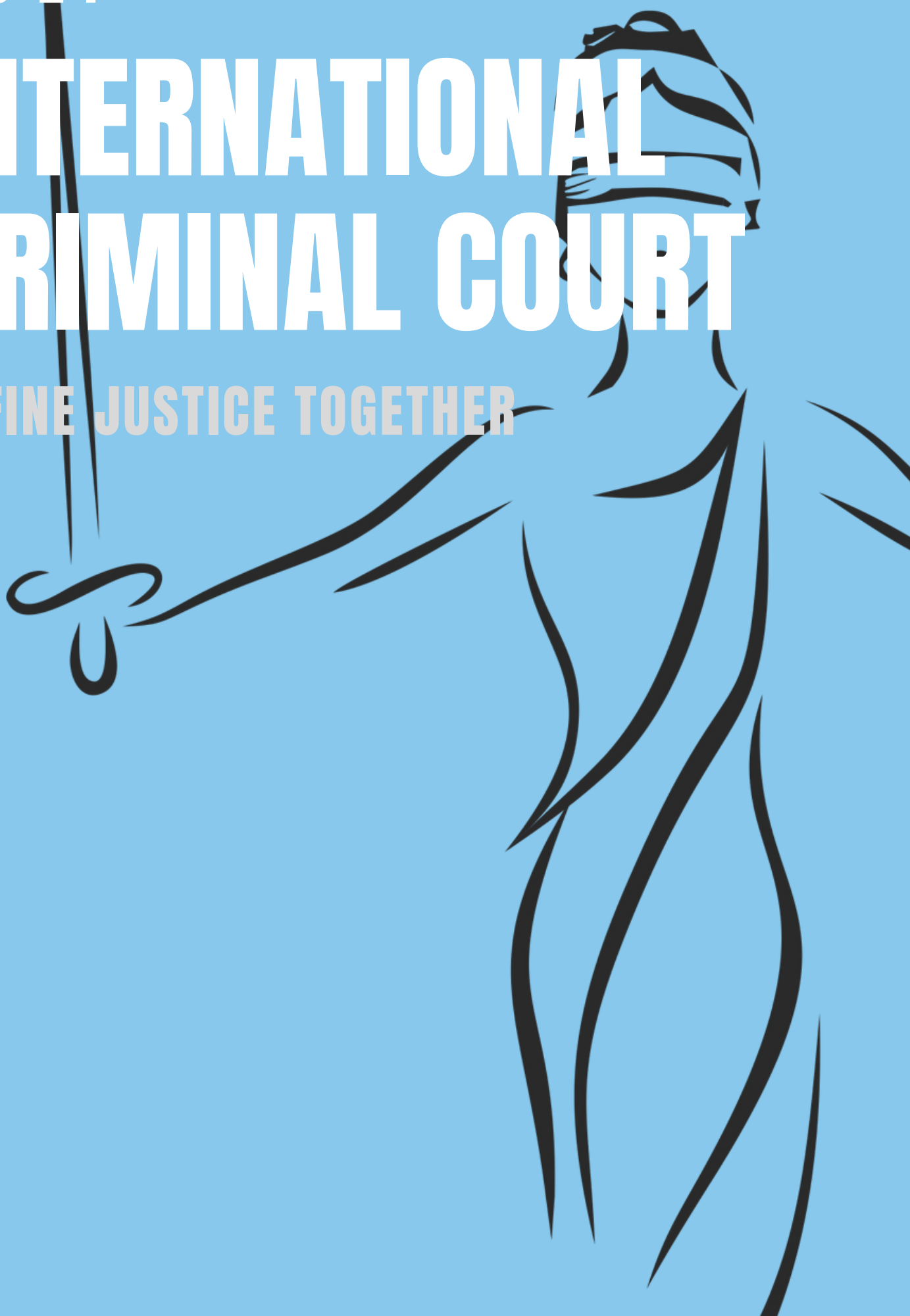


TCS'24

INTERNATIONAL CRIMINAL COURT

DEFINE JUSTICE TOGETHER



LETTER FROM SECRETARY GENERAL

Dear participants, it is my privilege to introduce you to Themis Court Simulations 2024 as the Secretary General of the Conference.

This year, we are once again hosting Turkey's leading moot court conference with academic saturation as well as organizational excellence. As Themis Court Simulations, our goal is to continue this tradition and provide you with a unique and exciting experience.

This year, we are continuing a tradition with additions. Our perspective was to have courts in the most exciting, competitive and instructive areas of law and in this context, we have prepared six interesting courts.

On behalf of the academic team who prepared these exciting courts and my Deputy Secretary General Ece Koç, I would like to welcome you all to Themis Court Simulation. Likewise, our organizing team will welcome you with their kind hospitality to make your experience as easy as possible.

I would also like to thank all my academic team in advance. I can see that I have the opportunity to work with a great group of people, so I am happy to have such a team. With their potential, it is clear that this journey will be incredibly enjoyable. I would also like to thank my fellow Director General Mr. Can Deryahan and Deputy Director Generals Ms. Berfin Rabia İstek and Ms. Nur Damla Karadurmuş for their tireless organizational team.

In closing, on behalf of Themis Court Simulations, I would like to once again welcome you all to this year's event and look forward to define justice together!

Best regards,

Kaan Ünder

Secretary General of Themis Court Simulations 24

LETTER FROM UNDER SECRETARY GENERAL

Esteemed participants,

It is truly an honor to serve you as Under Secretary-General of the International Criminal Court at THEMIS Court Simulations Conference, 2024. I am Simge ERDEM and I am glad to welcome you all to this epic conference where you can show your legal knowledge and debating skills.

ICC is a court that serves as a final judicial option, stepping in when domestic legal systems are unable to hold individuals responsible for acts such as genocide, war crimes, crimes against humanity, and crime of aggression.

We, as the academic team of ICC, picked a case for you where you can discuss 2 of the main crimes of ICC: Crimes Against Humanity and War Crimes. We hope that you can examine the case and all the details carefully which will hopefully lead you to notice the significant points of the prosecutor and defense side.

This guide is created by the academic team of ICC to help you comprehend the greatest crimes. This guide is expected to be read and understood from all the participants before the conference. Having fruitful debates and serving justice needs exertion.

Along the way, there are few people that we owe a “Thank You”, starting with our Secretary-General Kaan ÜNDER and Deputy Secretary-General Ece KOÇ for letting me be a part of this great organization for the 3rd time. Thank you to all the organization team, especially Director-General Can DERYAHAN, Deputy Director-General Berfin İSTEK and Nur Damla KARADURMUŞ. I am sure you will enjoy your 3 days here because of their efforts.. As for the academic assistants who are ambitious and hardworking: Mert GÜNDÜZ and Öykü SÖĞÜT. Thank you for your efforts and being so easy to work with. Lastly, thank you THEMIS for being my lifelong family. Hopefully these 3 days will live in your memories forever.

Yours Sincerely,

Simge ERDEM

LIST OF ABBREVIATIONS

APC	Armée Populaire Congolaise
DRC	Democratic Republic of Congo
FNI	Nationalist and Integrationist Front
FPLC	Patriotic Forces for the Liberation of Congo (<i>Forces Patriotiques pour la libération du Congo</i>)
ICC	International Criminal Court
UPC	Union of Congolese Patriots

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I. GENERAL PRINCIPLES OF INTERNATIONAL CRIMINAL LAW

1. **Principle of Legality:** Also known as the principle of legality, this principle, which is enshrined, for example, in Article 15 of the International Covenant on Civil and Political Rights, provides that no one may be convicted or punished for an act or omission that did not constitute a criminal offense, under national or international law, at the time it was committed. It further provides that no heavier penalty may be imposed than applicable at the time the criminal offense was committed. The purpose of this principle is to ensure that legislation is specific and predictable so that individuals may reasonably foresee the legal consequences of their actions. The ICC Statute contains a similar provision on the principle of legality
2. **Ne Bis In Idem:** No person should be tried or punished more than once for the same offense. It ensures fairness for defendants since they can be sure that the judgment will be final and protects against arbitrary or malicious prosecution at both domestic and international level. Further, this principle endeavors to ensure that investigations and prosecutions are scrupulously initiated and carried out.
3. **Individual Criminal Responsibility:** International criminal law allows for individuals to be held criminally responsible not only for committing war crimes, crimes against humanity and genocide, but also for attempting, assisting in, facilitating or aiding and abetting the commission of such crimes. Individuals may also be held criminally responsible for planning, instigating or ordering the commission of such crimes.
4. **Command Responsibility:** Violations of international criminal law can also result from a failure to act. Armed forces or groups are generally placed under a command that is responsible for the conduct of its subordinates. As a result, in order to make the system effective, hierarchical superiors may be held to account when they fail to take proper measures to prevent their subordinates from committing serious violations of international humanitarian law.
5. **Non-retroactivity Ratione Personae:** No person shall be criminally responsible under Rome Statute for conduct prior to the entry into force of the Statute. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

II. INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT

A. ESTABLISHMENT OF INTERNATIONAL CRIMINAL COURT

The ICC, also known as the International Criminal Court, is a lasting global tribunal created with the purpose of examining, charging, and adjudicating individuals alleged to have committed the gravest offenses that deeply concern the international community. These offenses include genocide, crimes against humanity, war crimes, and the crime of aggression.

The Court is located in The Hague, Netherlands, as specified by the Rome Statute. However, the statute allows the Court to convene in alternative locations as deemed appropriate by the judges. Additionally, the Court has established offices in the regions under investigation for operational purposes.

The Assembly of States Parties, consisting of states that have ratified the Rome Statute, oversees the International Criminal Court (ICC). This body is responsible for appointing Court officials, endorsing its budget, and approves amendments to the Rome Statute. The ICC has four main components: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry.

The Presidency of the International Criminal Court (ICC) comprises three judges, namely the President and two Vice-Presidents, who are elected through an absolute majority vote by the 18 judges of the Court.

B. JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court stands as a permanent and independent judicial institution, in contrast to ad hoc tribunals like those for the former Yugoslavia and Rwanda, as well as similar courts, which were established under the United Nations framework to address specific situations with limited mandates and jurisdiction.

The ICC functions as a supplementary, rather than a substitutive, entity to national criminal justice systems. Its role involves investigating, prosecuting, and trying individuals only in cases where the respective state is genuinely unable, unwilling, or delayed in conducting such proceedings. This principle, termed complementarity, prioritizes national systems,

emphasizing that states bear the primary responsibility for prosecuting those responsible for the gravest crimes.

International Criminal Court mainly focuses on 4 crimes;

- Genocide
- Crimes Against Humanity
- War Crimes
- Crime of Aggression

C. ROME STATUTE

On 17 July 1998, a gathering of 160 nations established the inaugural treaty-based permanent International Criminal Court, formally recognized as the Rome Statute of the International Criminal Court. This treaty, ratified during the conference, delineates the offenses falling under the ICC's jurisdiction, outlines procedural rules, and establishes mechanisms for state collaboration with the ICC. Nations adhering to these stipulations are termed States Parties and are represented in the Assembly of States Parties.

Convening at least annually, the Assembly of States Parties formulates overarching policies for the Court's administration and conducts evaluations of its operations. During these sessions, States Parties scrutinize the activities of the working groups instituted by participating states, deliberate on matters pertinent to the ICC, engage in discourse regarding new initiatives, and approve the ICC's annual budget.

III. PROSECUTOR v. LUBANGA

A. INTRODUCTION TO THE CASE

The case of “The Prosecutor v. Thomas Lubanga Dyilo” is a matter that will be handled by the International Criminal Court (ICC). This case was pursued against Thomas Lubanga Dyilo, President of UPC and Commander-in-Chief of Congo. This case revolves around events that started with the Ituri Conflict, a sub-conflict of the Great African War, which lasted from 1999 to 2003.

The Ituri conflict is a persistent, low-intensity asymmetrical conflict occurring in the Democratic Republic of the Congo (DRC). It involves the Lendu, who are predominantly

agriculturalists, and the Hema, who are primarily pastoralists. The Prosecution alleges that acts committed by the Lendu ethnic group against the Hema group include poisoning water wells, forced pregnancies and child conscription and the deployment of 15,000 child soldiers to the front line. During the conflict, thirty thousand people were forced to flee their homes, the country destabilized. DRC and many neighbour countries were affected and involved from unpredictable security conditions.

The DRC ratified the Rome Statute, the founding instrument of the International Criminal Court on 11 April 2002. On 3 March 2004, the Government of the DRC referred to the Court the situation (the events falling under the Court's jurisdiction) in its territory since the entry into force of the Rome Statute on 1 July 2002. After a preliminary analysis, the Prosecutor initiated an investigation on 21 June 2004. Thomas Lubanga was arrested in 2006 and the appeal process began in 2007.

B. BACKGROUND OF EVENTS

In 1960, the Congo, which had been under colonial rule until 1960, gained independence from Belgium. This independence was short-lived, and due to disagreements in governance, the Congo Crisis occurred. Taking advantage of this chaos, Joseph-Désiré Mobutu seized power through a coup and changed the country's name to Zaire in 1971. The country remained a one-party state under the control of Mobutu's party, the Revolutionary Movement of the People, for many years.

The Rwandan Genocide in the 1990s weakened Mobutu's regime. The ethnic group that was responsible for this genocide, the Hutu, joined forces with military units loyal to the Tutsi government that followed, and opposition groups against Mobutu united to take over Zaire, removing Mobutu from power. In 1997, the leader of these rebel groups Laurent-Désiré Kabila, took control of the country and changed its name to the Democratic Republic of the Congo.

However, this victory did not last long. In 1998, once again, forces led by Rwanda attempted to take over the country, but this advance was thwarted with the assistance of military forces from Angola and Zimbabwe. As a result of all these developments, the country became divided internally and struggled with years of ongoing civil wars.

1. First Congo War

As a result of the prevented invasion supported by Angola and Zimbabwe, Tutsis who fled from Rwanda to Congo began to revolt and create internal derangement in reaction. Rwanda, to support the chaos caused by the Tutsis, sent troops to Congo. Following this support, a front against the Tutsis was formed by the government in Congo. Alongside the rapidly escalating internal derangement in the country, President Kabila of Congo addressed the entire population through radio and called for the killing of Tutsis wherever they were seen. On the other hand, Rwanda, assisting the Tutsis, aimed to destroy Congo through civil war and seize its territory. In fact, in this war, Rwanda even persuaded the states of Burundi and Uganda to join their ranks in the struggle. President Kabila took action to suppress the rapidly spreading civil war. Utilizing the tactics of the opposing group, Kabila collaborated with some states. Rebel forces under Kabila's leadership advanced towards the capital Kinshasa and overthrew Mobutu. However, after the victory, unrest continued in Congo, leading to a period of ongoing internal wars and conflicts.

2. Ethnic Conflict

The two sides of the ongoing ethnic conflict in the DRC are the Hemas and Lendus living in the Ituri region on the eastern side of the country. The tension between these two groups dates back to the periods when the country was under a Belgian colony. Belgian colonial administrators supported the Hemas, leading to educational and welfare inequalities between the two groups. Despite this, these two communities lived together for many years, even engaging in intermarriages.

In general, land disputes, economic competition, grazing rights, and access to resources are some of the reasons for the conflict between these two neighboring groups.

3. Thomas Dyilo Lubanga

Born on December 29, 1960, in Djiba, Ituri Province, Congo, Lubanga is a member of the Hema ethnic group. During the Ituri conflict, he played a prominent role by founding the Union of Congolese Patriots (UPC). During the Second Congo War, he served as a military commander and "defense minister" as part of the Congolese Rally for Democracy-Liberation Movement (RCD-ML), a pro-Uganda movement.

In July 2001, he founded the Union of Congolese Patriots (UPC), representing the Hema ethnic group. Lubanga became the president of the UPC's military wing, the Patriotic Forces for the Liberation of Congo (FPLC).

On March 17, 2006, he was arrested by the International Criminal Court for forcibly recruiting children under the age of 15 and actively using them in conflicts.

C. RELEVANT PERSONS TO THE CASE

1. Laurent-Désiré Kabila

Laurent-Desire Kabila served as president of the Democratic Congo after the African War. He led ethnic Tutsis from South Kivu against Hutu forces; With this action he marked the beginning of the First Congo War. With the support of Rwanda, Uganda and Burundi, Kabila led the forces under his command to rebel against Mobutu as the Allied Democratic Forces (ADF/ADFL). Approximately 10,000 child soldiers are reported to be among the forces under his command. He was killed in an assassination.

2. Joseph Kabila

Joseph Kabila, who became a president after the assassination of his father, has faced constant wars with eastern Congo and internal rebel forces supported by the governments of neighboring Uganda and Rwanda. He is the first Congolese president to be directly elected in the election held in 2006. He handed over his duty in 2019.

3. Célestin Kifwa:

Between July 16, 1998, and August 15, 1998, Celestin Kifwa served as the Chief of Staff of the Congolese Armed Forces. He is the brother-in-law of Kabila. He was appointed to the position due to being a relative of Kabila after the departure of Rwandan troops.

4. James Kabarebe

James Kabarebe served as the Chief of Staff of Zaire (now DRC) between May 17, 1997 and July 16, 1998. He is a retired Rwandan military officer. In 1994, he played a leading role in the massacre of Hutu civilians. During the First Congo War, he was the commander of the Rwandan-led army, with the aim of defeating former militia groups that committed genocide

against the Tutsis, destroying camps where Hutu civilians lived, and overthrowing Zaire's President Mobutu Sese Seko.

On May 17, 1997, he led the capture of the capital Kinshasa and the overthrow of Mobutu Sese Seko in the DRC. In response, Kabila appointed him as the Chief of Staff of the Congo's army. Kabila dismissed him from his position, replacing him with Celestin Kifwa afterwards.

D. RELEVANT CRIMES TO THE CASE

1. Crimes Against Humanity

Crimes against humanity refer to all crimes committed against human life and dignity and are specifically defined by the ICC. These crimes are serious violations of human rights law and are observed in situations of internal conflict and international war. In this case, there are the following subheadings specified in the Rome Statute:

Murder: "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

2. War Crimes

The case involves a high level of war crimes. War crimes consist of violations of the laws and customs of war in force under international law, and the sub-articles at issue in the case are as follows. War crimes include torture, mutilation, corporal punishment, hostage taking and acts of terrorism. This category also covers violations of human dignity such as rape and forced prostitution, looting and execution without trial. War crimes, unlike crimes against humanity, are always committed in times of war.

Willful killing:

Willful killing is a very serious crime that happens during a war. It means that someone intentionally killed one or more people who were supposed to be protected by special rules called the Geneva Conventions. The person who did the killing knew that they were breaking these rules and the killing happened during a war that involved more than one country.

Torture or inhuman treatment, including biological experiments:

The intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused. The pain or suffering inflicted must have had such purposes as obtaining information or a confession, punishment, intimidation, coercion or for any reason based on discrimination of any kind.

E. STATEMENT OF FACTS

- **April, 1994** Nearly 800,000 Tutsis and moderate Hutus were killed in Rwanda, millions of Rwandan refugees flooded into the eastern Democratic Republic of Congo where mostly Lendu and Hema people live.
- **May, 1996** Rwanda invaded Zaire (which was renamed the Democratic Republic of the Congo in the process).
- **May, 1997** Anti-communist Zairean president Mobutu Sese Sekowith was replaced with the rebel leader Laurent-Désiré Kabila which was supported by Uganda and Rwanda.
- **October, 1997** Civil war has risen in the east DRC because of the high presence of Tutsi and Hutu people from Rwanda along with the local tension between Hema and Lendu people from DRC.
- **July, 1998** Kabila dismissed his Rwandan chief of staff James Kabarebe, and replaced him with a native Congolese, Célestin Kifwa.
- **August, 1998** Kabila went to war with his previous allies, Uganda.
- **December, 1999** Conflict in Ituri has begun between Lendu and Hema.
- **September, 2000** The Union of Congolese Patriots (“UPC”) was created by Thomas Lubanga along with the military wing Patriotic Forces for the Liberation of Congo (“FPLC”) which are both commanded by him.
- **January, 2001** Kabila was shot dead by a bodyguard at the presidential palace in Kinshasa. Joseph Kabila took over his father’s spot.

- **June, 2001** Conflicts between Hema and Lendu got heated in the Ituri field after the inclusion of UPC troops, FPLC against the Armée Populaire Congolaise (“APC”) and other Lendu militias.
- **September, 2002** People living in Bunia (near Ituri zone) from all ages between 12-60 sent to either the headquarters of the UPC/FPLC in Bunia or its military training camps, including at Rwampara, Mandro and Mongbwalu.
- **June, 2003** FPLC took power in Ituri in a short amount of time.
- **September, 2003** Daily Monitor Gazette in Uganda made news about the conflict in Ituri and claimed that more than 800 soldiers have died and 1000 injured which includes the young soldiers at the age of 12-18.¹
- **May, 2004** There has been an incident in the Shans town (town close to Bunia City), where the water well has been poisoned and more than 1400 people lost their lives due to water.²
- **June, 2004** The European Union began Operation Artemis, sending a French-led peacekeeping force to Ituri. The EU force managed to take control of the regional capital of Bunia.
- **17 March 2006**: Prosecution filed an application for the issuance of a warrant of arrest for Thomas Lubanga Dyilo.
- **16 February 2007**: Thomas Lubanga Dyilo made its first appearance before the International Criminal Court.

¹ Annex 1

² Annex 2

III. APPLICABLE LAW

A. ROME STATUTE - ESTABLISHMENT OF THE COURT

Article 1 - The Court

“An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.”

Article 2 - Relationship of the Court with the United Nations

“The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.”

Article 3 - Seat of the Court

“1. The seat of the Court shall be established at The Hague in the Netherlands (“the host State”).

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.”

Article 4 - Legal status and powers of the Court

“1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.”

B. ROME STATUTE - JURISDICTION

Article 5 - Crimes within the jurisdiction of the Court

“The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;*
- (b) Crimes against humanity;*
- (c) War crimes;*
- (d) The crime of aggression.”*

Article 7 - Crimes against humanity

“1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) Torture;*
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3,*

or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 8 - War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

c. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.”

Article 9 - Elements of Crimes

“1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 bis. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.”

Article 10

“Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.”

Article 13 - Exercise of jurisdiction

“The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the

Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the

Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 15 - Prosecutor

“1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

...”

Article 17 - Issues of admissibility

“1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

...”

Article 20 - Ne bis in idem

“1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.”

Article 21 - Applicable Law

“1. The Court shall apply:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided

that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.”

IV. MERITS OF THE CASE

- 1) What is the role and power of the International Criminal Court?
- 2) Does the International Criminal Court have jurisdiction?
- 3) What are the main principles to apply to the case?
- 4) What are the main crimes allegedly committed by the Defendant?
- 5) What are the elements of the related crimes?
- 6) What is the difference between crime of genocide and crime of murder under crimes against humanity?
- 7) Does consent make the crimes unpunishable?
- 8) Is there an age limit to be able to give consent?

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