Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)

On 17 October 2000, the Democratic Republic of the Congo (DRC) filed an Application instituting proceedings against Belgium concerning a dispute over an international arrest warrant issued on 11 April 2000 by a Belgian examining judge against the acting Congolese Minister for Foreign Affairs, Mr. Abdoulaye Yerodia Ndombasi, seeking his detention and subsequent extradition to Belgium for alleged crimes constituting “grave violations of international humanitarian law”. The arrest warrant was transmitted to all States, including the DRC, which received it on 12 July 2000.

The DRC also filed a request for the indication of a provisional measure seeking “an order for the immediate discharge of the disputed arrest warrant”. Belgium, for its part, called for that request to be rejected and for the case to be removed from the List. In its Order made on 8 December 2000, the Court, rejecting Belgium’s request for the case to be removed from the List, stated that “the circumstances, as they [then] presented themselves to the Court, [were] not such as to require the exercise of its power, under Article 41 of the Statute, to indicate provisional measures”.

The Memorial of the DRC was filed within the prescribed time-limits. For its part, Belgium filed, within the prescribed time-limits, a Counter-Memorial addressing both issues of jurisdiction and admissibility and the merits.

In its submissions presented at the public hearings, the DRC requested the Court to adjudge and declare that Belgium had violated the rule of customary international law concerning the inviolability and immunity from criminal process of incumbent foreign ministers and that it should be required to recall and cancel that arrest warrant and provide reparation for the moral injury to the DRC. Belgium raised objections relating to jurisdiction, mootness and admissibility.

In its Judgment of 14 February 2002, the Court rejected the objections raised by Belgium and declared that it had jurisdiction to entertain the application of the DRC. With respect to the merits, the Court observed that, in the case, it was only questions of immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that it had to consider, on the basis, moreover, of customary international law.

The Court then observed that, in customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. The Court held that the functions exercised by a Minister for Foreign Affairs were such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoyed full immunity from criminal jurisdiction and inviolability. Inasmuch as the purpose of that immunity and inviolability was to prevent another State from hindering the Minister in the performance of his or her duties, no

distinction could be drawn between acts performed by the latter in an “official” capacity and those claimed to have been performed in a “private capacity” or, for that matter, between acts performed before assuming office as Minister for Foreign Affairs and acts committed during the period of office. The Court then observed that, contrary to Belgium’s arguments, it had been unable to deduce from its examination of State practice that there existed under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs when they were suspected of having committed war crimes or crimes against humanity.

The Court further observed that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities. The immunities under customary international law, including those of Ministers for Foreign Affairs, remained opposable before the courts of a foreign State, even where those courts exercised an extended criminal jurisdiction on the basis of various international conventions on the prevention and punishment of certain serious crimes.

However, the Court emphasized that the immunity from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs did not mean that they enjoyed impunity in respect of any crimes they might have committed, irrespective of their gravity. While jurisdictional immunity was procedural in nature, criminal responsibility was a question of substantive law. Jurisdictional immunity might well bar prosecution for a certain period or for certain offences ; it could not exonerate the person to whom it applied from all criminal responsibility. The Court then spelled out the circumstances in which the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs did not represent a bar to criminal prosecution.

After examining the terms of the arrest warrant of 11 April 2000, the Court noted that the issuance, as such, of the disputed arrest warrant represented an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs, on charges of war crimes and crimes against humanity. It found that, given the nature and purpose of the warrant, its mere issuance constituted a violation of an obligation of Belgium towards the DRC, in that it had failed to respect the immunity which Mr. Yerodia enjoyed as incumbent Minister for Foreign Affairs. The Court also declared that the international circulation of the disputed arrest warrant from June 2000 by the Belgian authorities constituted a violation of an obligation of Belgium towards the DRC, in that it had failed to respect the immunity of the incumbent Minister for Foreign Affairs. Finally, the Court considered that its findings constituted a form of satisfaction which would make good the moral injury complained of by the DRC. However, the Court also held that, in order to re-establish “the situation which would, in all probability have existed if [the illegal act] had not been committed”, Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it had been circulated.