

IN THE INTERNATIONAL COURT OF JUSTICE

**THE KINGDOM OF BELGIUM,
APPLICANT**

V.

**THE REPUBLIC OF SENEGAL,
RESPONDENT**

MEMORIAL OF THE KINGDOM OF BELGIUM

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

STATEMENT OF JURISDICTION

The Kingdom of Belgium has come before the International Court of Justice with an issue in need of settlement. The Kingdom of Belgium recognises the jurisdiction of this court to settle an ongoing issue involving the Republic of Senegal. Mr. Hissène Habré, the former President of the Republic of Chad, has allegedly committed acts of torture and crimes against humanity during his presidency and has been a resident of Senegal since being granted political asylum by the Senegalese Government in 1990.

1. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment signed by the Kingdom of Belgium and the Republic of Senegal in 1985 and ratified by the Kingdom of Belgium in 1999 and by the Republic of Senegal in 1986 states:
 - a. **ARTICLE VI:**
 - i. “...any State Party in whose territory a person alleged to have committed any offence referred to in article 4 (acts of torture) is present shall take him into custody or take other legal measures to ensure his presence.”
 - ii. “Such State shall immediately make a preliminary inquiry into the facts.”
 - b. **ARTICLE VII:**
 - i. “The State Party in the territory under whose jurisdiction a person alleged to have committed any offense referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.”
2. Under Article 36 of the United Nations Charter, both nations have come to the courts in need of help settling a dispute. Below listed are the exact statutes mentioned before.

“1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”

“2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a.) the interpretation of a treaty
- b.) any question of international law;
- c.) the existence of any fact which, if established, would constitute a breach of an international obligation;
- d.) the nature or extent of the reparation to be made for the breach of an international obligation”

“6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.”

3. The Republic of Senegal signed a declaration recognizing the jurisdiction of the Court on 22 October 1985. It has no qualms therefore about its case going before the principal judicial organ of the United Nations.

STATEMENT OF LAW

1.) Paragraph 1 of Article 30 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that, if any disputes between State Parties are not addressed by negotiation within six months, then “... any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”

2.) Article 4 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

- a. “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”
- b. “Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.”

3.) Article 5, paragraph 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

“Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offenses in cases where the alleged offender is

present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.”

STATEMENT OF FACTS

- 1.) Mr. Hasséne Habré served as the fifth president of Chad from 1982 to 1990. While in office, Habré was responsible for the deaths of 40,000 people, many of whom were Belgian citizens, and other human-rights abuses, such as rape and sexual slavery. In 1990 Habré fled to Senegal, where he was granted political asylum.
- 2.) On January 25, 2000, seven Chadians filed an official complaint against Mr. Habré at the Dakar Tribunal. The senior judge indicted Mr. Habré for crimes against humanity and acts of torture. It was only weeks later when prosecuting authorities previously in favor of Mr. Habré’s prosecution reversed their decision and began supporting Mr. Habré’s application to annul proceedings. The judge was removed from the case, and on July 4, 2000, the *Chambre d’accusation* annulled the proceedings.
- 3.) On November 30, 2000, a Belgian of Chadian descent submitted a complaint against Mr. Habré in a Belgian court. Two more Belgians also submitted similar complaints on April 12 and May 3 of 2001. The investigative judge concluded that Mr. Habré’s acts were considered “crimes against humanity.”
- 4.) On September 19, 2005, the investigative judge sent the Senegalese authorities an arrest warrant *in absentia* for Mr. Habré—thus followed a series of Note Verbales in which Senegal refused to either extradite Mr. Habré or prosecute him.
- 5.) The African Union and several other international organizations urged the Republic of Senegal to prosecute or extradite Mr. Habre to a state where prosecution would take place

ARGUMENTS

- 1.) Considering the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5, paragraph 1 “Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offenses referred to in article 4 in the following cases:”, subsection c) “When the victim is a national of that State if that State considers it appropriate”, Belgium is entitled to act within the powers laid down by such Convention, including the right to prosecute and extradite, against Mr. Habre given the considerable amount of Belgian citizens victims of the acts perpetrated by Mr. Habre.
- 2.) The Republic of Senegal has failed and keeps failing to act in regards to this situation. They refuse to prosecute Mr. Habre for an alleged “lack of jurisdiction over a foreign national”, but, at the same time, they de facto maintain jurisdiction over Mr. Habre by

granting him political asylum and therefore denying his extradition to another state. These acts are not only logically in contrast to each other, but breach the legal basis granted by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SUMMARY AND REQUESTS

Given the jurisdiction of this Court in this matter, the international laws involved, and the exposed facts and arguments, the Kingdom of Belgium formally requests this Court to accept its claim that the Republic of Senegal must prosecute Mr. Habre for his crimes against humanity, or allow his extradition to Belgium for such prosecution to take place.

Given the lack of action from the Republic of Senegal since as early as the year 1990, we advise and suggest that this Court consider the extradition of Mr Habre to the Kingdom of Belgium as the most suitable option.

We advise the Court to consider our arguments for jurisdiction as precedent for addressing similar extradition cases in the future.