

The International Court of Justice
Of the
American Model United Nations

(25 November 2003)

The Diallo Case

Republic of Guinea v. Democratic Republic of Congo

PRESENT:PRESENT: *President* Alo Alonzo; *Vice-President* Vogl; *Justices* Bulson, Burton, Dresen, Franklin, Honda, Hypnar, Klemesrud, Laiu, Scherbakoff, Stapleton, and Verschage

The Court,
Composed as above,
Delivers the following Judgment

1. The Republic of Guinea contends that one of its nationals, Mr. Ahmadou Sadio Diallo, was wrongfully imprisoned by the Democratic Republic of Congo, where he had been a resident for nearly 32 years. The Democratic Republic of Congo contends that even though Mr. Diallo was a resident to whom several oil companies and Zaire owe debts to in excess of \$13m, the government of Congo is under no obligation to repay Mr. Diallo for debts accumulated by the country of Zaire.
2. Citing the African Charter on Human Rights, established by the Organization of African Union, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, the Republic of Guinea believes that the Democratic Republic of Congo owes Mr. Diallo monetary and other types of compensation for violation of human rights. Citing the Vienna Convention on Succession of States in Respect of Treaties, the Democratic Republic of Congo alleges that it is no longer obligated to repay Mr. Diallo because any debts incurred occurred under the government of Zaire; and, thus, the point is moot.
3. The Republic of Guinea asserts that Mr. Diallo is afforded diplomatic protection as an essential point of international law. The Democratic Republic of Congo contends that diplomatic protection does not extend to Mr. Diallo under the operation of jus soli, in which Mr. Diallo became a national of the DRC. This would mean that under Article 4 of the Hague Convention (1930), A State may not be afforded diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

4. Both the Democratic Republic of Congo and the Republic of Guinea acknowledge Mr. Diallo was a resident national of the Republic of Guinea and the country of Zaire prior to his expulsion from Zaire.

5. Both the Democratic Republic of Congo and the Republic of Guinea are willing to bring their dispute before the ICJ.

For these reasons,
The Court,
By nine votes to four,

Finds that it cannot rule on matters brought up by the Republic of Guinea prior to the expulsion of Mr. Diallo from the country of Zaire. The International Court of Justice has no jurisdiction under Article 4 of the 1930 Hague Convention. Subsequently, any damages, rulings, reviews, issues, and domestic court determinations before the time of expulsion cannot be considered by this court.

IN FAVOR: *President* Alonzo, *Justices* Franklin, Honda, Hypnar, Klemesrud, Laiu, Scherbakoff, Stapleton, and Verschage.

AGAINST: *Vice President* Vogl, *Justices* Bulson, Burton, and Dresen.

The Court,
By nine votes to four,

Finds that Guinea has demonstrated no violation of international law that is detrimental either directly or indirectly to the interests of the country. Although we recognize that Mr. Diallo has experienced damages and other hardships, due to the acts within Zaire, the court only addresses issues pertaining to international law. With the evidence and testimony provided by the Applicant, it cannot be shown that the interests of Mr. Diallo are the same as the national interests of the Republic of Guinea. Therefore, Guinea *as a nation* has failed to establish harm done to the State of Guinea under existing international law, as they pertain to general principles embodied in Article 4 of the Hague Convention, as well as Article 34 of the ICJ Statute, where Only states may be parties in cases before the court.

IN FAVOR: *President* Alonzo, *Justices* Franklin, Honda, Hypnar, Klemesrud, Laiu, Scherbakoff, Stapleton, and Verschage.

AGAINST: *Vice President* Vogl, *Justices* Bulson, Burton, and Dresen.

The Court,
By ten votes to three

Finds, in favor of the Democratic Republic of the Congo.

IN FAVOR: *President* Alonzo, *Justices* Burton, Franklin, Honda, Hypnar, Klemesrud, Laiu, Scherbakoff, Stapleton, and Verschage.

AGAINST: *Vice President* Vogl, *Justices* Bulson, and Dresen.

Justice Burton appends a separate opinion.

Vice President Vogl, *Justices* Bulson, Dresen append a dissenting opinion.

Separate opinion of Justice Burton

Although I am able to concur with the resulting default judgement in favor of the Democratic Republic of the Congo that has been concluded by the majority of this court, I respectfully express that I do find significant errors with the process and findings used to reach such a conclusion.

I find that due to any reciprocal rights and duties that were present between Mr. Diallo and Zaire during his thirty-two year tenure within Zaire and due to the internationally accepted doctrine of *jus soli* it must be observed that Mr. Diallo was in fact a national of Zaire. In that Mr. Diallo was born within Guinea, to parents who were both nationals of Guinea, and that reciprocal rights and duties are also present between Mr. Diallo and Guinea, this Court must hold that Mr. Diallo does in fact hold dual citizenship within both Guinea and Zaire.

I find that the executive authority(ies) within Zaire by refusing to uphold and enforce a judgement rendered in Mr. Diallo s favor by the judicial authority(ies) within Zaire and by the arbitrary detainment and eventual expulsion of Mr. Diallo from the territorial jurisdiction of Zaire has conducted itself in such a capacity so as to deny to itself any legitimate claim of effective nationality over Mr. Diallo. In that Mr. Diallo possess Guinean nationality, in addition to his now obscured nationality from Zaire, and in that upon expulsion from their territorial jurisdiction the government of Zaire sent Mr. Diallo directly to the territorial jurisdiction of Guinea it must be concluded that for the purposes of the case present before the Court that Guinea possess the legitimate claim of effective nationality.

I find that although Article 4 of the Hague Convention of 1930 prevents diplomatic protection in the case of dual nationality when the disputing states are the states in which the individual holds such dual nationality, the *Florence Mergé* case of 1955 appears to append the Hague Convention s provision to allow the argument of effective citizenship to come into play in within the disputes between such aforementioned states. The Court recognizes the Democratic Republic of the Congo s contention that an individual possessing unclean hands may not be afforded diplomatic protection, however, the Democratic Republic of the Congo has failed to show through any venue other than the claim of guilt by association with the corrupt government of Zaire that Mr. Diallo does have unclean hands. Due to the significance of the allegations surrounding Zaire s treatment of Mr. Diallo, due to the fact that such violations may

in deed constitute a violation of Mr. Diallo's human rights, and due to the failure of the Democratic Republic of the Congo to show just reason for why Guinea should not make use of diplomatic protection. The state possessing effective nationality does enjoy the right to represent its national under the basis of diplomatic protection before the Court. In that effective nationality has been found to be in the favor of Guinea it must be concluded that the Court is competent to hear the present dispute.

I find that scholars are present on both sides of the issue as to whether or not a succeeding state is bound to automatically accept the international obligations which were agreed upon by a preceding state. In that these conflicting opinions had not been definitively adjudicated as of the date when the Democratic Republic of the Congo seized the political control of the territory previously under the jurisdiction of Zaire it cannot be presumed that the Democratic Republic of the Congo is automatically obligated to adhere to any issue of international law and/or international relations which were adhered to on the part of Zaire. The Democratic Republic of the Congo, within its own sovereign powers as a succeeding state, does possess the right to reject the obligations of Zaire, the preceding state. The Democratic Republic of the Congo does possess the ability to choose within its sovereign powers to accept the obligations of the preceding state, which it has done with regard to membership within the United Nations, to the compulsory jurisdiction of the International Court of Justice, to the Universal Declaration of Human Rights, and to the African Charter on Human and Peoples' Rights, however this pattern of voluntarily accepting some of the obligations of Zaire, no matter how significant they may be, does not constitute a perspective that every obligation of Zaire will now be maintained by the Democratic Republic of the Congo. Such choice to accept the obligations of the preceding state would in essence also be an optional pattern within domestic policies, therefore the Democratic Republic of the Congo is also under no obligation to adhere to the judgement rendered in Mr. Diallo's case within Zaire's domestic courts. There can be no finding in favor of Guinea on the Democratic Republic of Congo's decision to not oblige itself to the ruling of Zaire's courts. Mr. Diallo would be recommended to return to the territory which is now controlled by a successive state and again seek an award in his favor within the domestic courts of the new state of the Democratic Republic of the Congo.

I further find that even if a basis could be absolutely concluded so as to show a mandatory obligation for the Democratic Republic of the Congo to fulfill the obligations of Zaire, which would include the payment of the judgement to Mr. Diallo, it must be contemplated as to the extent that such an award would effect the Democratic Republic of the Congo. Article 42 Section 3 of the Draft Articles on State Responsibility adopted by the International Law Commission holds that "In no case shall reparations result in depriving the population of a State of its own means of subsistence." It is without contestation that the Democratic Republic of the Congo owes an external debt in excess of \$8 billion USD. It is further without contestation that the annual gross domestic product of the Democratic Republic of the Congo, at nearly \$6 billion USD, is only eighteen percent of the entire sum of judgement requested by Guinea. If such monetary award were to be rendered by this court it would in effect cripple the domestic economy of the Democratic Republic of the Congo as well as its standing within the international economic community. Such a judgement would be completely irresponsible for the Court to render as would it be inconsistent with international legal understanding.

Dissenting opinion of Vice-President Vogl, Justice Dresen, and Justice Bulson

The Court does have jurisdiction based on the reasons stated in the separate opinion of Justice Burton. However, the Democratic Republic of the Congo is a succeeding government, not a separate State, from the former State of Zaire, in as much as the geopolitical boundaries of Zaire remained unchanged. Therefore, the Democratic Republic of the Congo does retain all former obligations of the government of Zaire. At this time there has been a lack of evidence from both sides as to the actual amount of recompense due to Mr. Diallo and the actual amount of recompense the Democratic Republic of the Congo is able to award said individual. For aforementioned reasons, the Court should have found in favor the Republic of Guinea. The Court does not have the capability to determine damages incurred and cannot award recompense to Mr. Diallo.