



Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)

ARGUED: 25 November 2024

DECIDED: 26 November 2024

1 *The Majority Opinion was agreed to and signed by President Lercher of the Republic of Austria,*
2 *Vice President Escobedo of the Cooperative Republic of Guyana, Justice Barness of the Republic of*
3 *Brazil, Justice Crutcher of the Kingdom of Belgium, Justice Truax of the Republic of Kenya, Justice*
4 *Wasinger of the Republic of Poland, Justice Thom of the Republic of Trinidad & Tobago, Justice West*
5 *of the Republic of Ecuador, Justice Lambert of the Islamic Republic of Pakistan, Justice Shannon of*
6 *the Republic of Costa Rica, Justice Hartman of the Republic of Malta, and Justice Lenart of the French*
7 *Republic.*

8 *Summary of Facts and History –*

9 From 1982 to 1990, Mr. Hassene Habre served as the fifth president of Chad, a Central African
10 Nation. During his time as President, Habre was accused of being directly responsible for the deaths
11 of nearly 40,000 Africans and a multitude of war crimes from multiple different nations. Soon after Mr.
12 Habre fled to the Republic of Senegal, herein referred to as Senegal, seeking political asylum, which
13 was subsequently granted.

14 On January 25, 2000, seven Chadians filed an official complaint against Mr. Habree for violat-
15 ing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
16 (1984), herein thereafter referred to as CAT. On November 30, 2000, a Belgian of Chadian descent sub-
17 mitted a complaint with a civil application against the former President to a Belgian investigating judge.
18 The following year two more complaints were submitted by Belgians of Chadian descent on April 12 and
19 May 3 of 2001. These complaints were based on crimes covered by Belgian Law 1993/1999, which was
20 amended in 2003, and on the CAT covered by the 1984 Convention. In response to these complaints,
21 the investigating judge found the acts could be characterized as crimes against humanity under the
22 1993/1999 law which was amended in 2003 and on September 19 2001 they issued two international
23 letters rogatory to both Senegal and Chad. Between 2001 and 2005 Belgium took various investigative
24 steps, including examining complainants and witnesses, and analysing many of the documents that
25 were received from Chad and Senegal from the letters issued. On September 19, 2005, the investigative
26 judge issued an international arrest warrant in absentia for Habr, which was forwarded to the Sen-
27 galese authorities by Belgium. In response, Senegal placed Habr under temporary house arrest while
28 considering the extradition request. However, in a Note Verbale, Senegal ultimately refused to either
29 extradite or prosecute the former president, effectively keeping Habr under house arrest.

30 The African Union (AU) Committee of African Jurists recommended Senegal prosecute or ex-
31 tradite alleged criminal, Mr. Habre, to where the alleged criminal's prosecution should take place in
32 (Senegal). This occurred at the summit the AU held in Khartoum in 2006, they called for the African
33 Union nations to punish the alleged criminal to the fullest extent. Senegal accepted and has since
34 undertaken significant legal action.

35 *Summary of Arguments –*

36

37 The applicant, the Kingdom of Belgium, has brought this case before the Court seeking to uphold
38 their claim that Senegal is obligated to either prosecute or extradite Mr. Habre for his crimes against
39 humanity. They also request the Court find that Belgium is the most suitable option for prosecuting
40 Mr. Habre due to Senegal's inaction. Belgium has cited paragraph 1 of Article 30 of the CAT in their
41 arguments for why this Court has the jurisdiction to hear this case. Belgium has argued that it is entitled
42 to compel Senegal to extradite Mr. Habre under Article 5 (1) of the CAT due to having allegedly killed
43 Belgian citizens. Furthermore, Belgium is arguing Senegal has breached the legal basis of the CAT
44 by claiming they do not have the jurisdiction to prosecute Mr. Habre while also granting him political
45 asylum and denying his extradition to another State.

46 The Republic of Senegal approached the International Court of Justice stating that in this case
47 brought before the Court by Belgium, the Court does not have jurisdiction to hear the case. Senegal
48 disputes Belgium's claim of jurisdiction to hear this case citing Article 30 of the CAT and states there
49 is not an existing legal dispute between Belgium and Senegal regarding an interpretation of the CAT.
50 Furthermore, Senegal argues Belgium's interpretation of these obligations under CAT would undermine
51 and negatively affect the state sovereignty of Senegal, and the regional stability of the African Union as
52 they recommended to Senegal to prosecute Mr. Habre. Additionally, Senegal states they have taken
53 substantial legal and procedural steps toward prosecuting Mr. Habre throughout the period since he
54 was taken into custody, attributing delays to legislative and judicial reforms as their government and
55 courts were not structurally prepared for the prosecution of Mr. Habre rather than a failure to act.

56 *Summary of Jurisdiction -*

57 The Court determines it has jurisdiction under this case on the following legal bases:

58 Belgium is entitled to bring this case and pursue extradition or prosecution of Mr. Habr because
59 the charges were brought before the Belgian government by Belgian citizens of Chadian descent, who
60 are victims of the alleged offenses. In accordance with Article 5 of the Convention Against Torture
61 (CAT), "Each Party shall take such measures as may be necessary to establish its jurisdiction over
62 the offences referred to in Article 4" in certain circumstances, including "when the victim is a national
63 of that State if that State considers it appropriate." Given that the Belgian citizens who initiated the
64 case are victims of Mr. Habr, Belgium has the legal authority to establish jurisdiction over the offenses
65 committed by him. The Belgian government is exercising its right to prosecute and, where applicable,
66 seek extradition, in conformity with the provisions of the CAT. Thus, Belgium is acting within the powers
67 granted by the Convention to ensure justice is pursued in accordance with its legal obligations.

68 Article 36(2) of the Statute of the International Court of Justice provides that "the jurisdiction of
69 the Court applies in all legal disputes concerning the interpretation of a treaty [as well as] any question
70 of international law." Under this provision, the Court has jurisdiction to hear this case, as it involves a
71 dispute regarding the interpretation of the Convention Against Torture (CAT). While Senegal argues no
72 dispute exists between the parties, the facts demonstrate a clear legal dispute, which has led to the
73 referral of this case to the International Court of Justice. Despite the intervention of the African Union
74 urging Senegal to prosecute, Senegal failed to take action for four years. Consequently, Belgium initi-
75 ated this case on the grounds that Senegal violated Article 30 of the CAT, which governs the resolution
76 of disputes between State Parties.

77 Under Article 30(1) of the CAT, if a dispute between State Parties concerning the interpretation or
78 application of the Convention is not resolved through negotiation within six months, the dispute may be
79 referred to the International Court of Justice. Both Belgium and Senegal, upon signing the Convention,
80 had the option to opt out of the referral mechanism in Article 30(1), but neither state exercised this right.
81 Therefore, both states accepted the referral of this case to the ICJ, and Belgium brought the case in
82 accordance with the procedures outlined in the CAT and the Statute of the Court.

83 *Legal Analysis: (President Lercher, VP Escobedo, Justice West)*

84 The question at hand is how an egregious war criminal is to be prosecuted for his crimes against
85 humanity. For the answer, we implore the following reasoning:

86 Per Article 5 of the CAT, Parties are able to establish their jurisdiction over cases, "...(b) When the
87 alleged offender is a national of that State; [and] (c) When the victim is a national of that State if that

88 State considers it appropriate,"and this "3. Convention does not exclude any criminal jurisdiction ex-
89 exercised in accordance with internal law." Recognizing the three Belgium Petitioners with cases against
90 Mr. Habre arising in 2000 and 2001, Belgium is exercising its expressed rights within the CAT and the
91 Court finds their invocation of Article 5 to be in order.

92 When considering the lawfulness of Belgium's attempt to extradite Mr. Habre, the CAT underpins
93 their efforts to exercise their criminal jurisdiction over the matter. When a Party alleges any committed
94 offenses under the aforementioned article, Article 6 of the [date] Convention states they "shall take
95 him into custody or take other legal measures to ensure his presence," and outlining in point four that,
96 "When a State...has taken a person into custody, it shall immediately notify the States referred to in Arti-
97 cle 5, Paragraph 1, of the fact that such person is in custody and of the circumstances of his detention..."
98 to aid in the initiating State's indication of exercising jurisdiction. Belgium's criminal proceedings are
99 in line with Article 6 of the CAT; moreover, this Article emphasizes the obligation of Member States who
100 are party to the Convention to aid in the criminal and extradition proceedings an obligation Senegal
101 has failed to fulfill.

102 Senegal failed to perform its duties under Article 6 of the CAT. Belgium had to request the Re-
103 public of Senegal to place Mr. Habre under house arrest, when the Republic of Senegal should have
104 immediately placed him in their custody to adhere to the CAT. Additionally, Senegal violated Article
105 7 by impeding Belgium's ability to prosecute. Under Article 7, "The State Party... if it does not extra-
106 dite him, submit the case to its competent authorities for the purpose of prosecution." The Republic
107 of Senegal did not submit Mr. Habre to Belgium, which is the competent authority in this case. During
108 oral arguments, Senegal claimed that their courts were creating the necessary legislation to be able
109 to prosecute Mr. Habre. However, this alleged update has not been completed yet, has been ongoing
110 for more than a decade, and Senegal was unable to provide a status update on their institutional de-
111 velopment. Senegal failed to prosecute Mr. Habre or submit him to the relevant authorities. For these
112 reasons, the Court finds that the Republic of Senegal breached its duties under Article 6 and 7 of the
113 CAT.

114 Article 30, Paragraph 1 of the CAT states, "Any dispute between two or more States Parties con-
115 cerning the interpretation or application of this Convention which cannot be settled through negoti-
116 ation shall, at the request of one of them, be submitted to arbitration." The paragraph continues to
117 state that if the Parties are not able to agree on the organization of the arbitration within *six months*
118 of the date for a request for arbitration, the Parties can refer the matter to the International Court of
119 Justice. During oral arguments, the advocate for Senegal stated that the reason Mr Habre had not
120 been prosecuted was because of Senegal updating its political and judicial systems. Additionally, the
121 Advocate then continued to claim that Senegal would need an extension of one year to prosecute Mr.
122 Habre. This request is not grounded in any international law, is arbitrary, and is in violation of Article
123 10 of the UN Declaration of Human Rights that states, "Everyone is entitled in full equality to a fair and
124 public hearing..." Being out of the six month timeframe, Belgium is warranted in its request for the ICJ
125 to reach a judgement on the matter; moreover, if this Court were to deny Belgium's request then the
126 Court would also be denying Mr. Habre's right to a fair trial which includes a speedy resolution to his
127 case. The 19 years Senegal has held Mr. Habre without prosecution is reflective of this violation and
128 actively affects the regional stability of the African region.

129 When considering the question of extradition, Belgium's formal complaints and indictments
130 were filed in 2000 and 2001; whereas the AU's Committee of African Jurists recommendations to Sene-
131 gal arose in 2006. Recognizing the timeframe and criminal jurisdiction outlined in the CAT, it the position
132 of the Court is Belgium be able to conclude its criminal and extradition proceedings against Mr. Habre
133 as the invocation of CAT preceded any other disputed legal matters.

134 In any decision made by this body, the basic ideals of the United Nations, as presented in the
135 United Nations' charter, must be upheld to the fullest standard. Per Article 1, section 1 and section 3 of the
136 United Nations Charter, "the purposes of the United Nations are to [...] (1) maintain international peace
137 and security, and to that end: to take effective collective measures for the prevention and removal of
138 threats to the peace, and (3) achieve international co-operation in solving international problems of
139 an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect
140 for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or
141 religion."

142 As the judicial body of the United Nations, we hold that it would be violently irresponsible and
143 against the spirit of the United Nations to allow the implicit protection of an international war criminal.
144 In order to protect the peace of member states of the United Nations and to ensure the safety of their
145 nationals, we hold that extraditing and prosecuting Habre in the country of Belgium is the only path
146 forward.

147 *Conclusion:*

148 The Court recognizes not only the jurisdiction over this case, but also the duty to administer jus-
149 tice and maintain our commitment to international peace. The Court acknowledges Senegal's inability
150 and evident unwillingness to administer sufficient justice over war criminal Hissne Habr in a reasonable
151 timeframe.

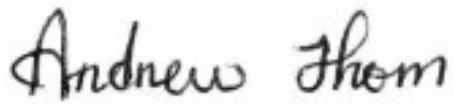
152 Due to these reasons, the Court recommends the following:

153 A swift and timely extradition of Hissene Habre to the Kingdom of Belgium.

154 A timely and fair trial and prosecution of Habre to the fullest extent in relation to the heinous war
155 crimes he committed while President of Chad, and

156 Following the conclusion of Mr. Habre's case, it is recommended that Belgium facilitate the
157 extradition of Mr. Habre to Senegal to conclude his case in accordance with the recommendation of
158 the AU's Committee of African Jurists.

Signed By



Justice Andrew Thom



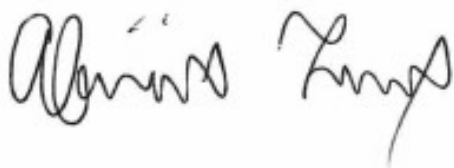
Justice Henry Crutcher



Justice Annie Wasinger



Justice Ayleen Escobedo



Justice Abigail Truax



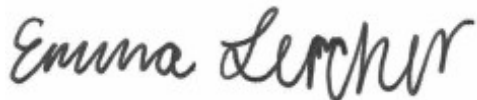
Justice Katey West



Justice Zachary Lenart



Justice Levi (Rhiannon) Hartman



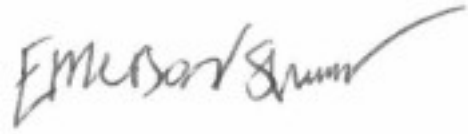
Justice Emma Lercher



Justice Leandro Lambert

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Justice Emma Barnes

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Justice Emerson Shannon