



American Model United Nations

ICJ

IN THE INTERNATIONAL COURT OF JUSTICE

BELGIUM V. SENEGAL

MEMORIAL OF THE KINGDOM OF BELGIUM

COMES NOW the Kingdom of Belgium and for their memorial to the Court states the following:

STATEMENT OF LAW

1. Senegal and Belgium are both parties of the United Nations Convention against Torture of 1984. In 2006, Belgium noted that the negotiation based on Article 30 of the aforementioned Convention have failed between the two States. Belgium argues that the interpretation of that article diverges from one State to the other.

2. Under customary international law, Senegal's failure to prosecute Mr. H. Habré, or to extradite him to Belgium to answer for the crimes against humanity which are alleged against him, violates the general obligation to punish crimes under international humanitarian law which is to be found in numerous texts of secondary law (institutional acts of international organizations) and treaty law.

3. The obligation to prosecute the perpetrators of such crimes is indicated in the resolutions of the General Assembly of the United Nations (see resolution 3074 (XXVIII), para. 1), the Draft Code of Crimes against the Peace and Security of Mankind adopted by the International Law Commission in 1996 (Article 9), and in numerous calls by the international community to combat impunity (see the preamble of the Statute of the ICC, 4th-6th consideranda, the Constitutive Act of the African Union, Article 4 (c), and various Security Council resolutions).

STATEMENT OF FACT

Since 2001, negotiations between Senegal and the Kingdom of Belgium have failed. Under the United Nations Convention against Torture of 1984, as well as under conventional and customary rules of international law, especially the customary obligation to punish crimes against humanity, Senegal must try Mr. H. Habré, failing to extradite him to Belgium. This case met the requirements provided for in the Statute of the ICJ for the indication of provisional measure (Request for the indication of Provisional Measure, Feb. 17, 2009). Senegal asked for a consequent amount of funds for the trial and will not move forward in the prosecution until the funds have been fully covered. On the other hand, Belgium is asking to try Mr. Habré after many complaints were received to the courts. The Kingdom of Belgium considers it its obligation to prosecute Mr. Habré and punish such crimes against humanity.

STATEMENT OF JURISDICTION

The Kingdom of Belgium would like to recall Article 36, paragraph 2, of the Statute of the International Court of Justice, which has been recognized by both Senegal (1985) and Belgium (1958), which indicates that both countries recognized the jurisdiction of the Court. As the matter in this case is of jurisdiction and of interpretation of international law, there is no discussion over the Court's jurisdiction for this case and that Belgium's claim is admissible (General list n°144, May 28, 2009).

ARGUMENTS

I. Senegal must prosecute Mr. Habré, or extradite him to Belgium

Senegal must prosecute Mr. H. Habré for the acts including crimes of torture and crimes against humanity which are alleged against him, failing his extradition to Belgium, where the Belgian courts have brought proceedings against him on the same grounds as a result of complaints filed in particular by a Belgian victim of Chadian origin.

II. Senegal argues about funds for prosecution

In 2006, Senegalese President agreed on an African Union mandate to prosecute Habré in

Senegal on behalf of the African Union which is abiding by the spirit of the rule *aut dedere aut*

punire” laid down in Article 7 of the 1984 United Nations Convention against Torture.

But Senegal has not even begun the legal proceedings. Senegal argues that the trial will necessitate about €27 million to cover the cost of the trial, and will not start the prosecution process until the money has been fully internationally funded.

III. Senegal might decide to lift his house arrest

At present, Mr. H. Habré is under house arrest in Dakar, but it transpires from an interview which the President of Senegal, A. Wade, gave to Radio France International that Senegal could lift his house arrest if it fails to find the funds which it regards as necessary in order to hold the trial of Mr. H. Habré. In such case, it would be easy for Mr. H. Habré to leave Senegal and avoid any prosecution. That would cause irreparable injustice to the rights conferred on Belgium by international law (the right to bring criminal proceedings for crimes against international humanitarian law) and also violate the obligations which Senegal must fulfill, of prosecuting or extraditing Mr. H. Habré for the crimes under international law which are alleged against him.

IV. Belgium is wanting to prosecute Mr. Habré

As this matter has been ongoing for almost 10 years, and seeing Senegal unwillingness to cooperate, this case met the requirements provided for in the Statute of the ICJ for the indication of provisional measure. Indeed, “According to its jurisprudence, the Court indicates provisional measures in order to preserve the rights of a party pending its decision on the merits, so as to avoid “irreparable prejudice” being caused to the rights of one of the parties in contention” (Request for the indication of Provisional Measure, Feb. 17, 2009). Belgium has hosted similar trial in the past (Rwanda trials) as they take it as their international duty to punish crimes against humanity.

SUMMARY AND PRAYER FOR RELIEF

A dispute between the kingdom of Belgium and Senegal has existed since 2001, when Belgium requested that Senegal try Mr. H. Habré, the former President of Chad. Belgium wishes to prosecute Mr. H. Habré for crimes against humanity and acts of torture. Seeing no prosecution from the State of Senegal, Belgium has been requesting the extradition of Mr. H. Habré to Belgium, where he would undergo criminal proceedings. Awaiting the judgment on the merits of the Court, Belgium called for the Court to require Senegal to monitor Mr. H. Habrés' deeds using Senegal judicial authorities so that the matter of international law can be effectively analyzed and evaluated by the Court. The Kingdom of Belgium prays that the Court will find an adequate solution to help either country to punish such crimes against humanity and set an example internationally.