



# INTERNATIONAL COURT OF JUSTICE

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

**The Court finds that the issue and international circulation by Belgium of the arrest warrant of 11 April 2000 against Mr. Abdulaye Yerodia Ndombasi failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Congo enjoyed under international law; and that Belgium must cancel the arrest warrant**

THE HAGUE, 14 February 2002. Today the International Court of Justice (ICJ), principal judicial organ of the United Nations, delivered its Judgment in the case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium).

In its Judgment, which is final, without appeal and binding for the Parties, the Court found, by thirteen votes to three,

“that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law”

and, by ten votes to six,

“that the Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated”.

The Court reached these findings after having found, by 15 votes to 1, that it had jurisdiction, that the Application of the Democratic Republic of the Congo (“the Congo”) was not without object (and the case accordingly not moot) and that the Application was admissible, thus rejecting the objections which the Kingdom of Belgium (“Belgium”) had raised on those questions.

## The reasoning of the Court

### Jurisdiction and admissibility

The Court first rejects certain objections of Belgium based on the fact that Mr. Yerodia was no longer the Minister for Foreign Affairs, or even a member of the Government of the Congo, at the time that the Court was dealing with the case.

With regard to the Court's jurisdiction, Belgium argues that there no longer exists a "legal dispute" between the Parties within the meaning of the declarations filed by them pursuant to Article 36 (2) of the Statute, and that, therefore, the Court lacks jurisdiction. On this point, the Court recalls that its jurisdiction must be determined at the time of the institution of the proceedings, and that at that time there was clearly "a legal dispute between . . . [the parties] concerning the international lawfulness of the arrest warrant of 11 April 2000 and the consequences to be drawn if the warrant was unlawful". The Court accordingly rejects the first Belgian objection.

The Court also rejects the second Belgian objection, namely that, because of the above-mentioned change in Mr. Yerodia's situation, the case is now without object. The Court finds that this change has not deprived the Application of its object. It points out that the Congo argues that the arrest warrant was and remains unlawful, and asks the Court so to declare, while continuing to seek cancellation of the warrant; for its part Belgium continues to dispute the Congo's submissions.

Nor does the Court find, as claimed by Belgium in its third objection, that the Congo's claims are inadmissible because the facts underlying the Application have changed in such a way as to produce a transformation of the dispute before the Court into another dispute. The Congo's final submissions, the Court observes, arise "directly out of the question which is the subject-matter of that Application".

Belgium's fourth objection, that, because of the change of Mr. Yerodia's situation, "the case has assumed the character of an action of diplomatic protection but one in which the individual being protected has failed to exhaust local remedies" is also rejected by the Court. The Court notes that the Congo never invoked the individual rights of Mr. Yerodia and recalls that, in any event, the admissibility of the Application must be determined as at the time of its filing.

The Court finally observes, in response to a subsidiary argument of Belgium, that, while in accordance with a well-established principle the Court is "not entitled to decide upon questions not asked of it, [that] non ultra petita rule nonetheless cannot preclude the Court from addressing certain legal points in its reasoning". The Court observes that in the present case it thus may not rule, in the operative part of its Judgment, on the question whether the disputed arrest warrant, issued by the Belgian investigating judge in exercise of his purported universal jurisdiction, complied in that regard with the rules and principles of international law governing the jurisdiction of national courts, because that question was not contained in the final submissions of the Parties. This does not mean, however, that the Court may not deal with certain aspects of that question in the reasoning of its Judgment, should it deem this necessary or desirable.

### Merits

The Court then observes that in the present case it is only the immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs which it has to consider. Having referred to certain treaties which were cited by the Parties in this regard, and having concluded that they do not define the immunities of Ministers for Foreign Affairs, the Court finds that it must decide the questions relating to these immunities on the basis of customary international law.

The Court states that, in customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. In order to determine the extent of these immunities, the Court must therefore first consider the nature of the functions exercised by a Minister for Foreign Affairs. After an examination of the nature of those functions the Court concludes that they are such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties. In this respect, no distinction can be drawn between acts performed by a Minister for Foreign Affairs in an "official" capacity and those claimed to have been performed in a "private capacity", or, for that matter, between acts performed before the person concerned assumed office as Minister for Foreign Affairs and acts committed during the period of office. Thus, if a Minister for Foreign Affairs is arrested in another State on a criminal charge, he or she is clearly thereby prevented from exercising the functions of his or her office.

The Court then turns to Belgium's arguments that Ministers for Foreign Affairs do not enjoy such immunity when they are suspected of having committed war crimes or crimes against humanity. It points out that, after having carefully examined State practice, including national legislation and those few existing decisions of national higher courts, such as the House of Lords or the French Court of Cassation, it has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs.

The Court further observes that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities. The immunities under customary international law, including those of Ministers for Foreign Affairs, remain opposable before the courts of a foreign State, even where those courts exercise an extended criminal jurisdiction on the basis of various international conventions on the prevention and punishment of certain serious crimes.

The Court emphasizes, however, that the immunity from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they enjoy impunity in respect of any crimes they might have committed, irrespective of their gravity. Immunity from criminal jurisdiction and individual criminal responsibility are quite separate concepts. While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility. The Court then spells out the circumstances in which the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution.

After examination of the terms of the arrest warrant of 11 April 2000, the Court states that the issuance, as such, of the disputed arrest warrant represents an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs on charges of war crimes and crimes against humanity. It finds that, given the nature and purpose of the warrant, its mere issue constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity which Mr. Yerodia enjoyed as the Congo's incumbent Minister for Foreign Affairs and, more particularly, infringed the immunity from criminal jurisdiction and inviolability then enjoyed by him under international law. The Court also notes that Belgium admits that the purpose of the international circulation of the disputed arrest warrant was "to establish a legal basis for the arrest of Mr. Yerodia . . . abroad and his subsequent extradition to Belgium". It finds that, as in the case of the warrant's issue, its international circulation from June 2000 by the Belgian authorities, given the nature and purpose of the warrant, constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of the incumbent Minister for Foreign Affairs of the Congo and, more particularly,

infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law.

The Court finally considers that its finding that the arrest warrant was unlawful under international law, and that its issue and circulation engaged Belgium's international responsibility, constitute a form of satisfaction which will make good the moral injury complained of by the Congo. However, the Court also considers that, in order to re-establish "the situation which would, in all probability have existed if [the illegal act] had not been committed", Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated.

#### Composition of the Court

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

President Guillaume appends a separate opinion to the Judgment of the Court; Judge Oda appends a dissenting opinion to the Judgment of the Court; Judge Ranjeva appends a declaration to the Judgment of the Court; Judge Koroma appends a separate opinion to the Judgment of the Court; Judges Higgins, Kooijmans and Buergenthal append a joint separate opinion to the Judgment of the Court; Judge Rezek appends a separate opinion to the Judgment of the Court; Judge Al-Khasawneh appends a dissenting opinion to the Judgment of the Court; Judge ad hoc Bula-Bula appends a separate opinion to the Judgment of the Court; Judge ad hoc Van den Wyngaert appends a dissenting opinion to the Judgment of the Court.

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A summary of the Judgment is given in Press Communiqué No. 2002/3bis, to which a summary of the opinions is annexed. The full text of the Judgment and of the opinions is available on the Court's website (<http://www.icj-cij.org>).

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