

**16 NOVEMBRE 2023**

**ORDONNANCE**

**APPLICATION DE LA CONVENTION CONTRE LA TORTURE ET AUTRES  
PEINES OU TRAITEMENTS CRUELS, INHUMAINS OU DÉGRADANTS**

**(CANADA ET PAYS-BAS c. RÉPUBLIQUE ARABE SYRIENNE)**

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**APPLICATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,  
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**(CANADA AND THE NETHERLANDS v. SYRIAN ARAB REPUBLIC)**

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**ORDER**

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**INTERNATIONAL COURT OF JUSTICE**

**YEAR 2023**

**2023  
16 November  
General List  
No. 188**

**16 November 2023**

**APPLICATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,  
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**(CANADA AND THE NETHERLANDS *v.* SYRIAN ARAB REPUBLIC)**

**REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES**

**ORDER**

*Present:* *President* DONOGHUE; *Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLESWORTH, BRANT; *Registrar* GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

*Makes the following Order:*

1. On 8 June 2023, Canada and the Kingdom of the Netherlands (hereinafter “the Applicant States” or “the Applicants”) filed in the Registry of the Court an Application instituting proceedings against the Syrian Arab Republic (hereinafter “Syria”) concerning alleged violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “Convention against Torture” or the “Convention”).

2. At the end of their Application, the Applicant States

“respectfully request the Court to adjudge and declare that Syria:

- (a) has breached, and continues to breach, its obligations under the Convention against Torture, in particular those in Articles 2, 7, 10, 11, 12, 13, 14, 15, 16, and 19;
- (b) must fully accept its responsibility for those internationally wrongful acts;
- (c) must cease any such ongoing violations forthwith and comply with its obligations under the Convention against Torture;
- (d) must provide appropriate assurances and guarantees of non-repetition of violations of the Convention against Torture;
- (e) must investigate and where warranted, prosecute and punish those responsible for acts of torture, while also guaranteeing fair treatment at all stages of the proceedings for any person against whom proceedings are brought; and
- (f) must provide individual victims full reparation, including compensation and rehabilitation, for the injury they have suffered as a consequence of those internationally wrongful acts.

The applicants further respectfully request the Court to adjudge and declare that Syria has committed a serious breach of a peremptory norm of international law, due to its gross or systematic failure to fulfill its obligation under Article 2 of the Convention against Torture not to commit torture as well as to prevent its officials and other persons acting in an official capacity from perpetrating acts of torture, and determine the legal consequences thereof.”

3. In their Application, the Applicant States seek to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 30, paragraph 1, of the Convention against Torture.

4. Together with the Application, the Applicant States submitted a Request for the indication of provisional measures with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of their Request, the Applicant States asked the Court to indicate the following provisional measures:

- “(a) Syria shall immediately take effective measures to cease and prevent all acts that amount to or contribute to torture and other cruel, inhuman or degrading treatment or punishment;

- (b) In light of the greatly enhanced risk for detainees of being subjected to torture and other cruel, inhuman or degrading treatment or punishment, Syria shall immediately:
- (i) cease arbitrary detention, and release all persons who are arbitrarily or unlawfully detained;
  - (ii) cease all forms of incommunicado detention;
  - (iii) allow access to all of its official and unofficial places of detention by independent monitoring mechanisms and medical personnel, and allow contact and visitations between detainees and their families and legal counsel; and
  - (iv) take urgent measures to improve the conditions of all of its official and unofficial detention facilities to ensure all detainees are treated with humanity and with respect for the inherent dignity of the human person in accordance with international standards;
- (c) Syria shall not destroy or render inaccessible any evidence related to the Application, including, without limitation, by destroying or rendering inaccessible medical or other records of injuries sustained as a result of torture or other cruel, inhuman or degrading treatment or punishment or the remains of any person who was a victim of torture or other cruel, inhuman or degrading treatment or punishment;
- (d) Syria shall safeguard any information concerning the cause of death of any detainee who died while in detention or while hospitalised, including forensic examination of the human remains and places of burial, as well as afford the next of kin of any person who died as a result of torture or other cruel, inhuman or degrading treatment or punishment, following arrest, hospitalisation or detention with a death certificate, stating the true cause of death;
- (e) Syria shall disclose the location of the burial sites of persons who died as a result of torture or other cruel, inhuman or degrading treatment or punishment following arrest, hospitalisation or detention, to the next of kin;
- (f) Syria shall not take any action, and shall ensure that no action is taken, which may aggravate or extend the existing dispute that is the subject of the Application, or render it more difficult to resolve; and
- (g) Syria shall provide a report to the Court on all measures taken to give effect to its Order for provisional measures, beginning no later than six months from its issuance and every six months thereafter pending the resolution of the dispute.”

6. The Registrar immediately communicated to the Government of Syria the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request for the indication of provisional measures.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures by a letter dated 13 June 2023.

8. By a letter dated 8 June 2023 accompanying the Application, Canada informed the Court of the appointment of Mr Alan H. Kessel, Assistant Deputy Minister and Legal Adviser at Global Affairs Canada, as Agent for the purposes of the case. By a letter dated 2 November 2023, Canada subsequently informed the Court of the appointment of Mr Louis-Martin Aumais, Director General of the Public International Law Bureau at Global Affairs Canada, as Co-Agent.

By a letter dated 8 June 2023 accompanying the Application, the Kingdom of the Netherlands informed the Court of the appointment of Mr René J.M. Lefeber, Legal Adviser at the Ministry of Foreign Affairs, as Agent for the purposes of the case, and of Ms Annemarieke Künzli, Legal Counsel at the Ministry of Foreign Affairs, as Co-Agent.

9. By letters dated 9 June 2023, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 3 July 2023 as the date for the opening of the oral proceedings on the request for the indication of provisional measures. Subsequently, by letters dated 23 June 2023, the Registrar informed the Parties that the Court had decided to postpone the opening of the oral proceedings until 19 July 2023. By a letter dated 13 July 2023, Syria asked the Court to postpone the hearings by three months. After having ascertained the views of the Applicant States, which opposed this request, the Court postponed the opening of the hearings until 10 October 2023. The Parties were informed of the Court's decision by letters dated 14 July 2023.

10. In accordance with Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Convention against Torture the notifications provided for in Article 63, paragraph 1, of the Statute of the Court. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute of the Court.

11. By a letter dated 9 October 2023, the chargé d'affaires of the Embassy of Syria in Brussels informed the Court that his Government had decided not to participate in the hearings due to open on 10 October 2023 and that the Court would be provided with "the details of [Syria's] position in a separate letter".

12. At the public hearing held on the morning of 10 October 2023, oral observations on the request for the indication of provisional measures were presented by:

*On behalf of Canada and the Netherlands:*

Mr René J. M. Lefeber,  
Ms Annemarieke Künzli,  
Ms Teresa Crockett,  
Mr Alan H. Kessel.

13. At the end of their oral observations, the Applicant States asked the Court to indicate the following provisional measures:

- “(a) Syria shall immediately take effective measures to cease and prevent all acts that amount to or contribute to torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In light of the greatly enhanced risk for detainees of being subjected to torture and other cruel, inhuman or degrading treatment or punishment, Syria shall immediately:
- (i) cease arbitrary detention, and release all persons who are arbitrarily or unlawfully detained;
  - (ii) cease all forms of incommunicado detention;
  - (iii) allow access to all of its official and unofficial places of detention by independent monitoring mechanisms and medical personnel, and allow contact and visitations between detainees and their families and legal counsel; and
  - (iv) take urgent measures to improve the conditions of all of its official and unofficial detention facilities to ensure all detainees are treated with humanity and with respect for the inherent dignity of the human person in accordance with international standards;
- (c) Syria shall not destroy or render inaccessible any evidence related to the Application, including, without limitation, by destroying or rendering inaccessible medical or other records of injuries sustained as a result of torture or other cruel, inhuman or degrading treatment or punishment or the remains of any person who was a victim of torture or other cruel, inhuman or degrading treatment or punishment;
- (d) Syria shall safeguard any information concerning the cause of death of any detainee who died while in detention or while hospitalised, including forensic examination of the human remains and places of burial, as well as afford the next of kin of any person who died as a result of torture or other cruel, inhuman or degrading treatment or punishment, following arrest, hospitalisation or detention with a death certificate, stating the true cause of death;
- (e) Syria shall disclose the location of the burial sites of persons who died as a result of torture or other cruel, inhuman or degrading treatment or punishment following arrest, hospitalisation or detention, to the next of kin;
- (f) Syria shall not take any action, and shall ensure that no action is taken, which may aggravate or extend the existing dispute that is the subject of the Application, or render it more difficult to resolve;
- (g) Syria shall provide a report to the Court on all measures taken to give effect to its Order for provisional measures, beginning no later than six months from its issuance and every six months thereafter pending the resolution of the dispute; and
- (h) Syria shall take immediate actions to reduce the risk of torture being committed by its officials and other personnel, including by issuing instructions to ensure that detainees are treated in accordance with their human dignity, suspending all

personnel suspected of having committed torture or other ill-treatment pending investigation, lifting de facto immunity for those of its officials who commit torture, and ensuring that statements obtained under torture are not used as evidence in any proceedings.”

14. By a letter dated 10 October 2023 and received in the Registry early in the afternoon on the same day, the chargé d'affaires of the Embassy of Syria in Brussels communicated to the Court the position of his Government regarding the request for the indication of provisional measures submitted by Canada and the Netherlands. This letter was immediately transmitted to the Applicant States.

15. By a letter dated 13 October 2023, Syria informed the Court of the appointment of Mr Ammar Al-Arsan, chargé d'affaires of the Embassy of the Syrian Arab Republic in Brussels, and of Mr Ihab Hamed, Counselor at the Permanent Mission of the Syrian Arab Republic to the United Nations Office in Geneva, as Agents for the purposes of the case.

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16. The Court regrets the decision taken by Syria not to participate in the oral proceedings on the request for the indication of provisional measures.

17. The non-appearance of a party has a negative impact on the sound administration of justice, as it deprives the Court of assistance that a party could have provided to it. Nevertheless, the Court must proceed to discharge its judicial function at any phase of the case (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 217, para. 21).

18. Though formally absent from the proceedings at a particular or all stages of the case, non-appearing parties sometimes submit to the Court letters and documents by means not contemplated by its Rules. It is valuable for the Court to know the views of both parties in whatever form those views may have been expressed (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 217, para. 22).

19. The Court will therefore take account of the letter communicated by Syria on 10 October 2023 (see paragraph 14 above) to the extent that the Court finds this appropriate in discharging its duties. It emphasizes that the non-appearance of a party in the proceedings at any stage of the case cannot, in any circumstances, affect the validity of its decision (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 217, para. 23).



## I. PRIMA FACIE JURISDICTION

### 1. General observations

20. The Court may indicate provisional measures only if the provisions relied on by the applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, pp. 217-218, para. 24).

21. In the present case, the Applicant States seek to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article 30, paragraph 1, of the Convention against Torture (see paragraph 3 above). The Court must therefore first determine whether those provisions prima facie confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

22. Article 30, paragraph 1, of the Convention against Torture reads 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.”

23. Canada, the Netherlands and Syria are all parties to the Convention against Torture; Canada ratified the Convention on 24 June 1987, the Netherlands ratified it on 21 December 1988, and Syria acceded to it on 19 August 2004. None of the Parties has entered a reservation to Article 30 of the Convention.

### 2. Existence of a dispute relating to the interpretation or application of the Convention against Torture

24. Article 30, paragraph 1, of the Convention against Torture makes the Court’s jurisdiction conditional on the existence of a dispute relating to the interpretation or application of the Convention. According to the established case law of the Court, a dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other” (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations” (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). To determine whether a dispute exists in the present case, the Court cannot limit itself to noting that

one of the Parties maintains that the Convention applies, while the other denies it (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, pp. 218-219, para. 28).

25. Since the Applicant States have invoked as the basis of the Court's jurisdiction the compromissory clause in an international convention, the Court must ascertain, at the present stage of the proceedings, whether it appears that the acts complained of are capable of falling within the scope of that convention *ratione materiae* (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 219, para. 29).

\* \*

26. The Applicant States contend that the exchanges between the Parties, extending over more than a decade and including statements made in multilateral fora, public statements and diplomatic Notes, clearly show that there is a dispute between the Applicants and Syria relating to the interpretation and application of the Convention against Torture. According to the Applicants, since at least 2011, they have consistently expressed their profound concern regarding the human rights situation in Syria and have repeatedly called on Syria to meet its international human rights obligations, including those set out in the Convention against Torture. They maintain that in various multilateral settings, including the United Nations Security Council, General Assembly and Human Rights Council, they have specifically made known their disagreement and concern with regard to ongoing practices of torture and other cruel, inhuman or degrading punishment or treatment in Syria and that, each time, Syria has either remained silent or expressed disagreement.

27. The Applicants further state that, on 18 September 2020, the Netherlands formally notified Syria of the dispute between them and requested that negotiations be held pursuant to Article 30, paragraph 1, of the Convention against Torture, with regard to Syria's failure to comply with its obligations under that Convention. According to the Applicants, the Netherlands publicly announced that it had taken this step and, the next day, Syria publicly denounced the Netherlands' actions. The Applicants add that, on 3 March 2021, Canada made a similar request for negotiations with Syria pursuant to Article 30, paragraph 1, of the Convention against Torture, "[i]n light of the longstanding dispute between the Government of Canada and the Syrian Arab Republic". This request was also accompanied by a public announcement. The Applicants note that, on 12 March 2021, they made a joint statement regarding their intention to hold Syria accountable for the violations of its obligations under the Convention against Torture. The Applicants also refer to a "Statement of Facts" and a "Statement of Law", which they presented to Syria in writing on 9 August 2021. These documents included a description of the relief sought by the Applicants. The Applicants state that, on 30 September 2021, they were informed by Syria that it "rejected 'in toto' the characterisation of the dispute as its 'international responsibility for the recent breaches of its obligations under the Convention against Torture', along with the Statement of Facts and Statement of Law".

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28. The position of Syria, as set out in the letter of 10 October 2023 from the Embassy of Syria in Brussels, is that the Applicants have failed to prove the elements required according to the Court’s jurisprudence to establish the existence of a dispute. According to Syria, the correspondence exchanged between Syria and the Applicant States and two in-person meetings of their delegations held in April and October 2022 show that

“Syria did not hold contradictory opinions to those of the applicants, and was trying to understand the concerns raised by them, find out their points of view, and obtain more information about them, with the aim of verifying and dealing with them if necessary or required, and reaching an agreement with the applicants”.

29. Syria further contends that “the statements and releases issued by the applicants . . . were merely general and not specifically related to the ‘existence of dispute’ according to the Convention against Torture” and that “they came in the context of the general framework of the developments of the situation in Syria”. In addition, Syria states that “the correspondence that took place between the Parties was of a procedural nature, and in the context of an attempt to understand the aspects raised by the applicants”.

\* \*

30. The Court recalls that, for the purposes of determining whether there was a dispute between the parties at the time of filing an application, it takes into account in particular any statements or documents exchanged between them, as well as any exchanges made in multilateral settings (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, pp. 220-221, para. 35). The existence of a dispute is a matter for objective determination by the Court; it is a matter of substance, and not a question of form or procedure (*ibid.*).

31. The Court takes note of the Applicants’ assertion that they have raised allegations of violations of the Convention since 2011 in various multilateral fora as well as in bilateral settings. The Court will first turn to the statements made on a bilateral basis. In this respect, the Netherlands and Canada each sent a diplomatic Note to Syria, dated 18 September 2020 and 3 March 2021 respectively, in which they alleged that Syria had failed to fulfil its obligations under the Convention against Torture. The Applicants sent their first joint diplomatic Note on 21 April 2021, in which they recalled, *inter alia*, these individual diplomatic Notes. In a diplomatic Note dated 30 September 2021, Syria acknowledged that the Applicants had sent the “Statement of Facts” and “Statement of Law” on 9 August 2021 and stated that it rejected “in toto” the “formulation” by the Applicants which referred to its “international responsibility for breaches of its obligations under the Convention against Torture”. In a series of subsequent diplomatic Notes in which the Parties discussed the possibility of further exchanges, Syria expressed its respect for the Convention against Torture and asserted that it paid attention to its international obligations, including under the Convention. The Court considers that these exchanges between the Parties prior to the filing of the Application indicate that they differ as to whether certain acts or omissions allegedly committed by Syria gave rise to violations of the latter’s obligations under the Convention against Torture. In view of the above, it is not necessary for the Court to consider the Applicants’ contentions with respect to exchanges made in multilateral fora.

32. For the purposes of the present proceedings, the Court is not required to ascertain whether any alleged violations of Syria's obligations under the Convention against Torture have occurred, a finding that could only be made as part of the examination of the merits of the case. At the stage of making an order on a request for the indication of provisional measures, the Court's task is to establish whether the acts and omissions complained of by the Applicants appear to be capable of falling within the provisions of the Convention (cf. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 222, para. 43). The Court notes that, according to the Applicant States, Syria has violated its obligations under the Convention in various ways, namely through enforced disappearances, abhorrent treatment of detainees, inhumane conditions of detention, other acts committed in order to coerce, punish or terrorize the civilian population, and sexual and gender-based violence. In the Court's view, the acts and omissions alleged by the Applicants to have been committed by Syria appear to be capable of falling within the provisions of the Convention.

33. The Court therefore finds that there is a sufficient basis to establish prima facie the existence of a dispute between the Parties relating to the interpretation or application of the Convention against Torture.

### 3. Procedural preconditions

34. Article 30, paragraph 1, of the Convention against Torture sets out procedural preconditions which must be met before a dispute may be referred to the Court (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 445-448, paras. 56-63). First, the parties must attempt to settle any dispute "through negotiation". Secondly, any such dispute, if it cannot be settled through negotiation, "shall, at the request of one of [the parties], be submitted to arbitration". That provision stipulates that the dispute may be submitted to the Court only if "within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration".

35. At this stage of the proceedings, the Court will examine whether it appears, prima facie, that the Applicant States genuinely attempted to engage in negotiations with Syria, with a view to resolving their dispute concerning the latter's compliance with its substantive obligations under the Convention against Torture, and whether they pursued these negotiations as far as possible (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 372, para. 33). It will then examine whether it appears, prima facie, that an attempt was made to submit the dispute to arbitration and, if so, whether six months have passed since the Applicants' request for arbitration, during which period the Parties were unable to agree on the organization of the arbitration.

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36. Regarding the precondition of negotiation contained in Article 30, paragraph 1, of the Convention against Torture, the Applicant States begin by asserting that over a three-year period they exchanged 66 diplomatic Notes with Syria and held two in-person meetings in April and

October 2022 seeking to find a negotiated resolution to the dispute. They further state that by the close of the second in-person meeting held on 5 and 6 October 2022, it was “evident that the positions of the Parties remained diametrically opposed with regard to the facts presented by Canada and the Netherlands, the scope of the dispute, the interpretation and application of the Convention against Torture, and the possible settlement of the dispute”. The Applicants add that, after more than two years of “concerted efforts”, the position of the Parties had not evolved and no progress had been made towards resolution of the dispute. The Applicants state that, having concluded that further negotiations could not lead to the settlement of the dispute, they informed Syria by a diplomatic Note dated 17 October 2022 that they considered that negotiations had become deadlocked or futile.

37. With respect to the arbitration precondition contained in Article 30, paragraph 1, of the Convention against Torture, the Applicant States submit that, by a diplomatic Note dated 7 November 2022, they formally requested that the dispute be submitted to arbitration and enclosed proposed “foundational elements” to form the basis for an agreement on the organization of the arbitration. According to the Applicants, Syria did not acknowledge or otherwise respond to this request. They add that, notwithstanding subsequent invitations for Syria to provide comments on the arbitration proposal, no response has been received on the matter. The Applicants point out that more than six months have passed from the time they formally requested arbitration without agreement on the organization of that arbitration.

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38. With regard to the precondition of negotiation contained in Article 30, paragraph 1, of the Convention against Torture, Syria asserts in its letter of 10 October 2023 that the diplomatic Notes exchanged between the Parties did not address the “substance of the issue” and that the first meeting, held on 26 April 2022, “was devoted to agreeing on procedural aspects only”. According to Syria, it was agreed to continue holding meetings every three months and, consequently, the Parties exchanged correspondence to set a date for a second meeting. Syria contends that the second meeting, held on 5 and 6 October 2022, was the only substantive meeting held between the Parties and that, as such, it was not sufficient for the Applicants to conclude that a deadlock had been reached or that future negotiations were futile. Syria submits that, in correspondence after that meeting, it consistently confirmed its readiness to engage seriously and in good faith with the Applicants on the basis of the Convention against Torture, indicating that it had more points to raise and discuss and repeatedly proposing that another meeting be held as soon as possible.

39. With respect to the arbitration precondition in Article 30, paragraph 1, of the Convention against Torture, Syria argues in its letter of 10 October 2023 that the request for arbitration contained in the diplomatic Note from the Applicants dated 7 November 2022 was not consistent with the spirit and letter of Article 30 of the Convention because the “elements” regarding the organization of an arbitral tribunal contained in the diplomatic Note constituted “a precondition that impede[d] any possibility of discussing the issue of arbitration”.

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40. Regarding the precondition of negotiation contained in Article 30, paragraph 1, of the Convention against Torture, the Court observes that negotiations are distinct from mere protests or disputations and require a genuine attempt by one of the parties to engage in discussions with the other party, with a view to resolving the dispute. Where negotiations are attempted or have commenced, the precondition of negotiation is met only when the attempt to negotiate has been unsuccessful or where negotiations have failed, become futile or are deadlocked. In order to meet this precondition, “the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question” (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, pp. 373-374, para. 38).

41. The Court notes that, since the allegations that Syria violated its obligations under the Convention against Torture were formally raised by the Netherlands in its diplomatic Note of 18 September 2020 (in which it proposed negotiations in relation to these allegations), the first diplomatic Note sent by Canada on 3 March 2021, and the Applicants’ first joint diplomatic Note to Syria of 21 April 2021, the Parties have exchanged a series of diplomatic Notes over two years, and held in-person meetings on 26 April 2022 and on 5 and 6 October 2022 in an effort to negotiate a resolution of the dispute. However, it appears to the Court, from the content of the diplomatic Notes and the available information regarding the in-person meetings, that the positions of the Parties had not evolved and no substantive progress had been made in resolving their dispute during the period before the joint diplomatic Note of 7 November 2022, in which Canada and the Netherlands requested that the dispute be submitted to arbitration.

42. It therefore appears to the Court that the negotiation precondition set forth in Article 30, paragraph 1, of the Convention had been met as of the date of the filing of the Application.

43. Regarding the arbitration precondition contained in Article 30, paragraph 1, of the Convention against Torture, the Court considers that the diplomatic Note dated 7 November 2022 contains an explicit offer by the Applicant States to Syria to have recourse to arbitration in order to settle the dispute over alleged violations by Syria of that Convention. The Court further observes that Syria does not appear to have acknowledged or otherwise responded to this offer, and that more than six months have passed since it was made. It therefore appears to the Court that the procedural precondition relating to arbitration in Article 30, paragraph 1, of the Convention had been met as of the date of the filing of the Application.

44. Recalling that, at this stage of the proceedings, the Court need only decide whether, *prima facie*, it has jurisdiction, the Court finds that the procedural preconditions under Article 30, paragraph 1, of the Convention against Torture appear to have been met.

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45. The Court notes that Syria, in its letter of 10 October 2023, states that the Court has no jurisdiction to entertain the Application. In particular, Syria argues that Article 30 of the Convention

against Torture is applicable only after the mechanisms and procedures stipulated in Articles 17 to 21 thereof, which relate to the establishment and functions of the Committee against Torture, have been met in the event of a dispute concerning the interpretation or application of the Convention. Syria contends that the Applicants cannot institute proceedings before the Court on the basis of Article 30 of the Convention without first having submitted a communication to the Committee against Torture under Article 21, which they have not done. Syria adds that, in any case, it has made a declaration under Article 28, paragraph 1, that it does not recognize the competence of the Committee to take action under Article 20 and has never recognized the competence of the Committee to receive and consider communications under Article 21 of the Convention.

46. In this regard, the Court observes that Article 30, paragraph 1, of the Convention against Torture does not appear to indicate that the Court's jurisdiction under this provision is subject to the procedures of the Committee against Torture. It moreover appears to the Court that the fact that Syria has declared that it does not recognize the competence of the Committee to act under Article 20 and has never recognized the Committee's competence to receive and consider communications under Article 21, has no bearing on the Court's jurisdiction under Article 30, paragraph 1, of the Convention.

#### **4. Conclusion as to prima facie jurisdiction**

47. In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article 30, paragraph 1, of the Convention against Torture to entertain the case to the extent that the dispute between the Parties relates to the interpretation or application of the Convention.

## **II. STANDING OF CANADA AND THE NETHERLANDS**

48. The Applicants argue that they seek compliance by Syria with its obligations under the Convention against Torture, which they characterize as possessing an *erga omnes partes* nature, and are thus owed to the Applicants, and indeed to all States parties to the Convention.

49. In its letter of 10 October 2023, Syria argues that the obligations arising from the Convention against Torture are individual obligations of States and that the Applicants do not have the right to raise allegations about its responsibility under the Convention because they have not established that they have suffered any damage.

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50. The Court recalls that, in a previous case where Article 30, paragraph 1, of the Convention against Torture was also invoked as the basis of jurisdiction, it observed that “[t]he States parties to the Convention have a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity”. According to the reasoning expounded by the Court, such a common interest

“implies that the obligations in question are owed by any State party to all the other States parties to the Convention. All the States parties ‘have a legal interest’ in the protection of the rights involved (*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). These obligations may be defined as ‘obligations *erga omnes partes*’ in the sense that each State party has an interest in compliance with them in any given case.” (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 449, para. 68.)

It follows that any State party to the Convention against Torture may invoke the responsibility of another State party with a view to having the Court determine whether the State failed to comply with its obligations *erga omnes partes*, and to bring that failure to an end.

51. The Court thus concludes that the Applicants have, *prima facie*, standing to submit to it the dispute with Syria concerning alleged violations of obligations under the Convention against Torture.

### **III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED**

52. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 223, para. 50).

53. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which the Applicant States wish to see protected exist; it need only decide whether the rights claimed by them on the merits, and for which they are seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 224, para. 51).

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54. The Applicants contend that, as they are States parties to the Convention against Torture with a common interest to seek compliance with its obligations, the rights that they assert in the present case are plausible. The Applicants refer to their rights to secure compliance by Syria with its obligations under the Convention against Torture, in particular the obligations under Articles 2, 7,



10, 11, 12, 13, 15 and 16. They further submit that protecting their rights to seek Syria's compliance will also protect persons in Syria who, they argue, are currently, or are at imminent risk of, being subjected to torture and other cruel, inhuman or degrading treatment or punishment.

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55. In its letter dated 10 October 2023, Syria contends that for the alleged rights under the Convention against Torture to be plausible, specific evidence of alleged acts of torture must be presented by the Applicants. It states that no such evidence, however, was provided by the Applicants.

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56. The Convention imposes a number of obligations on States parties with regard to the prevention and punishment of acts of torture and other acts of cruel, inhuman or degrading treatment or punishment. Article 1, paragraph 1, of the Convention defines torture in the following terms:

“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Other provisions of the Convention require States parties, *inter alia*, to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction (Article 2); to extradite persons alleged to have committed acts of torture or to submit the case to their competent authorities for the purpose of prosecution (Article 7); to ensure that education and information regarding the prohibition against torture are fully included in the training of personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment (Article 10); to ensure that their competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under their jurisdiction (Article 12); to ensure that any individual who alleges having been subjected to torture in any territory under their jurisdiction has the right to complain to, and to have the case promptly and impartially examined by, their competent authorities (Article 13); and to prevent in any territory under their jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture (Article 16).

57. The Court notes that the provisions of the Convention against Torture are intended to protect individuals from torture and other acts of cruel, inhuman or degrading treatment or punishment. The Court has previously held that there is a correlation between respect for individual rights enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination, the obligations of States parties thereto and the right of States parties to seek compliance therewith (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 382, para. 57). In the view of the Court, the same applies to the Convention against Torture. The Court considers that the Applicants have a plausible right to compliance by Syria with those obligations under the Convention which have an *erga omnes partes* character. The assertion by Syria that the Applicants have not presented specific evidence of alleged acts of torture (see paragraph 55 above) will be considered below (paragraphs 72 and following), in the context of the Court's examination of the conditions of a risk of irreparable prejudice and urgency.

58. In light of the above, the Court considers that the rights claimed by the Applicant States and for which they are seeking protection (see paragraph 54 above) are plausible.

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59. The Court now turns to the condition of the link between the rights claimed by the Applicant States and the provisional measures requested.

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60. The Applicant States submit that the provisional measures requested are directly linked to the rights which form the subject-matter of the dispute, in that they are aimed at ensuring compliance by Syria with its obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment, protecting the integrity of the proceedings before the Court and safeguarding the right of the Applicants to have their claim fairly adjudicated. They add that certain provisional measures requested aim to address specifically the "substantially enhanced risk" of being subjected to torture and other cruel, inhuman or degrading treatment or punishment for detainees who, they claim, are being arbitrarily detained, held incommunicado or living in abhorrent detention conditions.

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61. In its letter dated 10 October 2023, Syria argues that the requirement that a link must exist between the rights whose protection is sought and the provisional measures being requested has not been satisfied.

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62. The Court considers that, by their very nature, some of the provisional measures sought by the Applicant States (see paragraph 5 above) are aimed at preserving the rights they assert on the basis of the Convention against Torture in the present proceedings. This is the case, in particular, with regard to the requested measures requiring Syria to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and to preserve evidence relating to any such acts.

63. The Court concludes, therefore, that a link exists between the rights claimed by the Applicant States and some of the requested provisional measures.

#### **IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY**

64. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences (see, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 226, para. 65).

65. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the Court makes a final decision on the case (see, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 227, para. 66). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

66. The Court is not called upon, for the purposes of its decision on the request for the indication of provisional measures, to establish the existence of breaches of obligations under the Convention against Torture, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court’s decision on the request for the indication of provisional measures.

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67. The Applicants allege that Syria has committed acts of torture and subjected detainees to other acts of cruel, inhuman or degrading treatment or punishment on a mass scale since at least 2011 and that it demonstrates no intention of preventing ongoing or future violations. In this regard, the Applicants refer to various reports by the Independent International Commission of Inquiry on the Syrian Arab Republic, which was established by a resolution of the Human Rights Council in 2011 (hereinafter the “Commission of Inquiry” or the “Commission”). The Applicant States claim that these violations are causing irreparable prejudice to their right to seek Syria’s compliance with its obligations. They also argue that each new act of torture or other acts of cruel, inhuman or degrading treatment or punishment by Syria constitute irreparable harm with respect to each victim. They point out that, where past violations have occurred, the Court has found provisional measures appropriate when it is “not inconceivable” that they might occur again.

68. The Applicant States further contend that, in view of the continuing violations, the urgency to indicate provisional measures has persisted over the entire length of time since they invoked Syria’s responsibility for violations of the Convention against Torture and attempted to settle the dispute through negotiation and arbitration, and still exists to date.

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69. Syria, for its part, in its letter dated 10 October 2023, states that, in the current proceedings, there is no urgency as there is no real and imminent risk that “needs to be addressed immediately”. In particular, according to Syria, the “Statement of Facts” presented by the Applicants relates to the period between 2011 and 2014, which is not consistent with the condition of urgency. In addition, Syria argues that the fact that the Applicants did not respond to its request to provide specific cases of torture to be investigated or its request to hold another substantive meeting on the issue shows a lack of urgency.

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70. Having previously determined that the rights asserted by the Applicant States are plausible and that there is a link between those rights and some of the provisional measures requested, the Court turns to the questions of whether irreparable prejudice could be caused to those rights and whether there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to those rights before the Court gives its final decision.

71. The Court considers that individuals subject to torture and other acts of cruel, inhuman or degrading treatment or punishment, which entail bodily harm and psychological distress, are at serious risk of irreparable prejudice (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 389, para. 82). In view of the relationship between the rights of such individuals and the rights of States parties to the Convention (see paragraph 57 above), it follows that there is also a risk of irreparable prejudice to the rights asserted by the Applicants.

72. In the present proceedings, the information placed before the Court includes various reports drawn up by the Commission of Inquiry. The Court notes that the report of the Commission of Inquiry dated 11 March 2021 indicated that “[t]he use of arbitrary detention, torture and ill-treatment, including through sexual violence, involuntary or enforced disappearance and summary executions, has been a hallmark of the conflict”, and that

“[v]iolations and abuses have been perpetrated with such consistency, particularly by the Government of the Syrian Arab Republic, and have been reported so widely by the Commission of Inquiry and others that it is impossible to claim that they were committed without the knowledge of the relevant chains of command”.

The Commission concluded that “[t]hose who have survived describe executions and deaths from neglect and appalling prison conditions, suggesting that those still in incommunicado custody may slowly die unless released expeditiously”. Moreover, the Commission has drawn attention in several reports to the systematic aspect of torture and other acts of cruel, inhuman or degrading treatment or punishment in detention facilities operated by the Syrian authorities, leading to extensive deaths in detention.

73. The Court notes that, in resolution 77/230 of 15 December 2022, the General Assembly “[d]eplore[d] and condemn[ed] in the strongest terms the continued widespread and systematic gross violations and abuses of human rights and fundamental freedoms” in Syria, including “torture, systematic sexual and gender-based violence, including rape in detention, and ill-treatment, other violations and abuses of human rights, including those of women and children”. The Court also takes note of the report of the Commission of Inquiry dated 7 February 2023, in which it pointed out that it

“ha[d] reasonable grounds to believe that the Government continued to commit acts of murder, torture and ill-treatment against persons in detention, including practices causing death in detention, as well as arbitrary imprisonment and enforced disappearances”,

and that it “continued to document pervasive violations of human rights and humanitarian law across the country”. In its report dated 10 July 2023, the Commission of Inquiry documented continuing torture and other acts of cruel, inhuman or degrading treatment or punishment in government detention facilities and emphasized that

“continuing involvement of multiple State actors, including intelligence directorates, police, military and the judiciary, in . . . acts [of torture, rape and sexual violence, enforced disappearance, murder, extermination, imprisonment, and other inhumane acts in the context of detention], coupled with the complete lack of accountability among the intelligence or security apparatus, indicates that the attack against the civilian population remains ongoing, widespread, systematic, and carried out in furtherance of Government policy”.

In its most recent report of 14 August 2023, the Commission of Inquiry indicated that it “has reasonable grounds to believe that the Government continued to commit acts of torture and ill-treatment”.

74. The Court also notes that the Commission of Inquiry addressed sexual and gender-based violence in its report of 8 March 2018. In that report, the Commission found that, both inside and outside of detention, sexual and gender-based violence against women, girls, men and boys has been a persistent issue in Syria since the uprising in 2011. Outside of detention, the Commission has found that

“[g]overnment forces and associated militias have perpetrated rape and sexual abuse of women and girls and occasionally men during ground operations, house raids to arrest protestors and perceived opposition supporters, and at checkpoints”.

The Commission documented rape of women and girls in detention, as well as male detainees. After the Human Rights Council requested the Commission to consider updating this 2018 report, the Commission found in its February 2023 report that sexual violence in government-controlled detention facilities “continues to occur countrywide”.

75. The Court is of the opinion that, in light of the above, there is a real and imminent risk of irreparable prejudice to the rights invoked by the Applicant States before the Court gives its final decision.

#### V. CONCLUSION AND MEASURES TO BE ADOPTED

76. The Court concludes from all of the above considerations that the conditions for the indication of provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by the Applicant States, as identified above (see paragraph 58).

77. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 229, para. 79).

78. In the present case, having considered the terms of the provisional measures requested by the Applicant States and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

79. The Court considers that, pending the final decision in the case, Syria must, in accordance with its obligations under the Convention against Torture, take all measures within its power to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and ensure that its officials, as well as any organizations or persons which may be subject to its control, direction or influence, do not commit any acts of torture or other acts of cruel, inhuman or degrading treatment or punishment.

80. The Court is further of the view that Syria must take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of the Convention against Torture, including medical and forensic reports or other records of injuries and deaths.

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81. The Court recalls that its orders on provisional measures under Article 41 of the Statute have binding effect and thus create international legal obligations for any party to whom the provisional measures are addressed (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 230, para. 84).

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82. The Court reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Canada, the Netherlands and Syria to submit arguments in respect of those questions.

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83. For these reasons,

THE COURT,

*Indicates* the following provisional measures:

(1) By thirteen votes to two,

The Syrian Arab Republic shall, in accordance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, take all measures within its power to prevent acts of torture and other cruel, inhuman or degrading treatment or

punishment and ensure that its officials, as well as any organizations or persons which may be subject to its control, direction or influence, do not commit any acts of torture or other acts of cruel, inhuman or degrading treatment or punishment;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant;

AGAINST: *Vice-President* Gevorgian; *Judge* Xue;

(2) By thirteen votes to two,

The Syrian Arab Republic shall take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant;

AGAINST: *Vice-President* Gevorgian; *Judge* Xue.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this sixteenth day of November, two thousand and twenty-three, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Canada, the Government of the Kingdom of the Netherlands and the Government of the Syrian Arab Republic, respectively.

(Signed) Joan E. DONOGHUE,  
President.

(Signed) Philippe GAUTIER,  
Registrar.



Vice-President GEVORGIAN appends a dissenting opinion to the Order of the Court; Judge XUE appends a declaration to the Order of the Court.

*(Initialed)* J.E.D.

*(Initialed)* Ph.G.

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