



VOL. 5 - ISSUE 2 (2024)

Journal of International Criminal Law

Online Scientific Review

EDITED BY

Heybatollah Najandimanesh
Anna Oriolo

ISSN: 2717-1914

www.jiclonline.org

TABLE OF CONTENTS
VOLUME 5 – ISSUE 2

INTERNATIONAL CRIMES AND JUSTICE: INSIGHTS ON THE INTERNATIONAL COURTS' DECISIONS ON THE SITUATION IN UKRAINE

Pages 1-24

 XXX

Francesco Focillo

YAKUZA: JAPAN'S UNDERGROUND SOCIETY IN 21ST CENTURY

Pages 25-66

 XXX

Yufei Lin

JUSTICE DELAYED: UNPACKING INEFFICIENCY IN THE INTERNATIONAL CRIMINAL COURT

Pages 67-80

 XXX

Sabba Salebaigi-Tse

THE ARMED CONFLICT IN THE DEMOCRATIC REPUBLIC OF THE CONGO AND THE INTERNATIONAL CRIMINAL COURT

Pages 81-92

 XXX

Nouredine Soudani

UNIFYING THE LEGAL TAPESTRY: NAVIGATING ICC'S JURISPRUDENTIAL DISARRAY

Pages 93-126

 XXX

Lily Zanjani

BOARD OF EDITORS

EDITOR-IN-CHIEF

Heybatollah Najandimanesh, Allameh Tabataba'i University of Tehran (Iran)

GENERAL EDITOR

Anna Oriolo, University of Salerno (Italy)

EDITORIAL BOARD

Sètondji Roland J.B. Adjovi, Arcadia University (United States of America)

Hussein Aghaei Janatmakan, Shahid Chamran University of Ahwaz (Iran)

Mohammad Ali Ardebili, Shahid Beheshti University (Iran)

Mohamed Badar, Northumbria University (United Kingdom)

Flavio de Leao Bastos Pereira, Mackenzie Presbyterian University of São Paulo (Brazil)

Paolo Benvenuti, 'Roma Tre' University of Rome (Italy)

Michael Bohlander, Durham University (United Kingdom)

Homayoun Habibi, Allameh Tabataba'i University of Tehran (Iran)

Gerhard Kemp, University of Derby (United Kingdom)

Anja Matwijkiw, Indiana University Northwest (United States of America)

Solange Mouthaan, University of Warwick (United Kingdom)

Ali Hussein Najafi Abrand Abadi, Shahid Beheshti University of Tehran (Iran)

Behzad Razavifard, Allameh Tabataba'i University of Tehran (Iran)

Mehdi Zakerian, Islamic Azad University of Tehran (Iran)

ADVISORY BOARD (REFEREES)

Amina Adanan, Maynooth University (Ireland)

Amir Biparva, University of Justice Sciences and Administrative Services (Iran)

Girolamo Daraio, University of Salerno (Italy)

Ali Garshasbi, AALCO of New Delhi (India)

Noelle Higgins, Maynooth University (Ireland)

Kriangsak Kittichaisaree, ITLOS of Hamburg (Germany)

Gianfranco Liace, University of Salerno (Italy)

Panagiota Manoli, University of Peloponnese (Greece)

Roxana Matefi, Transilvania University of Braşov (Romania)

Mauro Menicucci, University of Salerno (Italy)

Marco Naddeo, University of Salerno (Italy)

Virginie Mercier, University of Aix-Marseille (France)

Hector Olasolo, Universidad del Rosario of Bogotá (Colombia)

Gizem Dursun Özdemir, Izmir Kâtip Çelebi University (Turkey)

Gisella Pignataro, University of Salerno (Italy)

Irena Rajchinovska Pandeva, Ss. Cyril & Methodius University of Skopje (North Macedonia)

Laurent Saenko, University of Aix-Marseille (France)

Eduardo Toledo, International Nuremberg Principles Academy (Germany)

Antonio Vecchione, University of Salerno (Italy)

EDITORIAL ASSISTANTS

Stefano Busillo (*in-Chief*), University of Salerno (Italy)

Emanuele Vannata (*in-Chief*), University of Salerno (Italy)

JICL'S INSIGHTS

Mohammadmehdi Seyed Nasser, Islamic Azad University of Tehran (Iran)

OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and



- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about “ecocide” is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

The Armed Conflict in the Democratic Republic of the Congo and the International Criminal Court

by *Nouredine Soudani**

ABSTRACT: The armed conflict in the Democratic Republic of Congo is considered one of the most deadly conflicts witnessed by the African continent in the late twentieth century, with more than 5 million casualties. It has seen some of the worst international crimes and serious violations of human rights and humanitarian law. Various internal and international factors and causes contributed to its outbreak. In the face of the national judiciary's inability to conduct independent investigations into the alleged crimes, the country's president requested the Prosecutor of the International Criminal Court to open an investigation into the situation in the Democratic Republic of Congo, as his country is a party to the Rome Statute. The Prosecutor responded by opening an investigation, which led to indictments against key war criminals, resulting in convictions being issued against them.

KEYWORDS: Armed Conflict; Conviction Rulings; International Crimes; Prosecutor; War Criminals.

I. Introduction

Over the past decades, the African continent has witnessed numerous wars and armed conflicts. One of the African countries that has experienced a particularly severe armed conflict, marked by the worst international crimes and serious human rights violations, is the Democratic Republic of Congo (DRC). The armed conflict there has resulted in more than 5 million casualties, making it the largest number of fatalities witnessed in the world since the end of World War II in 1945.

Based on that, the armed conflict in the Democratic Republic of Congo, which began in the late 1990s, is considered one of the largest and most dangerous armed conflicts to humanity not only in Africa, but also in the world in terms of scale and complexity. Several factors and reasons have contributed to the onset and escalation of this conflict. These include internal factors primarily related to power struggles and ethnic conflict among various tribes in the country, as well as international factors, especially the frequent interventions, particularly by regional countries like Rwanda, which had a military presence in the Democratic Republic of Congo.

The armed conflict in the Democratic Republic of Congo has led to the commission of crimes against humanity, war crimes, and numerous other serious violations of human rights. This has prompted calls for an investigation into the situation in the Democratic Republic of Congo by the International Criminal Court (ICC), of which the Democratic Republic of Congo is a party to its statute. Consequently, on April 19, 2004, the Congolese President requested the Prosecutor to open an investigation into the situation in the Democratic Republic of Congo, especially since the national judiciary was unable to conduct investigations and ensure fair trials

DOUBLE BLIND PEER REVIEWED ARTICLE

* Associate Professor of International Law, Faculty of Law and Political Science, University of Skikda (Algeria)

The Armed Conflict in the Democratic Republic of the Congo and the International Criminal Court

for the accused. The Prosecutor responded by opening an investigation on June 23, 2004, which resulted in indictments against several officials and convictions being handed down against them.

Studying the armed conflict in the Democratic Republic of Congo is crucial due to its severe nature, which has resulted in the deaths of millions of civilians. This necessitates an examination of the nature of this conflict in terms of its causes and context. Furthermore, researching this topic is important in shedding light on the role played by the International Criminal Court in prosecuting war criminals and ensuring their punishment. The intervention of the International Criminal Court in the armed conflict in the Democratic Republic of Congo and its opening of an investigation is considered one of the most successful interventions by the Court compared to other cases it has investigated. This is evident through the execution of arrest warrants issued against major criminals and ensuring their appearance before.

The study focuses on the background of the armed conflict in the Democratic Republic of Congo? It explores how the International Criminal Court has contributed to ensuring the prosecution and punishment of Congolese war criminals, preventing them from escaping justice?

The study relied on three methodologies: the descriptive approach, used to narrate texts and legal judgments related to the study topic; the analytical approach, employed to analyze legal texts related to this subject; and the historical approach, utilized to identify historical milestones relevant to the study topic.

For addressing the problem and covering all aspects raised by this topic, it has been divided into two sections. The first section deals with the background of the armed conflict in the Democratic Republic of Congo. The second section delves into the role of the International Criminal Court in the armed conflict in the DRC.

II. The Background of the Armed Conflict in the Democratic Republic of Congo

The DRC is one of the most prominent examples in Africa that witnessed some of the most violent civil wars, especially in the eastern regions like Kivu. In the early 1990s, security breakdowns in the country took a dangerous turn, escalating notably around 1993, coinciding with the outbreak of the civil war in Rwanda. This had serious repercussions on the internal stability of the DRC. Following this, the wave of violence escalated into two civil wars: the first extended from 1996 to 1997, and the second from 1998 to 2003.¹

The background of the armed conflict in Uganda can be attributed to several reasons that led to its outbreak. Therefore, it is important first to understand the factors that contributed to the existence of the armed conflict, and then address its outbreak and the physical violations of human rights committed within it.

A. Causes of Armed Conflict

The outbreak of armed conflict in the DRC is associated with internal and external factors, which can be summarized as follows.

¹ Fouzia Zeraouli, *Plunder, Booty, and Civil Wars in Sub-Saharan Africa: With Reference to the Case of the Democratic Republic of Congo*, 15(4) JOURNAL OF TRUTH IN HUMANITIES AND SOCIAL SCIENCES 170 (2015), at 170-171.

1. Internal Factors

- *The struggle for power*: the struggle for power in the DRC has been one of the main reasons behind the country's turmoil and the two civil wars that have inflicted suffering on the Congolese people since gaining independence from Belgium in 1960. The country has been caught in a vortex of power struggles, stemming from political violence that began with the police mutiny in 1960, the secession of the provinces of Katanga and Kasai, and the assassination of Patrice Lumumba. These events have been compounded by other rebellions, all rooted in the colonial policies enacted by Belgium.²

- *Ethnic conflicts*: ethnic conflicts are considered one of the main reasons for the occurrence of armed conflict in the DRC. These conflicts have been the primary cause of the two civil wars that the country has witnessed, fueled by animosity between various ethnic groups, which rulers have exploited. Looking back at the policies pursued by the presidents, we find that ethnic identity has been manipulated to manage various conflicts. Since the independence of the DRC, three presidents have ruled: Joseph Kasa-Vubu, Mobutu Sese Seko, and Laurent Kabila. All of them manipulated ethnic identity to govern their regimes. President Mobutu primarily pursued a policy of transforming the administration of the country into a private monarchy by appointing his relatives to all sensitive positions in the country. Moreover, there was no fairness in distributing the country's wealth among its citizens. As a result, ethnic groups opposing his policies emerged. This same policy was pursued by President Laurent Kabila, who also appointed members of his ethnic group, the Baluba, to key positions in the state. Other ethnic groups considered this a violation of their rights, leading to the outbreak of the Second Congo War from 1998 to 2003, which resulted in the assassination of President Laurent Kabila in 2001 and the assumption of power by his son, Joseph Kabila.³

2. External Factors

International interventions contributed to the outbreak of armed conflict in the DRC, with countries like Rwanda, Uganda, and Angola playing prominent roles in instigating the conflict. They provided military and political support to President Laurent Kabila to seize power. The intervention of these countries is primarily driven by a set of main objectives that each seeks to achieve. Uganda, sharing eastern borders with the DRC, played a significant role in the armed conflict. Some of Uganda's main objectives include:

- building a regional system controlled by the Tutsi ethnic minority through their control over the Great Lakes region, especially after the success of the Tutsi tribe in gaining power in both Rwanda and Burundi. These aspirations are primarily linked to the ongoing conflict in the DRC between government forces and opposition forces, particularly since Congolese Tutsi tribes in the east of the country have played a significant role in the internal conflict.

² Rafik Boubchir, *Conflict in the Democratic Republic of the Congo: Characteristics and Motivations*, 3(1) ALGERIAN JOURNAL OF SECURITY AND DEVELOPMENT 185 (2013), at 186.

³ *Id.*, at 187-188.

The Armed Conflict in the Democratic Republic of the Congo and the International Criminal Court

- the control over the resources and wealth of the DRC, especially gold, as Uganda's economy heavily relies on exporting this commodity to international markets.⁴

As for Rwanda, which is considered one of the key parties in the ongoing conflict in the DRC, its primary motivations for involvement in the armed conflict in the DRC revolve around securing its borders with the DRC from attacks by Hutu militias, particularly those operating from the Kivu province in eastern DRC.⁵

As for Burundi and Zimbabwe, their motivations for intervening in the armed conflict in the DRC do not differ significantly from those of Rwanda and Uganda. Burundi, like Rwanda, seeks to secure its borders with the DRC from attacks by Hutu militias, in addition to aiming to control the resources and natural wealth of the DRC. Zimbabwe, on the other hand, which entered the conflict alongside the Congolese government, is driven by the aspirations of Zimbabwe's president to play a regional role in the area.⁶

B. The Outbreak and Evolution of Armed Conflict in the Democratic Republic of the Congo

The outbreak of armed conflict in the DRC dates back to 1997, following elections in which Laurent Kabila emerged victorious and subsequently declared the country's independence.⁷ Following their victory in 1997, Rwanda requested the withdrawal of Rwandan forces that remained in the DRC. This led to several cases of rebellion within the Congolese army, which escalated into movements aimed at overthrowing the government. The conflict quickly evolved into a regional dispute, with both Rwanda and Uganda providing support to the rebels, while the president received backing from Angola, Namibia, Chad, and Zimbabwe.⁸

Following this conflict, President Laurent Kabila was assassinated on January 16, 2001, by one of his guards. Authority was then transferred to General Joseph Kabila, who was given the powers of the head of state and commander-in-chief of the armed forces during a joint meeting held by ministers and senior military officers. Subsequently, members of the Congolese transitional parliament unanimously appointed General Joseph Kabila as President of the DRC. However, rebel groups and some elements of the Congolese political elite rejected Kabila's emergence as the head of state. On January 21, 2001, the presidents of Angola, Zimbabwe, and Namibia announced their commitment to maintain their military forces in the DRC to enhance the security of the population, government, foreign citizens, including United Nations personnel and non-governmental organizations. They urged all parties to the Lusaka Agreement to refrain from any offensive military action, encouraged all parties to seek a political solution to the conflict, and called on the United Nations to deploy additional military observers in the DRC.⁹

⁴ Magda El-Gendi, Mohamed Kandil, *The Political Future of Uganda in East Africa*, 87 INTERNATIONAL POLITICS JOURNAL 127 (1999), at 129.

⁵ Boubchir, *supra* note 2, at 192.

⁶ *Id.*, at 192-193.

⁷ Mirna Adjami, Guy Mushiata, *The Impact of the Rome Statute and the International Criminal Court in the Democratic Republic of the Congo*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (2010), at 1.

⁸ OMAR M. AL-MAKHZOUMI, INTERNATIONAL HUMANITARIAN LAW IN LIGHT OF THE INTERNATIONAL CRIMINAL COURT (2008), at 367-368.

⁹ UNSC, Document No. S/2001/128, The Sixth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Feb. 12, 2001), at 1-2.

Following intensive consultations led by the neutral facilitator, Mr. Ketumile Masire, representatives of the government of the DRC and rebel movements agreed on a set of basic principles on May 4, 2001, in Lusaka to serve as a framework for dialogue among Congolese parties. In response to a call made by the President of the Congolese Liberation Front, Mr. Jean-Pierre Bemba, several civil society organizations, major political parties, the Congolese Liberation Front, and rebel movements affiliated with the Congolese Rally for Democracy formed a group called the “Union of Congolese Forces Working for Respect for the Lusaka Agreement and the Establishment of Dialogue among Congolese”.¹⁰

In a speech delivered by President Kabila on January 26, 2002, on the occasion of the first anniversary of his assumption of power, he reaffirmed his government’s commitment to dialogue among Congolese parties and cooperation in the third phase of the mission’s deployment. He emphasized the necessity of the withdrawal of Rwandan forces and announced that he had requested the Security Council to establish an international investigative committee to probe the nature of Rwandan armed groups in the DRC.¹¹

Based on this, the Presidents of the DRC and Rwanda signed a peace agreement in Pretoria on July 30, 2002, regarding the withdrawal of Rwandan forces from the DRC and the dissolution of former Rwandan armed forces and Interahamwe forces present in the DRC. The main provisions of the agreement involve the commitment of the government of the DRC to continue the process of tracking and disarming Interahamwe forces and former Rwandan armed forces in the areas under its control. The DRC also agreed to cooperate with the United Nations Mission in the DRC and the Joint Military Committee, as well as any other force formed by the third party, to disarm former Rwandan armed forces and Interahamwe forces. In return, Rwanda pledged to withdraw its forces from the DRC once effective measures were agreed upon to address its security concerns.¹²

Furthermore, the Presidents of the DRC and Uganda signed an agreement on September 6, 2002, regarding the withdrawal of Ugandan forces from the DRC and cooperation and normalization of relations between the two countries. According to the agreement, the government of Uganda committed to continue withdrawing its forces from the DRC according to a mutually agreed-upon timetable. Ugandan forces, in particular, were required to immediately withdraw from Gbadolite, Beni, and surrounding areas. Uganda also reaffirmed its readiness to withdraw its forces from Bunia after establishing administrative authority in Ituri. Regarding the situation in Ituri, both parties agreed to establish, with the assistance of the mission, a joint reconciliation committee for Ituri comprising representatives from the governments of the DRC and Uganda, as well as various leaders in the region. After deciding on the establishment of a mechanism to uphold law and order, an administrative authority would be formed.¹³

As a result of intensive negotiations and international pressure, representatives of the participating elements in the joint dialogue between Congolese parties in Pretoria signed the Comprehensive and Inclusive Agreement on the Transition in the DRC on December 17, 2002. The agreement stipulated that elections would be held at the end of the transitional period, which would last for 24 months. During this period, Joseph Kabila would remain the head of

¹⁰ UNSC, Document No. S/2001/572, The Eighth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (June 8, 2001), at 3.

¹¹ UNSC, Document No. S/2002/169, The Tenth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Feb. 15, 2002), at 2.

¹² UNSC, Document No. S/2002/1005, The Special Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Sept. 10, 2002), at 1-2.

¹³ *Id.*, at 3-4.

The Armed Conflict in the Democratic Republic of the Congo and the International Criminal Court

state and commander-in-chief of the armed forces, with four vice presidents responsible for government committees, each consisting of ministers and deputy ministers. The government would comprise 36 ministers and 25 deputy ministers. Additionally, a parliament would be established consisting of two chambers: the National Assembly (whose president would be nominated by the Congolese Liberation Movement) and the Senate (whose president would be nominated by civil society).¹⁴

Despite the historical steps witnessed in the formation process of the transitional government in Kinshasa, fighting and conflict persist in Ituri and the eastern part of the DRC. The situation in Ituri has been particularly severe, with approximately 420 civilians killed in Bunia during clashes between Lendu and Hema militias since the departure of Ugandan forces in May 2003. Incidents of rape and looting have also escalated, with a significant number of minors among the victims. In the border areas between Uganda and Ituri, reports indicate 380 cases of human rights violations, including killings, forced disappearances, mutilations, looting, and property destruction.¹⁵

Following the successful presidential, national assembly, and provincial council elections in the DRC, the National Assembly was formed on September 22, 2006. President Joseph Kabila was inaugurated on December 6, 2006, officially concluding the transitional process. On December 30, 2006, President Kabila appointed Antoine Gizenga as Prime Minister, who announced the formation of his government on February 5, 2007.¹⁶

However, this did not prevent acts of violence, as the DRC witnessed a security crisis resulting in serious human rights violations. In March 2007, violent clashes in Kinshasa between government forces and the special security forces of former Vice President Bemba led to the deaths of hundreds of civilians and extensive property damage.¹⁷

Towards the end of 2007, clashes intensified in the North Kivu province between the Armed Forces of the DRC and the political-military group led by the defector Laurent Nkunda, known as the National Congress for the Defense of the People (CNDP). Various armed groups, including the Mai Mai and the Democratic Forces for the Liberation of Rwanda (FDLR), also participated in the fighting. Government military operations aimed at neutralizing Nkunda's forces failed to achieve their objectives despite initial successes. Between December 10 and 13, 2007, government forces lost all the territories they had gained from the National Congress for the Defense of the People.¹⁸

The armed conflict in northern DRC witnessed the largest number of casualties since the end of World War II, with approximately 5.4 million people killed between 1998 and August 2007.¹⁹

¹⁴ UNSC, Document No. S/2003/211, The Thirteenth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Feb. 21, 2003), at 1-2.

¹⁵ UNSC, Document No. S/2003/1098, The Fourteenth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Nov. 17, 2003), at 1-2.

¹⁶ UNSC, Document No. S/2007/156, The Twenty-Third Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Mar. 20, 2007), at 1.

¹⁷ UNSC, Document No. S/2007/671, The Twenty-Fourth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Nov. 14, 2007), at 1.

¹⁸ UNSC, Document No. S/2008/218, The Twenty-Fifth Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo (Apr. 2, 2008), at 2.

¹⁹ Adjami, Mushiata, *supra* note 7, at 1.

III. The Role of the International Criminal Court in the Armed Conflict in the Democratic Republic of the Congo

In light of the international crimes and serious violations of human rights and the rules of international humanitarian law witnessed in the DRC as a result of the armed conflict in the country, and considering the failure and inability of the national judiciary in the DRC to investigate and ensure the prosecution of perpetrators of international crimes and violators of human rights, the situation in the DRC has been referred to the International Criminal Court, making it the second case to be referred to the International Criminal Court by States Parties to the Rome Statute after the situation in Uganda.

In order to understand the role played by the International Criminal Court in the armed conflict in the DRC, it is necessary first to delve into the referral of the situation in the DRC to the ICC, and then detail the judicial proceedings undertaken by the Court against perpetrators of international crimes.

A. Referral of the Situation in the Democratic Republic of the Congo to the International Criminal Court

On April 19, 2004, the President of the DRC sent a request to the Prosecutor of the International Criminal Court, asking for the Court's jurisdiction to investigate crimes committed in the DRC and to punish the perpetrators. The Prosecutor had been informed since March 2003 based on information received through non-governmental organizations about the situation in the DRC. It is worth noting that the DRC is a State Party to the Rome Statute of the International Criminal Court, which it signed on September 8, 2000, and deposited its instrument of ratification on April 11, 2001.²⁰

Based on that, the Prosecutor of the International Criminal Court opened an investigation on June 23, 2004 regarding the situation in the DRC, particularly to consider allegations of committing crimes including rape, torture, forced displacement, and the forcible recruitment of children, which had been committed since July 1, 2002, the date of entry into force of the Rome Statute. The Prosecutor had gathered information and reports on these allegations in cooperation with some states and international governmental and non-governmental organizations such as Amnesty International.²¹

B. The International Criminal Court Has Taken Judicial Proceedings Against High-Ranking Congolese War Criminals

After conducting the necessary investigations, the International Criminal Court brought charges against the key individuals responsible for committing war crimes and crimes against humanity, namely:

a) *Thomas Lubanga Dyilo*: on January 12, 2006, the Prosecutor filed a request with the Pre-Trial Chamber for the issuance of an arrest warrant against Thomas Lubanga Dyilo. The Chamber responded on February 10, 2006, by issuing a sealed order for his arrest, accusing him

²⁰ MUHAMMAD AL-SHIBLI AL-ATOUM, INTERNATIONAL COOPERATION WITH THE INTERNATIONAL CRIMINAL COURT AND ITS IMPACT ON ITS EFFECTIVENESS (2015), at 184.

²¹ *Id.*, at 185.

The Armed Conflict in the Democratic Republic of the Congo and the International Criminal Court

of war crimes, specifically the forced recruitment of children under the age of 15 and their use in active participation in hostilities. The Court sent a request for arrest and surrender to the DRC, which handed him over to the Court on March 17, 2006. On the same day, the Pre-Trial Chamber lifted the secrecy of the arrest warrant.²²

On June 10, 2012, the First Instance Chamber issued its verdict against Thomas Lubanga Dyilo, sentencing him to 14 years in prison. On August 7, 2012, the decision regarding principles and procedures for reparations was issued, and the Court authorized a total of 114 victims to participate in this case.²³

On October 3, 2012, both Lubanga and the Prosecutor appealed the verdict. However, on December 1, 2014, the Appeals Chamber affirmed Lubanga conviction and upheld the 14-year prison sentence, which became final. Compensation procedures are still under consideration. Following the Appeals Chamber's judgment on March 3, 2015, which amended the First Instance Chamber's order regarding reparations, the Trust Fund for Victims was requested to submit a draft plan for implementing collective reparations to the First Instance Chamber.²⁴

A panel of three judges from the Appeals Chamber decided on September 22, 2015, not to reduce Lubanga sentence. At that time, he had served four and a half years of his sentence. However, on December 8, 2015, the Presidency took into consideration Lubanga preference to serve his sentence in his home country, the DRC, and designated it as the state of enforcement.²⁵ This is considered the first judgment issued by the International Criminal Court since its founding treaty entered into force on July 1, 2002.

On December 15, 2017, the Second Instance Chamber issued a decision determining Lubanga liability in collective reparations for damages amounting to \$10 million. The Chamber concluded that out of 473 applications received by the Court, 425 met the requirements for benefiting from collective reparations for redress. However, additional evidence suggested the existence of hundreds, if not thousands, of other victims. On January 15, 2018, Lubanga defense, along with legal representatives of the victims seeking reparations, filed two appeals challenging the decision.²⁶

On July 18, 2019, the Appeals Chamber upheld a decision to amend the ruling issued by the Second Instance Chamber, which determined Lubanga liability for collective reparations. A directive was issued to the Trust Fund for Victims to commence the implementation of its proposal regarding the identification of locations for new claimants and the assessment of their eligibility for reparations, as approved by the Second Instance Chamber on February 7, 2019.²⁷

b) *Germain Katanga and Mathieu Ngudjolo Chui*: the DRC handed over Germain Katanga and Mathieu Ngudjolo Chui to the International Criminal Court on October 18, 2007, and February 7, 2008, respectively. Each of them faced nine charges related to war crimes (willful killing, cruel treatment, using children and forcibly recruiting them, sexual slavery,

²² ICC, Document No. ICC-ASP/5/15, 5th Session, Report on the Activities of the International Criminal Court for the Year 2006 Source, Assembly of States Parties (Oct. 17, 2006), at 3.

²³ UNGA, Document No. A/67/308, 67th Session, International Criminal Court Report to the United Nations for the Period 2011-2012, (Aug. 14, 2012), at 8.

²⁴ UNGA, Document No. A/70/350, 70th Session, International Criminal Court Report to the United Nations for the Period 2014-2015 (Aug. 28, 2015), at 11.

²⁵ UNGA, Document No. A/71/342, 71st Session, International Criminal Court Report to the United Nations for the Period 2015-2016 (Aug. 19, 2016), at 11.

²⁶ UNGA, Document No. A/73/334, 73rd Session, International Criminal Court Report to the United Nations for the Period 2017-2018 (Aug. 20, 2018), at 5.

²⁷ UNGA, Document No. A/74/324, 74th Session, International Criminal Court Report to the United Nations for the Period 2018-2019 (Aug. 23, 2019), at 5.

attacking civilians, looting, outraging personal dignity, rape, and destroying or seizing enemy property), and four charges related to crimes against humanity (willful killing, inhumane acts, sexual slavery, and rape), allegedly committed during the attack on the village of Bogoro in February 2003.²⁸

The Court of First Instance consolidated the two cases on March 10, 2008, a decision upheld by the Appeals Court which rejected the appeal against it. It confirmed the possibility of considering the two cases in one trial on June 9, 2008.²⁹

On September 26, 2008, the Court of First Instance affirmed the charges brought by the prosecutor against the defendants. Following the confirmation of the charges, the Second Instance Court Presidency was formed, and the case was referred to it. The Court and the parties began preparations for the trial, particularly addressing procedural matters related to evidence disclosure, witness protection, and information. However, Katanga objected to the admissibility of the lawsuit filed against him, claiming that he had previously undergone judicial proceedings for the same crimes in the DRC. Consequently, the Second Instance Court convened a public session, attended by representatives of the DRC, including the Minister of Justice. On June 12, 2009, the Court rejected Katanga's objection, on the basis that national authorities had not opened any investigation into the attack for which Katanga was being prosecuted before the Court.³⁰

On November 24, 2009, the trial of the accused began before the Second Instance Court. Over a period of more than 88 days of trial, the prosecution presented 105 pieces of evidence and called 14 witnesses and one expert to testify. The prosecution's presentation of arguments continued until July 16, 2010. A total of 362 victims are participating in the case through their legal representatives.³¹

On November 21, 2012, the Second Instance Court decided to separate the two cases. The Court acquitted Ngudjolo of all charges on December 18, 2012, and upon his release, he applied for asylum in the Netherlands. As for Katanga, the Court decided to activate Article 55 of the Rome Statute and notified the accused that it would reconsider the classification of charges in terms of criminal responsibility.³²

On March 7, 2014, the Second Instance Court convicted the accused of committing five crimes, including war crimes and crimes against humanity, but acquitted him of charges of rape, sexual slavery, and using children under the age of 15 in combat. The court issued its verdict on March 23, 2014, sentencing him to 12 years in prison. On June 25, 2014, both the defense and the prosecution withdrew their appeals against the verdict, indicating that they did not intend to appeal against the judgment. Therefore, the decision issued by the Second Instance Court is final.³³

A panel of three judges from the Appeals Chamber decided on November 12, 2015, to reduce Katanga's prison sentence from 12 years to 8 years and 8 months, setting January 18,

²⁸ UNGA, Document No. A/63/323, 63th Session, International Criminal Court Report to the United Nations for the Period 2007-2008 (August 22, 2008), at 7.

²⁹ *Id.*, at 07.

³⁰ UNGA, Document Number A/64/356, 64th session, International Criminal Court Report to the United Nations for the period 2008-2009 (Sept. 17, 2009), at 8.

³¹ UNGA, Document Number A/65/31, 65th session, International Criminal Court Report to the United Nations for the period 2009-2010 (Aug. 19, 2010), at 12.

³² UNGA, Document Number A/68/314, 68th session, International Criminal Court Report to the United Nations for the period 2012-2013 (Aug. 13, 2013), at 5.

³³ UNGA, Document Number A/69/321, 69th session, International Criminal Court Report to the United Nations for the period 2013-2014 (Sept. 18, 2014), at 12.

The Armed Conflict in the Democratic Republic of the Congo and the International Criminal Court

2016, as the date for the completion of his sentence. On December 8, 2015, the DRC was appointed as the state where Katanga would serve the remainder of his sentence.³⁴

c) *Bosco Ntaganda*: The First Pre-Trial Chamber issued an arrest warrant for Bosco Ntaganda on August 22, 2006, due to his involvement in war crimes, specifically recruiting children under the age of 15 and using them in hostilities between July 2002 and December 2003, when he was a senior leader in an armed group in Ituri. The accused remained at large and served as the chief of staff of the National Congress for the Defense of the People's Forces in North Kivu.³⁵ In October 2010, the Minister of Justice of the DRC refused to extradite him to the International Criminal Court.³⁶

In light of this situation, the Second Pre-Trial Chamber issued a second arrest warrant on July 13, 2012, based on a request submitted by the Prosecutor on May 14, 2012. This warrant was issued on the basis of three charges related to crimes against humanity (murder, rape, sexual slavery, and persecution) and four charges related to war crimes (murder, attacking civilians, pillaging, rape, and sexual slavery), alleged to have been committed in the Ituri region from September 1, 2002, to the end of September 2003.³⁷

On March 26, 2013, the accused appeared before the Second Trial Chamber after voluntarily surrendering to the Court, initiating the hearing session for the acknowledgment of charges on September 23, 2013. This session was adjourned on June 17, 2013, to February 10, 2014, at the request of the Prosecutor to allow sufficient time to fulfill obligations related to investigation and prosecution.³⁸

Based on that, the trial of the accused began on September 2, 2015, before the Sixth Trial Chamber, which delivered its verdict on July 8, 2019. The verdict convicted Ntaganda of five charges of crimes against humanity and 13 charges of war crimes. It ruled that Ntaganda was directly liable for parts of the charges related to three crimes (murder as a crime against humanity and war crime, persecution as a crime against humanity), and also held him criminally responsible as an indirect co-perpetrator for other parts of these crimes and for aiding and abetting the crimes, without specifying the duration of the sentence, which it said it would determine at an appropriate time. The Appeals Chamber partially granted Ntaganda request for an extension of the deadline to file a notice of appeal.³⁹

Following Ntaganda conviction on five charges of crimes against humanity and 13 charges of war crimes, the Sixth Trial Chamber received submissions from the parties and participants, heard witnesses, admitted evidence regarding potential sentencing, and held a session on the case from September 17 to 20, 2019. On November 7, 2019, Ntaganda was sentenced to 30 years in prison. Subsequently, Ntaganda appealed the conviction for crimes against humanity and war crimes, as well as the decision regarding the sentence, while the Prosecutor appealed a limited part of the conviction verdict.⁴⁰ However, on March 30, 2021,

³⁴ UNGA, *supra* note 24, at 12.

³⁵ Amnesty International, International Amnesty International Report for the year 2009, Human Rights Situation in the World (2009), at 285.

³⁶ Amnesty International, International Amnesty International Report for the year 2011, Human Rights Situation in the World (2011), at 279.

³⁷ UNGA, *supra* note 23, at 9.

³⁸ UNGA, *supra* note 32, at 6.

³⁹ UNGA, *supra* note 27, at 6.

⁴⁰ UNGA, Document Number A/75/324, 75th session, International Criminal Court Report to the United Nations for the period 2019-2020, (Aug. 24, 2020), at 6.

the Appeals Chamber confirmed Ntaganda conviction for crimes against humanity and war crimes and upheld the 30-year prison sentence issued by the Sixth Trial Chamber.⁴¹

d) *Kaléste Mbarushimana*: the Pre-Trial Chamber issued an arrest warrant for Mbarushimana on September 28, 2010, stating that there were reasonable grounds to believe that he personally and deliberately contributed to a joint plan by the Democratic Forces for the Liberation of Rwanda (FDLR) to lead an attack targeting civilian populations in northern and southern Kivu in order to gain political concessions as part of an international campaign to wrest political power concessions in favor of the FDLR.⁴²

On October 11, 2010, following the arrest of Mbarushimana by French authorities, the arrest warrant was unsealed, and the accused was transferred to the custody center of the Court in The Hague on January 25, 2011. He appeared before the Court for the first time on January 28, 2011. The confirmation of charges hearing was postponed at the request of the prosecution due to delays caused by technical difficulties encountered in reviewing the electronic devices seized at the suspect's premises. Subsequently, on July 25, 2011, the Prosecutor filed a document outlining the charges and a list of evidence, including 13 charges of war crimes and crimes against humanity alleged to have been committed in the North and South Kivu provinces and in eastern DRC from January 20 to December 31, 2009. The prosecution contends that Mbarushimana is responsible for contributing to the joint purpose of the Democratic Forces for the Liberation of Rwanda leadership by committing crimes through creating a “humanitarian catastrophe” in the North and South Kivu provinces to persuade the governments of Rwanda and the DRC to abandon their military campaigns against this group and to extract concessions for political power in Rwanda.⁴³

During the confirmation of charges hearings held from September 16 to 21, 2011, to consider the charges, 32 victims were authorized to participate in the proceedings. However, on December 16, 2011, the Pre-Trial Chamber issued a decision by majority ruling to reject the confirmation of charges against Mbarushimana, on the basis that the prosecution did not provide sufficient evidence to prove that the suspect was individually responsible for the crimes he was accused of committing. Consequently, the majority decision of the Chamber was to release the accused from detention. On December 20, 2011, the Appeals Chamber dismissed the prosecution's appeal against the release decision, and subsequently, Mbarushimana was released.⁴⁴

Based on the evidence provided, it appears that the involvement of the International Criminal Court in the armed conflict in the DRC was largely effective. The Court succeeded in prosecuting all individuals accused of committing war crimes and crimes against humanity in the conflict who were subject to arrest warrants. It managed to convict some of them, while acquitting others due to insufficient evidence.

⁴¹ UNGA, Document Number A/76/293, 76th session, International Criminal Court Report to the United Nations for the period 2020-2021 (Aug. 24, 2021), at 5.

⁴² UNGA, Document Number A/66/309, 66th session, International Criminal Court Report to the United Nations for the period 2010-2011 (Aug. 19, 2011), at 10.

⁴³ UNGA, Document Number A/66/309, 66th session, International Criminal Court Report to the United Nations for the period 2010-2011 (Aug. 19, 2011), at 10-11.

⁴⁴ UNGA, *supra* note 23, at 9.

IV. Conclusions

The armed conflict in the Democratic Republic of Congo is considered one of the most dangerous conflicts, where some of the most serious international crimes and severe human rights violations witnessed in Africa have been committed. This is clearly evidenced by the large number of civilian casualties. The outbreak of the armed conflict in the Democratic Republic of Congo can be attributed to a combination of internal and external factors. Internally, the conflict stems primarily from power struggles, ethnic conflicts among various tribal groups, and competition over the exploitation of rich natural resources, especially gold, within the country. Externally, the conflict is significantly linked to regional rivalries and foreign interventions that have greatly contributed to the outbreak of the armed conflict, particularly by neighboring countries of the Democratic Republic of Congo.

Despite the settlements reached between the parties to the armed conflict in the Democratic Republic of Congo, which included holding presidential and legislative elections, they have failed to stop the armed conflict.

With the national judiciary's failure and reluctance to investigate serious crimes and human rights violations in the Democratic Republic of Congo, the country's president referred the situation to the International Criminal Court as a State Party to the Rome Statute. This action aimed to enable necessary investigations and ensure the prosecution and punishment of those responsible for international crimes. Consequently, the referral of the situation in the Democratic Republic of Congo to the International Criminal Court became one of the cases referred by States Parties to the Rome Statute following Uganda.

The International Criminal Court conducted necessary investigations regarding allegations of international crimes falling within its jurisdiction. Based on these investigations, the ICC issued several arrest warrants against major war criminals. The Court proceeded to conduct trials, resulting in various outcomes including convictions and acquittals after due process.

The success of the International Criminal Court in the cases brought before it regarding the situation in the DRC, compared to other cases in various countries where the ICC has initiated investigations, is evident in the execution of all arrest warrants issued against major war criminals, their prosecution, and the issuance of judgments against them.