

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

**Comments of the Democratic Republic of the Congo on the reply of the Kingdom of Belgium  
to the question put by Judge Koroma**

In virtue of its right under Article 72 of the Rules of Court, the Democratic Republic of the Congo wishes to make the following comments on the reply given by Belgium on 30 October 2001 to the question put at the hearing of 19 October 2001 by Judge Koroma (CR 2001/11, p. 19):

1. Judge Koroma's question concerned the "purpose" of the disputed arrest warrant and not its legal effect in Belgium or abroad, as is clearly evident from the language used by him:

"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, . . . what was the purpose of the warrant?*"

Belgium's reply, which is entirely devoted to the legal effect of the warrant in Belgium or in third States, does not answer the precise question put by the Judge. It simply repeats what was already stated in the Counter-Memorial and in its oral argument with regard to the effect of the warrant; it says nothing as to the warrant's purpose. Only point 6 of the Belgian reply appears to address the question of the purpose of the arrest warrant; only to return immediately to assertions regarding its effect in Belgium and abroad.

2. The Democratic Republic of the Congo confines itself to noting — as Belgium does not dispute — that the warrant is fully enforceable without special formality in Belgium, and that, like any unilateral public act of a State authority, it cannot produce any effects abroad or bind foreign authorities without their agreement. The manner in which that consent is given does not matter. The DRC would observe, however, that, in issuing and circulating an international arrest warrant, a State manifests an intention to have the individual concerned arrested at the place where he is to be found, with a view to procuring his extradition.

3. Belgium's contention that the disputed arrest warrant, as such, has no legal effect outside Belgium implies that Belgium is not responsible for the effect given to the warrant abroad, responsibility for implementation of the warrant being purportedly a matter solely for the foreign State which gives effect to it. The Congo's Memorial and the oral argument of its counsel were sufficiently critical of that approach to the matter for it to be unnecessary to address the point again here. Equally, it is not for the Congo to address the hypothetical issue of joint authorship of an unlawful act. The Democratic Republic of the Congo does, however, consider it necessary to preclude any confusion which might arise between the arguments concerning the legal effect of the arrest warrant abroad and the question of any (co-)responsibility of the foreign authorities who give effect to it.

4. At all events, the legal effect of the disputed arrest warrant, whether in Belgium or abroad, is a question of domestic law, irrespective of whether or not that public act by Belgium accords

with international law, as an act under that legal order. The internationally wrongful act (violation of the immunity from suit of the Congo's Minister for Foreign Affairs) occurred in this case as soon as Belgium, through its investigating judge, sought to subject to the criminal jurisdiction of its courts an individual who, by virtue of his high representative office, must be totally immune therefrom. It makes no difference whether or not the internal act whereby that desire to prosecute is manifested produces binding legal effects abroad, or even within the responsible State itself. The Democratic Republic of the Congo would again recall in this regard that an act without any binding effect for third States under French law, namely the opening of an investigation in a case, was held by the French Court of Cassation to be contrary to the customary rule of the immunity of foreign Heads of State (*Qaddafi*, Judgment of 13 March 2001).

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