

# The Burger Court Opinion Writing Database

*Verlinden B.V. v. Central Bank of Nigeria*

461 U.S. 480 (1983)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
THE CHIEF JUSTICE

October 28, 1982

RE: No. 81-920, Verlinden B. v. Central Bank of Nigeria

MEMORANDUM TO THE CONFERENCE:

On October 11, 1982 I circulated a memo I received from the Clerk concerning the appointment of an amicus to represent the respondent in this case. The matter was listed as an agenda item at the October 15th Conference and I relisted it for Friday's Conference. I assume we want to appoint an amicus to argue for the respondent here. I'll try to muster up some names from among the Washington Bar. I have a former Clerk who was Assistant Legal Adviser at State and now with Covington and Burling. I question whether any of the "Big Guns", e.g., Griswold, et al. are anxious to work for nothing on a case like this.

OK

Regards,

Supreme Court of the United States  
Washington, D. C. 20543

OK

CHAMBERS OF  
THE CHIEF JUSTICE

October 28, 1982

RE: No. 81-920, Verlinden B. v. Central Bank of Nigeria

MEMORANDUM TO THE CONFERENCE:

It now develops that we may have a "natural" for appointment as amicus. A former Harlan Clerk, Stephen N. Shulman represented the Republic of Guinea in the CADC case which we are informed is under submission. (Republic of Guinea v. Maritime International, No. 81-1073).

Shulman has already filed an amicus brief in the above case and perhaps we can "anoint" him.

A copy of Mr. Stevas' memo is enclosed.

Regards,

WRB

To: Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: **MAY 5 1983**

Recirculated: \_\_\_\_\_

~~WLS  
9/20/83~~

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-920

VERLINDEN B. V., PETITIONER *v.* CENTRAL BANK  
OF NIGERIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to consider whether the Foreign  
Sovereign Immunities Act of 1976, by authorizing a foreign  
plaintiff to sue a foreign state in a United States District  
Court on a non-federal cause of action, violates Article III of  
the Constitution.

### I

On April 21, 1975, the Federal Republic of Nigeria and pe-  
titioner Verlinden B.V., a Dutch corporation with its princi-  
pal offices in Amsterdam, The Netherlands, entered into a  
contract providing for the purchase of 240,000 metric tons of  
cement by Nigeria. The parties agreed that the contract  
would be governed by the laws of the Netherlands and that  
disputes would be resolved by arbitration before the Interna-  
tional Chamber of Commerce, Paris, France.

The contract provided that the Nigerian government was  
to establish an irrevocable, confirmed letter of credit for the  
total purchase price through Slavenburg's Bank in Amster-  
dam. According to petitioner's amended complaint, how-  
ever, respondent Central Bank of Nigeria, an instrumentality  
of Nigeria, improperly established an unconfirmed letter  
of credit payable through Morgan Guaranty Trust Company

*John*

Change at 10.

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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Recirculated: **MAY 17 1983**  
\_\_\_\_\_

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-920

**VERLINDEN B. V., PETITIONER v. CENTRAL BANK OF NIGERIA**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether the Foreign Sovereign Immunities Act of 1976, by authorizing a foreign plaintiff to sue a foreign state in a United States District Court on a non-federal cause of action, violates Article III of the Constitution.

I

On April 21, 1975, the Federal Republic of Nigeria and petitioner Verlinden B.V., a Dutch corporation with its principal offices in Amsterdam, The Netherlands, entered into a contract providing for the purchase of 240,000 metric tons of cement by Nigeria. The parties agreed that the contract would be governed by the laws of the Netherlands and that disputes would be resolved by arbitration before the International Chamber of Commerce, Paris, France.

The contract provided that the Nigerian government was to establish an irrevocable, confirmed letter of credit for the total purchase price through Slavenburg's Bank in Amsterdam. According to petitioner's amended complaint, however, respondent Central Bank of Nigeria, an instrumentality of Nigeria, improperly established an unconfirmed letter of credit payable through Morgan Guaranty Trust Company

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To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

**STYLISTIC CHANGES**

From: **The Chief Justice**

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**MAY 18 1983**

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-920

**VERLINDEN B. V., PETITIONER v. CENTRAL BANK  
OF NIGERIA**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to consider whether the Foreign  
Sovereign Immunities Act of 1976, by authorizing a foreign  
plaintiff to sue a foreign state in a United States District  
Court on a non-federal cause of action, violates Article III of  
the Constitution.

I

On April 21, 1975, the Federal Republic of Nigeria and pe-  
titioner Verlinden B. V., a Dutch corporation with its princi-  
pal offices in Amsterdam, The Netherlands, entered into a  
contract providing for the purchase of 240,000 metric tons of  
cement by Nigeria. The parties agreed that the contract  
would be governed by the laws of the Netherlands and that  
disputes would be resolved by arbitration before the Interna-  
tional Chamber of Commerce, Paris, France.

The contract provided that the Nigerian government was  
to establish an irrevocable, confirmed letter of credit for the  
total purchase price through Slavenburg's Bank in Amster-  
dam. According to petitioner's amended complaint, how-  
ever, respondent Central Bank of Nigeria, an instrumentality  
of Nigeria, improperly established an unconfirmed letter  
of credit payable through Morgan Guaranty Trust Company

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

July 25, 1983

RE: No. 81-920, Verlinden B.V. v. Central Bank of Nigeria

MEMORANDUM TO THE CONFERENCE:

Absent dissent, I will instruct Henry Lind to add the following citation at the end of footnote 2 to this opinion, in the final version for the U.S. Reports:

See also Trendex Trading Corp. v. Central Bank of Nigeria, [1977] 1 All E.R. 881.

Trendex is an English case involving the same series of cement contracts that underlay the decision in Verlinden, and Trendex provides an interesting discussion of the British view of this dispute and the question of Nigeria's claims of sovereign immunity. The opinion was by Lord Denning, Master of the Rolls, recently retired.

Regards,

W.E.B.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 9, 1983

Re: No. 81-920

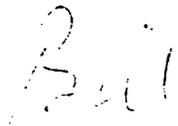
Verlinden B. V.  
v. Central Bank of Nigeria

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Dear Chief,

I agree.

Sincerely,



The Chief Justice

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 6, 1983

Re: 81-920 Verlinden v. Central Bank of Nigeria

Dear Chief Justice,

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 9, 1983

Re: No. 81-920 - Verlinden v. Central Bank  
of Nigeria

Dear Chief:

Please join me.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 16, 1983

Re: No. 81-920 - Verlinden B. v. Central Bank of Nigeria

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 7, 1983

81-920 Verlinden B.V. v. Central Bank of Nigeria

Dear Chief:

Please join me.

Sincerely,

LFP

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 10, 1983

Re: No. 81-920 Verlinden v. Central Bank of Nigeria

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 6, 1983

Re: 81-920 - Verlinden B. V. v. Central  
Bank of Nigeria

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 6, 1983

No. 81-920 Verlinden B. V. v. Central Bank of Nigeria

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference