

### JOINT DISSENTING OPINION OF JUDGES XUE, BHANDARI AND NOLTE

1. We voted against the provisional measure in the second operative paragraph of the present Order for an important procedural reason. In substance, we agree that Venezuela must “refrain from conducting elections, or preparing to conduct elections, in the territory in dispute”, as indicated in the second operative paragraph. However, this measure is, in our view, already included in the previous Order of the Court of 1 December 2023. It is neither necessary nor prudent for the Court to “specify” the scope of that Order by setting out a separate new measure.

2. On 30 October 2023, Guyana submitted a Request for the indication of provisional measures, seeking, *inter alia*, that the Court order Venezuela to refrain from proceeding with a “consultative referendum” scheduled for 3 December 2023.

3. On 1 December 2023, the Court unanimously concluded that the conditions for the indication of provisional measures were met and indicated two broad measures:

“(1) Pending a final decision in the case, the Bolivarian Republic of Venezuela shall refrain from taking any action which would modify the situation that currently prevails in the territory in dispute, whereby the Co-operative Republic of Guyana administers and exercises control over that area;” and

“(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve” (*Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures, Order of 1 December 2023, I.C.J. Reports 2023 (II)*, p. 668, para. 45).

4. By these measures, the Court requires the Parties to refrain from “any action” that would alter the status quo in the disputed territory or exacerbate the dispute before the Court.

5. Article 76, paragraph 1, of the Rules of Court gives the Court the power to “revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification”. The Court must also examine whether the existing provisional measures fully address the consequences arising from the “change in the situation” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 23).

6. On 6 March 2025, Guyana submitted a new Request for the indication of provisional measures, asking the Court to indicate the following measures, *inter alia*:

“1. Venezuela shall not conduct any election in, or in respect of, any part of the territory on Guyana’s side of the boundary line as established by the 1899 Arbitral Award . . .

2. Venezuela shall refrain from taking any action which purports to annex *de jure* or *de facto* any territory on Guyana’s side of the boundary line established by the 1899 Arbitral Award, including by incorporating ‘Guayana Esequiba’ as part of Venezuela.

3. Venezuela shall refrain from taking any action which would seek to modify the situation that currently prevails in the territory in dispute, whereby Guyana administers and exercises control over that area.”

7. In our view, the Order of 1 December 2023 *fully* and *clearly* addresses the concerns raised by Guyana in its new Request of 6 March 2025, as well as the consequences arising from Venezuela’s actions in so far as they may impact the status quo in the disputed territory. Under these circumstances, we are of the view that a modification of the existing provisional measures is not called for. The situation as it presents itself today, including the changes identified by the Court, is already covered by the Court’s Order of 1 December 2023 (see paragraph 30 of the Order). This is acknowledged by the Court when it characterizes the new provisional measure as “specifying the scope” of the previous Order (see paragraph 41). When the measures in the previous Order clearly address the current situation, we wonder what legal purpose this new provisional measure could serve.

8. We are of the view that the Court should have followed the approach it took in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, where it reaffirmed the existing provisional measures rather than issuing a new order on provisional measures.

9. In that case, the Court rejected the request for the modification of its previous Order and emphasized the ongoing necessity for effective implementation of the provisional measures indicated. It stated that

“the tenuous situation between the Parties confirms the need for effective implementation of the measures indicated in its Order of 7 December 2021. In these circumstances, the Court finds it necessary to reaffirm the measures indicated in its Order of 7 December 2021, in particular the requirement that both Parties ‘shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve’” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, *Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021*, *Order of 12 October 2022*, *I.C.J. Reports 2022 (II)*, p. 583, para. 21).

10. In our considered view, the Court should have concluded that there has been no change in the situation that would justify a modification within the meaning of Article 76, paragraph 1, of the Rules of Court, and that Venezuela remains bound by the provisional measures indicated in the Court’s Order of 1 December 2023.

11. We believe that the Court should exercise its power to “specify the scope” of its previous provisional measures only when a change in the situation gives rise to serious doubts as to whether its previous provisional measures are applicable to or sufficient to address the new situation. In the present circumstances, this is certainly not the case.

12. By unnecessarily “specifying the scope” of its previous provisional measures, the Court may weaken the authority of its orders and parties may be encouraged to submit repeated requests for the modification of provisional measures. Moreover, the Court should not appear to be engaging in the enforcement of the provisional measures it has indicated, which is not its task, or even prematurely suggesting that those measures have been violated, which it should not do at this stage

of the procedure (see paragraph 45 of the Order). We do not believe that the approach of the Court in the present Order serves the sound administration of justice. In our view, more self-restraint on the part of the Court would have been warranted.

*(Signed)* XUE Hanqin.

*(Signed)* Dalveer BHANDARI.

*(Signed)* Georg NOLTE.

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