

DECLARATION OF JUDGE XUE

1. With much regret to depart from the majority, I would like to explain the reasons for my vote.

2. At the outset, I wish to make it clear that my vote against the Court's decision to indicate the provisional measures in this case does not mean that I have any reservations with regard to the measures indicated therein. Irrespective of the Order, the Syrian Arab Republic, as a State party to the Convention against Torture, remains bound by its obligations under the Convention to take all measures within its power to prevent and punish offences of torture or other acts of cruel, inhuman or degrading treatment or punishment in its territory, and has the obligation to preserve evidence of violations for the purpose of prosecution of alleged offenders. I voted against the Order because of my consistent position on the question of standing in such so-called *actio popularis* cases.

3. In the present case, Canada and the Netherlands do not allege any injury to their nationals, nor do they assert jurisdiction over alleged offenders who were found in the territory of Syria. There is no jurisdictional link whatsoever between the Parties but "a common interest" claimed by Canada and the Netherlands in Syria's compliance with the obligations of the Convention against Torture, which I do not think gives the two States the right to institute the current proceedings. The two States are purportedly acting on behalf of the States parties to the Convention against Torture, which is similar to *actio popularis* in certain domestic legal systems.

4. I remain unconvinced by the reasoning given in the Order (see paragraphs 50-51), even on a *prima facie* basis, for the Applicants' standing before the Court. In my individual opinions appended to the Judgments in the *Belgium v. Senegal* and *The Gambia v. Myanmar* cases, I have elaborated, to a great extent, the reasons for my position on the question of standing (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), dissenting opinion of Judge Xue, p. 571; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022 (II), dissenting opinion of Judge Xue, p. 520). I will not rehearse them but highlight a few points that I think are imperative for the maintenance of the integrity of the Court.

5. First, conferral of such standing is not consistent with the principle of consent. Notwithstanding the aspirations manifested in the object and purpose of the Convention against Torture for the protection of human rights and fundamental freedoms, the jurisdiction of the Court under Article 30, paragraph 1, of the Convention is founded on a consensual basis. There must be a genuine dispute *between the parties* for the purpose of judicial settlement. In other words, whether the States parties accepted the jurisdiction of the Court for *actio popularis* cases is not determined by the Court's interpretation of Article 30 of the Convention but by the *intention* of the States parties at the time when the Convention was negotiated and concluded. Should the jurisdiction *ratione personae* of the Court be unduly expanded, it may prompt negative reactions from the States parties by restricting or withdrawing their acceptance of the Court's jurisdiction, which is certainly not conducive to strengthening the role of the Court in the peaceful settlement of international disputes.

6. Moreover, conferral of such standing, without necessary amendments to the Statute and Rules of Court, will pose challenges to the settled jurisprudence of the Court with regard to procedure, evidence and remedies. It remains to be seen to what extent such legal actions will promote the implementation of the Convention and what effect they may produce on the existing monitoring mechanisms under the Convention.

7. Lastly, conferral of such standing will likely give a policing role to the States parties in the implementation of the Convention against Torture. In the human rights field, such a role is often questioned and criticized for the selective and biased manner in which it is performed. Instead of promoting human rights and finding solutions to disputes, to allow such legal actions in the Court would likely weaken the function of the Court as a judicial organ for dispute settlement.

(Signed) XUE Hanqin.
