

## DISSENTING OPINION OF JUDGE REZEK

[Translation]

*Bases of provisional measures — Prima facie merit of the Applicant's argument — Sovereign equality of States and assertion of jurisdiction by the domestic forum solely on the basis of the principle of universal justice — Danger in delay — Continuation of a situation which both prevents the full exercise of the Congolese Minister's public office and impairs the sovereignty of the applicant State — Provisional measure which, without causing major prejudice to the other Party, would put an end to that situation until the Court makes a final ruling.*

1. Most contemporary systems of law take a fairly uniform view of provisional measures, notably their bases and effects. Notwithstanding the silence of the Statute and Rules of the International Court of Justice, which only lay down procedural rules in this respect, the Court does enjoy guidance in the matter, and not only that provided by its own jurisprudence.

2. At this stage, it is not a question of the effects, but rather of the bases. These are: the *bonus fumes juris*, the prima facie merit of the Applicant's argument in support of its claim; and the *danger in delay*, the risks raised by waiting, the danger that, if the Applicant prevails in the end, its claim ultimately will not be fittingly upheld, because the Court will have failed to grant it in advance the benefit, even if only partial, of the measures it is seeking.

3. The merit of the request submitted by the Democratic Republic of the Congo is apparent here. This is the first time that a State has come before the Court to tell it that a member of its Government is the subject of an arrest warrant issued by judicial authorities of another State and that the Government of that other State has provided support for the arrest warrant by circulating it throughout the international community.

4. Quite apart from the issue of the status of the individual at whom the warrant is directed and of the question of privileges enjoyed on the international plane by certain State officials, this is also the first time the Court finds itself confronted with the problem raised by an act of a local court purportedly based solely on the principle of universal justice — without regard to the situs of the offence or to the defence of essential assets or values of the forum State or to the nationality of agent or victims — and without the accused being present on the territory of the forum State. In my view, the argument that this amounts to a violation of the fundamental rule of sovereign equality of States is valid prima facie.

5. As far as urgency is concerned, I believe that the situation described in the request, i.e., the existence of the arrest warrant issued against a

member of the Congolese Government and the assistance being provided by the Belgian Government in executing the warrant, constitutes a continuing, permanent restriction on the full exercise of the public office of the individual in question and causes harm, also continuing and permanent, to the sovereignty of the applicant State.

6. What is the magnitude of the prejudice and therefore the degree of urgency? This is not a matter of ascertaining whether the continuation in force of the arrest warrant against the Congolese Minister causes irreversible prejudice — death aside, little is irreversible — but rather determining whether the indication of a provisional measure would also be liable to cause prejudice no less serious than that sought to be remedied on a provisional basis. Personally, I do not see any major drawback in suspending the effects of the arrest warrant issued by an investigating judge in Brussels, or rather the international dimension which the Belgian Government has conferred on it, until such time as the Court makes a final ruling on this legal issue, which is of undeniable importance and topicality.

7. To that end, I, unlike the majority, would have upheld the request for a provisional measure.

*(Signed)* FRANCISCO REZEK.