DISSENTING OPINION OF VICE-PRESIDENT GEVORGIAN

The Court lacks prima facie jurisdiction to indicate provisional measures — Conditions under Article 30 (1) of the Convention against Torture are not met — No genuine attempt to resolve the dispute through negotiations.

1. I am unable to join the majority in indicating provisional measures in this case because I believe the Court lacks prima facie jurisdiction. Canada and the Netherlands rely on Article 30 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "CAT") as the basis for the Court's jurisdiction. Article 30 (1) provides as follows:

> "Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

2. This compromissory clause imposes several conditions on the Court's jurisdiction. First, there must be a "dispute" between the parties "concerning the interpretation or application" of the CAT. Second, the parties must have attempted, but failed, to settle the said dispute through negotiations. Third, following unsuccessful negotiations, one of the parties must have submitted the dispute to arbitration. If, and only if, the parties are unable to agree on the organization of the arbitration, one of the parties may refer the dispute to the Court.

3. It is clear from these provisions that submitting the dispute to this Court is a last resort. Accordingly, the Court must satisfy itself that all the other methods of settling the dispute as set out in Article 30 (1) have been exhausted before it exercises its jurisdiction. In the present case, I believe the Court lacks prima facie jurisdiction as I do not think that the negotiation requirement has been met.

4. The Court has already had the opportunity to interpret the negotiation requirement of Article 30 (1). In *Belgium* v. *Senegal*, the Court held that it

must "ascertain[] whether there was, 'at the very least[,] a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute'"[1]. The Court then specified that "the precondition of negotiation is met only when there has been a failure of negotiations, or when negotiations have become futile or deadlocked" such that "no reasonable probability exists that further negotiations would lead to a settlement"[2].

5. I do not believe this requirement was met in the present case. In my view, Canada and the Netherlands have not made a genuine attempt to negotiate with a view of settling the dispute, nor have they shown that there was "no reasonable probability . . . that further negotiations would lead to a settlement". In their Application, Canada and the Netherlands argued that the negotiations became deadlocked or futile after "more than two years of exchanges of Notes Verbales" and two rounds of in-person meetings. However, a closer look at the exchanges between the Parties paints a different picture.

6. While they sent their first request to negotiate in September 2020 and March 2021 respectively, the Netherlands and Canada declined to provide clarifications and specific information on the substance of their allegations to Syria until 9 August 2021[3]. The Notes Verbales the Parties exchanged thereafter did not engage in the detail of the Parties' positions. The Parties then held two in-person meetings in April and October 2022, the first of which was largely procedural[4]. The Parties thus negotiated on the substance in earnest during only one in-person meeting held on 5 October and 6 October 2022[5]. Shortly after that single substantive round of negotiations, Canada and the Netherlands decided that the negotiations were "deadlocked" and "futile" and decided to refer the dispute to arbitration[6], despite the fact that they had committed to hold meetings with Syria every three months[7]. Participating in one substantive round of negotiations and then immediately abandoning talks

---

[1] See *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 445-446, para. 57 (citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 132, para. 157).

[2] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 446, para. 57. See also *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 345.

[3] See Joint Application instituting proceedings, Vol. II, Annex 3, Note Verbale dated 18 June 2021 (p. 25); Note Verbale dated 6 July 2021 (p. 26); Note Verbale dated 29 July 2021 (pp. 27-28) and Note Verbale dated 9 August 2021 (Annexes II and III, pp. 29-50).

[4] *Ibid*., Note Verbale dated 4 May 2022 (pp. 101-102) and Note Verbale dated 19 May 2022 (pp. 103-104).

[5] *Ibid*., Note Verbale dated 17 October 2022 (pp. 135-136).

[6] *Ibid*.

[7] *Ibid*., Note Verbale dated 27 October 2022 (pp. 137-138); Note Verbale dated 7 November 2022 (pp. 139-141) and Note Verbale dated 17 November 2022 (pp. 142-143).

cannot constitute, in my view, a "genuine attempt" at settling the dispute by negotiation.

7. Moreover, there is insufficient evidence that the negotiations had become deadlocked or futile. Unlike in other cases where the Court found negotiations to be "deadlocked", Syria was responsive throughout and never refused to pursue negotiations[8]. While it still opposed Canada and the Netherlands' claims, Syria considered that the October 2022 meeting had been fruitful, expressed its willingness to continue negotiating and proposed a new round of negotiations[9]. There was thus still a reasonable possibility of settling the dispute at that point, since Syria was still willing to negotiate and provide further explanations[10]. Canada and the Netherlands denied Syria that opportunity by immediately demanding arbitration. This is no surprise: the Applicants' conduct and press releases reveal that the ultimate aim was always to bring this case to the Court. It appears that they have submitted the dispute to negotiation and arbitration solely to artificially fulfil the prerequisite of Article 30 (1) and trigger the Court's jurisdiction.

8. In sum, because I do not believe the negotiation requirement of Article 30 (1) was fulfilled, I conclude that this Court lacks prima facie jurisdiction over this dispute.

(Signed) Kirill GEVORGIAN.

---

[8] See *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 27, para. 51; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 17, para. 21.

[9] Joint Application instituting proceedings, Vol. II, Annex 3, Note Verbale dated 27 October 2022 (pp. 137-138).

[10] *Ibid.*