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TO: Mr. Vijay Nambiar, Chef de Cabinet

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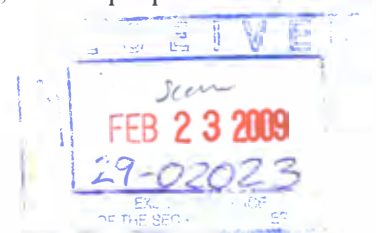
DE: Patricia O'Brien, Under-Secretary-General for Legal Affairs, The Legal Counsel

ICJ
DLA

Room No. -- No de bureau	Extension -- Poste	Date
S-3427B	3-5342	20 January 2009
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International Court of Justice – Belgium v Senegal: Institution of proceedings and request for provisional measures

Please find attached a Note to the Secretary-General regarding the institution of proceedings by Belgium against Senegal and its request for provisional measures as a result of Senegal failure to prosecute or to extradite the former President of Chad, Mr. Hissène Habré, for the purposes of criminal proceedings.



29-02023

Note to the Secretary-General

Through: Mr. Nambiar

Belgium institutes proceedings against Senegal in the International Court of Justice (ICJ)
and requests provisional measures

1. This is to inform you that yesterday afternoon, Belgium instituted proceedings in the International Court of Justice against Senegal for the latter's failure to prosecute or to extradite to Belgium the former President of Chad, Mr. Hissène Habré, to answer for the acts of torture that are alleged against him.

2. Belgium argues that under international law Senegal's failure to prosecute Mr. H. Habré, if he is not extradited to Belgium, violates the 1984 United Nations Convention against Torture. Moreover, Belgium contends that Senegal's failure to prosecute Mr. H. Habré also violates international customary law and the general obligation to punish crimes against international humanitarian law.

3. In addition, Belgium has requested the Court to indicate provisional measures requiring Senegal to take "all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal" to prevent him from fleeing the country. It fears that if Mr. H. Habré's current house arrest is lifted, he will leave Senegal and thus avoid any prosecution.

4. Senegal's reaction to Belgium's institution of proceedings against it remains unknown.

5. In light of the declarations recognizing the Court's compulsory jurisdiction submitted by both Belgium and Senegal, the Court will most likely accept the case. If so, this will be the fifteenth case on the Court's docket.

6. We will keep you informed of further developments in this case.



Patricia O'Brien
20 February 2009



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Press Release

Unofficial

No. 2009/13

19 February 2009

Belgium institutes proceedings against Senegal and requests the Court to indicate provisional measures

THE HAGUE, 19 February 2009. Belgium instituted proceedings late this afternoon before the International Court of Justice (ICJ) against Senegal, on the grounds that a dispute exists "between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute" the former President of Chad, Hissène Habré, "or to extradite him to Belgium for the purposes of criminal proceedings". It has also submitted a request for the indication of provisional measures in order to protect its rights pending the Court's Judgment on the merits.

Application instituting proceedings

In its Application, Belgium maintains that Senegal, where Mr. Habré has been living in exile since 1990, has taken no action on its repeated requests to see the former Chadian President prosecuted in Senegal, failing his extradition to Belgium, for acts including crimes of torture and crimes against humanity. The Applicant recalls that, following a complaint filed on 25 January 2000 by seven individuals and an NGO (the Association of Victims of Crimes and Political Repression), Mr. Habré was indicted on 3 February 2000 in Dakar for complicity in "crimes against humanity, acts of torture and barbarity" and placed under house arrest. Belgium adds that this indictment was dismissed by the Chambre d'accusation of the Dakar Court of Appeal on 4 July 2000, on the grounds that "'crimes against humanity' d[id] not form part of Senegalese criminal law".

The Applicant further indicates that "[b]etween 30 November 2000 and 11 December 2001, a Belgian national of Chadian origin and Chadian nationals" filed similar complaints in the Belgian courts. Belgium recalls that, since the end of 2001, its competent legal authorities have addressed numerous writs for judicial investigations to Senegal, and in September 2005 issued an international arrest warrant against Mr. Habré on which the Senegalese courts did not see fit to take action. At the end of 2005, according to the Applicant, Senegal passed the case on to the African Union. Belgium adds that in February 2007, Senegal decided to amend its penal code and code of criminal procedure so as to include "the offences of genocide, war crimes and crimes against humanity"; however, it points out that the Respondent has cited financial difficulties preventing it from bringing Mr. Habré to trial.

Belgium contends that under conventional international law, "Senegal's failure to prosecute Mr. H. Habré, if he is not extradited to Belgium to answer for the acts of torture that are alleged against him, violates the [United Nations] Convention against Torture [of 10 December 1984], in particular Article 5, paragraph 2, Article 7, paragraph 1, Article 8, paragraph 2, and Article 9,

paragraph 1". It adds that, under international custom, "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 against international humanitarian law which is to be found in numerous texts of derived law (institutional acts of international organizations) and treaty law".

To found the Court's jurisdiction, Belgium first invokes the unilateral declarations recognizing the compulsory jurisdiction of the Court made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court on 17 June 1958 (Belgium) and 2 December 1985 (Senegal).

Moreover, the Applicant indicates that "both States have been parties to the United Nations Convention against Torture of 10 December 1984" since 21 August 1986 (Senegal) and 25 June 1999 (Belgium). Article 30 of the Convention provides that any dispute between two States parties concerning its interpretation or application which it has not been possible to settle through negotiation or arbitration may be submitted to the ICJ by one of the States. Belgium contends that negotiations between the two States "have continued unsuccessfully since 2005" and that it reached the conclusion that they had failed on 20 June 2006. Belgium states, moreover, that it suggested recourse to arbitration to Senegal on 20 June 2006 and notes that the latter "failed to respond to that request . . . whereas Belgium has persistently confirmed in Notes Verbales that a dispute on this subject continues to exist".

At the end of its Application, Belgium requests the Court to adjudge and declare that

- the Court has jurisdiction to entertain the dispute [between Belgium and Senegal] regarding Senegal's compliance with its obligation to prosecute Mr. H. Habré or to extradite him to Belgium for the purposes of criminal proceedings;
- Belgium's Application is admissible;
- the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as author, co-author or accomplice;
- failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for his crimes before the Belgian courts".

Provisional measures

Belgium also submitted today a request for the indication of provisional measures. It explains therein that while "Mr. H. Habré is [currently] under house arrest in Dakar . . . 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 budget which it regards as necessary for the organization of the trial of Mr. H. Habré". The Applicant emphasizes that "[i]n such an event, it would be easy for Mr. H. Habré to leave Senegal and avoid any prosecution", which "would cause irreparable prejudice to the rights conferred on Belgium by international law [and] would violate the obligations which Senegal must fulfil".

Consequently, Belgium requests the Court "to indicate, pending a final judgment on the merits", provisional measures requiring the Respondent to take "all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal so that the rules of international law with which Belgium requests compliance may be correctly applied".

The full text of Belgium's Application will be available shortly on the Court's website (www.icj-cij.org).

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