

**Oasis International School Model United Nations**

**The International Court of Justice**

**President:** Hana Habib

**Vice President:** Nadia Mardini

Guiding Package

Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)

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**Introduction to the case:**

In 1993, the Belgian Parliament passed a law of universal jurisdiction*,* (the Law of 16 June 1993 concerning the Punishment of Grave Breaches of the International Geneva Conventions) thus allowing them to prosecute people accused of genocide, war crimes or crimes against humanity regardless to their region. On the 11th of April 2000, an investigating judge of the Brussels tribunal de première instance issued an international arrest warrant *in absentia*[[1]](#footnote-1) against the Minister of Foreign Affairs of the Democratic Republic of the Congo (DRC) Abdoulaye Yerodia Ndombasi, and with several other Rwandan nationals for their alleged involvement in the 1994 Rwandan Genocide. The warrant was based on universal jurisdiction and it accused Mr Yerodia of inciting racial hate against the Tutsi civilians in Rwanda. He was accused of inciting racial hatred in various speeches in the DRC in August 1998, which had contributed to the massacre of several hundred persons thus, he was charged as perpetrator[[2]](#footnote-2) or co-perpetrator of these crimes. Furthermore, charging him with offences constituting grave breaches of the Geneva Conventions and allegedly committing [crimes against humanity](http://www.internationalcrimesdatabase.org/Crimes/CrimesAgainstHumanity). The arrest warrant, which asked States to arrest, detain, and extradite Mr Yerodia to Belgium, was transmitted to the DRC in June 2000 and circulated internationally through Interpol.

The DRC then decided to bring the case to the International Court of Justice on the 17th of October 2000, and request the ICJ to declare that Belgium, by delivering the warrant, violated the territorial sovereignty of the DRC / the principle of sovereign equality among States and the diplomatic immunity from civil and criminal jurisdiction of the minister of foreign affairs in the Congo.

**History of the case:**

* **Parties involved:**

1. Democratic Republic of Congo
2. Kingdom of Belgium
3. Rwanda

Plaintiff (Democratic Republic of Congo): the DRC believes that the Belgian Tribunal of First / de première instance cannot judge Mr Abdoulaye Yerodia Ndombasi, their Minister for Foreign Affairs in its own courts and request to extradite him, since he possesses diplomatic immunity in order to fulfill his duties as foreign minister. They believe so because to them, Mr Yerodia has not committed any crimes and should not be charged as perpetrator. The investigating judge claims jurisdiction in respect of offences purportedly committed on the territory of the DRC by a DRC national “without any allegation that the victims were of Belgian nationality or that these acts constituted violations of the security or dignity” of Belgium.

Defendant (Kingdom of Belgium): Belgium believes that it is their right to prosecute war criminals and people involved with genocide according to the law of universal jurisdiction they passed in 1993 and 1999, and that Mr Yerodia was involved in crimes that breach the 1949 Geneva Conventions and its Additional Protocols. Therefore, he is stripped from diplomatic immunity from criminal jurisdiction.

Rwanda: The Rwandan Genocide plays an important role in this case, since Mr Yerodia is being accused of committing crimes against the Rwandan Tutsis. The Tutsis and the Hutus have also inhabited the DRC, and during the genocide criminals from other countries came and participated in this mass murder.

**History of proceedings**

* On the 11th of April 2000, the Belgian Magistrate issued an international arrest warrant against Congolese minister Yerodia Ndombasi accusing him of committing war crimes and genocide, as well as breaching the Geneva Convention of 1949. The warrant was sent out to States through Interpol.
* On the 17th of October 2000, the Democratic Republic of Congo filed an application to the International Court of Justice requesting that Belgium retracts the arrest warrant it issued against their Minister for Foreign Affairs Mr Yerodia.
* At the same time, the Democratic Republic of Congo requested the indication of interim measures[[3]](#footnote-3) under article 48 of ICJ Statute, arguing that the impending arrest warrant effectively barred Mr Yerodia from exercising his duties as Foreign Minister.
* On the 8th of December 2000, the Belgian Counsel requested to cancel the case implicating that it has been rendered moot[[4]](#footnote-4) because Ndombasi was not able to proceed with his duties as minister. But then, the ICJ rejected the request because Mr Yerodia had been transferred to a government post involving less frequent foreign travel.
* **Statement of facts:[[5]](#footnote-5)**
* The arrest warrant fails to note the “*current capacity [of Mr Yerodia Ndombasi] as Minister of Foreign Affairs”[[6]](#footnote-6)*.
* The arrest warrant characterizes the acts alleged as criminal law offences being “crimes under international law constituting grave breaches causing harm by action or omission to persons or property protected under the Conventions signed at Geneva on 12 August 1949 and Protocols I and II additional to said Conventions, [and] crimes against humanity”.
* According to the judge [of the Belgian Court], the Congolese population conducted “dragnet operations” to hunt down not only the rebels and invading forces but also Tutsi civilians, arbitrarily arrested a great many of them and massacred several hundreds.
* Mr. Yerodia Ndombasi, who at the time was Principal Private Secretary to the President of the Congo, is alleged to have provoked and encouraged the continuation of those massacres by two televised statements inciting racial hatred in august 1998, made after they had begun. The warrant asserts that these statements described all of the rebels who had infiltrated the Tutsis and incited “racial hatred”.[[7]](#footnote-7)

**Key terms:**

**Law of Universal Jurisdiction:** a legal doctrine which permits domestic courts to try and punish perpetrators of some crimes so heinous that they amount to crimes against the whole of humanity, regardless of where they occurred or the nationality of the victim or perpetrator.[[8]](#footnote-8)

***In absentia:*** To be tried in a court but not be physically present in the proceedings.

**Interpol:** International Criminal Police Organization. The Interpol is an intergovernmental organization that facilitates cooperation between States national police to help arrest international criminals and facilitate extradition procedures.

***Erga Omnes:*** International law term used legally as describing the right of any state to complain of a breach of aforementioned international customary law.

**Extradition:** The act of deporting a criminal or a person convicted of a crime from one country to another in order to be prosecuted or jailed.

**Statement of law:**

1. Article 2, paragraph 1, of the Charter of the United Nations, which states: “The Organization is based on the principle of the sovereign equality of all its Members.”
2. Article 146 and 147 of the Fourth Geneva Convention Relative to the Protection of Civilian Introduction 8 Persons in Time of War of 1949
3. Article 85 of the First Additional Protocol of 1997 (Geneva Conventions)
4. Article 3 of the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977
5. Convention on the punishment of the crime of genocide of 9 December 1948
6. Geneva Conventions I–IV (1949);
7. The Law of 16 June 1993 "concerning the Punishment of Grave Breaches of the International Geneva Conventions of 12 August 1949
8. The Belgian Law (Protocols I and II of 8 June 1977 Additional Thereto", as amended by the Law of 19 February 1999 "concerning the Punishment of Serious Violations of International Humanitarian Law)

**Useful links:**

* International Court of Justice. *Application of the Democratic Republic of Congo,* available on: <http://www.icj-cij.org/docket/files/121/7081.pdf>, consulted on the 4th of December 2016. *Introduction to the case*
* International Court of Justice. *Memorandum of the Democratic Republic of Congo,* available on: <http://www.icj-cij.org/docket/files/121/8305.pdf>, consulted on the 2nd of December 2016.
* International Court of Justice. *Counter-Memorandum of the Kingdom of Belgium,* available on: <http://www.icj-cij.org/docket/files/121/8304.pdf>, consulted on the 2nd of December 2016.
* Goldmanncvj, Mathias. *Arrest Warrant Case,* available on: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1249?prd=EPIL>, consulted on the 1st of December 2016. *Facts about the case and history of proceedings*
* Oxford Dictionnary of Law: <http://www.fd.unl.pt/docentes_docs/ma/wks_MA_21613.pdf> *Useful key terms and their explanation*

**Bibliography:**

* International Court of Justice. *Basis of the Court’s Jurisdiction,* available on: <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=2>, consulted on the 4th December 2016.
* International Court of Justice. *Application of the Democratic Republic of Congo,* available on: <http://www.icj-cij.org/docket/files/121/7081.pdf>, consulted on the 4th of December 2016.
* International Court of Justice. *Memorandum of the Democratic Republic of Congo,* available on: <http://www.icj-cij.org/docket/files/121/8305.pdf>, consulted on the 2nd of December 2016.
* International Court of Justice. *Counter-Memorandum of the Kingdom of Belgium,* available on: <http://www.icj-cij.org/docket/files/121/8304.pdf>, consulted on the 2nd of December 2016.
* International Court of Justice. *Verdict regarding the Case,* available on: <http://www.icj-cij.org/docket/files/121/8126.pdf>, consulted on the 2nd of December 2016.
* AMICC. *Questions and answers on the ICC and Universal Jurisdiction,* available on: <http://www.amicc.org/docs/Universal%20Jurisdiction%20Q&A.pdf>, consulted on the 7th of December 2016.
* Anonymous. *Belgian Arrest Warrant Case (summarized),* available on: <https://ruwanthikagunaratne.wordpress.com/2012/07/27/belgian-arrest-warrant-case-summary/>, consulted on the 3rd of December 2016.
* GOLDMANNCVJ, Mathias. *Arrest Warrant Case,* available on: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1249?prd=EPIL>, consulted on the 1st of December 2016.
* TAQUET, Elsa. *Abdoulaye Yerodia Ndombasi*, available on: <https://trialinternational.org/latest-post/abdoulaye-yerodia-ndombasi/>, consulted on the 1st of December 2016.
* International Court of Justice. Arrest Warrant of 11 April 2000 (Democratic republic of Congo v. Belgium), available on: <http://www.icj-cij.org/en/case/121/jurisdiction-admissibility>, consulted on the 14th of september 2017.

1. key terms p.7 [↑](#footnote-ref-1)
2. perpetrator: a person who carries out a harmful or an illegal act [↑](#footnote-ref-2)
3. interim measures: urgent measures [↑](#footnote-ref-3)
4. moot: a subject to debate or dispute, and does not admit a final decision [↑](#footnote-ref-4)
5. <http://www.icj-cij.org/docket/files/121/8304.pdf> [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. <https://trialinternational.org/latest-post/abdoulaye-yerodia-ndombasi/> [↑](#footnote-ref-7)
8. <http://www.amicc.org/docs/Universal%20Jurisdiction%20Q&A.pdf> [↑](#footnote-ref-8)