



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

Unofficial

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

**The Court rejects Belgium's request that the case be removed from the List and finds that the circumstances, as they now present themselves, are not such as to require the indication of provisional measures**

THE HAGUE, 8 December 2000. The International Court of Justice (ICJ) today unanimously rejected the request of Belgium that the case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) be removed from the List, and found by fifteen votes to two that the circumstances, as they now presented themselves to the Court, were not such as to require the exercise of its power to indicate provisional measures, as the DRC had wished.

The merits of the dispute concern an international arrest warrant issued on 11 April 2000 by a Belgian investigating judge against Mr. Yerodia Abdoulaye Ndombasi — Minister for Foreign Affairs of the DRC at the time, now Minister of Education — seeking his provisional detention pending a request for extradition to Belgium for "serious violations of international humanitarian law". In its request for the indication of provisional measures, the DRC had inter alia asked the Court to make an order for the immediate discharge of the disputed arrest warrant.

#### Reasoning of the Court

The Court starts by recalling that, in the course of the hearings, it was informed by Belgium that on 20 November 2000 a Cabinet reshuffle had taken place in the Congo, as a result of which Mr. Yerodia Ndombasi had ceased to exercise the functions of Minister for Foreign Affairs and had been charged with those of Minister of Education; and that this information was confirmed by the Congo.

Belgium had maintained that, as a result of the Cabinet reshuffle, the Congo's Application on the merits had been deprived of its object and should therefore be removed from the List. In this regard, the Court observes that, "to date", the arrest warrant issued against Mr. Yerodia Ndombasi "has not been withdrawn and still relates to the same individual, notwithstanding the new ministerial duties that he is performing" and that "at the hearings the Congo maintained its claim on the merits". It accordingly concludes that "the Congo's Application has not at the present time been deprived of its object" and that "it cannot therefore accede to Belgium's request for the case to be removed from the List".

As regards the request for the indication of provisional measures, the Court finds that it too still has an object, despite the Cabinet reshuffle, since inter alia the arrest warrant continues to be in the name of Mr. Yerodia Ndombasi and the Congo contends that Mr. Yerodia Ndombasi continues to enjoy immunities which render the arrest warrant unlawful.

The Court then turns to the issue of its jurisdiction. In the course of the hearings Belgium had contended that the Court could not at this stage of the proceedings take account of the declarations of acceptance of its compulsory jurisdiction made by the Parties because the Congo had not invoked those declarations until a late stage. The Court observes that the said declarations are within the

knowledge both of itself and of the Parties to the present case and that Belgium could readily expect that they would be taken into consideration as a basis for the jurisdiction of the Court in the present case. Belgium had also pointed out that its declaration excluded the compulsory jurisdiction of the Court concerning situations or facts "in regard to which the parties have agreed or may agree to have recourse to another method of pacific settlement", and that negotiations at the highest level regarding the arrest warrant were in fact in progress when the Congo seised the Court. The Court states that Belgium has not provided the Court with any further details of those negotiations, or of the consequences which it considered they would have in regard to the Court's jurisdiction, in particular its jurisdiction to indicate provisional measures. The Court concludes that the declarations made by the Parties constitute prima facie a basis on which its jurisdiction could be founded in the present case.

After having recalled that the power of the Court to indicate provisional measures "has as its object to preserve the respective rights of the parties pending the decision of the Court", that it "presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute" and that "such measures are justified solely if there is urgency", the Court notes that, following the Cabinet reshuffle of 20 November 2000, "Mr. Yerodia Ndombasi ceased to exercise the functions of Minister for Foreign Affairs and was charged with those of Minister of Education, involving less frequent foreign travel. It concludes that "it has accordingly not been established that irreparable prejudice might be caused in the immediate future to the Congo's rights nor that the degree of urgency is such that those rights need to be protected by the indication of provisional measures".

The Court adds that, "while the Parties appear to be willing to consider seeking a friendly settlement of their dispute, their positions as set out before [it] regarding their respective rights are still a long way apart". It points out that, "while any bilateral negotiations with a view to achieving a direct and friendly settlement will continue to be welcomed, the outcome of such negotiations cannot be foreseen"; that "it is desirable that the issues before the Court should be determined as soon as possible" and that "it is therefore appropriate to ensure that a decision on the Congo's Application be reached with all expedition". The Court further states that the Order made in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case, or with any questions relating to the admissibility of the Application or to the merits themselves.

#### Composition of the Court

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; Judges ad hoc Bula-Bula, Van den Wyngaert; Registrar Couvreur.

Judges Oda and Ranjeva have appended declarations to the Order. Judges Koroma and Parra-Aranguren have appended separate opinions to the Order. Judge Rezek and Judge ad hoc Bula-Bula have appended dissenting opinions to the Order. Judge ad hoc Van den Wyngaert has appended a declaration to the Order.

Pursuant to a recent decision of the Court, declarations and separate and dissenting opinions appended to the Order are no longer presented sequentially, but feature for the first time in the order of precedence of their authors.

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The full text of the Order and of the declarations and opinions is available on the Court's website (<http://www.icj-cij.org>). A summary of the Order will be issued later.

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