

ARREST WARRANT OF 11 APRIL 2000  
(Democratic Republic of the Congo v Belgium)<sup>1</sup>  
(ORDER)

**LATEST DEVELOPMENTS**

This case deals with the Congo's Application for an indication of provisional measure. The public hearings for this case opened on 20 November 2000. On 8 December 2000, the Court by Order rejected unanimously Belgium's request that the case be removed from the List. By 15:2 votes, the Court found that the circumstances of the case did not require the indication of provisional measures.

**BACKGROUND**

On 17 October 2000, the Congo instituted proceedings against Belgium concerning an international arrest warrant issued on 11 April 2000 by Mr Vandermeersch, examining judge at the Brussels *Tribunal de première instance*, against Mr Yerodia Abdoulaye Ndombasi of the Congo. Mr Ndombasi was then Minister for Foreign Affairs but was now Minister of Education. The warrant had sought his detention and extradition to Belgium for alleged crimes constituting "grave violations of international humanitarian law". The warrant was transmitted to all States, including the Congo, which received it on 12 July 2000.

In the warrant, the examining Belgian judge had affirmed his competence to deal with the facts committed allegedly on the Congo's territory by a national of the Congo. The warrant had characterised the facts as:

crimes of international law committed by action or omission against persons or property protected by the Geneva Conventions of 12 August 1949 and the Additional Protocols I and II to those Conventions, crimes against humanity...

In support, the warrant had cited the provisions of the applicable Belgian Law of 16 June 1993, as amended by the Law of 10 February 1999, on the punishment of grave violations of international humanitarian law.

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<sup>1</sup> International Court of Justice, Press Release 2000/32, 17 October 2000.

## THE CONGO'S APPLICATION

In its request for the indication of provisional measures, the Congo argued that Belgium had accepted the Court's jurisdiction as a basis for the Court's jurisdiction. Furthermore, to the extent necessary, the present Application signified the Congo's acceptance of that jurisdiction. The Congo *inter alia* asked the Court to make an Order for a provisional measure and sought to have the disputed warrant withdrawn forthwith.

The Congo maintained that the two conditions that were "essential for the indication of a provisional measure under the jurisprudence of the Court – urgency and the existence of irreparable damage – were manifestly present". *Inter alia*, the Congo stated that the warrant in effect prevented its Minister from departing the Congo for another State where his duties could call him, and accordingly, "from accomplishing his duties".

The Congo noted the following points:

1. The warrant did not allege that the victims were Belgian nationals nor allege that the facts constituted violations of Belgium's security or dignity.
2. Article 5 of the Belgian Law prescribed that the immunity conferred by a person's official capacity did not prevent the application of the Law. Article 7 of the same Law established that its universal application and the Belgian courts' universal jurisdiction in relation to "grave violations of international humanitarian law", did not require the accused to be on Belgian territory.

In addition, the Congo pleaded the following:

1. Article 7 and the warrant issued on the basis of this provision violated two principles. The first was on domestic jurisdiction, which provided that a State could not exercise its authority on the territory of another State. The second was on "sovereign equality" among United Nations Members, as declared in Article 2(1) of the United Nations Charter.
2. Article 5 and the arrest warrant contravened international law, in so far as they claimed to derogate from the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State, pursuant to Article 41(2) of the 1961 Vienna Convention on Diplomatic Relations.

Accordingly, the Congo asked the Court to declare that Belgium should annul the warrant issued against its Acting Foreign Minister.

#### THE COURT'S JUDGMENT

The Court began by referring to Belgium's contention. Belgium had stated that on 20 November 2000, a Cabinet reshuffle had occurred in the Congo as a result of which Mr Ndombasi ceased to be Minister for Foreign Affairs and became Minister of Education, which information was confirmed by the Congo. As a result of the Cabinet reshuffle, Belgium had argued that the Congo's Application on the merits was deprived of its object and should therefore be removed from the Court's List.

In this regard, the Court observed that, "to date" the arrest warrant issued against Mr Ndombasi had not been withdrawn and still related to the same individual notwithstanding his new ministerial duties. As a result, the Court concluded that "the Congo's Application had not been deprived of its object" and that the Court "[could] not therefore accede to Belgium's request for the case to be removed from the List". As regards the request for the indication of provisional measures, the Court found that, *inter alia*, the request had an object despite the Cabinet reshuffle since the arrest warrant continued to be in the name of Mr Ndombasi. Further, the Congo had contended that he continued to enjoy immunities that rendered the arrest warrant unlawful.

On its jurisdiction, the Court referred to Belgium's contention that the Court could not at this stage of the proceedings take account of the declarations of acceptance of its compulsory jurisdiction made by the Parties because the Congo had not invoked those declarations until a late stage. The Court observed that it was aware of the declarations, and so were the Parties. As such, Belgium should expect that the declarations would be taken into consideration as a basis for the Court's jurisdiction of in the present case.

Belgium had pointed out that its declaration excluded the compulsory jurisdiction of the Court concerning situations or facts "in regard to which the parties have agreed or may agree to have recourse to another method of pacific settlement". Belgium stated that negotiations at the highest level regarding the arrest warrant were in fact in progress when the Congo seised the Court.

The Court held that Belgium had not provided the Court with any further details of those negotiations. Neither did Belgium address the possible consequences that the negotiations would have in regard to the Court's jurisdiction, in particular its jurisdiction to indicate provisional measures. Accordingly, the Court concluded that *prima facie* the Parties' declarations constituted a basis on which the Court's jurisdiction could be founded in the present case.

Recalling the Court's power to indicate provisional measures, the Court held that:

1. the Court's object was to preserve the respective rights of the parties pending the decision of the Court;
2. the Court presupposed that irreparable prejudice should not be caused to rights that were the subject of dispute; and
3. such measures were justified solely if there was urgency.

The Court then considered the Congo's request for the indication of provisional measures. The Court noted the facts involving Mr Ndombasi and observed that following the Cabinet reshuffle of 20 November 2000 he ceased to exercise the functions of Minister for Foreign Affairs. Instead, he was charged with those of Minister of Education involving less frequent foreign travel. Therefore, the Court concluded as follows:

[I]t has accordingly not been established that irreparable prejudice might be caused in the immediate future to the Congo's rights nor that the degree of urgency is such that those rights need to be protected by the indication of provisional measures.

The Court added:

[W]hile the Parties appear to be willing to consider seeking a friendly settlement of their dispute, their positions as set out before [the Court] regarding their respective rights are still a long way apart... While any bilateral negotiations with a view to achieving a direct and friendly settlement will continue to be welcomed, the outcome of such negotiations cannot be foreseen...

Consequently, the Court held 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 expeditiously. The Court further stated that the Order made in the present proceedings in no way prejudged the question of the Court's jurisdiction to deal with the merits of the case, or with any questions relating to the admissibility of the Application or to the merits themselves.

Per Guillaume P; Shi V-P; Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal JJ; Bula-Bula, Van den Wyngaert JJ *ad hoc*.

Oda and Ranjeva JJ and Van den Wyngaert J *ad hoc* appended declarations to the Order. Koroma and Parra-Aranguren JJ appended separate opinions and Rezek J and Bula-Bula J *ad hoc* appended dissenting opinions.