

INTERNATIONAL COURT OF JUSTICE

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

**Further written comments of the Government of Senegal on the supplementary replies of the Belgian Government to the question put to Belgium by Judge Greenwood at the close of the hearing held on 16 March 2012, presented by Mr. Cheikh Tidiane Thiam, Ambassador and Agent of Senegal**

Mr. President, Members of the Court, the Government of the Republic of Senegal, through its Agent, has the honour to communicate to you below its further written comments on the supplementary replies of the Belgian Government to the question put to Belgium by Judge Greenwood at the close of the hearing held on 16 March 2012.

Senegal regards the fight against impunity for serious crimes under international law as a fundamental principle which is beyond dispute. However, the eminently political nature of extradition and the way in which the *aut dedere aut judicare* obligation is framed, allowing States to choose their course of action, are such as to give the latter broad discretion in terms of its interpretation.

While the prohibition of torture has certainly acquired the status of a (primary) peremptory norm (and has done so irrespective of its origins, conventional or customary), it is not clear that the secondary *aut dedere aut judicare* obligation deriving from that norm has also assumed the status of a peremptory norm of customary origin. Such a status is far from accepted by the international community as a whole, as shown by the positions taken by States during the work of the International Law Commission (Sixty-third session, doc. A/CN.4/648).

Moreover, the reference to General Assembly resolutions in Belgium's document (para. 24), aimed at definitively establishing a customary basis for the obligation in question, gives rise to two observations.

Firstly, the drafting procedure for some of the resolutions invoked by Belgium in support of its argument actually shows that:

“[t]he majority of members stressed that the draft declaration under consideration was not intended to propound legal norms or to change existing rules of international law, but to lay down broad humanitarian and moral principles upon which States might rely in seeking to unify their practices relating to asylum” (*Yearbook of the United Nations* 1967, p. 759).

Secondly, the General Assembly resolutions adduced as evidence of the customary status of the rule in question suggest that the principles contained therein fall into the category of moral ideals, and in any event were not intended to create legal obligations.

All these factors convince Senegal that, by invoking the customary status of the secondary rule *aut dedere aut judicare*, Belgium is seeking to stifle the debate on the nature of the obligation in question. Is it an obligation of conduct or of result? Does it belong to the category of obligations which are binding on all States, but separately? Senegal believes that the *aut dedere aut judicare* rule is a general obligation of conduct, since the fight against impunity is a process

whose possible objectives, under the Convention against Torture, are either prosecution or extradition. Moreover, the Government of the Republic of Senegal wishes to reiterate that this obligation borne by Senegal can be owed to Belgium only from the point at which the latter became a Party to that Convention.

For the Government of Senegal, it stands to reason that the references in both its written pleadings and its oral argument to the general principles and customary norms applicable in this context are valid only in so far as Belgium has demonstrated the peremptory nature of those principles and norms in respect of Senegal.

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