



*American Model United Nations*

## **International Court of Justice**

### **INTERNATIONAL COURT OF JUSTICE OF THE AMERICAN MODEL UNITED NATIONS**

ARGUED: November 18, 2007

DECIDED: November 18, 2007

THE REPUBLIC OF CONGO v THE REPUBLIC OF FRANCE

Dissenting Opinion:

This opinion finds in agreement with France and affirms their right to issue the warrants of inquiry of certain individuals.

The Court's jurisdiction in this matter is mandated by Article 36 of the Statute of the International Court of Justice in regards to the expressed consent to jurisdiction given by both parties.

In assessing the implications that may result if this Court neglects to allow furthering investigations into the alleged disappearances of certain individuals, we mandate that this body recognize the egregious nature of the allegations before us. In recognizing such allegations, it becomes incumbent upon this body to act in a manner that is in accordance with internationally recognized principles of human rights as codified by the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* to which both parties are signatories.

This court asserts that these disappearances are in fact egregious in nature; therefore, triggering the universal legal principle of jus cogens as presented in Article 53 of the *Vienna Convention on the Law of Treaties 1969*, which states the following:

*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*

France's ability to extend its investigational jurisdiction outside of its territorial boundaries stems from the applicability of the above stated principle of jus cogens. We find the potential violation of the *Convention against Torture and Other Cruel, Inhuman*

*or Degrading Treatment or Punishment*, satisfies the requirement established in Article 53 of a “peremptory norm of general international law.”

We hold the established principles of jus cogens superior to all notions made in the applicant’s memorial hindering on other conventions relating to the supremacy of state sovereignty and diplomatic immunity. Our criteria leading to the arrival of this conclusion includes the previously mentioned egregious nature of the offense as well as the minimal burden placed upon the Congolese individuals if they should comply with the warrants. This opinion holds that the burden placed upon the Congolese officials is minimal due to its inquisitorial nature rather than any arrests. This request is well within the limits set forth in Article 9 of *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* , which establishes:

*States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.*

It is not our aim to offend the judicial system of the Republic of Congo; but rather, insist that this grave issue must be addressed with the utmost attention and efforts. We further insist that any continuing investigations or inquiries post by France are carried out in a legally sound and diplomatically courteous manner. Customary norms of providing adequate impartial counsel along with fair and speedy processes should still be maintained throughout any investigations by any party to the case. Recognizing the potential for abuse, we encourage caution in the exercise of universal jurisdiction and hold that all cases in the future should be addressed individually. In the spirit of fostering positive diplomatic relations between all member states of the United Nations, we still would hope that all parties would work to a mutually acceptable agreement.

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President Gender

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Justice Vajpeyi

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Justice O'Brien

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Jusitce Forsberg

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Justice Campbell

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Justice Chatel