

## 25th Annual Session of the **Seoul Model United Nations**

<b>Forum:</b>	International Court of Justice (ICJ)
<b>Question of:</b>	Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)
<b>Student Officer:</b>	Philip Park, Deputy Assistant President

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### Introduction

This is a case concerning two parties: the applicant party (The Republic of Guinea acting on behalf of Mr. Ahmadou Sadio Diallo) and the respondent party (The Democratic Republic of the Congo). On the 28th of December, 1998, The Republic of Guinea applied for court proceedings against the Democratic Republic of Congo, on the grounds of “serious violations of international law” alleged to have been committed against Mr. Diallo.<sup>1</sup>

In 1964, Ahmadou Sadio Diallo established two companies: Africom-Zaire and Africontainers-Zaire. Diallo was a Guinean national, but he had been a resident of the Democratic Republic of Congo for 32 years.<sup>2</sup> Over the 32 years, Africom-Zaire and Africontainers-Zaire became entitled to significant amounts of debt, from both mining and oil companies in the DRC, as well as the state of the Democratic Republic of Congo. The debt, which was in the millions, was a source of conflict between Diallo and the DRC. His multiple attempts to recover the debt were met unfavorably by the state, as they denied him a favorable judgment in court. Mr. Diallo ended up being imprisoned by Congolese authorities, and stripped of his investments and properties. Furthermore, in the year 1995, Mr. Diallo was expelled from the Democratic Republic of Congo. In the Application Instituting Proceedings (1998)<sup>3</sup>, The Republic of Guinea stated that “this expulsion came at a time when Mr. Ahmadou Sadio Diallo was pursuing recovery of substantial debts owed to his businesses Africom-Zaire and Africontainers-Zaire by the Congolese State and by oil companies established in its territory and of which the State is a shareholder”.

The Republic of Guinea also argued that the intervention of Congolese authorities to expel Mr. Diallo from the DRC was an example of corrupt practices<sup>4</sup>. Guinea’s third claim argued for the existence of an exception to the diplomatic protection of companies by their national state<sup>5</sup>. The exception the Republic of Guinea argued for was one that would entail shareholders acting as a substitution for the

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<sup>1</sup> Case Briefs | Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo)

<sup>2</sup> Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)

<sup>3</sup> Icj - 103/7175

<sup>4</sup> Case Concerning Ahmadou Sadio Diallo

<sup>5</sup> Icj - 103/7175

## 25th Annual Session of the **Seoul Model United Nations**

company in question as a means of diplomatic protection. Given that diplomatic protection is extended from the nation of origin, this substitution would allow Africom-Zaire and Africontainers-Zaire to be subject to Guinean diplomatic protection, even if the companies are inherently Congolese.<sup>6</sup> The Democratic Republic of Congo raised preliminary objections on the 3rd of October, 2002 in regards to the admissibility of these claims by the Republic of Guinea. Modern history does not point to an international conflict between The Republic of Guinea and the DRC, and the two nations are far from sharing any borders. Rather, this case is an issue of the fine details of international law concerning diplomatic protection for an extranational business.

Diplomatic protection is a key aspect to maintaining healthy relations between nations. By allowing their citizens into other countries as foreign nationals, the home country is relying on mutual trust for the safety of its citizens and assets. The basic guarantee of diplomatic protection is the fundamental building block upon which further agreements and treaties can be made. In such a manner, diplomatic protection ends up being one of the most important bonds of unity between nations.

~~Advocates and judges, while there haven't been noted conflicts between the Republic of Guinea and the Democratic Republic of the Congo, the amount of assets involved in this case, as well as the implication of the case's outcome for the application of diplomatic protection as a whole could become a major source of conflict not just between the aforementioned parties, but the entirety of the diplomatic space of the world. It is imperative that the steps taken in the International Court of Justice regarding this case be fair, and resolve the conflict in a manner that allows for the continuation of productive diplomacy.~~

## Definition of Key Terms

### **International Court of Justice (ICJ)**

Established in June of 1945 by the UN Charter, The International Court of Justice (ICJ) is the judicial branch of the United Nations. The International Court of Justice settles international legal disputes according to international law. Additionally, it serves the function of providing advisory opinions on legal questions posed by the UN and other special organizations. The official languages of the International Court of Justice are English and French.<sup>7</sup>

### **The Charter of the United Nations**

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<sup>6</sup> Vienna Convention On Diplomatic Relations (1961)

<sup>7</sup> The Court | International Court Of Justice

## 25th Annual Session of the **Seoul Model United Nations**

Ratified on the 26 of June, 1945, The Charter of the United Nations is the founding document of the United Nations. and came into force on 24 October 1945. The Charter is considered an international treaty, and the UN Member States are bound by it. The UN Charter describes laws concerning international relations, from sovereign equality of States to the prohibition of the use of force in international relations. The UN Charter encompasses the purpose and founding principles of the UN. The Charter has been amended 3 times, in 1963, 1965, and 1973. As the framework for the UN, and by extension its judicial organ (The International Court of Justice), the charter enables the use of the ICJ to resolve international conflicts through the use of a third party (The United Nations). For this case, the UN Charter is what enables the applicant party (The Republic of Guinea) to call upon the court in a formal case.<sup>8</sup>

### **Associé**

While the word “associé” is originally French, and translates to “associate” in English, within the context of the case the word has a more specific meaning. An associé is a person or entity having interests as a partner or shareholder. An associé to something is financially linked to that thing. Mr. Diallo is an associé to Africom-Zaire and Africontainers-Zaire, and the Republic of Guinea argues that his rights as an associé had not been observed.<sup>9</sup>

### **Diplomatic Immunity**

Diplomatic immunity is an exemption given to diplomats, which allows them to escape the laws of a foreign jurisdiction. The exemption includes protection from being subject to criminal, administrative, and civil laws belonging to the country in which the diplomat is conducting diplomatic business. They are instead always subject to the laws of their home countries. The purpose of diplomatic immunity is to maintain government relations, and it was first entered into international law through the passing of the 1961 Vienna Convention on Diplomatic Relations.<sup>10</sup>

### **Locus Standi**

Locus standi is the right to bring an action (a case) to be heard in court. In order to have locus standi, one must demonstrate to the court that a certain law or action has brought harm to some person or entity, and that one has sufficient connection to the law or action in question. Within the International Court of Justice, locus standi always applies, and the applicant party must prove that the actions of the

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<sup>8</sup> UN Charter | United Nations

<sup>9</sup> Associé | French To English | Law

<sup>10</sup> Vienna Convention On Diplomatic Relations (1961)

## 25th Annual Session of the **Seoul Model United Nations**

receiving party or an international law have harmed an individual, entity, or nation. Locus Standi is separate from the jurisdiction of the court, and the court may have jurisdiction over a case while the pertaining parties lack locus standi.<sup>11</sup>

### **Remedial**

A Remedial action is intended to correct something that is wrong, or to improve a bad situation. More specifically within the context of the ICJ or court cases in general, remedial action or remedial means are ways for the applicant party (plaintiff) to right a wrong done by the respondent party (defense), or receive suitable compensation for damages.<sup>12</sup>

## **Timeline of Key Events**

### **1955 - Nottebohm Case**

In this case, the Principality of Liechtenstein claimed restitution and compensation from the Government of Guatemala on the ground that Guatemala had acted towards Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law. The ICJ decided that Liechtenstein's claim was inadmissible on grounds relating to Mr. Nottebohm's nationality. It was decided that only the bond of nationality between a state and an individual allows the state to put forward an international claim on his behalf. Since Mr. Nottebohm was a German national, and he had obtained Liechtenstein nationality in 1940. It was judged that the grant of nationality is entitled to recognition by other States only if it represents a genuine connection between the individual and the State granting its nationality. Since Mr. Nottebohm's nationality was not based on any genuine prior link with Liechtenstein, Liechtenstein was not entitled to take up his case and put forward an international claim on his behalf.<sup>13</sup>

If nationality on the international plane is defined by the bond between the state and the individual, then it puts into question whether or not Mr. Diallo's bond for his 32 year residency in the DRC was to the DRC, and if Mr. Diallo is viable for diplomatic protection.

### **1959 - Interhandel Case**

In this case, the Government of the United States made a transfer of its shares of the General Aniline and Film Corporation (GAF), a company incorporated in the United States. The US argued that

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<sup>11</sup> US Legal | Locus Standi Law And Legal Definition

<sup>12</sup> Cambridge Dictionary | Remedial

<sup>13</sup> International Court Of Justice | Nottebohm (Liechtenstein V. Guatemala)

## 25th Annual Session of the **Seoul Model United Nations**

the company, which was owned by Interhandel, a company registered in Basel, Switzerland, belonged in reality to I.G. Farbenindustrie of Frankfurt. On 1 October 1957, Switzerland applied to the Court for a declaration that the United States was under an obligation to restore the transferred assets to Interhandel. On 24 October 1957, the Court made an Order noting that, in the light of the presented information, there appeared to be no need for provisional measures. The Court found the Swiss application inadmissible, because Interhandel had not exhausted the remedies available to it in the United States courts, meaning that Interhandel had not used all existing methods of compensation and conflict resolution within the United States.<sup>14</sup>

This case sets the precedent for individuals and entities in foreign states to have to exhaust local remedial measures in order to exercise diplomatic protection, meaning that The Republic of Guinea has to prove this same fact in order for the case to hold up in court.

### **1964 - Founding of Africontainers-Zaire and Africom-Zaire**

Mr. Ahmadou Sadio Diallo founded Africontainers-Zaire and Africom-Zaire in the Republic of Zaire (now known as the Democratic Republic of Congo). The two companies dealt with shipping and the rental use of shipping containers. Over the course of Mr. Diallo's 32-year-long stay in the DRC<sup>15</sup>, Africontainers-Zaire and Africom-Zaire allegedly owed over 6.5 million USD<sup>16</sup> in debt from both the state of the DRC as well as oil production companies that the DRC was heavily invested in.

### **1975 - Barcelona Traction Case**

In this case, Belgium sought compensation for the damage claimed to have been caused to its nationals, shareholders in the Barcelona Traction, Light and Power Company, Ltd., as the result of illegal acts as per international law said to have been committed by the Spanish State. Spain, on the other hand, submitted that the Belgian claim should be declared inadmissible or unfounded. Regardless, in a Judgment delivered on 5 February 1970, the Court found that Belgium had no legal standing to exercise diplomatic protection of shareholders in a Spanish company over measures taken against that company in Spain.<sup>17</sup>

This previous case opens the door for the DRC to argue that the Republic of Guinea holds no jurisdiction, nor the ability to exercise diplomatic protection of Africontainers-Zaire and Africom-Zaire, companies that are registered as Congolese.

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<sup>14</sup> International Court Of Justice | Interhandel (Switzerland V. United States Of America)

<sup>15</sup> Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo).

<sup>16</sup> Case Briefs | Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo)

<sup>17</sup> International Court Of Justice | Barcelona Traction, Light And Power Company, Limited (Belgium V. Spain)

## **2002 - The Democratic Republic of the Congo's preliminary objections**

The Democratic Republic of the Congo's preliminary objections mainly refuted the ability of the Republic of Guinea to extend diplomatic protection. Since Africom-Zaire and Africontainers-Zaire were both founded in Congo, the Democratic Republic of Congo argued that remedial means had not been exhausted (all methods of reclaiming assets or receiving compensation haven't been used), and that the Republic of Guinea has no right to substitute Africom-Zaire and Africontainers-Zaire with the companies' shareholder Mr. Ahmadou Sadio Diallo.<sup>18</sup>

## **Position of Key Member Nations and Other Bodies + Burden of Proof**

### **Republic of Guinea**

The applicant party, the Republic of Guinea, sees the actions of the Democratic Republic of Congo to waive judgments on debt settlements by Mr. Diallo as an act of corruption on the part of the Congolese authorities. The Republic of Guinea sees Mr. Diallo's expulsion from the DRC as an encroachment upon Mr. Diallo's rights as a Guinean national, and as an associé to his businesses. The Republic of Guinea believes that the International Court of Justice has full jurisdiction over the case as per article 36 of the Statute of Court.<sup>19</sup> Additionally, the Republic of Guinea believes that diplomatic protection of Africom-Zaire and Africontainers-Zaire should not be handled by the national state. This is because the national state of Africom-Zaire and Africontainers-Zaire is the DRC, which Guinea claims is responsible for causing harm to the companies and Mr. Diallo.<sup>20</sup> Therefore, the Republic of Guinea believes that the DRC is incapable of providing adequate diplomatic protection, and the Republic of Guinea, rather, should be the nation exercising diplomatic protection over the two companies. However, this exception is a center of dispute between Guinea and the DRC. The Republic of Guinea also believes that Mr. Diallo had exhausted all possible means of debt retrieval within the borders of the DRC.

### **The Democratic Republic of Congo**

As previously mentioned, the respondent party, the Democratic Republic of Congo has no particular history with the Republic of Guinea. The DRC has received aid from the Republic of Guinea on multiple occasions, and both nations do not bear animosity toward one another. The DRC does not deny

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<sup>18</sup> Case Concerning Ahmadou Sadio Diallo

<sup>19</sup> International Court Of Justice | Statute Of The Court

<sup>20</sup> Case Briefs | Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo)

## 25th Annual Session of the **Seoul Model United Nations**

Mr. Diallo's Guinean citizenship. However, the DRC objects to the Republic of Guinea having Locus Standi before the court.<sup>21</sup> The DRC denies any corrupt actions by its officials and believes that Mr. Diallo had not exhausted means of debt retrieval in the DRC before the filing of an application to the ICJ.<sup>22</sup> Finally, the DRC does not agree with The Republic of Guinea's claim that Mr. Diallo can stand in as a substitute for Africom-Zaire and Africontainers-Zaire before the Court. The DRC believes that the two companies' status as being established in the DRC subjects them to the law of the DRC and the judgment of Congolese officials.

### **The Burden of Proof**

The burden of proof lies solely with the Applicant party, to prove by a preponderance of evidence the following claims:

- 1) Mr. Diallo had exhausted all local remedial means to retrieve debt owed to Africom-Zaire and Africontainers Zaire.<sup>23</sup>
- 2) Mr. Diallo's rights as an associé to Africom-Zaire and Africontainers-Zaire were encroached upon by the DRC, and that significant harm had been done to Mr. Diallo as a result.
- 3) The exception to Diplomatic Protection by the national state is valid, and Mr. Diallo as an individual can be used as a substitute for Africom-Zaire and Africontainers-Zaire. There must also be proof of such an exception being used reasonably.<sup>24</sup>

The respondent party on the other hand has no contentions to prove. By regular preponderance of evidence, as long as the Republic of Guinea does not provide sufficient evidence of the validity of the claims, or the Democratic Republic of Congo can prove that the claims are more likely to be invalid than valid, the respondent party can annul those specific claims.

In order for the applicant party to win the case as a whole, they must prove that at least 2 of the 3 claims are valid. For the respondent party to win the case as a whole, they must prove that 2 or more of the claims are invalid.

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<sup>21</sup> Case Concerning Ahmadou Sadio Diallo

<sup>22</sup> Icj - 103/13500

<sup>23</sup> Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo).

<sup>24</sup> Statute Of The Court | International Court Of Justice

## Key Documents

### **Optional Protocol concerning the Compulsory Settlement of Disputes**

Adopted on the 24th of April, 1963, the Optional Protocol concerning the Compulsory Settlement of Disputes is an amendment that was made to the Vienna Convention on Diplomatic Relations the same year that the document was drafted. The Protocol's main purpose is to outline the procedures for when disputes arise concerning the interpretation or application of the VCDR. The Optional Protocol gives the International Court compulsory jurisdiction over said interpretation and application unless some other form of settlement is decided upon by the concerned parties.<sup>25</sup>

### **The Statute of the International Court of Justice**

The Statute of the International Court of Justice is an integral part of the Charter of the United Nations which established the International Court of Justice. Ratified on the same date, the 26th of June, 1945, The statute borrowed many of its elements from the statute of the Permanent Court of International Justice (PCIJ) of the League of Nations. The ICJ Statute is annexed to the United Nations Charter itself, and it describes the structure of the Court, its powers and competences (jurisdictions), and the applicable law. As per Article 92 of the UN Charter, the Statute of the ICJ establishes the ICJ as the principal judicial organ of the United Nations.<sup>26</sup>

### **Vienna Convention on Diplomatic Relations (VCDR)**

Adopted on the 14th of April, 1961, the Vienna Convention on Diplomatic Relations is one of the staple documents of the United Nations, and has continually affected the manner in which member states approach international law and international relations. Drafted and ratified during the UN Conference on Diplomatic Intercourse and Immunities held at the Neue Hofburg in Vienna, Austria, the Convention also contains two amendments. The Optional Protocol concerning the Acquisition of Nationality, as well as the Optional Protocol concerning the Compulsory Settlement of Disputes. The VCDR aims to facilitate “the development of friendly relations” by emphasizing the value and necessity of diplomatic immunity, which grants diplomats to conduct their diplomacy without fear of personal harm and coercion. The VCDR is often considered to be one of the most successful instruments of the United Nations.<sup>27</sup>

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<sup>25</sup> Cil Nus | OPCSD (1961)

<sup>26</sup> Statute Of The Court | International Court Of Justice

<sup>27</sup> Vienna Convention on Diplomatic Relations.” Un.org



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25th Annual Session of the **Seoul Model United Nations**

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