



ARREST WARRANT OF 11 APRIL 2000 (DEMOCRATIC REPUBLIC OF THE CONGO v. BELGIUM)

Reply by Belgium to the question raised by Judge Koroma at the conclusion of the oral hearing on 19 October 2001 (CR 2001/11, p.19)

Question: “In the course of this afternoon’s session [counsel for Belgium] stated that this case is not about the enforcement of the arrest warrant in Belgium, and the delegation has maintained all along that it is not obligatory on third States to enforce the warrant.

If, then, the warrant of arrest is neither about one nor the other, what was the purpose of the warrant?”

Answer

1. In its Application instituting proceedings, the Democratic Republic of the Congo charged that, in consequence of the issuing and transmission of the arrest warrant, Belgium had violated the DRC’s sovereignty and the immunity of its Minister for Foreign Affairs in office. In Belgium’s contention, these allegations cannot simply be taken at face value. They must be proved.

2. In addressing the issue of the effect of the arrest warrant, Belgium distinguished between the effect of the warrant in Belgium and the effect of the warrant in third States.¹ As regards the effect of the warrant in Belgium, Belgium acknowledges that the warrant would require the relevant Belgian authorities to arrest Mr Yerodia Ndombasi were he to be found in Belgium – subject to the caveat expressed on the face of the warrant relating to immunity from enforcement.

3. While the arrest warrant undoubtedly has an effect in Belgium, the present case is not, however, about the effect of the warrant in Belgium. This is simply because the DRC has no right in law to insist on the unrestricted entry into Belgium of its Minister for Foreign Affairs. This is a matter that falls entirely within the

¹ CR 2001/8, at p.52; CR 2001/11, at pp.10 – 11.



sovereign competence of Belgium. The sovereignty of the DRC cannot therefore be infringed in consequence of the legal effect of the arrest warrant in Belgium.

4. As regards third States, the nature of the warrant is such as to require that further preliminary steps are taken before the relevant authorities of such States are obliged to act upon the Belgium warrant. As Judge *ad hoc* Van den Wyngaert observed in her Declaration to the Court's *Provisional Measures Order* in this case, "[t]here is always a need for validation by the authorities of the State where the person named in the warrant has been found, even in the case where a red notice has been issued by Interpol."² This independent act of validation by third State authorities, such as the issuing of a local arrest warrant, will in turn itself invariably be preceded by some further prior act, such as a request for provisional arrest or the issuing of a Red Notice. The Belgian arrest warrant is not therefore, of itself, sufficient to create obligations for either the DRC or any other State. If it is to have legal effect in third States, the warrant must be validated or completed by some further act or acts. Put differently, as regards enforcement in third States, the Belgian arrest warrant is an inchoate act. Enforcement of the warrant is dependent on some further preliminary steps having been taken.

5. Given its inchoate quality as regards third States, Belgium contends that the issuing and transmission of the arrest warrant cannot of itself be said to have infringed the sovereignty of the DRC.

6. Against this background, the question asks about the purpose of the arrest warrant. As a matter of Belgian law, subject to the caveat expressed on the face of the warrant concerning immunity from enforcement, the purpose of the warrant was clearly to require that, if found in Belgium, Mr Yerodia Ndombasi should be detained by the relevant Belgian authorities with a view to his prosecution on charges of war crimes and crimes against humanity. The purpose of the warrant was also, no doubt, to establish a legal basis for the arrest of Mr Yerodia Ndombasi abroad and his



subsequent extradition to Belgium on charges of war crimes and crimes against humanity. However, as described above, as regards this latter purpose, the legal effect of the warrant is conditional upon it being validated or completed by some prior act requiring the arrest of Mr Yerodia Ndombasi by the relevant authorities in a third State. The arrest warrant does not, therefore, of itself, establish a legal basis for the arrest of Mr Yerodia Ndombasi in a third State.

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² *Provisional Measures Order*, 8 December 2000; Declaration of Judge Van den Wyngaert. at paragraph 2.