

Arrest Warrant of 11 April 2000
(Democratic Republic of the Congo v. Belgium)

Press statement of Judge Gilbert Guillaume
President of the International Court of Justice
14 February 2002

The International Court of Justice has today handed down its Judgment in the case between the Democratic Republic of the Congo and Belgium concerning the lawfulness of an international arrest warrant issued in the year 2000 by a Belgian judge against the incumbent Minister for Foreign Affairs of the Congo.

I would begin by observing that the Court acted with dispatch in reaching its decision in this case, thanks to an expedited procedure. Thus, with the full co-operation of the Parties, it has succeeded in ruling on the Congo's Application some 16 months after it was filed.

I would next note that, by 15 votes to 1, the Court rejected various objections raised by Belgium relating to jurisdiction, mootness and admissibility, and accordingly proceeded to examine the merits of the case.

This case originated in an "international arrest warrant *in absentia*" issued in April 2000 by an investigating judge of the Brussels *Tribunal de première instance* against Mr. Abdoulaye Yerodia Ndombasi, who was at the time Minister for Foreign Affairs of the Congo. In that warrant, which was circulated internationally, the judge accused Mr. Yerodia Ndombasi of having made certain speeches in the Congo in August 1998 representing an incitement to racial hatred. He charged the Minister, who was not a Belgian national and was neither a resident of Belgium or present in that country, with (i) grave breaches of the 1949 Geneva Conventions and of the Additional Protocols thereto and (ii) crimes against humanity.

In its Application instituting proceedings, the Congo asked the Court to declare that Belgium should annul that warrant. It contended in the first place that the investigating judge was not entitled to hold himself competent in respect of the offences in question by relying on a universal jurisdiction not recognized by international law. Secondly, the Congo argued that the charges had been brought in defiance of the immunities enjoyed by incumbent Ministers for Foreign Affairs. In the subsequent proceedings, however, the Congo relied only on the second limb of its argument. The Court has accordingly not ruled on the first limb.

The Court decided by 13 votes to 3 that the issue and international circulation of the disputed arrest warrant had failed to respect the immunity from criminal jurisdiction and inviolability which Mr. Yerodia Ndombasi enjoyed under international law.

In so ruling, the Court clarified the nature and scope of the immunities enjoyed by Ministers for Foreign Affairs.

It recalled that immunities accorded to such persons under customary international law are granted not for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. Then, after analysing those functions, the Court concluded that "throughout the duration of his or her office, [a Minister for Foreign Affairs] when abroad enjoys full immunity from criminal jurisdiction and inviolability". This is the case whether the Minister is present in foreign territory in an "official" or "private" capacity, whether the acts in question were performed before he or she assumed office as Minister or during the period of office, and finally, whether the acts were performed in an official or in a private capacity.

The Court then turned to the question whether this is so when a Minister for Foreign Affairs is suspected of having committed war crimes or crimes against humanity. On this point, it examined with care State practice, including national legislation and decisions of higher national courts, such as the House of Lords in the *Pinochet* case and the French Court of Cassation in the *Qaddafi* case. It also considered the statutes and jurisprudence of international criminal courts. Following this examination, it concluded that there existed no exception under international law to the rule establishing immunity from criminal process before foreign national courts and inviolability.

The Court further made it clear that a careful distinction must be drawn between the jurisdiction of courts and the immunity of those appearing before them. Jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction.

It also pointed out that immunity from jurisdiction and individual criminal responsibility are two separate concepts.

By way of example, the Court emphasized that Ministers for Foreign Affairs do not enjoy any immunity from criminal jurisdiction under international law in their own countries. Further, immunity from foreign jurisdiction could be waived by the State represented. The Court made it clear that, provided that it has jurisdiction under international law, a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity. Finally, the Court recalled the powers which may be conferred in this area on international criminal courts. It observed that, for these various reasons, immunity does not mean impunity.

On these bases, the Court, after stating its finding that the issue and circulation of the disputed arrest warrant had been unlawful, concluded with a finding, by 10 votes to 6, that Belgium must, by means of its own choosing, cancel the arrest warrant and so inform the authorities to whom that warrant had been circulated.

This Judgment has for the first time defined the scope of the immunities of Ministers for Foreign Affairs. As a result, it not only brings closure to the dispute of which it had been seised. It also represents an important contribution by the Court to the development of international law in a field of great topical interest.
