

**Letter to the Registrar dated 15 April 2009 from
the Agent of the Republic of Senegal**

[Translation]

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

I have the honour to transmit to you the response of the Republic of Senegal to the question put by Judge Cançado Trindade on 8 April 2009. It reads as follows:

“Senegal has the honour to respond to the question put to it by Judge Cançado Trindade shortly before the end of the public hearing held at the Peace Palace on 8 April 2009 in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*.

The question put was the following: ‘*For the purposes of a proper understanding of the rights to be preserved (under Article 41 of the Statute of the Court), are there rights corresponding to the obligations set forth in Article 7, paragraph 1, in combination with Article 5, paragraph 2, of the 1984 United Nations Convention against Torture and, if so, what are their legal nature, content and effects? Who are the subjects of those rights, States having nationals affected, or all States Parties to the aforementioned Convention? Whom are such rights opposable to, only the States concerned in a concrete case, or any State Party to the aforementioned Convention?*’

Senegal respectfully recalls that it is the Respondent in the present case and in these incidental proceedings relating to the request for the indication of provisional measures, in which the merits of the case should not be entered into beyond what is strictly necessary for the purpose of that request. Subject to the Court appreciating that the statements which follow are of a purely informative nature and therefore cannot affect Senegal’s freedom to argue its positions in due course on the merits of the case, the Senegalese Government, in deference to and with respect for the Members of the Court, wishes to furnish the following replies:

1. Articles 5, paragraph 2, and 7, paragraph 1, of the United Nations Convention against Torture set forth more obligations than they attribute rights to a State Party. For the State Party there is, on the one hand, the obligation to take the necessary measures to establish its jurisdiction to try persons who are accused of acts of torture and, on the other hand, the obligation to extradite the perpetrators of such acts who are found in its territory, if it does not try them.
2. The *nature* of the international obligation to prohibit torture has undergone a major change. From being a conventional obligation of relative effect, it has had an *erga omnes* effect attributed to it.
3. The ICJ has on several occasions reiterated that ‘an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State . . . the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*’ (see

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment of 5 February 1970, *I.C.J. Reports 1970*, p. 32, para. 33).

4. The existence of indivisible obligations *erga omnes* has subsequently been restated by the ICJ on a number of occasions from 1971 onwards (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, *I.C.J. Reports 1971*, pp. 56 *et seq.*, paras. 126 *et seq.*; *Nuclear Tests (Australia v. France)*, Judgment of 20 December 1974, *I.C.J. Reports 1974*, p. 269, para. 50; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, *I.C.J. Reports 1996*, p. 258; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Counter-Claims, Order of 17 December 1997, *I.C.J. Reports 1997*, p. 258, para. 35).
5. If there is a right which a State Party could claim to exercise by virtue of the 1984 Convention against Torture, it would be 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.
6. Consequently, if we consider that the Convention against Torture, in its Articles 5, paragraph 2, and 7, paragraph 1, creates a right for a State Party, it can only be the right to demand extradition. However, the State Party must defer in that right before a State which fulfils its obligation to hold a trial.”

You will receive the original of this letter through the appropriate channels as soon as possible.
