Non corrigé
Uncorrected

Traduction
Translation

CR 2012/7 (traduction)

CR 2012/7 (translation)

21 mars 2012 à 10 heures

21 March 2012 at 10 a.m.

8 The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the second round of oral argument of the Republic of Senegal. I now give the floor to H.E. Mr. Cheikh Tidiane Thiam, Agent of the Republic of Senegal. You have the floor, Mr. Thiam.

Mr. THIAM:

INTRODUCTION AND GENERAL OBSERVATIONS

1. Mr. President, Members of the Court, at the beginning of the second round of oral argument of Senegal, I have the great honour to speak on behalf of my delegation and the Government of the Republic of Senegal, and to address some general observations to your distinguished Court. These hearings are marked by our country's sincere concern to share, in complete transparency and in good faith, the facts and arguments which underlie and inform our replies to the allegations which have led Belgium to bring us before your Court.

2. In the light of the arguments and explanations contained in its Counter-Memorial and oral pleadings, whereby Senegal has declared and demonstrated that, in this case, it has duly fulfilled its international commitments and that it has not committed any internationally wrongful act, I would like to ask the Court, on behalf of my country, to find in its favour on the submissions which follow and which will be presented at the close of the oral argument at the end of this morning.

3. After this introduction, Mr. President, Members of the Court, the following members of our delegation will take the floor, with your permission:

— Mr. Ibrahima Bakhoum, counsel, who will address certain points regarding the question of the inadmissibility of Belgium's Application;

— Mr. Oumar Gaye, counsel, who will consider a particular aspect regarding the matter of the alleged recognition of a dispute and Senegal's compliance with the provisions of the Convention against Torture; and then

— Mr. Abdoulaye Dianko will address the Court and deal with certain points relating to the non-existence of internationally wrongful acts attributable to Senegal.

9 4. Following these presentations, I shall again take the floor, firstly in order to respond to the questions put by judges, and then to present the final submissions of the Government of Senegal. It will be clear from our submissions that these proceedings bring together two countries which very likely share the same concerns and the same aim, namely to comply and ensure compliance with international law and to combat impunity, but which do not go about these matters in quite the same way, thereby showing that our two countries have not talked enough, and, perhaps, not negotiated enough.

5. I thank you for your attention and would ask, Mr. President, that you now give the floor to Mr. Ibrahima Bakhoum.

The PRESIDENT: Thank you, Mr. Thiam. I give the floor to Mr. Ibrahima Bakhoum, counsel of Senegal. You have the floor, Mr. Bakhoum.

Mr. BAKHOUM:

THE INADMISSIBILITY OF BELGIUM'S APPLICATION

1. Mr. President, Members of the Court, it is a pleasure and an honour to return before the Court, not to lay before you Senegal's arguments on admissibility, which were amply covered in the State of Senegal's Counter-Memorial and in its first round of oral argument, but rather to provide some clarifications or replies to certain points, arguments or positions developed by Belgium on Monday 19 March 2012 during its second round of oral argument; and I shall be brief. The points I shall raise concern negotiation, arbitration and the absence of a dispute.

On the absence of negotiation

2. In this connection, Mr. Gérard Dive, Co-Agent of Belgium, quoting from my remarks on the absence of negotiations, said in his pleading that "[i]nternational negotiation presupposes a minimum number of contacts and a minimum amount of follow-up and definition of the terms of
10 the discussion; the Kingdom of Belgium has clearly paid no heed to these minima in the present case"[1].

[1] CR 2012/6, p. 11, para. 2 (Dive).

3. In a vain attempt to demonstrate the existence of negotiations prior to the seisin of the Court, he continued to quote me, rather speciously moreover, and deliberately and completely distorting the letter and spirit of my remarks.

4. Indeed, on page 13, paragraph 9, of the verbatim record of 19 March 2012, he states: "— to use again the . . . words of Mr. Bakhoum — the existence of 'a minimum number of contacts and a minimum amount of follow-up and definition of the terms of the discussion'. There is more than adequate proof" — of the existence of prior negotiations, is what is implied.

5. Mr. President, Members of the Court, at this point I must insist on clarifying the spirit and the letter of my remarks, which, despite being quite clear, were distorted by Mr. Dive in his pleading.

6. Thus, far from arguing the absence of negotiations by asserting the existence of a minimum number of contacts and a minimum amount of follow-up and definition of the terms of the discussion, I actually argued quite the opposite. Indeed, I repeat my argument, before your distinguished Court, that international negotiation presupposes a minimum number of contacts, a minimum amount of follow-up and definition of the terms of the discussion, which Belgium has never undertaken. At best, in its attempt to establish the existence of negotiations, it mentions three requests for information to which Senegal duly gave a prompt response.

7. The Kingdom of Belgium has not produced, nor can it produce, any relevant proof or evidence to establish the existence or endorsement of negotiations as required under Article 30 of the Convention against Torture as a condition for the admissibility of its action.

8. Members of the Court, has the Kingdom of Belgium produced in evidence a clear and official proposal for formal negotiations that was sent to Senegal? Has it included in the case file a clear and unequivocal official document confirming the response that Senegal sought to give to such an offer of negotiation? Members of the Court, has the Kingdom of Belgium produced a
11 document defining the terms of reference for any such negotiations? Finally, has it included in the case file one or more Notes from the Parties attesting to the end of negotiations?

9. Unfortunately, Mr. President, Members of the Court, you will find that the answer to all these questions is no.

10. How, then, can it reasonably be argued that negotiations actually took place prior to the seisin of the Court, in compliance with Article 30 of the Convention against Torture? For the answer to that, I shall humbly defer to your considered judgment.

On arbitration

11. In this connection, Mr. President, Members of the Court, I humbly request permission to quote from a Note Verbale dated 20 June 2006 from the Kingdom of Belgium — of which there is in fact no trace in Senegal's archives[2] — whereby Belgium claims to have made an offer of recourse to arbitration to which Senegal did not reply within the prescribed six months.

12.

> "It should be remembered that, in its Verbal Note handed over on 4 May to the Ambassador of Senegal in Brussels, Belgium emphasized that an unresolved dispute regarding this interpretation would lead to recourse to the arbitration procedure provided for in Article 30 of the Torture Convention, and . . . mentioned the possibility of Belgium having recourse to this procedure, while reiterating its differing interpretation of the relevant provisions of said convention . . . Belgium cannot fail to point out that the attempted negotiation with Senegal . . . has not succeeded."

13. These words invite three observations.

— Firstly: Belgium refers to the failure of negotiations which never took place, as pointed out in my previous argument.

— Secondly: Belgium reports the existence of a dispute, which is not a dispute in this case, and I shall come back to this point.

12 — Thirdly: Belgium refers to *possible* recourse to the arbitration procedure.

14. In connection with the third point on arbitration, Mr. President, Members of the Court, I would invite you to observe, with the Parties, that Belgium speaks of a possibility, in other words an event whose likelihood is characterized by uncertainty.

15. And you will observe that, in this case, the possibility of recourse to the arbitration procedure was not taken up by Belgium, since up until the time these proceedings began, Belgium had at no point submitted to Senegal an official, formal, clear and reasoned proposal to go to arbitration.

---

[2] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 148, para. 45.

16. Moreover, this is precisely what explains and justifies the fact that Senegal gave no response — a fact which Belgium first points out and then deplores. However, it is clear that since no proposal to make use of the arbitration procedure was received from Belgium, there could be no response from Senegal in that connection.

17. Furthermore, if there is a place to speak of "good faith", "surprises", "surreptitious manner" and "dissembling", it is here, since in respect of both prior negotiations and recourse to arbitration, Belgium has never demonstrated a clearly expressed intention — and if it had wanted to express its intention clearly, it would have done so through official, clear and reasoned correspondence, unequivocally stating the purpose thereof.

18. Instead, it merely refers to correspondence which did not concern formal compliance with the preconditions of negotiation and arbitration set out in the relevant provisions of Article 30 of the Convention against Torture.

19. In order to demonstrate compliance with these prerequisites of Article 30 of the Convention against Torture, Belgium instead merely refers to letters concerning other matters, in which these words or prior procedures are mentioned in passing and in a superfluous way. This is not calculated to achieve success.

13 20. Thirdly and finally, Belgium speaks of "an unresolved dispute regarding this interpretation [which] would lead to recourse to the arbitration procedure provided for in Article 30 of the Torture Convention"[3].

21. This third point will be dealt with in relation to the absence of a dispute, about which, with your permission, I shall say a few words, a few brief words. However, may it please the Court to note that, in French, Belgium speaks of a "*controverse*" and not a "*différend*".

On the absence of a dispute

22. In this regard, as I stated earlier, in dealing with the so-called "Hissène Habré case", *at no time* did Senegal discern a dispute with the Kingdom of Belgium within the meaning of Article 30 of the Convention against Torture, and nor was any dispute discernible to Senegal.

[3]CR 2012/6, p. 15, para. 13 (Dive).

23. At the very most, my country has noted throughout with interest Belgium's welcome contribution to Senegal's efforts to implement the relevant provisions of the Convention against Torture.

24. Moreover, in this connection, it is entirely appropriate that Belgium should speak in French of a *"controverse"* regarding the interpretation of the provisions of the Convention against Torture, rather than a *"différend"*, or dispute, with Senegal.

25. Turning now to Mr. Eric David, in his pleading he asserted that "the dispute relates . . . not to the *applicability* of the Convention against Torture and general international law, but . . . to the *application* of those rules"[4].

26. It should be noted in this respect that in actual fact there is no dispute, since the application of the Convention against Torture by Senegal relates to its implementation, and the implementation of the said Convention, far from being a static process, is a dynamic one manifested by a series of actions undertaken by Senegal.

It is on record, in this regard, that Senegal has achieved a great deal and still continues to undertake concrete and appropriate action: in particular, firstly, through consultations with the
14 African Union, which have reached a very advanced stage, aimed at establishing an *ad hoc* international court pursuant to the decision of the ECOWAS Court of Justice of 18 November 2010; and, secondly, by implementing the provisions of the Convention, through its judicial response to the various extradition requests made by Belgium, the most recent of which will be dealt with promptly and appropriately.

Regarding judicial co-operation, the Agent will return to this in his remarks.

27. Mr. President, Members of the Court, I therefore beg you, on the strength of these observations on admissibility, to adjudge and declare that the proceedings initiated by Belgium are in clear breach of the provisions of Article 30 of the 1984 Convention against Torture, and, accordingly, to declare the said action inadmissible.

28. In conclusion, I would point out that my arguments regarding the provisions on admissibility in Article 30 of the Convention against Torture stem from the need to inform the

[4]CR 2012/6, p. 27, para. 5 (David).

discussion on this point and not from an unwillingness to discuss the merits of the case, something which, in view of the arguments contained in its Counter-Memorial and its various pleadings, Senegal would be in a very comfortable position to do.

Mr. President, Members of the Court, I thank you most sincerely for your kind attention and ask you to invite my colleague Abdoulaye Dianko to take the floor after me.

Thank you for your attention.

The PRESIDENT: Thank you, Mr. Bakhoum. I have one question however: is Mr. Dianko going to speak, or Mr. Gaye? It is for the Agent to decide. I understand that it is Mr. Gaye who has some points to make regarding the existence or otherwise of a dispute. I see that it is Mr. Gaye who will speak. You have the floor, Mr. Gaye.

15 Mr. GAYE: Thank you, Mr. President.

ALLEGED RECOGNITION OF THE EXISTENCE OF A DISPUTE AND SENEGAL'S COMPLIANCE WITH THE PROVISIONS OF THE CONVENTION AGAINST TORTURE

1. Mr. President, Members of the Court, I am addressing you once again to clarify certain aspects of the arguments presented by Belgium, which persists in maintaining that a dispute exists and claims, without any good reason, that Senegal has not fulfilled its obligations under the 1984 Convention. My presentation will focus on two points: first, the alleged recognition of the existence of a dispute, and second, Senegal's compliance with the provisions of the Convention against Torture.

Alleged recognition of the existence of a dispute

2. In his statement on Monday 19 March 2012, Mr. Gérard Dive, the Co-Agent of Belgium, attempted to prove, on the basis of extracts from my pleadings before the Court, that there is indeed a dispute between our two States. I shall quote what he said:

> "Mr. Oumar Gaye, in his statement of last Thursday, explicitly acknowledged the existence of such a dispute when speaking of the African Union's intervention in the case before us, in connection with the interpretation and application of the Convention against Torture. Thus, he stated:
>
> 'At issue before the Court is a difference between two States as to how the execution of an obligation arising from an international

> instrument to which both States are parties should be understood. That is the reality of the contentious proceedings that have been brought before the Court.'"[5]

Mr. Dive went on to argue that Senegal recognized the existence of a dispute when he quoted the following words: "Senegal finds it difficult to understand Belgium's insistence on an interpretation which has never been that of the State liable to perform the obligation in question — which is, precisely, to 'try'"[6].

3. On the basis of those words, Belgium, which is finding it difficult to provide objective evidence establishing that a dispute exists, seeks the Court's support in "tak[ing] note of this observation, made by Senegal, of the existence of a dispute between our two countries".

16 4. My colleague Ibrahima Bakhoum has talked in considerable detail about what constitutes a dispute that should be brought before the Court, so there is no need for me to add anything on the subject. Belgium cannot seize on the mere fact that I have mentioned the word "dispute" here in Court to claim that one exists, when it is having so many problems in defining it convincingly. However, the statements he quoted have been taken out of context, and I should like to make our actual position on this point absolutely clear.

5. I had in fact already replied to Belgium, which, in its Memorial, took the view that, in referring the Hissène Habré case to the African Union, Senegal had not fulfilled its obligation to punish the acts specified in the Convention against Torture[7]. My reply continued in verbatim record 2012/4, paragraph 33 *et seq*., page 26.

6. On this point, Senegal's Agent and Professor Alioune Sall had explained in great detail the meaning to be ascribed to the African Union's decision of 2 July 2006[8]; they emphasized that the African Union's raising of the case of the former Chadian President had no legal implications, and that the Union could not take the place of Senegal, which remained the only party responsible for fulfilling the obligations set out in the Convention against Torture as a State Party to the Convention and, on that same basis, the only one bound by the obligation to "extradite" or "prosecute".

---

[5]CR 2012/6, p. 16, para. 17 (Dive).

[6]CR 2012/6, p. 17, para. 18 (Dive).

[7]CR 2012/4, p. 26, para. 33 *et seq.*

[8]Doc. Assembly/AU/3 (VII).

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[9].

Senegal's compliance with the provisions of Articles 5, paragraph 2, Article 6, paragraph 1, and Article 7, paragraph 1, of the Convention against Torture

7. It should be remembered that Senegal has established its jurisdiction in accordance with the provisions of Article 5, paragraph 3, of the Convention, which states: "This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law." It was also on that basis that Mr. Habré was indicted by the senior investigating judge in 2000, acting upon the

17

complaint with civil-party application filed in January 2000 by Souleymane Guengueng and others.

8. Furthermore, the criminal procedure rules in Senegal comply with the provisions of Article 7, paragraph 3, of the Convention against Torture, concerning "guaranteed fair treatment at all stages of the proceedings". Those rules enabled Mr. Habré to put his case to the Senegalese courts and the ECOWAS Court of Justice, enabled the civil parties to file appeals, and enabled Belgium to make its extradition requests, all without hindrance.

9. If Senegal had intended, as Belgium claims, to shirk its obligations, it would certainly not have taken the trouble to amend its Constitution and bring its legislation into line with the provisions of the Convention against Torture, nor would it have followed the correct procedure in receiving Belgium's extradition requests, all of which have been considered by the courts in accordance with Senegalese law.

10. Mr. President, Members of the Court, at the Donors Round Table held in Dakar on 24 May 2010 to raise funds for Mr. Habré's trial, the European Union representative

> "paid tribute to Senegal and the AU for their firm commitment to moving the process forward without delay, and to Belgium, which had agreed not to bring Hissène Habré to trial. The EU would continue to give its strong support to the process, which entailed greater African responsibility for events which had taken place in Africa." (Item 5 in the judges' folder.)

11. Likewise at the Round Table, Belgium announced its intention to contribute one million euros towards funding for the trial. How can Belgium, which abandoned the idea of trying

[9]CR 2009/11, p. 13, para. 10 (Diouf).

Mr. Habré in 2010, claim that there is any dispute before the Court under the Convention against Torture?

12. Furthermore, the participants in the Round Table

> "pointed to the need for an immediate start to the proceedings stage as soon as the financial resources necessary for it to begin had been mobilized. The donors also undertook to mobilize the necessary funds in such a way as to avoid any interruption in the conduct of the trial, in accordance with the agreed budget schedule."

13. Belgium, which took part in the Round Table, did not express any reservations and signed the Final Document approving the proceedings.

18 14. In the light of the arguments I have just presented and the submissions of the speakers before me, Senegal asks the Court to find that the dispute alleged by Belgium is merely theoretical and has never actually existed between our two countries.

Keeping Hissène Habré in Senegal is in accordance with Article 6, paragraph 1, of the Convention against Torture

15. Mr. Dive argued that I said the following:

> "The Court will note that, despite the declarations by the President of the Republic of Senegal, the Kingdom of Belgium has not provided evidence of the existence of any decision aimed at expelling Mr. Hissène Habré to another country. No such administrative decision has been taken, and Senegal remains in compliance with the commitments it undertook here before your Court."[10]

16. However, Article 6, paragraph 1, of the Convention against Torture requires Senegal, in whose territory Mr. Habré is present, he being alleged to have committed offences referred to in the Convention, to take the necessary measures to ensure his presence.

17. Mr. President, Members of the Court, you will note that Mr. Habré is still in Senegal, thus confirming our country's fulfilment of the commitment it gave here to the Court at the hearing on Belgium's request for the indication of provisional measures[11].

18. In that respect, Senegal is scrupulously complying with the provisions of Article 3, paragraph 1, of the Convention, a fact which Belgium does not dispute, since it maintains that it has "never claimed that a formal expulsion document was drafted on that occasion"[12].

---

[10]CR 2012/6, p. 17, para. 19 (Dive).

[11]*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 154.

[12]CR 2012/6, p. 17, para. 20 (Dive).

19. Members of the Court, we shall leave you to assess the statements to which Belgium has referred and which have no legal status, since the proceedings before the Court are objective, based on documents.

20. Mr. Dive wonders why, if Senegal decided to prosecute Mr. Habré, it should not do so on the basis of the complaints filed in Belgium, consulting the Belgian judicial record and taking account of the investigations conducted in Belgium and Chad. He again quotes my words:

19

> "given the number of victims and civil parties to the case, even though Senegal again thanks the Kingdom of Belgium for its offer of co-operation, the Senegalese courts are entitled to treat the civil parties, the victims and the witnesses on an equal basis, while respecting the rights of Mr. Hissène Habré and his possible accomplices. Such a trial deserves to be prepared carefully, and the Kingdom of Belgium should abstain from the pressure it is exerting on the range of judicial bodies seised with contentious cases."[13]

21. It should be emphasized that accepting Belgium's offer of co-operation would not mean that the courts would agree to conduct the investigations as Belgium wished or would accept guidelines drawn up by Belgium. The investigating judge will conduct his investigation in accordance with Senegalese law and the principle that all individuals are equal before the law, totally impartially, and without favouring any victim because of his country of residence. The victims in Senegal, Belgium and Chad should all be treated the same.

22. The investigating judge investigates for the prosecution and the defence. He gathers evidence, seeks out the perpetrators and their accomplices, and transmits the file on the investigation to the courts, which then assess the guilt of those charged.

Mr. President, Members of the Court, thank you for your kind attention. I would respectfully ask you to give the floor to my colleague, Mr. Abdoulaye Dianko, who will continue the defence of Senegal's interests. Thank you.

The PRESIDENT: Thank you, Mr. Gaye. I now give the floor to Mr. Abdoulaye Dianko. You have the floor, Mr. Dianko.

---

[13] CR 2012/6, p. 20, para. 25 (Dive).

20 Mr. DIANKO:

CERTAIN POINTS RELATING TO THE NON-EXISTENCE OF INTERNATIONALLY WRONGFUL ACTS ATTRIBUTABLE TO SENEGAL

1. Mr. President, Members of the Court, I return before you, at the request of the Agent of Senegal, to clarify certain points relating to the non-existence of internationally wrongful acts attributable to Senegal. To that end, I shall consider the following points:

— The meaning of the Agent of Senegal's statement on extradition.

— The true scope of our interpretation of the African Union decision of 2006.

2. On Friday 16 March, during our oral argument, we asserted and amply demonstrated that Belgium is hard pressed to prove, both in its written pleadings and in the statements made before your distinguished Court, that any specific action or omission which can be attributed to Senegal constitutes an internationally wrongful act.

3. That assertion has been eloquently confirmed by Belgium's representatives during these proceedings, in particular by Mr. Gérard Dive, Co-Agent, in his argument last Monday[14].

4. In the hope of finding a breach of an international obligation attributable to Senegal, he took a number of statements out of context, interpreted them as he saw fit and, on the basis of his very loose interpretation, drew the conclusions that suited his purpose, namely that

> "in order to establish the existence of an internationally wrongful act on the part of Senegal, the Court would then merely have to verify whether Senegal had fulfilled its obligation to prosecute Mr. Habré under the Convention against Torture and under the rules of general international law to which Belgium has referred".

5. We could, of course, have issued the same invitation to the Court, but on condition that the following clarifications were made and the statements put back into context, so as to dispel any confusion and ensure that there is no misunderstanding of Senegal's clear position in this case.

21 6. Mr. Dive begins by selectively citing the Agent of Senegal and notes that in his opening speech on Thursday 15 March 2012, the Agent stated that "Belgium might . . . find that Senegal will do as it has asked and that its perseverance has paid off"[15].

---

[14]CR 2012/6, pp. 24-25, paras. 39-42.

[15]CR 2012/4, p. 19, para. 45 (Thiam).

7. While, according to Mr. Dive, Belgium believed that Senegal intended to comply with its obligation to prosecute or, failing that, to extradite in the event of a favourable decision by the Court of Appeal, it was very surprised to hear me say in my remarks last Friday that the African Union's decision of July 2006: "signifies that Senegal has to try Mr. Habré, but must do so . . . on African soil" and that "Senegal will apply that decision while at the same time proceeding to perform its treaty obligation"[16].

8. Belgium thus concludes from this statement that Senegal has apparently decided no longer to entertain the slightest possibility of extraditing Mr. Habré, contrary to the view expressed by the Agent of Senegal.

9. Such a deliberately reductionist representation is an unacceptable distortion of what were nevertheless two clearly worded statements, which may confuse the understanding of Senegal's position as set out in all our written and oral pleadings since 2009.

The meaning of the Agent of Senegal's statement on extradition

10. Let us therefore look again at this statement, parts of which — I repeat — were deliberately left out, and note that the Agent began by saying that Senegal had already embarked on a process that was to lead to prosecution. I quote the part of the Agent's statement that was not cited in Belgium's presentation:

> "with the completion of these legislative and constitutional reforms, which were . . . entirely voluntary, particularly as regards the exception to the principle of non-retroactivity introduced into the Constitution, there appeared to be no further obstacles to progress towards the trial of Mr. Habré. The Donors Round Table for the funding of the trial, held in Dakar on 24 November 2010, generated sufficient funding pledges to cover the budget of around €8.6 million, or some CFA5,176,000,000."

22

11. This is in fact what the Agent of Senegal said on the subject of extradition:

> "It should be noted, however, that Belgium's persistence in repeatedly requesting Mr. Habré's extradition has led to the emergence of a further new and extremely important factor, which is that the Court of Appeal has, unexpectedly, abandoned its judgment of 25 November 2005, which had seemed to rule out altogether the possibility — now open — that any extradition request might be considered which complied with the formal requirements laid down by Senegalese law. This fundamental reversal of its decision has allowed the Senegalese courts considerable breathing space and means that they can now co-operate with other countries when they are called upon to consider any extradition request arising in such

[16] CR 2012/6, p. 24, para. 40 (Dive).

> circumstances. This does, at least, re-open the other alternative to trial, and means that extradition can be seriously considered instead of prosecution."

12. Therefore, Senegal's Agent wanted above all to highlight how the Court of Appeal's position had evolved; if it had adhered to its logic of 2005, the scope of Senegal's treaty-based *aut dedere aut judicare* obligation would, in principle, have been reduced. This would have made compliance with that obligation unlikely in practice, were there to be insurmountable obstacles to the trial being held in Senegal. That is the only point Senegal's Agent wished to make regarding extradition.

What then is the true scope of our interpretation of the African Union decision of 2006?

13. We recalled that the African Union:

— considered that the Hissène Habré case fell within its own competence;

— mandated Senegal to prosecute and ensure that Hissène Habré is tried, *on behalf of Africa, by a competent Senegalese court*.

14. We maintain that this decision reflected the desire of the African Union in 2006 to see Habré tried in Africa and, more precisely, in Senegal. But that never meant that Senegal, in the context of complying with that decision, was committed to precluding absolutely any possibility of extradition.

23 15. In any event, in stating that Senegal will apply that decision, we made a point of specifying that we would do so in strict compliance with our treaty obligation, and we thought that everyone, in particular our opponents, knew that the treaty obligation also included the obligation to extradite if no trial were held.

16. Moreover, it should be recalled that the African Union decision of 2006 expressly mentions the obligations that are binding on Senegal under the 1984 Convention against Torture .

17. I therefore fail to see how we can undertake to comply with such an obligation — that is our obligation arising from that Convention — and at the same time decide irrevocably "that Hissène Habré will not leave African soil".

18. We note that Mr. Dive himself acknowledged that in its most recent decision, the African Union, in view of the material difficulties, no longer rules out the possibility of the trial being held outside Africa.

19. Furthermore, the African Union had already set the tone in the 2006 decision, and in its subsequent decisions, when it underlined the need to find the financial resources to assist Senegal in holding the trial.

20. In other words, the African Union had already foreseen the difficulties of holding the trial in Africa.

Conclusion

21. We agree with Belgium that, in order to establish the existence of an internationally wrongful act, the Court must indeed verify whether Senegal has complied with its obligation to prosecute Mr. Habré.

22. Besides correcting Belgium's representation of Senegal's position, we consider that the two statements cited by Mr. Dive, that is both the Agent's and my own, remain consistent with our position.

23. The obligation to prosecute should be judged in the light of what has been done.

24 24. Thus we recall that Senegal is seeking to prosecute Mr. Habré, as is attested by the many steps and initiatives taken towards that end, which have been listed at length in our arguments. However, there are obstacles in our path that we are trying to overcome.

25. Amongst those obstacles is one that Belgium cares little to mention, and yet it is referred to in the statement by our Agent which Mr. Dive sought to cite. I once again quote the Agent of Senegal:

> "However, the decision handed down a few days earlier, on 18 November 2010, by the ECOWAS Court of Justice undermined this progress towards the holding of an early trial, since it ruled out prosecution by the Senegalese courts."

> "Of course, Senegal's commitments under the Convention against Torture remain, but account will now have to be taken of the new factor introduced by the decision of the ECOWAS Court of Justice."

26. That judgment, as we recalled in our final remarks on Friday, in so far as it points to the establishment of a new mechanism that will be more cumbersome, more complicated and even more expensive for Senegal, which was already struggling to find the resources to organize a trial at national level, is likely to constitute a major stumbling block to implementing our decision to try Mr. Habré.

27. That is why the change in position of the Court of Appeal should be welcomed, in that it no longer constitutes, in absolute terms, an insurmountable obstacle to Senegal's compliance with its obligation to extradite — in the event, of course, that it finds itself unable to prosecute and that Belgium's request for extradition is deemed admissible.

I thank you for your kind attention and would ask you, Mr. President, to give the floor to the Agent of the Republic of Senegal. Thank you.

The PRESIDENT: Thank you, Mr. Dianko. I give the floor to Mr. Thiam, the Agent of Senegal. Mr. Thiam, you have the floor.

Mr. THIAM: Thank you, Mr. President. I have been asked to do two things: to answer the questions put by judges, and then to present the final submissions of the Government of Senegal at the end of the second round of Senegal's oral argument.

25

REPLIES TO JUDGES' QUESTIONS

Mr. President, Members of the Court, thank you for the questions which some of the judges have put to Senegal. I and my delegation welcome these as an opportunity to explain and clarify certain important points in our written and oral argument during these proceedings.

Because of the confines of the situation in which my answers will be given, I shall unfortunately not be able to go into all the questions in exhaustive detail. We would ask those judges whose questions are not answered directly or in full to bear with the Senegalese delegation, and we will do our best to provide more satisfactory answers at a later stage.

Questions put to both Parties by Judge Abraham at the end of the hearing on 16 March 2012

1. "Is Belgium entitled to invoke the responsibility of Senegal for the alleged breach by the latter of its obligation to submit the H. Habré case to its competent authorities for the purpose of prosecution, unless it extradites him, in respect of the alleged crimes the victims of which did not have Belgian nationality at the time the facts occurred? In the case of an affirmative answer, what is the legal basis conferring such entitlement on Belgium? In this respect, should one differentiate between the alleged crimes falling within the scope of the 1984 Convention against Torture and the others?"

Reply

2. In reply, Senegal does not dispute, as such, the *idea* that Belgium may invoke its responsibility for an alleged breach of its obligation to submit Mr. Habré to its competent authorities. In doing so, however, Belgium must have an *entitlement* (or appropriate capacity) which should be beyond question. In our opinion, the legal basis on which Belgium relies for its

26

title of jurisdiction does not stand up to scrutiny in the context of international practice and case law. What is presented as a dispute in the present case serves to illustrate the actual situation, which is that Senegal does not contest the existence of the *aut dedere aut judicare* rule in international law, but only the conditions in which Senegal should apply that rule, and Belgium has challenged those conditions in order to derive a title of jurisdiction.

3. The reiteration of the facts that you have been given by Senegal's counsel has shown that, in the present case, Belgium began by invoking universal jurisdiction, and then, following amendments to its legislation, extraterritorial jurisdiction, on the basis of a factor showing a connection with Belgium: the nationality of the victims. Belgium also bases its jurisdiction on a subsidiary title: passive personal jurisdiction. It is therefore requesting the Court to clarify the meaning of the *aut dedere aut judicare* obligation, which it would itself like to assume on the basis of a title of jurisdiction which, even if secondary, is unlawful. Let me now consider the implications of Judge Abraham's question.

4. First of all, Belgium is trying to persuade the Court somehow to accept that a certain international responsibility exists, this being the only way, in its desperation, to bring Mr. Habré to trial — possibly, as Belgium would have it, before the Belgian courts. In the face of this insistence, or undue haste as others might call it, Senegal would urge the Court to ensure compliance with the principles of international law that apply here, namely the need for a lawful title of jurisdiction. As a subsidiary argument, I will look at the time factor — discussed many times in these proceedings — in Belgium's démarche (the date when the "Belgian" applicants before the Belgian courts actually gained Belgian nationality), in order to examine the failure to comply with the "continuous nationality" rule in the approach adopted by Belgium.

5. Secondly, Senegal is well aware of the nature and importance of the prohibition on torture in the international legal order, which should alone have been enough to persuade all States to do

more to co-operate with Senegal to bring Mr. Habré to trial. Yet at the same time Belgium has repeatedly demanded that Senegal extradite him. My delegation would like to reaffirm here that, under international law, where there is competing jurisdiction between two States, personal jurisdiction must (unless otherwise stipulated) be seen as subsidiary to a territorial title. This

27 primacy of territorial jurisdiction over personal jurisdiction is long established in international case law, as is clear, in particular, from the arbitral award handed down in the *Deserters of Casablanca* case[17].

6. In Senegal's view, the victims should have had Belgian nationality at the time when the harmful acts were committed. In international proceedings, individuals have often been required to provide evidence that they had the "nationality of the applicant State including at the time when the acts giving rise to the injury took place"[18]. The Permanent Court of International Justice, the predecessor of the International Court of Justice, was called upon to examine the question of a break in the legal connection between an individual and his State. And it became clear that, in international proceedings, the unacceptability of any interruption in continuous nationality was well established under international law[19].

7. The critical date must thus be regarded as the time when the wrongful act was committed or the time when the Chadian victims suffered harm. Belgium was entitled to rely on an entirely different title of jurisdiction which both conventional and customary international law allow when it comes to the punishment of torture, but clearly not on the passive personal jurisdiction of the Chadian victims who have now become Belgian.

Judge Greenwood's question

8. "With regard to the argument that Senegal is in breach of a customary international law obligation to prosecute or extradite, please indicate:

(1) which States have provided for their courts to possess jurisdiction over

---

[17]See arbitral award in *Deserters of Casablanca (France* v. *Germany)*, Permanent Court of Arbitration, 22 May 1909, *R.I.A.A.*, Vol. XI, p. 126.

[18]*Orazio de Attelis* case, decision of 1842 (American-Mexican arbitration system established by the Treaty of 11 April 1839) *[Translation by the Registry]*; see also Moore, *International Arbitrations*, Vol. IV, pp. 3333-3334; see *Panevezys-Saldutiskis Railway, Judgment, 1939, P.C.I.J. Series A/B No. 76*, p. 3 *et seq.*

[19]In the *Nottebohm (Liechtenstein* v. *Guatemala)* case, even though the main issue was the validity of naturalization, the legal problems raised substantiated the idea that the rule requiring a continuous legal connection had acquired a certain customary status (*Second Phase, Judgment, I.C.J. Reports 1955*, p. 4 *et seq.*).

(i) war crimes committed in an armed conflict not of an international character; and

(ii) crimes against humanity;

28 in cases where the alleged offence occurred outside their territory and neither the alleged offender nor the victims were their nationals;

(2) what instances there are of States exercising jurisdiction or granting extradition in such cases; and

(3) what evidence exists that States consider that international law requires them to prosecute or extradite in such cases."

Judge Greenwood adds that his question relates solely to customary international law and not to action taken pursuant to treaty obligations such as those arising under the Convention against Torture.

Reply

9. This is a very complex and difficult question. I cannot say that our answers will be exhaustive, but we can say this. Under its Law of 16 June 1993 concerning the punishment of serious violations of international humanitarian law, provided for by the Geneva Conventions of 12 August 1949 and Additional Protocols I and II of 8 June 1977, Belgium has seen a number of cases come before its courts.

10. The first was a trial that became known as the Butare Four, which involved four Rwandans (Vincent Ntezimana, a university professor, Alphonse Higaniro, a factory director, and Consolata Mukangango and Julienne Mukabutera, members of a religious community), who were arrested in Belgian territory and accused of having taken part in Tutsi massacres in the prefecture of Butare (Rwanda) during the 1994 genocide.

11. The Belgian Public Prosecutor prosecuted them for violations of the Geneva Conventions and the Belgian Penal Code. Although the alleged crimes occurred within the context of the 1994 genocide, the Butare Four were not accused of the crime of genocide, since that offence was not covered by Belgian law at the time when the acts were committed. On 8 June 2001, they were found guilty by the jury at the Brussels *Cour d'assises* and sentenced to between 12 and 20 years' imprisonment.

12. This was probably the only trial held on the basis of the Belgian law on universal jurisdiction before it was amended in 2003.

29 13. A third Rwandan trial was held before the Brussels *Cour d'assises* in 2007. Bernard Ntuyahaga, a former major in the Rwandan armed forces (FAR), was prosecuted for the murders of ten Belgian United Nations peacekeepers and the Rwandan Prime Minister, as well as of an "indeterminate number" of Rwandans on the same occasion. On 5 July 2007, Mr. Ntuyahaga was sentenced to 20 years' imprisonment.

14. Unlike the other two Rwandan trials — if we can call them that — some of Mr. Ntuyahaga's victims were Belgian. Two titles of jurisdiction were used here: universal jurisdiction and passive personal jurisdiction.

15. On 11 April 2000, still relying on its universal jurisdiction, Belgium issued an international arrest warrant for the Congolese Foreign Minister, Yerodia Ndombasi, for crimes against humanity.

The International Court of Justice, which was subsequently seised by the Democratic Republic of the Congo, found that Ministers for Foreign Affairs enjoy full immunity and inviolability[20].

16. Belgium learned lessons from the Judgment handed down by the International Court of Justice. When complaints were filed against Ariel Sharon, the former Israeli Prime Minister, and Amos Yaron for genocide, crimes against humanity and violation of the Geneva Conventions for the massacres in the Sabra and Shatila refugee camps in Beirut in 1982, the Belgian courts had to comply with the requirements of the International Court of Justice. And we know what happened next.

17. In 2002, two complaints were lodged against the Total company for acts which occurred in Burma. The first was filed in France and resulted in a settlement[21], while the second was filed in Belgium.

---

[20] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002,* p. 3.

[21] Article by Pascal Ceaux and Jacques Follorou, *Le Monde*, 30 November 2005.

18. This second complaint came from four Burmese refugees who, relying on the law of universal jurisdiction, accused Total of complicity in crimes against humanity. According to their account, Total had provided logistical and financial support for the Burmese military junta, which
30 protected its gas pipeline and was responsible for torture, murder, arbitrary arrests, forced displacements of populations and forced labour.

19. Shortly after the complaint was filed, the Law of 2003 repealed the Law of 1993, but made it possible, under Article 29, for the action to continue if at least one of the complainants had Belgian nationality when the complaint was filed. In fact, in that particular case, the complainants did not have Belgian nationality, although one of them had political refugee status in Belgium.

20. Any discrimination in access to courts is an infringement of the Belgian Constitution and violates Article 16 of the 1951 Geneva Convention Relating to the Status of Refugees.

21. When the issue was brought before the Court of Cassation, it sought a preliminary ruling from the Court of Arbitration, which on 13 April 2005 declared that Article 29 of the Law of 2003 was unconstitutional. In a decision of 29 June 2005, the Court of Cassation disregarded that opinion and, on the basis of Article 29, ruled that the Belgian courts must decline jurisdiction.

22. I could have continued to provide further details on this point, but I will simply add that, when seised by the complainants, the Court of Arbitration annulled Article 29 altogether in a decision of 21 June 2006.

23. Faced with these contradictory judgments, the Public Prosecutor, under directions from the Minister of Justice, requested the Court of Cassation to revoke its decision. This application was necessary in so far as the Court of Arbitration's annulment of Article 29 did not affect the courts' declining of jurisdiction.

24. Only the Court of Cassation may withdraw a decision, by revoking it.

25. On 28 March 2007, the Court dismissed the application on the grounds that it could not order the revocation unless it was more favourable to the defendant, in that particular case the Total company.

26. In April 2007, the Minister of Justice once again used his power of injunction and the Total case was brought before the *Chambre des mises en accusation* (Indictment Division). Total claimed that the Court of Cassation's first decision had the force of *res judicata*; the applicants

refuted this, since the basis on which the decision had been made was deemed never to have existed, because the contested provision of the Law of 2003 had been annulled by the Court of Arbitration.

31

27. In a decision of 5 March 2008, the *Chambre des mises en accusation* found in Total's favour and dismissed the Minister of Justice's application, together with the questions which the complainants had submitted to the Court of Arbitration for a preliminary ruling.

28. On 18 March 2008, the Burmese applicants filed an appeal before the Court of Cassation against the decision of 5 March 2008; the Court of Cassation dismissed that appeal on 29 October 2008.

29. To date, following the Court of Arbitration's judgment of 13 April 2005, no amendment has been made to the Belgian Constitution, as far as we know, to bring Article 29 of the Law of 2003 into line with the provisions of the Constitution and thus allow equal access to the Belgian courts.

30. The Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 urges the Contracting Parties to punish the crime of genocide (Art. 1) and requires them to enact the necessary legislation (Art. 5). Under Article 6, a competent tribunal of the State in the territory of which the act was committed or an international penal tribunal has jurisdiction.

31. On page 95 *et seq.* of its Memorial, Belgium refers to the need to punish crimes against humanity, war crimes and crimes of genocide, but it certainly did not allow the Burmese to benefit from the provisions of that Convention, nor has it provided any evidence of prosecution or extradition, despite Judge Greenwood's request to do so.

32. In Senegal's opinion, in the light of the arguments I have just presented, Belgium's arguments do not establish any violation by Senegal of the provisions of the Convention against Torture.

The PRESIDENT: Mr. Thiam, I should be very grateful if you would provide the Court with copies of the various decisions of the Belgian courts and the judgments of the Court of Arbitration which you have mentioned in this section of your argument. Thank you. You may continue.

32 Mr. THIAM: Thank you, Mr. President.

This gives me the opportunity to reply to the first part of the question from Judge Cançado Trindade, which reads:

"1. *As to the facts* which lie at the historical origins of this case, taking into account the alleged or eventual projected costs of the trial of Mr. Habré in Senegal, what in your view would be the probatory value of the Report of the National Commission of Inquiry of the Chadian Ministry of Justice?"

Reply

33. As the Co-Agent, Mr. Dive, noted in his presentation of 19 March 2012, the arguments developed in regard to freedom of proof in criminal matters and the unfettered discretion of the trial judge in assessing evidence, which is discussed *inter partes* at the public hearing, are also valid in Senegal.

34. It should merely be pointed out that, with regard to the rules in force in Senegal, the "Report of the National Commission of Inquiry of the Chadian Ministry of Justice" can only be used for information purposes and is not binding on the investigating judge who, in the course of his investigations conducted by means of an international letter rogatory, may endorse or disregard it.

35. Nor is this report binding on the trial judge dealing with the merits of the dispute. The value of the report is therefore entirely relative.

Concerning the second part of the question from Judge Cançado Trindade, which reads:

"2. As to the law:

(a) Pursuant to Article 7 (1) of the United Nations Convention against Torture, how is the obligation to 'submit the case to its competent authorities for the purpose of prosecution' to be interpreted? In your view, are the steps that Senegal alleges to have taken to date, sufficient to fulfil the obligation under Article 7 (1) of the United Nations Convention against Torture?

33 *(b)* According to Article 6 (2) of the United Nations Convention against Torture, a State Party wherein a person alleged to have committed an offence (pursuant to Article 4) is present, 'shall immediately make a preliminary inquiry into the facts'. How is this obligation to be

interpreted? In your view, are the steps that Senegal alleges to have taken to date, sufficient to fulfil its obligation under this provision of the United Nations Convention against Torture?"

Reply

36. It should be recalled that, even before it acceded to the Convention against Torture, Senegal had endeavoured to punish acts of torture causing serious harm to the dignity of the human person. It had thus established its jurisdiction in relation to the provisions of Article 5, paragraph 3, of the Convention, which provides: "This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law." It was on this basis that Mr. Hissène Habré was indicted by the senior investigating judge in 2000 when the competent Senegalese authorities had been seised with complaints.

37. It was also on the basis of Article 7, paragraph 3, of the Convention against Torture, which provides that "Any person regarding whom proceedings are brought in connection with any of the offences referred to in Article 4 [of the Convention] shall be guaranteed fair treatment at all stages of the proceedings", that Mr. Hissène Habré was able to avail himself of the means of redress made available by Senegalese law to any individual implicated in proceedings before criminal courts, without distinction of nationality, on the same basis as the civil parties.

38. It should be noted that, further to the judgment of 20 March 2001, in which the Court of Cassation upheld the judgment of the *Chambre d'accusation* of the Court of Appeal — judgment No. 135 of 4 July 2000 (contained in the judges' folder), which had removed the case from the investigating judge — and following the mission to Senegal undertaken by the Committee against Torture from 4 to 7 August 2009, Senegal adapted its legislation to the other provisions of the Convention against Torture (items 3 and 10 in the judges' folder).

34 39. In criminal proceedings, the investigating judge may be seised either by a complaint with civil-party application or by an application from the Public Prosecutor to open an investigation.

40. The preliminary inquiry is aimed simply at enabling the basic facts to be established; it does not necessarily lead to prosecution, since the prosecutor may, in the light of the results, consider that there are no grounds for further proceedings.

41. Moreover, the United Nations Convention against Torture does not contain a "general obligation to combat impunity" in the sense of a legal obligation [whether in terms of a general obligation of result or a general obligation of conduct] having the effect of requiring universal jurisdiction to be established. The hypothesis of an obligation of result is obviously out of the question, since the fight against impunity is a process having prosecution or extradition as possible aims under the said Convention. What would be the purpose of establishing universal jurisdiction, as provided for in Article 5, paragraph 2, in the case of a State which already has a legal entitlement to exercise territorial jurisdiction, which, furthermore, is the most obvious principle in cases of competing jurisdiction, as we saw earlier?

42. In 2009, Senegal established its jurisdiction to deal with offences covered by the Convention against Torture. This is not disputed by Belgium. This precondition has been duly fulfilled by Senegal.

Belgium and Senegal, as Parties to the Convention against Torture, appear to differ on the "time frame within which the obligations provided for in Article 7 must be fulfilled or [on the] circumstances (financial, legal or other difficulties)" (*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, para. 48). And Article 7, paragraph 1, of the 1984 Convention against Torture requires Senegal "in the territory under whose jurisdiction a person alleged to have committed [acts of torture] is found . . . if it does not extradite him, [to] submit the case to its competent authorities for the purpose of prosecution". The *aut dedere aut judicare* obligation remains nonetheless an obligation either to extradite or, in the alternative, to prosecute, as international law does not appear to "give priority to either alternative course of action"[22]. "The physical presence of the alleged offender provides a sufficient basis for the exercise of jurisdiction by the custodial State."[23]

35

The obligation to try, on account of which Senegal has been brought before the Court, cannot be conceived as an obligation of result[24]. I could perhaps, very rapidly, give a short definition contained in the work by Jean Combacau and Serge Sur, which states that:

---

[22]Draft Code of Crimes against the Peace and Security of Mankind, with commentaries, Art. 9, p. 31, para. 6.

[23]*Ibid.*, Art. 9, p. 32, para. 7.

[24]*Droit international public*, ed. Montchrestien, p. 545.

> "Obligations of means or behaviour are those requiring the person liable thereto to take such measures as may be expected, within the limits of reasonable likelihood, to produce a certain result; and obligations of result are those which, subject to practical possibilities, require him to achieve the result in any event."[25] *[Translation by the Registry.]*

The obligation concerned in this case is more in the way of one of means, where "the requirement of wrongfulness is fulfilled only if the State to which the source of the obligation is attributable has not deployed all the means or endeavours that could legitimately be expected of it in order to achieve the results expected by the authors of the rule" *[translation by the Registry]*. As was observed by Judge *ad hoc* Serge Sur:

> "The steps taken by Senegal in amending its constitution and legislation to establish its jurisdiction to conduct such a trial are concrete, have been taken without undue delay and give proof of its [commitment]: it is clear to see what it has done, and continues to do . . . to hold the trial."[26]

In fact, it is a matter of established precedent that international law does not impose obligations of result on member States. Indeed, the Arbitral Tribunal, in the *Islamic Republic of Iran* v. *United States of America* case, held that: "Unless otherwise agreed by treaty, general international law permits a state to choose the means by which it implements its international obligations within its domestic jurisdiction." This solution has been adopted by the international courts and, in particular, in the *Prosecutor* v. *Blaskic* judgment by the International Criminal Tribunal for the former Yugoslavia.

It may be noted that the decisions rendered by international courts are mirrored in the approach taken at the subregional level. Thus, in the *Colozza* case, the European Court of Human
36 Rights held that the Contracting States enjoy a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with conventional requirements, including the one laid down in Article 6, paragraph 1, of the European Convention on Human Rights.

43. In the light of the foregoing, the measures taken by Senegal are largely sufficient and satisfy the obligations laid down by Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention against Torture. The obligation to extradite or try, as set forth in the United Nations

---

[25] *Ibid.*, p. 546.

[26] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order to 28 May 2009, I.C.J. Reports 2009*; see separate opinion of Judge *ad hoc* Serge Sur attached to the Order, p. 6.

Convention against Torture, which is central to the legal debate, is a way of expressing the obligation to combat impunity. In the case between Senegal and the Kingdom of Belgium, it should be pointed out that, once Senegal undertook major reforms to allow the trial to be held, including constitutional reforms, it may be considered to have satisfied its obligation of means or of "best efforts", so as not to give the appearance of a State heedless and not desirous of implementing its conventional obligations. It may not have done this to a sufficient extent, but it has made sufficient progress in terms of acting to achieve such a result.

Regarding the questions put by Judge Keith and Judge Donoghue, the State of Senegal would like to submit replies in writing, if the Court has no objection. The nature of the *aut dedere aut judicare* obligation, to which Judge Xue refers, has been taken into account in the replies given to Judge Cançado Trindade. Only the absolute nature of the rule will be dealt with in more detail in the written communication that Senegal intends to transmit to the Court.

I should like to thank you for your attention and, in particular, for your indulgence in listening to and following my statement. Thank you.

I said at the beginning that my statement would consist of two parts. The first was to be devoted to providing replies to the questions put by judges at the sitting of 16 March. I should now like, with your permission, Mr. President and Members of the Court, to read out our final submissions.

FINAL SUBMISSIONS

1. Mr. President, Members of the Court, in the light of all the arguments and reasons
37 contained in its Counter-Memorial, in its oral pleadings and in the replies to the questions put to it by judges, whereby Senegal has declared and sought to demonstrate that, in the present case, it has duly fulfilled its international commitments and has not committed any internationally wrongful act, I would ask the Court, on behalf of my country, to find in its favour on the following submissions and to adjudge and declare that:

(1) Principally, it cannot adjudicate on the merits of the Application filed by the Kingdom of Belgium because it lacks jurisdiction as a result of the absence of a dispute between Belgium and Senegal, and the inadmissibility of that Application;

(2) In the alternative, should it find that it has jurisdiction and that Belgium's Application is admissible, that Senegal has not breached any of the provisions of the 1984 Convention against Torture, in particular those prescribing the obligation to "try or extradite" (Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention), or, more generally, any other rule of conventional law, general international law or customary international law in this area;

(3) In taking the various measures that have been described, Senegal is fulfilling its commitments as a State Party to the 1984 Convention against Torture;

(4) In taking the appropriate measures and steps to prepare for the trial of Mr. H. Habré, Senegal is complying with the declaration by which it made a commitment before the Court.

(5) It consequently rejects all the requests set forth in the Application of the Kingdom of Belgium.

2. Those are our final submissions. Mr. President, Members of the Court, these submissions bring to a close Senegal's second round of oral argument.

3. Let me take the opportunity, at this solemn moment, to thank all the Members of the Court for the attention, patience and, indeed, indulgence that they have reserved for the contributions and pleadings of our delegation in the course of the hearings.

38 4. We also thank the Registrar and all his staff for the excellence of their work, which has ensured that the proceedings before the Court have run very smoothly, not to mention the invaluable contributions of the interpreters and translators, without whom our voices would not have been heard.

5. Lastly, Mr. President, Members of the Court, it is my pleasure to thank the delegation of the Kingdom of Belgium, its Agent and Co-Agent and all its members, for the friendly relations they have maintained with the Senegalese delegation throughout the proceedings brought before your distinguished Court. Thank you.

The PRESIDENT: Thank you, Mr. Thiam. The Court takes note of the final submissions which you have just read out on behalf of the Republic of Senegal, as it took note, on Monday, of the final submissions of the Kingdom of Belgium.

I would remind you that the Parties are invited either to supplement in writing the replies already given to the judges' questions, or to submit written replies to questions that have not yet

been answered, by 6 p.m. on 28 March at the latest. I would add that any comments that one of the Parties may wish to make on the responses of the other Party should be submitted by 6 p.m. on 4 April at the latest.

That brings us to the end of this set of hearings devoted to the oral arguments of the Parties. I should like to thank the Agents, counsel and Advocates of both Parties for the assistance they have provided to the Court through their oral statements and for the courtesy which they have shown throughout these proceedings. I would ask that the Agents remain at the Court's disposal to provide any further information that the Court may require.

The Could will now retire for deliberation. The Parties will be advised by the Registrar of the date on which the Court will deliver its judgment at a public sitting in the Peace Palace.

The sitting is closed.

The Court rose at 12.10 p.m.

_____