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Mercredi 8 avril à 16 h 30

Wednesday 8 April 2009 at 4.30 p.m.

8 The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear the second round of oral observations of Senegal. I would like to add that Judge Skotnikov, for reasons which have been duly explained to the Court, will not attend this afternoon's sitting. I now give the floor to H.E. Mr. Cheikh Tidiane Thiam, Agent of the Republic of Senegal. You have the floor, Sir.

Mr. THIAM: Thank you, Mr. President.

1. Mr. President, Members of the Court, I have the honour to appear before you again to introduce the second round of presentations by Senegal.

2. Allow me to address the delegation of Belgium to tell it just how touched my delegation has been by its friendly remarks, which were not at all dictated by mere diplomatic proprieties, and to which Senegal wishes to respond, by way of myself, with a sincerity commensurate with the quality of the excellent relations maintained by our two countries, and by our two peoples. It has not been an easy exercise, however, since it was in a healthy spirit of adversity in defence of our at times divergent positions that we had constantly to maintain the highest degree of decorum and courtesy in our remarks.

3. Mr. President, we did so in full awareness of our capacity as representatives of a country which is admittedly relatively young, but is one which has strived to establish and consolidate within it the conditions whereby a State of law which upholds international law and the fundamental freedoms and rights of the individual might flourish. Its political stability, acknowledged around the world, has never been disturbed by the unrest which unfortunately affects certain areas of the African continent. This is the product of a long-established culture, built upon peace, unity and the principles of democracy, in particular those which have made it possible for the practice of free and transparent elections to assert itself.

4. Mr. President, Members of the Court, Senegal has listened attentively to the observations of the distinguished Agent, Co-Agent and Counsel of Belgium. It has nonetheless noted with a mixture of surprise and some satisfaction, which we have no hesitation in welcoming incidentally, a change in the form and the content of the arguments put forward by Belgium during the second round of pleadings.

9 5. Senegal is of the opinion that certain points still need to be clarified for the Court. The Senegalese delegation will endeavour to do so briefly.

6. The first clarification concerns the use made by Belgium of the radio interview with the President of the Republic of Senegal aired by "Radio France Internationale". That interview was indeed mentioned in the main body itself of Belgium's request for the indication of provisional measures. A reading of the text of the transcript of that interview can leave no doubt as to the alterations it had undergone in the presentation which was made of it by the other Party. In view of the importance assigned in the present case to the statements made therein by the Senegalese Head of State, the Senegalese delegation can only invite the Court to appreciate the fact that Belgium has now claimed that that interview was not — and I quote Professor Eric David — "mentioned by Belgium" (CR 2009/10, p. 16, para. 16).

7. The second clarification relates to the wording of the initial request by Belgium for the indication of provisional measures whereby Senegal might be asked to take "all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal . . .". After the remarks made during yesterday's hearing by Sir Michael Wood[1] and borne out by terms of the text of Belgium's final submissions, Senegal takes note that the expression "judicial authorities" has been dropped and now replaced by the words "Senegalese authorities". The Senegalese delegation would like to convey to the Court the great concern caused within it by such a substantial modification. On this point it seems indeed that there was manifestly neither a misunderstanding, nor an error of drafting, but the expression of an option that was clearly defined by Belgium originally.

8. The third clarification goes considerably further than a simple question of semantics and regards the involvement of the African Union in the management of the *Hissène Habré* case. It is necessary because of a difference in interpretation between the Parties not of the Convention against Torture of 1948, but of the words "transfer", "seisin" or "seized" used by Senegal to describe the conditions of the contribution by the African Union.

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[1] CR 2009/10.

10 9. The Senegalese delegation wishes to point out that, whatever the term used, one inescapable reality remains and that is that Senegal has not relinquished the case. The manifest evidence of this fact lies in the response of the African Union to the appeal by Senegal, in which it makes reference, in its decision of July 2006, to the conventional obligations of Senegal deriving from its ratification of the United Nations Convention against Torture of 1984. Moreover, there has never been any question of the physical transfer of Mr. Hissène Habré to the African Union. Senegal submitted the "Hissène Habré case" to the African Union and requested its support and assistance in resolving it. During the first round of oral arguments, my delegation explained the matter at length.

10. Mr. President, Members of the Court, in appealing to the African Union on the *Hissène Habré* case, Senegal had absolutely no intention of avoiding its international obligations. Quite the contrary! Since 2005, following the judgment by the *Chambre d'accusation* of the Dakar Court of Appeal on its lack of jurisdiction, thus ending the extradition procedure initiated by Belgium, Senegal has unstintingly displayed its unequivocal intention to try Mr. Hissène Habré. We would like to note with satisfaction in this respect that Belgium yesterday recalled its involvement within the European Union in the endeavour to find the financial resources necessary for the holding of a trial before a Senegalese court.

11. As for the budgetary question linked to funding, Senegal, which has never lost sight of the scale of the trial in question, wishes to draw the attention of everyone, particularly those prone to objecting to the approximate amounts of budgets that have still to be finalized, to the large number of victims and crimes alleged, as well as the length of time during which they were committed which spanned some ten years, corresponding to the time spent by the person concerned as head of the Chadian State. Senegal understood from the presentations of the Belgian delegation that at least 3,780 persons lost their lives as a result of the crimes attributed to Hissène Habré. That number allegedly represents only one-tenth of the overall number of victims, which is thus said to amount to some 40,000. That figure does not include the 54,000 political detainees between 1982 and 1990. Thus at least 94,000 direct victims or their claimants are likely to be concerned by the trial of Mr. Hissène Habré in Senegal.

11 12. That accounts for the financial difficulties brought to light by Senegal concerning the organization of the trial. It is also the explanation which must be attributed to the approach made by Senegal to the African Union.

13. The pan-African organization responded by asking all its Member States to make contributions to the budget which is to be drawn up by it in partnership with the European Union and the Government of the Republic of Senegal.

14. We now come, Mr. President, Members of the Court, to the response of the Co-Agent of Belgium to the question asked by the honourable Judge Greenwood. The Co-Agent of Belgium stated that any "declaration" which Senegal might be called upon to give on the subject "would have to be clear and unconditional". We will leave it to the Court to appreciate the additions made by the Co-Agent of Belgium, whereas, as we have already indicated, as the Agent of Senegal, our delegation explicitly made such a declaration during the first round of oral arguments and can only welcome the request made by the honourable Judge Greenwood when he asks Senegal to do so with all due solemnity.

15. Senegal for its part will not be so bold as to intervene in the consideration and drafting of the order which your distinguished Court will issue and will leave it to evaluate the fate of Belgium's requests in that respect.

16. Mr. President, Members of the Court, with your permission, the following persons will follow me in addressing you briefly:

— Professor Ndiaw Diouf on considerations of jurisdiction and admissibility in response and in reply to counsel for Belgium;

— Professor Alioune Sall on the conditions for the indication of provisional measures; and

— Mr. Demba Kandij, Co-Agent of the Republic of Senegal will put before the Court the final submissions of Senegal and its response to the question asked by Judge Greenwood.

17. Mr. President, Members of the Court, I thank you for your kind attention and I ask you to give the floor to Professor Ndiaw Diouf.

The PRESIDENT: I thank you, Mr. Cheikh Tidiane Thiam. I now give the floor to Professor Ndiaw Diouf.

12 Mr. DIOUF: Thank you, Mr. President.

1. Mr. President, Members of the Court, I have the honour to appear before you once again for this second round of presentations to respond to the observations made by counsel for Belgium during the first day and then on the second day.

2. They seem unhappy about us having the last opportunity to express ourselves before this distinguished institution.

3. Mr. President, Members of the Court, I trust that our adversaries in this case are not seeking to deprive us of the possibility as Respondent to avail ourselves of the prerogatives related to the right of defence; it would not be surprising incidentally, given that they have already challenged the right of Senegal to discuss the jurisdiction prima facie of the Court and in so doing have given precedence to the Practice Directions over the Rules of Court.

4. That said, my colleague Professor Eric David[2], accuses us in his presentation of having submitted lengthy arguments which concern the merits of the dispute and which consequently go beyond the scope of a request for the indication of provisional measures.

5. Allow me, Mr. President, to express our astonishment as to an assessment which seems all the more surprising in that the first presentation by Mr. David was almost entirely (23 paragraphs out of 29) concerned with such questions considered as referring to the merits[3].

6. If our arguments appear to Professor David to relate to the merits, it is because the request for the indication of provisional measures is so closely intertwined with the merits as to merge with them, in such a way that he who challenges it appears to bring up the merits.

7. Let us recall in passing that this request consisted of requiring a judicial measure from the Senegalese executive. Belgium, as the Agent of Senegal noted previously, has realized its mistake by itself.

8. I will turn to the merits today, but only to draw attention to the inaccuracies contained in Mr. David's presentation, which, you will agree, remains within the limits of Practice Direction XI.

13 9. My distinguished colleague, Professor David, contends that "when Senegal invokes the amendments it has made to its criminal law so as to be able to prosecute Mr. Hissène Habré it is

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[2]CR 2009/10, p. 11, para. 2.

[3]CR 2009/8, p. 16, paras. 1 to 29.

seeking to demonstrate that it is now capable of prosecuting him . . .”[4]. Senegal cannot afford to go to such efforts to amend its legislation for the sole purpose of possessing nicely written laws; it wishes, in making this undertaking, to create the conditions without which it would be impossible to fulfil the obligations made incumbent upon it by the Convention against Torture.

10. Mr. David also contends, in referring to the presentation by Professor Cheikh Tidiane Thiam, that “Senegal states that submitting the case to the African Union satisfies the requirements of the 1984 Convention”[5]. I wish to state clearly that at no point has Senegal established any link between the decision of the African Union and the obligations incumbent upon it under the 1984 Convention.

11. Finally, he claims that “Senegal systematically brings up the financial difficulties caused by the organization of the trial of Mr. Hissène Habré in order to justify its incapacity to hold this trial for the time being”[6].

12. In our opinion, the capacity to hold a trial is assessed on the quality of the legislation and the performance of the existing institutions. That said, and whatever the country concerned, it would take a minimum of precautions regarding the availability of the necessary funding before undertaking the organization of a trial of interest to thousands of victims[7] and which involves thousands of witnesses[8] as the Agent of Senegal has recalled. We are incidentally astounded by the attitude of Belgium which, while pledging financial aid to Senegal, appears to criticize it for taking these minimal precautions so as to ensure an impartial, fair and equitable trial.

13. The statements made by Sir Michael Wood call for similar comments. If I rely on the translation by the interpreter, my colleague with the opposing Party has us as saying that Senegal

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bases its obligation to try Hissène Habré on the mandate from the African Union[9]. At no point in our presentations, as a look at the minutes readily allows us to acknowledge, did we view the

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[4]CR 2009/10, p. 11, para. 2.

[5]CR 2009/10, p. 11, para. 3.

[6]CR 2009/10, p. 12, para. 6.

[7]CR 2009/8, p. 19, para. 2. Mr. David, quoting a Chadian committee, estimates that the figure of 3,780 identified and documented victims represents only 10 per cent of the overall number.

[8]CR 2009/8, p. 19, para. 2. Mr. David, citing the same committee, speaks of 54,000 political detainees between 1982 and 1990. All of those persons are potential witnesses.

[9]CR 2009/10, p. 20, paras. 12-14.

decision of the African Union from that perspective. As far as I am concerned, I only referred to the African Union once and that was to say that Senegal, on bringing the trial, will be able to rely on the support of Member States of the Union both for seeking funds and in terms of mutual judicial assistance.

14. We take great pleasure, moreover, from the assertion by Belgium that it has intervened with the European Union in order to mobilise such resources.

15. Sir Michael Wood in his presentation in the second round[10] traces the alleged dispute between Senegal and Belgium back to the year 2005 (which was also apparent from his first-round presentation[11]). He is of the opinion that it originates from the fact that Senegal only appears to be bound by the decision of the African Union, which dates from July 2006. The Court will not fail to draw the necessary consequences from this contradiction. For our part, we confine ourselves to noting that it is difficult to trace the occurrence of a dispute back to 2005 when the event which allegedly caused it (that is the reference by Senegal to the resolution of the African Union) took place a year later, that is in 2006.

16. Generally the presentations which we were given opportunity of following yesterday warrant the most serious reservations.

17. I find it hard to understand the insistence of Belgium on talking about a dispute between the two Parties as to the interpretation and application of the Convention by basing itself upon the obligation of Senegal to prosecute or try Mr. Hissène Habré for the crimes of torture attributed to him under the Convention against Torture and not on the fact of having submitted the issue to the African Union. Senegal wishes to recall that it has never considered that the obligation to try Hissène Habré derived from the decision of the African Union and that it has constantly referred to the 1984 Convention when making the necessary amendments to its legislation in order to make the proposed trial possible.

15 18. On this subject, it is possible to observe that counsel for Belgium, who decidedly have highly selective memories, appear to remember at times that Senegal bases all the acts that it makes on international rules of conventional and customary origin.

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[10]CR 2009/10, p. 23, para. 23.

[11]CR 2009/8, p. 46, para. 33.

19. Did not Professor David himself acknowledge, in the second round of presentations, that in "the statement of grounds for the Senegalese law which brings the main crimes under international humanitarian law within the Senegalese Penal Code, it states that this represents the 'incorporation of international rules of conventional and customary origin'"[12]?

20. The lack of dispute is manifest. That is amply sufficient to lead the Court to assess that, as it stands, there is nothing to adjudge and that thus it has not to pronounce itself on its "power" to order the indication of provisional measures.

21. Senegal is of the opinion that it is not helpful to discuss jurisdiction at great length. For that reason, it does not dwell on the question of the optional clauses. The condition for jurisdiction under Article 30 of the Convention of 1984 and that deriving from the optional clauses are, in my opinion, cumulative in such a way that it is enough for one of them to be lacking for the Court to be unable to uphold its jurisdiction. In any event, Senegal reserves the right to raise the question of jurisdiction at a later date, if necessary, if the Court upholds its jurisdiction prima facie.

22. That being so, Belgium's request is premature, as the condition concerning prior negotiations and the institution of arbitral proceedings which Belgium itself views as indispensable has not been fulfilled.

23. I take advantage of this opportunity to remind the Court that Senegal is still waiting for Belgium to produce evidence of the delivery to the Senegalese authorities of the disputed note of 20 June 2006, which it claims to have sent to the Ministry of Foreign Affairs with an explicit proposal of recourse to arbitration. Sir Michael Wood, who has lengthy experience of the civil service as he recalled the last time, cannot be unaware that, in diplomatic practice, the original or a copy of correspondence may be given in person at a high level without prejudice, so as to provide

16 advance notice on a given subject, pending official delivery through the usual appropriate channels, which must always be made. In the present instance, this note has not been delivered to the competent authorities of Senegal to date.

24. Belgium's *Note Verbale* of 8 May 2007, which the Ministry of Foreign Affairs acknowledged, merely referred to the previous note of 20 June 2006.

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[12] 2009/10, pp. 14-15, para. 14.

25. In any event, an internal report drafted by Belgium cannot establish proof of delivery. No one can supply a proof for his own benefit; this rule is too well known for us to feel the need to dwell on it at great length.

26. Senegal concludes that the request for the indication of provisional measures should be dismissed, without an examination of the merits, in view of the lack of jurisdiction prima facie and its inadmissibility.

27. I ask you, Mr. President to give the floor to Professor Sall so that he can show you that, even if you were to examine the merits, you would be bound to conclude that the request is groundless.

I thank you, Mr. President, Members of the Court, for your kind and patient attention.

The PRESIDENT: Thank you for your presentation, Professor Ndiaw Diouf. I now give the floor to Mr. Alioune Sall.

Mr. SALL:

OBSERVATIONS ON THE CONDITIONS FOR THE INDICATION OF PROVISIONAL MEASURES CITED DURING BELGIUM'S FIRST AND SECOND ROUNDS OF ORAL ARGUMENT

1. Mr. President, Members of the Court, it is with pleasure that I again take the floor before the Court to respond to Belgium's statements of yesterday.

2. Our presentation will be brief and will centre on the question of the basis for provisional measures, more specifically on the substantive conditions to be met for the Court to be able to order provisional measures.

3. The Republic of Senegal continues to consider there to be no reason today to justify the indication by the Court of the provisional measures requested by the Kingdom of Belgium.

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Urgency — which is a fundamental requisite for the indication of such measures and which involves the existence of a "real risk of irreparable prejudice", to quote the description given yesterday by the learned Sir Michael Wood, counsel for Belgium — does not obtain in the case of Belgium's request. I intend to show this, and to begin by focusing on the import of the statement made by the Senegalese Head of State which is considered to have given rise to the request now before you.

1. The statement by the Senegalese Head of State does not represent a threat justifying a request for the indication of provisional measures

4. In its pleadings yesterday the Kingdom of Belgium returned to the subject of the statement made by the President of the Republic of Senegal which, Belgium argues, has justified the request to the Court to indicate provisional measures.

5. In his address Belgium's distinguished counsel Professor Eric David stated: "the interview given by President Wade on 2 February 2009 which was produced yesterday by Senegal . . . appears to relate to a broadcast by *Radio France Internationale* which was not in fact mentioned by Belgium"[13].

6. Speaking through me, the Republic of Senegal is sorry to say that it must forcefully reject this assertion. The statement is actually referred to in the request for the indication of provisional measures filed by Belgium (and, incidentally, is the only Presidential statement referred to in that request). Here verbatim is what the request says:

> "At present, Mr. H[issène] Habré is under house arrest in Dakar, but it transpires from an interview which the President of Senegal . . . gave to Radio France International that Senegal could lift his house arrest if it fails to find the budget which it regards as necessary . . ."[14].

7. At any rate, whether in regard to this statement or the others which Belgium subsequently produced in support of its request, the Republic of Senegal fails to see how the comments made, when understood in the light of the facts as they stand today and of Mr. Habré's situation in Dakar,

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can provide any basis for thinking that there is a "real", "imminent" or "likely" risk, in the words used by the Court, that he might evade the Senegalese authorities.

8. Without dwelling too long on this, we can say that the tenor of the various Presidential statements in question in these interlocutory proceedings may be summarized as follows:

> "The Republic of Senegal is mindful of its commitments as a party to the 1984 Convention. It has assumed and intends to continue to assume all of its obligations; to this very end it has made the necessary changes in its legal system and is seeking to fulfil its specific obligation, namely to try Mr. Habré. Given the particular characteristics of this matter — specifically, that it is of a scale never before dealt with in the Senegalese judicial system —, the proper performance of this duty does however require the raising of funds which Senegal is incapable of furnishing alone. Once these resources have been secured, the trial will begin."

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[13]CR 2009/10, p. 15, para. 16 (David).

[14]Request for the indication of provisional measures of 17 February 2009, p. 1.

That is the tenor of the President's statement.

9. Just yesterday, 7 April 2009, the Senegalese delegation received a recently published communiqué from the African Union calling on potential contributors to take action to finance the trial.

10. Incidentally, Senegal takes note of the terms used yesterday by Belgium's eminent counsel Professor Eric David, who, after hearing Senegal's oral argument, stated: "if it was . . . 'pushing a bit to speed things up' [as President Wade said], . . . Belgium can only welcome and take note of that explanation"[15].

11. The backdrop of the trial for which preparations are now being made is indeed one of co-operation across Africa — and even beyond. In this connection Senegal wishes to make clear once and for all, so as to dispel for good all ambiguity and misunderstanding, that as a State it is bound by the 1984 Convention. The fact that an organization like the African Union may be involved in organizing the Habré trial in no way lessens Senegal's duties and rights as a party to the Convention. Indeed, it is as a party to the Convention, not pursuant to a mandate from the African Union, that the Republic of Senegal is fulfilling its obligations.

19 12. It was shown here the day before yesterday that the fund-raising process has begun, that international negotiations are under way for this purpose and that partners such as the European Union and the African Union stand ready today to lend their support to this process.

13. At this stage, the Republic of Senegal cannot but note with satisfaction Belgium's declaration yesterday that it was prepared to join in this dialogue. The Applicant's distinguished Agent told us that Belgium was willing to work "within the European Union for it to provide a substantial and constructive solution in response to the African Union's call for the necessary budgetary resources to be made available"[16] for the organization of the trial.

14. I now come to the measures Belgium has requested. In Senegal's view, these have by now become matters of fact and this should lead the Court to reject the request for the indication of provisional measures.

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[15]CR 2009/10, p. 15, para. 16 (David).

[16]CR 2009/10, p. 9, para. 5 (Rietjens).

2. The effectiveness of the measures sought by Belgium

15. In its request, amended yesterday, Belgium is now asking the Court to request Senegal "to take all the steps within its power to keep Mr. Hissène Habré under the control and surveillance of the Senegalese authorities so that the rules of international law with which Belgium requests compliance may be correctly applied"[17].

16. The Court will observe that this request, which — let us repeat — does not exactly match the initial request submitted to it, concerns measures which have by now largely become reality.

17. Mr. President, Members of the Court, the day before yesterday I fully described to this distinguished body the conditions under which Mr. Habré is being kept under surveillance in Dakar. I shall not return to this except to repeat two facts:

— Mr. Habré, together with his family and residences, is kept under constant surveillance — day and night; and

20 — Mr. Habré is, at this very moment, without any valid travel document (passport or other) allowing him to travel.

18. In his statement the day before yesterday to the Court, counsel for Belgium Sir Michael Wood said:

> "The provisional measure sought is thus necessary and proportionate. Indeed, it would ensure the continuation of the position which has effectively existed since 2000, when Mr. Habré was first placed under house arrest so as to ensure his availability to face justice before the Senegalese courts." [18]

19. Yesterday, Tuesday, Sir Michael Wood repeated before the Court:

> "Our reference to Mr. Habré being kept under the control and surveillance of the judicial authorities of Senegal was not intended to suggest any particular form of control and surveillance. One possibility would be that Senegal would continue the present arrangements, which do seem to be effective."[19]

20. The Court will thus observe the strict identity between the request for the indication of provisional measures and the actions actually being taken by Senegal at present. This is a reason to reject the request now before the Court. Especially since Belgium would itself have difficulty proving, if its own reasoning is to be followed, the existence of irreparable prejudice: it has

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[17]Final submissions of Belgium, 7 April 2009.

[18]CR 2009/8, p. 55, para. 75 (Wood).

[19]CR 2009/10, p. 19, para. 7 (Wood).

endeavoured to show that the obligation "to try or to extradite" is a customary norm, and therefore enforceable by Belgium against any other State where Habré might, by some remote chance, happen to be. Accordingly, the alleged prejudice cannot be described as irreparable.

21. I now come to the third and final point in my statement, dealing with the initiation of the process which should lead to Mr. Habré's trial.

3. The initiation of the process leading to Mr. Habré's trial

22. In its Orders the Court is inclined to indicate urgent measures whenever there is, in addition to something of great importance at stake, the risk that a right will be vitiated through the lapse of time. That is definitely not the case here.

21 23. Similarly, and from nearly the beginning, the Court has rightly not felt any need to indicate urgent measures where action is being taken which aims at rendering moot the fears expressed by one party, or even making the judicial confrontation itself academic. A respondent's undertaking to take a certain action is indeed capable of dispelling the urgency of a situation. In the present case, what is involved is more an undertaking than a promise, because the requested surveillance is already in place and is now effective. Belgium has so admitted repeatedly.

24. Mr. President, Members of the Court, I shall take the liberty simply of recalling that the Court in the *Interhandel* case, decided in 1957, rejected Switzerland's request for the indication of provisional measures because: first, while the Government of the United States wished to sell shares, it did not intend to do so immediately; and, second, at the time the Court was seised, proceedings were pending before American courts (*Interhandel (Switzerland* v. *United States of America), Interim Protection, Order of 24 October 1957, I.C.J. Reports 1957*, p. 112).

25. In the *Passage through the Great Belt* case, the Court rejected Finland's request after satisfying itself that, as Denmark contended, there would be no hindrance to passage through the Great Belt in the near future (*Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, pp. 12 *et seq*.). The Court considered there to be no urgency after it expressly placed on record the assurances given by the Danish authorities.

26. Mr. President, Members of the Court, yesterday the distinguished Agent of Belgium told the Court that "Belgium would like Senegal to prosecute and try Mr. Hissène Habré *itself* . . . It is only if it fails to prosecute him that Senegal should extradite Mr. Habré to Belgium . . ."[20]

27. Senegal now reaffirms its will to pursue the ongoing process, in which it assumes in full its obligations as a State Party to the 1984 Convention; the Co-Agent of the Republic of Senegal,
22 speaking after me, will confirm this. That, we believe, should suffice for the rejection of Belgium's request.

28. Mr. President, Members of the Court, I thank you for your kind attention.

The PRESIDENT: Thank you, Maître Alioune Sall, for your statement. I now invite Mr. Demba Kandji, Co-Agent, to present Senegal's final submissions.

Mr. KANDJI: Thank you, Mr. President.

SUBMISSIONS

1. Mr. President, Members of the Court, distinguished members of the Belgian delegation, the honour falls to me, as Co-Agent, to bring Senegal's pleadings to a close.

2. In conclusion, Senegal

(a) expresses every reservation at this stage as regards the jurisdiction of the Court that might result either from the optional declarations recognizing the Court's jurisdiction made by Belgium and Senegal or from Article 30 of the United Nations Convention against Torture of 1984, in respect of the merits of the claim;

(b) and considers

(i) that the Court does not have jurisdiction to indicate the provisional measures requested by Belgium;

(ii) that the circumstances of the case do not require the Court to exercise the power conferred upon it by Article 41 of the Statute to indicate provisional measures;

(iii) that there is no risk of irreparable prejudice to the right claimed by Belgium, in so far as that right exists; and

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[20] CR 2009/10, p. 10, para. 9 (Rietjens).

(iv) that, finally, the Kingdom of Belgium has not demonstrated the urgency that, among other conditions, would justify the indication of the provisional measures that have been requested.

23 3. The foregoing leads me respectfully to ask this august Court to hold that the request for the indication of provisional measures, as reformulated by the Kingdom of Belgium, must be rejected.

4. Mr. President, Members of the Court, pursuant to Article 60 (2) of the Rules of Court, a copy of the written text of Senegal's final submissions will be transmitted to the Court and to the Agent of the Kingdom of Belgium.

5. Before I complete this presentation by the Republic of Senegal, I should like to respond to the important question put by the honourable Judge Greenwood. At the conclusion of the first round of oral argument, Judge Greenwood asked:

> "In view of what was said this afternoon, by the distinguished Agent of Senegal, and by learned Counsel of Senegal, first, does Senegal give a solemn assurance to the Court that it will not allow Mr. Habré to leave Senegal while the present case is pending before this Court? And secondly, if so, does Belgium accept that such assurance is a sufficient guarantee of the rights which it claims in the present case?"

6. To respond: Senegal is of course prepared solemnly to confirm what it has already said:

> "By order of my Government, and as Co-Agent of Senegal, I hereby confirm what Senegal said last Monday, that is — and I shall say this in English to Judge Greenwood, who put the question — 'Senegal will not allow Mr. Habré to leave Senegal while the present case is pending before the Court. Senegal has not the intention to allow Mr. Habré to leave the territory while the present case is pending before the Court'." *[Translation by the Registry:* 'Le Sénégal ne permettra pas à M. Habré de quitter le Sénégal alors que la présente affaire est pendante devant la Cour. Le Sénégal n'a pas l'intention de permettre à M. Habré de quitter le territoire alors que cette affaire est pendante devant la Cour.'*]*

7. I would however beg the Court's pardon for reminding it that the Republic of Senegal in its first round of oral argument already referred a number of times to the effectiveness of the measures needed to ensure that Mr. Habré remains on Senegalese soil[21]. It also underlined the effectiveness of these measures, thanks to which Mr. Habré has been kept from leaving Senegalese territory ever since his arrival, in 1990[22].

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[21]CR 2009/9, p. 42, para. 10.

[22]CR 2009/9, p. 46, para. 3 and p. 49, para. 18.

8. Most particularly, in his introductory statement the Agent of Senegal, Professor Cheikh Tidiane Thiam, said: "Senegal does not envisage putting an end to the control and surveillance of Mr. Hissène Habré both before and after the funding pledged by the

24 international community has been made available to it to cover the legal proceedings concerned."[23]

9. Judge Oumar Gaye later pointed out in the clearest of terms that "Senegal has never had and does not have now any intention to lift the control and surveillance measures taken with respect to Mr. Hissène Habré"[24].

10. Senegal is of the view that the repeated assurances which I have just reviewed and the responses given by the distinguished Co-Agent of the Kingdom of Belgium to the question put to it[25] by themselves suffice to extinguish any raison d'être for the request for the indication of provisional measures submitted by the Kingdom of Belgium and to allow the Court to conclude that there is no cause to rule on that request.

11. Naturally, the Republic of Senegal will refrain from suggesting to the Court how it should formulate its decision and Senegal foresees that you will see fit to disregard the conditions laid down by the Kingdom of Belgium.

12. Mr. President, Members of the Court, this brings to an end my statement and Senegal's presentation of its observations on the request for the indication of provisional measures submitted by the Kingdom of Belgium.

13. On behalf of the delegation of the Republic of Senegal, I should like to thank the Court for its kind attention and Judges Simma and Greenwood specifically for their questions to the Parties. May I also thank the Registrar and the entire staff of the Registry, as well as the staff of the translation services, for their readiness to assist and their efficiency. Thank you.

The PRESIDENT: Thank you, Mr. Demba Kandji, Co-Agent. I shall now give the floor to Judge Cançado Trindade, who wishes to put a question to the Parties. Judge Cançado Trindade, if you please.

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[23]CR 2009/9, p. 21, para. 57.

[24]CR 2009/9, p. 54, para. 12.

[25]CR 2009/10, p. 26, para. 6.

25 Judge CANÇADO TRINDADE: Thank you, Mr. President. During these public hearings both delegations have expressly referred to the rights of States and to the rights of individuals. Thus, my question is for both Parties. I shall ask it in English so as to maintain the linguistic balance of the Court. The question is as follows: 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? [Afin de mieux cerner les *droits* qui doivent être préservés (aux termes de l'article 41 du Statut), y-a-t-il des droits qui correspondent aux obligations énoncées à l'article 7 1), lu conjointement avec l'article 5 2), de la convention des Nations Unies contre la torture de 1984 et, si tel est le cas, quels sont leur *nature juridique*, leur *contenu* et leurs *effets* ? Quels sont les titulaires de ces droits — les Etats dont les nationaux sont concernés, ou tous les Etats parties à la convention précitée ? A qui ces droits sont-ils opposables — seulement aux Etats concernés par une affaire concrète, ou à tout Etat partie à la convention ?] Thank you, Mr. President.

The PRESIDENT: Thank you, Judge Cançado Trindade. The text of this question will be sent, in written form, to the Parties this evening. In accordance with the usual practice, the Parties are requested to provide their written replies to this question not later than 6 p.m. on Wednesday 15 April 2009. Any comments a Party may wish to make, in accordance with Article 72 of the Rules of Court, on the reply by the other Party must be submitted no later than 6 p.m. on Monday 20 April 2009.

That brings the present series of sittings to an end.

It remains for me to thank the representatives of the two Parties for the assistance they have given to the Court by their oral observations in the course of these four hearings.

I wish them a happy return to their respective countries and, in accordance with practice, I would ask the Agents to remain at the Court's disposal. Subject to this reservation, I declare the present oral proceedings closed.

The Court will render its Order on the request for the indication of provisional measures as soon as possible. The date on which the Court will deliver this Order at a public sitting will be duly communicated to the Agents of the Parties.

As the Court has no other business before it today, the sitting is closed.

The Court rose at 5.30 p.m.

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