



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Certain Criminal Proceedings in France
(Republic of the Congo v. France)

The Court rejects the request for the indication of a provisional measure
submitted by the Republic of the Congo

THE HAGUE, 17 June 2003. Today the International Court of Justice (ICJ), the principal judicial organ of the United Nations, rejected the request for the indication of a provisional measure submitted by the Republic of the Congo in the case concerning Certain Criminal Proceedings in France (Republic of the Congo v. France).

In its Order, the Court finds, by fourteen votes to one, “that the circumstances, as they now present themselves to [it], are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures”.

History of the proceedings

On 9 December 2002, the Republic of the Congo filed in the Registry of the Court an Application instituting proceedings against France seeking the annulment of the investigation and prosecution measures taken by the French judicial authorities further to a complaint for crimes against humanity and torture allegedly committed in the Congo against individuals having Congolese nationality filed by various human rights associations against the President of the Republic of the Congo, Mr. Denis Sassou Nguesso, the Congolese Minister of the Interior, General Pierre Oba, and other individuals including General Norbert Dabira, Inspector-General of the Congolese Armed Forces, and General Blaise Adoua, Commander of the Presidential Guard.

The Congo contends that by “attributing to itself universal jurisdiction in criminal matters and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed by him in connection with the exercise of his powers for the maintenance of public order in his country”, France violated “the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations . . . exercise its authority on the territory of another State”. The Congo further submits that, in issuing a warrant instructing police officers to examine the President of the Republic of the Congo as witness in the case, France violated “the criminal immunity of a foreign Head of State — an international customary rule recognized by the jurisprudence of the Court”.

In its Application, the Congo indicated that it proposed to found the jurisdiction of the Court, pursuant to Article 38, paragraph 5, of the Rules of Court, “on the consent of the French Republic, which will certainly be given”. In accordance with this provision, the Congo’s Application was transmitted to the French Government and no action was taken in the proceedings. By a letter

dated 8 April 2003 and addressed to the Registry, France stated that it “consent[ed] to the jurisdiction of the Court to entertain the Application pursuant to Article 38, paragraph 5”. This consent made it possible to enter the case in the Court’s List and to open the proceedings.

The Congo’s Application was accompanied by a request for the indication of a provisional measure “seek[ing] an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux Tribunal de grande instance”. Public hearings were held on 28 and 29 April 2003. At those hearings, the Congo confirmed its request for the indication of a provisional measure while France asked the Court to reject that request and not to indicate any such measure.

Reasoning of the Court

The Court begins by recalling that the power to indicate provisional measures has as its object to preserve the respective rights of the parties pending a final decision in the case and that it presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute. It adds that such measures are justified solely if there is urgency.

The Court examines the Congo’s argument according to which the French criminal proceedings are a cause of irreparable prejudice to the honour and reputation of the highest authorities of the Congo, and to internal peace in the country, to its international standing and to Franco-Congolese friendship. It notes that it has not been informed in what practical respect this has occurred and finds that no evidence has been placed before it of any serious prejudice or threat of prejudice of this nature.

The Court goes on to determine whether the criminal proceedings currently pending in France entail a risk of irreparable prejudice to the right of the Congo to respect by France for the immunities of President Sassou Nguesso as Head of State. In this regard, the Court takes note of the statements of French representatives during the hearings according to which “France in no way denies that President Sassou Nguesso enjoys, as a foreign Head of State, ‘immunities from jurisdiction, both civil and criminal’”. The Court concludes from the foregoing that as regards President Sassou Nguesso, there is at the present time no risk of irreparable prejudice. It adds that it is not established either that any such risk exists as regards General Oba, Minister of the Interior of the Republic of the Congo.

The Court further considers the existence of a risk of irreparable prejudice in relation to the claim of the Congo that the unilateral assumption by a State of universal jurisdiction in criminal matters constitutes a violation of a principle of international law. It rejects this allegation after reaching a number of conclusions. As regards President Sassou Nguesso, the Court stresses that the request for a written deposition made by the investigating judge on the basis of Article 656 of the French Code of Criminal Procedure has not been transmitted to the person concerned by the French Ministry of Foreign Affairs, while this is the only way to take evidence from him. As regards General Oba and General Adoua, the Court observes that they have not been the subject of any procedural measures by the investigating judge. There is therefore no urgent need for provisional measures. As for General Dabira, the Court notes that the criminal proceedings instituted in Meaux have had an impact upon his own legal position, inasmuch as he possesses a residence in France, and was present in France and heard as a témoin assisté, and in particular because, having returned to the Congo, he declined to respond to a summons from the investigating judge, who thereupon issued a mandat d’amener against him. The Court however indicates that the practical effect of a provisional measure of the kind requested would be to enable General Dabira to enter France without fear of any legal consequences but that the Congo has not demonstrated the likelihood or even the possibility of any irreparable prejudice to the rights it claims resulting from the procedural measures taken in relation to General Dabira.

Since the Court does not see, in the circumstances of the case, any need for measures to be indicated independently of the requests submitted by the Parties, it rejects the Congo’s request, not

without having recalled that its decision in no way prejudices the question of its jurisdiction to deal with the merits of the dispute.

Composition of the Court

The Court was composed as follows: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka; Judge ad hoc de Cara; Registrar Couvreur.

Judges Koroma and Vereshchetin append a joint separate opinion to the Order; Judge ad hoc de Cara appends a dissenting opinion to the Order.

A brief summary of the Order is published in the document entitled “Summary No. 2003/1”, to which a summary of the opinions is attached. The full text of the Order and of the opinions appears on the Court’s website (www.icj-cij.org).

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