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Rechtsgebied: Straf

Soort procedure: Eerste aanleg - meervoudig

Inhoudsindicatie: Also see BC7362. Request of the International Criminal Tribunal of Rwanda (ICTR) to surrender Rwandan who is suspected of having committed the following criminal offenses pursuant to the Statute: conspiracy to commit genocide; genocide; complicity in genocide; killing and causing violence to health and physical or mental well-being as serious violations of article 3 common to the Geneva Conventions of 1949 and Additional Protocol II of 1977. The court declares the surrender of the aforementioned the person claimed to the ICTR, admissible such for the purpose of prosecution with regard to the offenses for which his surrender has been requested.

Uitspraak

COURT OF THE HAGUE
CRIMINAL LAW SECTION

SURRENDER CHAMBER
(SENTENCE)

reference: UTL-I-2007.036.808
in camera number 08/15

The Hague, March 21, 2008

The court of The Hague, surrender chamber, submits the following decision on a request of the International Criminal Tribunal of Rwanda (hereinafter to be referred to under 1) to surrender:

[person claimed],
born on [date], 1945 in [place] (Rwanda),
presently detained in Penitentiary Institution Haaglanden, location Zoetermeer,

hereinafter to be referred to as the person claimed.

1. Abbreviations to be used.

ICTR: the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of the international humanitarian rights, committed in the territory of Rwanda or neighbouring countries of Rwanda on points of time between January 1, 1994 and

December 31, 1994, instituted by resolution 955 of the Security Council of the United Nations dated November 8, 1994.

Registrar: the Registrar of the ICTR.

ICTR Implementation Act: the Law of December 18, 1997, Bulletin of Acts and Decrees 754, containing stipulations related to the establishment of the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of the international humanitarian law, committed in the territory of Rwanda as well as of Rwandan civilians responsible for genocide and other such violations, committed in the territory of neighbouring countries, between January 1, 1994 and December 31, 1994.

Yugoslavia Tribunal (ICTY) Implementation Act: the Law of April 21, 1994, Bulletin of Acts and Decrees 308, containing stipulations related to the establishment of the International Tribunal for the prosecution of persons responsible for serious violations of the international humanitarian law, committed in the territory of the former Yugoslavia since 1991.

Statute: the Statute of the ICTR, included in the attachment to resolution 955 of the Security Council of the United Nations dated November 8, 1994.

Rules: Rules of Procedure and Evidence of the ICTR.

2. The request for surrender

By fax message of August 17, 2007, the Registrar requested the minister of justice of the Netherlands to surrender the aforementioned claimed person for the purpose of prosecution.

3. The submitted documents.

I. a fax message from the minister of justice to the district public prosecutor's office The Hague dated August 17, 2007; attached is:

1. the decision of the Trial Chamber of the ICTR in the English language, called 'Decision on Prosecutor's Extremely Urgent Motion for Revocation of the Referral to the Kingdom of the Netherlands Pursuant to Rule 11bis (F) & (G)', dated August 17, 2007;

II. a letter from the minister of justice to the district public prosecutor's office The Hague dated August 27, 2007; attached are:

a. a certified copy of the decision of the Trial Chamber of the ICTR in the English language, stipulating that, at the request of the Dutch public prosecutor, the prosecution of the person claimed should be reversed by the ICTR, called 'Decision on Prosecutor's Extremely Urgent Motion for Revocation of the Referral to the Kingdom of the Netherlands Pursuant to Rule 11bis (F) & (G)', dated August 17, 2007;

b. a certified copy of an arrest warrant issued in the English and French languages by the Trial Chamber of the ICTR related to the person claimed, named 'Warrant of Arrest and Order for Transfer and Detention', dated August 17, 2007;

c. a certified copy in the English and French languages of the amended indictment with regard to the person claimed, dated December 1, 2006;

d. a certified copy in the English and French languages of article 20 of the Statute and of articles 42 and 43 of the Rules;

e. a form to confirm receipt to be signed by the person claimed;

III. a letter from the minister of justice to the district public prosecutor's office The Hague dated September 4, 2007, received on September 5, 2007; attached are:

1. an epistle of the First Secretary Political and Culture of the Embassy in Dar es Salaam, Tanzania, to the ministry of foreign affairs dated August 23, 2007; attached is:

a. a letter from the Assistant Secretary-General Registrar of the ICTR to the Ambassador of the Kingdom of the Netherlands in Tanzania dated August 20, 2007 concerning the transmission of a 'Warrant of Arrest and Order for Transfer and Detention' with regard to [the person claimed], Case no. ICTR-2005-86-11bis and the 'Decision on Prosecutor's Extremely Urgent Request for Revocation of the Referral to the Kingdom of the Netherlands Pursuant to Rule 11bis (F) & (G)'; attached to this are the documents mentioned under II.a through II.e in duplicate;

IV. a letter from the public prosecutor in The Hague to the president of the three-judge criminal section of the court of The Hague, dated March 5, 2008, received March 6, 2008; attached is:

1. a note in the English language from the Registrar to the Dutch public prosecutor, entitled 'Note to the attention of the Dutch Public Prosecutor with reference to [person claimed] safety concerns in view of his impending transfer to Arusha', dated February 28, 2008; attached are:

a. 'Registrar's Submissions Under Rule 33(B) Of The Rules On Prosecutor's Extremely Urgent Motion And Public Defence Response For Revocation Of The Referral Order Pursuant To Rule 11bis (F) & (G)', dated August 15, 2007;

b. 'Registrar's Further Submissions Under Rule 33(B) Of The Rules On Prosecutor's Extremely Urgent Motion And Public Defence Response For Revocation Of The Referral Order Pursuant To Rule 11bis (F) & (G)' dated August 16, 2007;

c. 'Decision on Prosecutor's Extremely Urgent Motion For Revocation Of The Referral To The Kingdom of the Netherlands Pursuant To Rule 11bis (F) & (G)', dated August 17, 2007;

d. 'Registrar's Submission Under Rule 33(B) of the Rules on 'Public Defence Application to the President of the Tribunal for Modification of Detention Conditions Pursuant Rule 64"', dated August 23, 2007;

e. 'Decision on Defence Application for Modification of Detention Conditions of the Accused', dated August 29, 2007;

V. a certified translation of the documents mentioned under II.a through II.d, III.1.a, IV.1 and IV.1.a through IV.1.e;

VI. The decision made by judge Khan, Acting President of the ICTR named 'Decision on Joint Prosecution and Defence Application for Modification of Detention Conditions of the Accused - Rules 21 and 64 of the Rules of Procedure and Evidence', dated March 6, 2008;

VII. a written demand from the public prosecutor in The Hague, dated September 11, 2007, requesting the consideration of the petition to surrender and imprison the person claimed;

VIII. an order of the acting president of the District Court The Hague to set the date and notice to the person claimed dated February 6, 2008.

4. Other documents.

During the court session of the surrender judge on March 7, 2008, the public prosecutor submitted a written summary containing her view about the admissibility of the request for surrender.

5. Description of the request.

According the amended indictment mentioned under II. under c, dated December 1, 2006, the

person claimed is suspected of having committed the following criminal offenses pursuant to the Statute:

1. Conspiracy to commit genocide (on the basis of individual criminal responsibility):

The Prosecutor charges [person claimed] with conspiracy to commit genocide, a crime stipulated in Article 2(3)(b) of the Statute, in that on or between the dates of 1 January and 17 July 1994, [person claimed] did conspire with at least 22 others to kill or cause serious bodily or mental harm to members of the Tutsi racial or ethnic group with the intent to destroy, in whole or in part, a racial or ethnic group, as such; according to the explanation to this accusation this took place in Rwanda;

2. Genocide (on the basis of both individual and superior criminal responsibility):

The Prosecutor of the ICTR charges [person claimed] with genocide, a crime stipulated in article 2(3)(b) of the Statute, in that from 1 January 1994 to 17 July 1994, throughout Rwanda, particularly in [préfecture], [person claimed] was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group, with intent to destroy, in whole or in part, a racial or ethnic group, as such;

3. Complicity in Genocide(on the basis of both individual and superior criminal responsibility):

The Prosecutor of the ICTR charges [person claimed] with complicity in genocide, a crime stipulated in article 2(3)(b) of the Statute, in that from 1 January 1994 to 17 July 1994, throughout Rwanda, particularly in [préfecture], [person claimed] was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group, with intent to destroy, in whole or in part, a racial or ethnic group, as such, or with the knowledge that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and that his assistance would contribute to the crime of genocide;

4. Killing and causing violence to health and physical or mental well-being as serious violations of article 3 common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 (on the basis of both individual and superior criminal responsibility):

The Prosecutor of the ICTR charges [person claimed] with killing and causing violence to health and physical or mental well-being as serious violations of article 3 common to the Geneva Conventions of 1949 and Additional protocol II of 1977, a crime stipulated in article 4(a) of the Statute, in that [person claimed] was responsible for killing and seriously injuring non-combatant Tutsi during the period 7 April 1994 and 17 July 1994, when there was throughout Rwanda a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Conventions of 1949, and the killing and serious injury of the victims was closely related to the hostilities or committed in conjunction with the armed conflict and the victims were persons taking no part in that conflict.

6. The examination in court.

During the court session on March 7, 2007, the President gave information about the request for surrender as well as about the contents of the aforementioned documents under 3. The person claimed appeared at the court session and was assisted by his counsel G.G.J. Knoop LL.M., and stated that he is the person mentioned in the request for surrender, that he possesses Rwandan nationality and that he objects to the requested surrender. By and on behalf of the person claimed, defence was put forward during the court session which we will further discuss below.

In the summary mentioned under 4, the public prosecutor let it be known that the requested surrender is admissible.

7. Assessment of the admissibility of the requested surrender.

7.1 The following apply to the request: The Statute, the ICTR Implementation Act and the ICTY Implementation Act.

7.2 The documents submitted by the claiming party comply with the requirements as included in article 55(B) of the Rules.

7.3 The offences to which the documents mentioned under 3 relate, are serious criminal offences of which the ICTR is competent to take knowledge pursuant to the Statute.

7.4 By or on behalf of the person claimed, no defence was put forward on the basis of which the court would have to assume that there was an impediment for the admissibility of the requested surrender while it was neither shown to the court ex officio that there is such an impediment.

7.5 The court has heard the request by counsel to consider a conditioned surrender in the framework of advice to be given by the court to the minister of justice. Counsel has requested the minister to further suggest to have the actual surrender of the person claimed, take place after a decision has been made by the President of the ICTR on the (probably still to be submitted) motion for reconsideration of the 'Decision on Joint Prosecution and Defence Application for Modification of Detention Conditions of the Accused - Rules 21 and 64 of the Rules of procedure and Evidence' dated March 6, 2008 or the (possible) decision about the application for leave to appeal with regard to the above mentioned decision of March 6, 2008 by the ICTR Trial Chamber. However, it is not certain that an application for leave to appeal will be submitted against that decision.

In order to substantiate the above, counsel argues that the person claimed will run a substantial safety risk when detained in the United Nations Detention Facility (UNDF) of the ICTR in Arusha (Tanzania), because on the expiry of the transfer, he will be exposed to the considerable risk that he will be killed by persons hostile to him.

Another possibility put forward by counsel with regard to not effecting the actual surrender to the Tribunal of the person claimed, is to accelerate the procedure at the ICTR because a third country has declared to be willing to have the person claimed serve his sentence in that third country. This would mean that the person claimed would remain to be detained in the United Nations Detention United (UNDU) in Scheveningen before and after the necessary 'hearings' at the ICTR till - depending on the decision to be made by the ICTR - he would be transferred to a third country. Moreover, counsel requests the court to attach in her advice to the minister the condition to the actual transfer that the Registrar will draw up an up-to-date safety investigation with regard to the person claimed, as already was promised by the Registrar in paragraph 21 of the note mentioned above under 3.IV.1.

7. The applicable articles of the treaty and of the law.

Besides the articles already mentioned, also the following articles apply:

- article 4 of the ICTY Implementation Act and article 2 of the ICTR Implementation Act.

Decision

The court,

declares the surrender of the aforementioned [the person claimed] to the ICTR, admissible such for the purpose of prosecution with regard to the offenses for which his surrender has been requested, as described in the documents mentioned under 3.II.a, 3.II.b and 3.II.c.

This sentence has been given by
Mr Van Rossum LL.M. president
Mrs Veldt-Foglia LL.M. and Mr Schaaf LL.M. judges
in the presence of Ms Otten LL.M. clerk of the court,
and was pronounced during the public hearing of this court on March 21, 2008.

Mrs Veldt-Foglia was unable to co-sign this sentence.