

INTERNATIONAL COURT OF JUSTICE

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General List
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CASE CONCERNING THE ARREST WARRANT OF 11 APRIL 2000

(DEMOCRATIC REPUBLIC OF THE CONGO v. BELGIUM)

ORDER

Present: President Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Bula-Bula, Van den Wyngaert; *Registrar* Couvreur.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Article 44, paragraph 3, of the Rules of Court,

Having regard to the Application filed in the Registry of the Court on 17 October 2000, whereby the Democratic Republic of the Congo instituted proceedings against the Kingdom of Belgium in respect of a dispute concerning an "international arrest warrant issued on 11 April 2000 by a Belgian investigating judge . . . against the Minister for Foreign Affairs in office of the Democratic Republic of the Congo, Mr. Abdulaye Yerodia Ndombasi",

Having regard to the Order of 8 December 2000 whereby the Court adjudicated upon the request for the indication of provisional measures submitted by the Democratic Republic of the Congo on 17 October 2000, as adjusted at the hearings to take account in particular of the fact that on 20 November 2000 Mr. Yerodia Ndombasi "had ceased to exercise the functions of Minister for Foreign Affairs and been charged with those of Minister of Education", and in which the Court stated that "it [was] desirable that the issues before the Court should be determined as soon as possible", and that "it [was] therefore appropriate to ensure that a decision on the Congo's Application be reached with all expedition",

Having regard to the Order of 13 December 2000 whereby the President of the Court, taking account of the agreement of the Parties as expressed at a meeting with their Agents on 8 December 2000, fixed 15 March 2001 and 31 May 2001 as the respective time-limits for the filing of a Memorial by the Democratic Republic of the Congo and a Counter-Memorial by the Kingdom of Belgium addressing both issues of jurisdiction and admissibility and the merits,

Having regard to the Orders of 14 March 2001 and 12 April 2001 whereby, taking account of the reasons given by the Democratic Republic of the Congo and of the agreement of the Parties, the time-limits for the filing of the Memorial of the Democratic Republic of the Congo and of the Counter-Memorial of the Kingdom of Belgium were extended to, respectively, 17 April 2001 and 31 July 2001, and then to 17 May 2001 and 17 September 2001,

Having regard to the Memorial filed by the Democratic Republic of the Congo within the time-limit as thus extended;

Whereas, in a letter received in the Registry by facsimile on 14 June 2001, the Agent of Belgium pointed out that

"[i]n paragraph 11 of its Memorial, the Democratic Republic of the Congo note[d] that [, since] 'the formation of the new Congolese Government by President Joseph Kabila, Mr. Yerodia Ndombasi no longer appear[ed] on the list of members of that Government'";

whereas the Agent stated that

"Belgium . . . too consider[ed] that Mr. Yerodia Ndombasi no longer [held] any office in the Government of the Democratic Republic of the Congo";

and whereas he observed:

"This new fact has important implications for this case. It raises questions of jurisdiction and admissibility, on the grounds *inter alia* that the case as presented in the Congo's Memorial differs on important points from the case as presented in the Congo's Application instituting proceedings, and that the case is now moot. It also suggests that the need for expedition is less pressing.

.....

In light of this new fact, Belgium envisages formulating objections to jurisdiction and admissibility";

Whereas in that same letter the Agent of Belgium stated that "[a]s regards the Belgian legislation at issue in this case, Belgium . . . [was] currently undertaking a review of the Law in terms of its implementation"; and whereas he made the following request on behalf of his Government:

"In light of these new facts, and in order to prevent the issues on the merits of the dispute between the Parties being considered and unhelpfully frozen before the ongoing review of legislation has been completed and the issues of jurisdiction and admissibility settled, Belgium requests the Court to derogate from its Orders of 13 December 2000 and 12 April 2001 in order to permit the conduct of a preliminary phase in accordance with the Court's usual procedure. Belgium accordingly kindly requests the Court to fix 28 September 2001 as the time-limit within which it shall submit its objections to

jurisdiction and admissibility and provide all other relevant information for purposes of a decision by the Court in a preliminary phase. In accordance with usual practice under Article 79 of the Rules of Court, consideration of the merits would then be suspended until the end of the preliminary phase";

Whereas, by a letter of 14 June 2001, the Registrar transmitted a copy of the Belgian communication to the Agent of the Democratic Republic of the Congo, requesting him to inform the Court by 22 June 2001 at latest of any comments which his Government might wish to make on that communication;

Whereas, by a letter dated 22 June 2001 and received in the Registry that same day, the Agent of the Democratic Republic of the Congo contended that

"[n]one of the elements put forward by the Agent of Belgium in his letter appear[ed] to justify a derogation from the Order of 13 December 2000";

whereas, in particular, he stated the following:

"In its Order of 8 December 2000, the Court has already had occasion to dismiss Belgium's argument that the change in Mr. Yerodia's ministerial responsibilities rendered the Application of the Democratic Republic of the Congo without object. Nor can the fact that Mr. Yerodia currently has no ministerial responsibility deprive the Application of the Democratic Republic of the Congo of its object, since the Application concerns redress for a previous unlawful act. Belgium further reproaches the Democratic Republic of the Congo with having departed in its Memorial from the terms of the Application instituting proceedings, to the point that 'the case as presented in the Congo's Memorial differs from that presented in the Application instituting proceedings'. That affirmation, or rather the conclusion drawn therefrom, is clearly erroneous.

In any event, there is nothing to prevent Belgium from raising this point in the single Counter-Memorial which it has still to file, since said Counter-Memorial must cover questions of both jurisdiction and admissibility and the merits. Nor is it possible to accept the Agent of Belgium's contention that Mr. Yerodia's absence from ministerial office makes settlement of this dispute less urgent. In fact, it would appear most desirable to settle the merits of the case as quickly as possible, not only in order to allow the Parties to pursue mutual relations in an atmosphere of calm, but also because it deals with a question of principle which interests the international community at large";

whereas the Agent observed, as regards the Belgian legislation, that

"[w]hatever the content of that review, as to which we have no information, since the Belgian Government has not yet tabled any draft law to that end, it cannot deprive the dispute of its object, since the Application of the Democratic Republic of the Congo concerns redress for a previous unlawful act, which no legislative reform can make good";

Whereas, in the same letter, the Agent of the Democratic Republic of the Congo concludes as follows on behalf of his Government:

"I have the honour to inform you that the Democratic Republic of the Congo does not accept Belgium's proposals . . . and in no case wishes to see a derogation from the procedure as laid down by the Court in its Orders of 8 December 2000 and 13 December 2000.

Nevertheless, in a spirit of reciprocity, my Government has no objection to the Court according Belgium a time-limit of 28 September 2001 for the submission of its Counter-Memorial alone, on condition that the latter addresses all questions relating to jurisdiction, to admissibility and to the merits";

Whereas the Democratic Republic of the Congo thus expresses its opposition to any variation in the procedure as agreed and embodied in the Order of the President of the Court dated 13 December 2000; whereas the Court itself sees no compelling reason for departing from the agreed procedure; and whereas it accordingly considers that it should not accede to Belgium's request;

Whereas, however, the Democratic Republic of the Congo does not object to the time-limit for the filing of Belgium's Counter-Memorial being extended to 28 September 2001, provided that pleading addresses both any questions of jurisdiction and admissibility as well as the merits; and whereas the Court itself sees no objection to this;

Taking account of the views of the Parties,

(1) *Rejects* the request by the Kingdom of Belgium for authorization, in derogation from the Orders of the President of the Court dated 13 December 2000 and 12 April 2001, to submit preliminary objections involving suspension of the proceedings on the merits;

(2) *Extends* to 28 September 2001 the time-limit prescribed in the Order of 12 April 2001 for the filing by the Kingdom of Belgium of a Counter-Memorial addressing both questions of jurisdiction and admissibility and the merits; and

Reserves the subsequent procedure for further decision.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-seventh day of June, two thousand and one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Kingdom of Belgium, respectively.

(*Signed*) Gilbert Guillaume,
President.

(*Signed*) Philippe Couvreur,
Registrar.
