



**Oasis International School Model United Nations**

International Court of Justice

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Guiding Package - Guide de Recherche

Case: The obligation to prosecute or extradite (Belgium vs. Senegal)

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## TABLE OF CONTENTS

<b>I.</b>	Introduction to the case .....	2
<b>II.</b>	History of the case .....	2
	- Parties Involved .....	2
	- Factual Background/Statement of facts .....	4
	- History of proceedings .....	4
<b>III.</b>	Key terms .....	5
<b>IV.</b>	Statement of Law .....	5
<b>V.</b>	Statement of jurisdiction .....	5
<b>VI.</b>	Additional Information .....	6
<b>VII.</b>	Useful Links .....	6
<b>VIII.</b>	Bibliography .....	7

## **I. Introduction to the case**

Hissèn Habré -a current resident in Senegal- was the former President of the Republic of Chad during the period of 1982 to 1990. During his 8-year rule, M. Habré is accused of allegedly having committed war crimes and crimes against humanity. Arrests of actual or presumed political opponents, detentions without trial, mistreatment, torture, and extrajudicial executions fall among the serious violations of humanitarian law and human rights committed during his mandated. M. Habré was overthrown on the 1<sup>st</sup> of December 1990, which was followed by his request for political asylum in Senegal, which he was granted. He's been living in Dakar, Senegal ever since.

From the 25<sup>th</sup> of January 2000 onwards, several proceedings were instituted before Senegalese and Belgians courts and before the UN Committee Against Torture concerning the crimes alleged to have been committed during Habré's presidency.

Belgium has made several claims to have Senegal prosecute Habré or extradite him to Belgium for prosecution, however no legal action on their part was carried out.

On the 19<sup>th</sup> of February 2009, Belgium has filed an application instituting proceedings against Senegal before the International Court of Justice alleging that Senegal has breached its international obligations by failing to prosecute or extradite Hissen Habré.

## **II. History of the case**

### **- Parties involved:**

- Kingdom of Belgium:

According to Belgium, Senegal's failure to prosecute Habré "violates the general obligation to punish crimes against international humanitarian law"<sup>1</sup>.

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<sup>1</sup> Application instituting proceedings filed in the Registry of the Court on 19 February 2009, page 13.

Moreover, under the 1984 UN Convention against Torture and the 1984 Other Cruel, Inhumane or Degrading Treatment or Punishment Senegal was under obligation to “either prosecute alleged perpetrators or extradite them to another country with jurisdiction for prosecution”<sup>2</sup> which it failed to oblige.

Belgium has filed its application on the behalf of the Chadian citizens and the Belgian citizens with Chadian origins.

- Republic of Senegal:

Senegal on the other hand has asserted that it had taken numerous steps to facilitate the prosecution of Habré, like changes in its domestic laws to implement the Convention Against Torture (CAT) in 2007-2008, and referring the matter to the African Union (AU). The AU Assembly issued a decision in 2006 for Senegal to prosecute Habré, however Senegal claimed that it lacked financial resources requesting international financial assistance (which was provided).

Moreover, Senegal claimed that it was hindered in the prosecution of Habré because of the Economic Community of West African States (ECOWAS)’s decision that precludes it from prosecuting Habré in its domestic courts by the concept of *Ex Post Facto*<sup>3</sup> laws.

- Chad

(Did not interfere in the case however the persons that made the original claims against Habré were Chadian citizens or from Chadian origins. Moreover Chad has been supportive of the efforts made to bring Habré to justice. They waved his immunity in 2002 to allow him to be prosecuted in front of the Belgian court.

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<sup>2</sup> Application instituting proceedings filed in the Registry of the Court on 19 February 2009, page 13.

<sup>3</sup> Refer to III. Key Terms

- **Factual Background/Statement of facts:**

- The first complaint against Habré was issued in January 2000, but proceedings were annulled since the case concerned crimes committed outside Senegalese territory by foreign nationals against other foreign nationals.
- On the 19<sup>th</sup> September 2005, an international arrest warrant for Habré was issued, and on the 22<sup>nd</sup> Belgium requested Habré's extradition. However on the 25<sup>th</sup> November the Dakar Court decided that Habré enjoyed jurisdictional immunity and would not extradite him.
- Belgian authorities lead a 4-year investigation into the victim's' allegations and continued to attempt to bring Habré to justice.
- In July 2006 the AU decided that Senegal should prosecute Habré.
- In 2007-2008 Senegal had adapted its legislation in order to establish jurisdiction for the crimes under the Convention against Torture.
- In 2009, the ECOWAS claimed that proceedings against Habré by Senegal would violate the *Ex Post Facto* laws.

- **History of proceedings:**

- On the 19<sup>th</sup> of February 2009, Belgium filed an application before the ICJ requesting it to declare that Senegal is under obligation to prosecute Habré or to extradite him to Belgium. Breaching the UN Convention against Torture and customary law.
- Belgium also requested on the same date to have the Senegalese judicial authorities to keep Habré under their control and surveillance.
- The ICJ delivered its verdict on the 20<sup>th</sup> of July 2012.

### **III. Key Terms**

- Extradite: To hand over a person accused of a crime to the jurisdiction of a foreign state.
- Ex Post Facto: It refers to laws adopted after an act is committed making it illegal, although it was legal when done, or it increases the penalty of the crime after it was committed.<sup>4</sup>
- Erga Omnes Partes: It's a legal term in International Law, describing obligations owed by states towards the community of states as a whole. Consequently, any state has the right (or even obligation) to complain of a breach.
- Customary International Law: It refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties.

### **IV. Statement of laws**

- Article 5 (2), Article 6 (2) , and Article 7 (1) of the 1984 UN Convention against Torture.
- 1984 Other Cruel, Inhumane or Degrading Treatment or Punishment Senegal.

### **V. Statement of jurisdiction**

- Article 30 (paragraph 1) of the Convention against Torture
- Article 36 (paragraph 2) of the Statute of the Court on the declarations made by the parties: Belgium on 17 June 1958 and Senegal on the 2 December 1985.

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<sup>4</sup> *The Legal Dictionary by Farlex.* <http://legal-dictionary.thefreedictionary.com/ex+post+facto>

## VI. Additional Information

- Prosecution: “is an international obligation under the Convention, the violation of which is a wrongful act engaging the responsibility of the State”<sup>5</sup>
- On the other hand, Extradition: “is an option offered to the State by the Convention” to “relieve itself of its obligation to prosecute by acceding to an extradition request”<sup>3</sup>

## VII. Useful Links:

- *International Court of Justice* <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=144&code=bs&p3=0>
- *International Court of Justice* <http://www.icj-cij.org/docket/files/144/17086.pdf>
- *Oxford Public International law (OPIL)* <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2129>
- *American Society of International Law.* <https://www.asil.org/insights/volume/16/issue/29/belgium-v-senegal-international-court-justice-affirms-obligation>.
- *International Crimes Data Base.* <http://www.internationalcrimesdatabase.org/Case/750/Belgium-v-Senegal/>
- *Human Rights Watch.* <https://www.hrw.org/news/2012/03/29/habre-case-qa-belgium-v-senegal#1>.

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<sup>5</sup> *Oxford Public International law (OPIL)* <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2129>

## VIII. Bibliography:

- *International Court of Justice* <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=144&code=bs&p3=0>
- *International Court of Justice* <http://www.icj-cij.org/docket/files/144/17086.pdf>
- *Oxford Public International law (OPIL)* <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2129>
- *American Society of International Law.* <https://www.asil.org/insights/volume/16/issue/29/belgium-v-senegal-international-court-justice-affirms-obligation>.
- *International Crimes Data Base.* <http://www.internationalcrimesdatabase.org/Case/750/Belgium-v-Senegal/>
- *Human Rights Watch.* <https://www.hrw.org/news/2012/03/29/habre-case-qa-belgium-v-senegal#1>.
- *The New International Law Word press* <https://thenewinternationallaw.wordpress.com/2012/07/27/questions-relating-to-the-obligation-to-prosecute-or-extradite-belgium-v-senegal-a-brief-commentary/>
- *EJI TALK.* <http://www.ejiltalk.org/belgium-v-senegal-did-the-court-end-the-dispute-between-the-parties/>
- *The Hague Justice Portal* <http://www.haguejusticeportal.net/index.php?id=10167>
- *Berlin International Model United Nations* <http://www.berlinmun.de/conference-2013/international-court-of-justice-icj-2013/>