

Case concerning *Questions relating to the Obligation to Prosecute or Extradite*
(*Belgium v. Senegal*)

**Comments of the Kingdom of Belgium on the response of the Republic of Senegal to the
questions put by Judge Cañado Trindade**

1. Belgium agrees with Senegal that any State Party has the right to secure from another State Party in which the alleged perpetrator of an act of torture is present the prosecution of that person and that, failing such prosecution, the first State Party may request that person's extradition. However, Belgium considers that a State Party's rights are broader than as set out by Senegal in its response to the questions put by Judge Cañado Trindade: it is stating the obvious to say that a State has the right to request extradition, but the State Party's right is not limited to "requesting" or "demanding" the extradition of the alleged perpetrator (Senegal's response, paras. 5-6). That right also comprises *securing* such extradition, subject to the conditions provided by the law of the requested State (1984 Convention, Art. 8, para. 3), where the latter does not prosecute the alleged perpetrator (Art. 5, para. 2, and Art. 7, para. 1).

2. In paragraph 5 of its response, Senegal acknowledges that a State has "the right to secure compliance with the obligation, for another State, to try the perpetrator of an act of torture who is present in its territory or, failing that, to request his extradition". Senegal therefore recognizes that States parties to the Convention have a twofold right: the right to have the State in which the alleged perpetrator is present prosecute him, and the right to seek the extradition of the alleged perpetrator if the requested State fails to bring such a prosecution. In paragraph 6, Senegal nonetheless states, concerning the "right for a State Party" created by Articles 5, paragraph 2, and 7, paragraph 1, that "it can *only* be the right to demand extradition" of the alleged perpetrator (emphasis added). Senegal no longer mentions the alternative right of the requesting State either to have the requested State prosecute the alleged perpetrator or to seek his extradition.

3. Belgium maintains that any State Party to the 1984 Convention possesses the right both to see the alleged perpetrator of an act of torture prosecuted in the requested State (Art. 7, para. 1) and to secure his extradition if the requested State does not prosecute the alleged perpetrator (Art. 7, para. 1, and Art. 8, para. 3) (*judicare vel dedere*).
