



*American Model United Nations*  
**ICJ**

IN THE INTERNATIONAL COURT OF JUSTICE

BELGIUM V. SENEGAL

MEMORIAL OF THE REPUBLIC OF SENEGAL

COMES NOW the Republic of Senegal and for their Memorial to the Court  
states the following:

STATEMENT OF LAW

1. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter UN Convention Against Torture), Article 5, paragraph 2, expresses that States must take measures necessary to establish jurisdiction in cases where the offender is present in said jurisdiction and the State chooses not to extradite the offender.

2. The UN Convention Against Torture, Article 7, paragraph 1, states that if the State Party chooses not to extradite, that State must submit the case to competent authorities for prosecution.

3. The UN Convention Against Torture, Article 9, paragraph 1, States should assist each other in conjunction with civil proceedings. As referenced in Article 9, Article 4, paragraphs 1 and 2 states that each party shall make torture a criminal offense and those choosing to prosecute must ensure an suitable penalty.

4. In the International Court of Justice's Request for the Indication of

Provisional Measures in the Case Concerning Questions Relating to the Obligation to Prosecute or Extradite handed down on 28 May 2009, the court found that Belgium's rights were not being violated by Senegal and required no provisional measure, according to Article 41 of the Statute of the Court.

5. According to the thirty-sixth session of the UN Committee Against Torture's Communication number 181/2001, Article 7.12 states that the UN Convention Against Torture does not indicate that any State Party is under time constraints to meet its obligations to the Convention.'

6. According to the thirty-sixth session of the UN Committee Against Torture's Communication number 181/2001, Article 7.14 states that, Senegal's condition as a developing State requires consideration as the country attempts to "apply the rule of law."

## STATEMENT OF FACT

Hissène Habré was the dictator of the Republic of Chad from 1982-1990. During his tenure he is attributed with over 40,000 murders, systematic torture, and ethnic discrimination. Mr. Habré was exiled to the Republic of Senegal in 1990 where he has since remained. The dictator lost his immunity as a head of State in 1993. In 2000, Mr. Habré was indicted in a Senegalese court on the charges of crimes against humanity acts of torture and Barbarity. The case was dismissed on appeal that same year on grounds that "Senegalese courts cannot hear acts of torture committed by a foreigner outside the Senegalese territory regardless of the nationalities of the victims." Mr. Habré was detained in 2005 by Senegal in compliance with an international

arrest warrant. Legislative and constitutional changes have been made to allow for the prosecution of Mr. Habré in Senegal. Courts then declared that Senegal had no jurisdiction over the case since Mr. Habré did have immunity as a head of State when the charges were alleged.

## STATEMENT OF JURISDICTION

The Court does not have jurisdiction to hear this case due to the fact that there exists no legal dispute over the UN Convention Against Torture. The dispute is not over the conditions of the Convention but, rather, over the time, location, and cost of Mr. Habré's prosecution. Senegal is abiding by the treaty and is taking necessary steps to prosecute Mr. Habré. Because no condition of the Convention is being violated or disputed, the Court has no jurisdiction over the case.

## ARGUMENTS

I. Senegal has amended its constitution and laws to allow for the prosecution of Mr. Habré.

In 2008, Senegal altered its constitution and domestic laws to allow for "prosecution of crimes against humanity, war crimes, and torture, regardless of where the act occurred." Whereas the Dakar Court of Appeal dismissed the case against Mr. Habré in 2005 because the country had no jurisdiction over the matter, the government has made numerous amendments that now allow Senegalese courts to prosecute

international offenders.

II. The difference in cost associated with passing the case to Belgium to prosecute would be negligible.

With hundreds of witnesses needing to be flown to Belgium to testify and with Senegal on the verge of being prepared to hear the case, financing Mr. Habré's extradition to and subsequent trial in Belgium is not feasible. According to Human Rights Watch, France, Switzerland, Belgium, the Netherlands, and the European Union are all prepared to help fund a trial for Mr. Habré in Senegal. The budget handed down by Senegal currently lists the projected cost of Mr. Habré's trial to be €29 million.

III. The UN Convention does not impose a time limit for prosecution.

The UN Convention Against Torture does not require any State to prosecute an international offender within any time frame. Senegal has taken steps to begin prosecuting Mr. Habré and has submitted a budget for the trial. While the length of time Senegal has taken to begin prosecuting Mr. Habré may be undesirable to some, Senegal is under no obligation to commence proceedings while it is in the process of allowing itself to do so. If Senegal were not taking steps to prosecute Mr. Habré, under the UN Convention Against Torture, the country would be obligated to extradite the dictator. However, given that Senegal has been active in pursuing prosecution, the country is not to be held to any time constraints.

IV. Belgium's assertion that because of three nationals claiming grievances the case should be extradited is disproportionate to the complaints of hundreds of Senegalese and African citizens.

In a criminal complaint filed in the Dakar Regional Court, the charges against Mr. Habré include ninety-seven political killings, 142 cases of torture, 100 disappearances, and 736 arbitrary arrests all in the country of Chad. This information was verified by a French medical team and the Chadian Truth Commission Report. No Belgians were involved in any of these reported cases. Given the sheer number of Chadian citizens affected by Mr. Habré's actions and the fact that the Chadian complainants approached Senegal asking them to prosecute support Senegal's prosecution of Mr. Habré.

#### SUMMARY AND PRAYER FOR RELIEF

Belgium has no claim before this court to the prosecution of Hissène Habré. Senegal has made significant progress in preparing itself for the trial and prosecution of the dictator and has not violated any condition set forth in the UN Convention Against Torture. Senegal prays that the Court will uphold the State's international right to prosecute Mr. Habré within its own jurisdiction and will find that Senegal has not violate, in any regard, the UN Convention Against Torture.