

Cour internationale  
de Justice

LA HAYE

International Court  
of Justice

THE HAGUE

ANNÉE 2002

*Audience publique*

*tenue le vendredi 14 juin 2002, à 12 heures, au Palais de la Paix,*

*sous la présidence de M. Guillaume, président,*

*en l'affaire des Activités armées sur le territoire du Congo*  
(nouvelle requête : 2002)

(République démocratique du Congo c. Rwanda)

Demande en indication de mesures conservatoires

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COMPTE RENDU

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YEAR 2002

*Public sitting*

*held on Friday 14 June 2002, at 12 noon, at the Peace Palace,*

*President Guillaume presiding,*

*in the case concerning Armed Activities on the Territory of the Congo*  
(New Application: 2002)

(Democratic Republic of the Congo v. Rwanda)

Request for the indication of provisional measures

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VERBATIM RECORD

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*Présents* : M. Guillaume, président  
MM. Ranjeva  
Herczegh  
Fleischhauer  
Koroma  
Vereshchetin  
Mme Higgins  
MM. Parra-Aranguren  
Kooijmans  
Rezek  
Al-Khasawneh  
Buergenthal, juges  
MM. Dugard  
Mavungu Mvumbi-di-Ngoma, juges *ad hoc*  
M. Couvreur, greffier

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*Present:*

President	Guillaume
Judges	Ranjeva
	Herczegh
	Fleischhauer
	Koroma
	Vereshchetin
	Higgins
	Parra-Aranguren
	Kooijmans
	Rezek
	Al-Khasawneh
	Buergenthal
Judges <i>ad hoc</i>	Dugard
	Mavungu Mvumbi-di-Ngoma
Registrar	Couvreur

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***Le Gouvernement de la République démocratique du Congo est représenté par :***

S. Exc. M. Jacques Masangu-a-Mwanza, ambassadeur extraordinaire et plénipotentiaire de la République démocratique du Congo auprès du Royaume des Pays-Bas,

*comme agent;*

S. Exc. M. Alphonse Ntumba Luaba Lumu, ministre des droits humains,

*comme coagent;*

M. Lwamba Katansi, professeur à l'Université de Kinshasa,

M. Pierre Akele Adau, doyen de la faculté de droit de l'Université de Kinshasa et haut magistrat,

*comme conseils;*

M. Lukunda Vakala Mfumu, assistant à l'Université de Kinshasa, assistant du ministre des droits humains,

M<sup>e</sup> Kabinda Ngoy, assistant au cabinet du ministre des droits humains et avocat au barreau de Lubumbashi,

*comme assistants des conseils.*

***Le Gouvernement de la République rwandaise est représenté par :***

S. Exc. M. Monsieur Gérard Gahima, procureur général de la République rwandaise,

*comme agent;*

S. Exc. Mme Christine Umutoni Nyinawumwani, ambassadeur extraordinaire et plénipotentiaire de la République rwandaise auprès du Royaume des Pays-Bas,

*comme coagent;*

M. Christopher Greenwood, Q.C., professeur de droit international à *London School of Economics*,

*comme conseil et avocats.*

***The Government of the Democratic Republic of the Congo is represented by:***

H. E. Mr. Jacques Masangu-a-Mwanza, Ambassador Extraordinary and Plenipotentiary of the Democratic Republic of the Congo to the Kingdom of the Netherlands,

*as Agent;*

H. E. Mr. Alphonse Ntumba Luaba Lumu, Minister for Human Rights,

*as Co-Agent;*

Mr. Lwamba Katansi, Professor at the University of Kinshasa,

Mr. Pierre Akele Adau, Dean of the Faculty of Law, University of Kinshasa and Senior Magistrate,

*as Counsel;*

Mr. Lukunda Vakala Mfumu, Assistant at the University of Kinshasa, Assistant to the Minister for Human Rights,

Maître Kibinda Ngoy, Assistant to the Minister for Human Rights and member of the Lubumbashi Bar,

*as Assistants to Counsel.*

***The Government of the Rwandese Republic is represented by:***

H.E. Mr. Gérard Gahima, *Procurer-General* of the Rwandese Republic,

*as Agent,*

H.E. Mrs. Christine Umutoni Nyinawumwani, Ambassador Extraordinary and Plenipotentiary of the Rwandese Republic to the Kingdom of the Netherlands,

*as Co-Agent,*

Mr. Christopher Greenwood, Q.C., Professor of International Law at the London School of Economics,

*as Counsel and Advocate.*

Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte, et je voudrais tout d'abord préciser qu'à la suite d'une réunion que j'ai eue avec les agents des Parties, la République démocratique du Congo a décidé de retirer les documents qu'elle avait déposés lors de la précédente audience.

Nous allons maintenant entendre le deuxième tour de plaidoiries de la République rwandaise, et je donne la parole au professeur Greenwood.

Mr. GREENWOOD: Thank you very much, Mr. President. Mr. President, may I take this opportunity of thanking my learned friend, the Co-Agent of the Democratic Republic of the Congo, for his decision to withdraw the documents that were put before you in the earlier session this morning.

Mr. President, I can be very brief in my remarks to you this morning. The purpose of the oral hearings, and in particular the second round of oral hearings, is to focus on the issues which divide the parties. And this morning's proceedings have very effectively done that. The learned Agent for the Democratic Republic of the Congo finished the second round of argument by the Congo by repeating to you the provisional measures of protection which his Government seeks. And he was quite candid about that. He requested, amongst others, that there be an order for an embargo on the supply of certain provisions to Rwanda and the purchase of certain items from Rwanda; a request for a declaration that Rwanda has violated various international law instruments and rules of customary law; a request for a provisional measure to the effect that the Congo has a right to demand compensation from Rwanda, and great a deal else.

Mr. President, we can be clear that these are measures which could not be ordered by a court as provisional measures of protection in *any* event. It is a request for an interim judgment on the merits. Secondly, that there is no link whatever between the jurisdictional provisions in the treaties on which the Congo relies — and to which I will return in a moment — and the measures which it seeks. It is trying to use provisions in treaties of a highly specific character to bring before you a request for provisional measures which, if indeed it is a request for provisional measures at all, covers the entire gamut of the current situation in the Democratic Republic of the Congo. And in particular, the Request by the Democratic Republic of the Congo invites you to make orders to

non-parties because an embargo, an order for the establishment of a peacekeeping force, could not be made in proceedings between two States, because they would necessarily have to be addressed to other States and organizations which are not before you at this hearing.

Let me turn from that to the question of jurisdiction, because in our submission this is what the hearings have really focused upon as the issue before you. Does this Court have a *prima facie* basis for jurisdiction? No substantial response was made by the Democratic Republic of the Congo to the points which Rwanda raised yesterday. We heard nothing whatever about what *is* the dispute under the particular provisions of the Convention on the Elimination of All Forms of Discrimination against Women. Or which provision of the Constitution of the World Health Organization is the interpretation or application of that provision is in issue here.

We very clearly invited the Democratic Republic of the Congo to specify these points. They have declined to do so. We are left with a suspicion — in fact more than a suspicion — that the reason why they have said nothing on this subject is that there is nothing that they can say to the Court.

But they did clarify one very important issue, and that is to disavow any intention of relying upon the Convention on the Privileges and Immunities of the United Nations as a basis for jurisdiction. And one of the learned counsel for Congo made clear this morning that references to that Convention and to the Headquarters Agreement between the United Nations and the Congo were solely to establish — and I hope I have understood it aright — that Rwanda has no authority to murder members of MONUC. Well let me make it quite clear, Rwanda *has never* murdered or attacked members of MONUC, has no intention of doing so, and does not need to be reminded that it has no authority to do so, by reference to a treaty to which Rwanda is not a party in any event, namely the Headquarters Agreement.

Now one or two issues of jurisdiction were touched on in the second round this morning. First of all, I must reiterate what was said yesterday that, contrary to the picture that has been painted by the Democratic Republic of the Congo, there is nothing remotely incompatible with a respect for international law or a respect for this Court as an institution for a State to take a jurisdictional argument. Innumerable counsel over the last 50 years have stood at this podium and sat at that table and taken jurisdictional arguments in cases of this kind. The limits on the

jurisdiction of the Court are a part of the international law which the Court applies and which Rwanda is determined to respect. Nor, again contrary to what was said this morning by the Congo, is Rwanda in any way standing before you and saying “you have no jurisdiction, let me continue the massacres”, which was the phrase used by the learned Minister for Human Rights. There is a clear difference, Mr. President, between the substantive law which Rwanda is bound by, has never denied it is bound by, and is pledged to respect, and the question of jurisdiction. And it is, if I may say so, a little rich for the Democratic Republic of the Congo to seek to assume that any challenge to jurisdiction of a court must be a claim to impunity when it has itself only recently been successful in this Court on an argument about diplomatic immunity and immunity in respect of one of its Ministers. The difference between immunity or lack of jurisdiction and impunity is something which the Congo should be very well aware of.

Let me turn then to the Genocide Convention and the reservation to it. Counsel for the Congo argued this morning that that reservation is inadmissible and cannot be relied upon. But they said not one word, Mr. President, about why the self-same reservation made by Spain and the United States was held by a majority of 13 votes to 3 by this Court only three years ago, to be a reservation on which those two States could rely. The argument put forward by the Congo in respect of Article IX and the Rwandan reservation to it is wholly without merit. My learned friend, counsel for the Congo, made the point that the Genocide Convention lays down obligations of the most fundamental character binding on Rwanda, and Rwanda cannot escape from those obligations. Mr. President, Rwanda has never sought to escape from those obligations; we are bound by the Genocide Convention and we observe its contents. We respect its substantive provisions, but we are not bound by Article IX; we exercised what was our right to make a reservation to that Article. And it is no good my learned friend saying the human rights treaties are different: if one looks at the panoply of human rights treaties, in the majority of cases the provisions for dispute settlement are indeed explicitly of an optional character. One thinks, for example, of the Optional Protocol to the International Covenant for Civil and Political Rights.

Then there is the point about arbitration and negotiation. With great respect, we say that the Congo has completely misunderstood this issue. We are not saying that there is a general rule of international law that before seising the Court the parties must always seek to achieve a settlement

by negotiation or arbitration. And quotations from the Charter, quotations from learned works of international law on the generality of any obligation of pacific settlement, are entirely beside the point. What we are saying is that the treaties on which the Congo relies, specifically the Convention on the Elimination of All Forms of Discrimination Against Women and the Montreal Convention, and, albeit in a somewhat different form, the World Health Organization Constitution, these specific instruments contain obligations of the clearest possible character to take certain steps before the Court can be seised. There must be an attempt at a negotiated settlement of the dispute; there must be an attempt to organize an arbitration.

Now, the Minister and various other members of the Congolese delegation said that repeatedly the Congo has attempted to negotiate and put forward proposals of this kind. But are two comments about that.

First of all, not one single document has been offered to you proposing arbitration, *not one* — a marked contrast, for example, with Libya's offerings to this Court in the Montreal Convention *Lockerbie* case.

Secondly, what the Congo has actually done is to confuse two completely different issues. It has confused proposals about the settlement of the general situation in the Congo — the peace and security issues on which the Minister finished his speech — with the entirely different issue of a proposal for the arbitration of a specific dispute under, for example, the Convention on the Elimination of All Forms of Discrimination Against Women. It cannot possibly be a way of meeting the requirements in Article 29 of that Convention or Article 14 of the Montreal Convention for one State to go along to another and say: why don't we sit down and talk about all the problems that we've got, or why don't we refer to arbitration how you're going to withdraw your forces from our territory. Those are totally different issues. It is not a case of two different ways of looking at the same dispute. One only has to glance at what is on the agenda of the Lusaka peace process — and you can see a very good illustration of it from what is in the Application and the Request. One only has to glance at that and compare it with the language of these treaties to realize that we are talking here about quite different matters, and that there is nothing in what the Congo has done — no single document it can put before you, no argument it has put before you — which would suggest it has met the obligations laid down in Article 29 of the Convention on

Women or Article 14 of the Convention on Montreal. Indeed, even today, in the second round of oral hearings, when it is far too late, the Congo still has not suggested what *is* the dispute between the two countries arising under the Convention for the Elimination of All forms of Discrimination Against Women. What *is* the dispute under the Montreal Convention or the World Health Organization Constitution? I said yesterday that Rwanda simply has no idea which provisions of these treaties the Congo considers to be in issue. Mr. President, we are no wiser and no better informed this morning than we were yesterday afternoon on this subject.

Two other points I can make very briefly before I conclude. The first concerns the role of the Security Council. This may be the result of a misunderstanding of a translation, but I did not suggest yesterday that because the Security Council were seised of the issues that therefore the Court could not act. I suggested to you that the Court cannot act because there is no *prima facie* basis for its jurisdiction. And that would be the case irrespective of anything the Security Council may have done or may be doing. But it is, of course, the case that the Court will be aware that the Security Council has taken action in respect of the situation in the Democratic Republic of the Congo, and is continuing to do so.

And that leads me to my second, final point. That is, that the learned counsel for the Congo suggested to you this morning that one merely had to pick up one of these documents and read it out and it showed immediately what the Congo was suffering and that it was Rwanda's fault.

Now that second point is actually rather important, because if one looks at the latest Security Council resolution 1399 and at the latest Presidential Statement made only last month, those two instruments make it clear that the United Nations is extremely concerned about the behaviour of RDC-Goma, one of the rebel factions operating in a particularly complicated patchwork quilt — if one likes — of rebel groups and other forces in that part of the Democratic Republic of the Congo. But there is not the merest hint that Rwanda is responsible for that. On the contrary, Rwanda is asked to use its good offices with the RDC-Goma to try and bring the RDC-Goma back into compliance. And I must repeat what my learned friend the Agent for Rwanda said yesterday, that there are no Rwandan troops in Kisangani and there have not been this year or last.

Now, fortunately, those are not issues to which the Court has to address itself, because this case is actually one that turns on a very much simpler issue: the manifest absence of jurisdiction,

an absence which has effectively been admitted before you this morning by counsel for the Congo. Instead of addressing the arguments we raised yesterday about jurisdiction, they repeated their comments about the gravity of the situation, the terrible nature of violations of international law which they claim are occurring.

But even if one accepted — and we do not accept it — the truth of what is put before you, it would make no difference to the question of jurisdiction. I will not read the quotation to you again, but I would repeat the reference to what this Court said in the *Legality of Use of Force* cases. There is a fundamental distinction between the violation of rules of substance and the Court's jurisdiction, and that the question of whether there has been a violation is one which can only be addressed after jurisdiction has been established. It cannot be a substitute for the basis of jurisdiction for this Court. Mr. President, I have no doubt that the Court will not lose sight of that principle, even if the Congo has done.

I would now respectfully ask you to call upon Mr. Gahima, as the Agent for Rwanda, to make our formal closing submissions.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. Je donne maintenant la parole à M. l'agent pour la République rwandaise.

Mr. GAHIMA: Mr. President, Members of the Court. May it please the Court.

Rwanda is a country that has suffered immensely from problems arising from the 1994 genocide and its aftermath. Indeed, Rwanda is a country whose stability — indeed whose survival — is still at risk. And one of the causes of the risks posed to our survival is the presence in the Democratic Republic of the Congo of guerrillas which committed genocide in 1994 and today are still committed to continuing it and to complete it. These groups include Ex-Far, the former government army of Rwanda. They include the Interhamwe militia, which are not only part and parcel of the Government of the military Democratic Republic of the Congo, but are indeed its backbone. Honourable Members of this Court, you heard the delegation of the Democratic Republic of the Congo admit before you this morning that under the process of the Lusaka Peace Agreement they have signed disarmed about 2,000. But those are not all the combatants who threaten our survival who are in the Congo: they are numbered in tens of thousands.

We, in Rwanda, want peace — peace for us and for our neighbours. It is a peace that we seek with diligence and with the support of the international community, and a peace that we seek through the framework of a treaty we and our brothers from the Democratic Republic of the Congo have signed called the Lusaka Peace Agreement.

Our brothers from the Democratic Republic of the Congo said that Rwanda has not lived up to its obligations under the Lusaka Peace Agreement. Nothing could be further from the truth. Rwanda is very committed to the peace process that is in motion. The Peace Agreement provided for a ceasefire: that ceasefire is in place and holding. The peace process required a disengagement of forces: Rwanda withdrew not just 15 km, but 200 km — more than 185 km from the front line that the Peace Agreement provided for. So I beg your indulgence, Members of this honourable Court, to let you know that Rwanda is a country that is committed to peace and is pursuing it diligently because we need it — as we know our brothers do.

The Democratic Republic of the Congo misrepresents the role that the Security Council has played and what the Security Council expects of Rwanda. You have been told time and again, honourable Members of the Court, that Rwanda has no regard for the resolutions of the Security Council, but nothing could be further from the truth. Members of the Security Council — all members — have visited our region very frequently to discuss the implementation of the Lusaka Peace Agreement. We have had very good meetings with our leadership. We are in full agreement with members of the Security Council about how the peace process in the Congo should proceed — mainly implement the Lusaka Peace Agreement, mainly promote the inter-Congolese dialogue that began in Sun City in South Africa in March. We are in full agreement with the Security Council on all positions it has taken regarding the conflict in the Democratic Republic of the Congo.

You were told that government troops are in Kisangani. Our troops are not in Kisangani. If you look at the latest Security Council resolution, there is nowhere where the Security Council says that the troops of Rwanda are in Kisangani — and that is not by mistake, because MONUC, the United Nations peacekeeping force is on the ground in Kisangani and it is not by mistake that it has not been mentioned that we are required to vacate Kisangani.

In conclusion, honourable Members of the Court, the arguments that have been set forth during the hearings of the past two days boil down to this: we respect this Court, we respect our

obligations under international law. But international law also confers certain rights — such as the right to evoke provisions of treaties that you are party to; such as the right to indicate to the Court that this is not a dispute in which it has jurisdiction. We are doing no more than asserting our rights under international law in raising the issue of jurisdiction before you. We are committed to peace — peace for Rwanda, peace for our neighbours. The fact that this Court does not make any orders for provisional measures because it lacks jurisdiction does not in any way lessen our resolve to continue the search for peace.

There is one other thing that I would like to ask your indulgence about, something I would like to talk about. You have been given a lot of documents, not this morning's documents, but the documents that were attached to the Application and the Request for the indication of provisional measures. They are documents that allege human rights violations in the Democratic Republic of the Congo. Now, I would wish Members of the Court to spend just a little time to reflect on what the eastern Democratic Republic of the Congo is like today. It is an area where the armies of several countries are involved; it is an area where there are dozens of rebel groups, some opposed to the Government of the Democratic Republic of the Congo, some supported by the Democratic Republic of the Congo, or pirating. Needless to say, in an institution like this — an institution of conflict — a lot that comes out in the press or as publications by some human rights organizations is misinformation that is part and parcel of propaganda that is an inevitable element of war.

I wish to draw your attention, Members of the Court, to the fact that nothing that the Democratic Republic of the Congo has produced links Rwanda to any of the activities that are alleged to have taken place. But this is not an issue that I would wish to delve deeply into. The basis of our arguments, yesterday and this morning, is basically that we do not believe that there is a jurisdictional basis for the current proceedings. We set out our arguments. They are arguments that are very sound. It is very clear that the Democratic Republic of the Congo could not answer these, and they do not attempt to. So we continue with the request that we made to this honourable Court yesterday — first, that the Request of the Democratic Republic of the Congo for the indication of provisional measures should be denied; and secondly, we also request that, in view of the fact that the current proceedings are really an abuse of the process of court, we pray this Court to exercise its discretion and strike this case from its List.

I thank you, Mr. President and honourable Members of the Court.

Le PRESIDENT : Je vous remercie, Monsieur l'agent. Ceci met un terme à la présente séance. Il me reste à remercier les représentants des deux Parties pour l'assistance qu'ils ont bien voulu fournir à la Cour par leurs observations orales au cours de ces quatre audiences. Je leur souhaite un heureux retour dans leurs pays respectifs et, conformément à la pratique, je prierai les agents de bien vouloir rester à la disposition de la Cour. Sous cette réserve, je déclare la présente procédure orale close.

La Cour rendra son ordonnance sur la demande en indication de mesures conservatoires le plus tôt possible. La date à laquelle cette ordonnance sera prononcée en séance publique sera communiquée aux agents des Parties en temps utile.

La Cour n'étant saisie d'aucune autre question aujourd'hui, l'audience est levée.

*L'audience est levée à 12 h 40.*

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