DECLARATION OF JUDGE BRANT

[Translation]

1. I voted in favour of both points in the operative clause of this second Order on provisional measures handed down by the Court in the case concerning the *Arbitral Award of 3 October 1899*. While I essentially subscribe to the reasoning set out by the Court in its grounds for the Order, I nonetheless find it necessary to make a number of observations.

2. In the first provisional measures proceedings in this case, Guyana, referring to Article 41 of the Statute of the Court and Articles 73 and 74 of its Rules, asked the Court to pronounce as a matter of urgency on the holding by Venezuela of a "Consultative Referendum", in which questions would be put to the population of the latter concerning in particular the "creation of the Guayana Esequiba State" and its incorporation into Venezuelan territory (*Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Provisional Measures, Order of 1 December 2023, I.C.J. Reports 2023 (II)*, p. 665, para. 34). In its Order of 1 December 2023, the Court — unanimously — required of both Parties that they "refrain from any action which might aggravate or extend the dispute . . . or make it more difficult to resolve", and of Venezuela that it 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" (*ibid.*, p. 668, para. 45).

3. In the present proceedings, it did not seem necessary to me, at first sight, for the Court to modify, on the basis of Article 76, paragraph 1, of its Rules, the measures it had previously indicated, since they covered the situation which Guyana was now presenting as "new". However, the accumulation of several new facts which occurred directly after the Court had made its Order of 1 December 2023, and which are described by the Court in paragraphs 27, 28 and 29 of the present Order, persuaded me of the need for the Court to make clear what it expected of the Parties in the future.

4. When new provisional measures are requested in one and the same case, the applicable law offers only two possibilities: either the Court considers there to be a change in the situation that justifies modification of the decision concerning the provisional measures previously indicated (as has happened in the past, see, for example, *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 Indicating Provisional Measures of 26 January 2024, Order of 28 March 2024,*

I.C.J. Reports 2024 (II), p. 525, para. 41); or the Court reaffirms — without modifying — the measures it has already ordered (which it has also done in the past, for example in the Orders handed down on 12 October 2022 and 6 July 2023 in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan)*).

5. Neither of these two options is entirely satisfactory when the Court wishes to make clear the extent of obligations so that they are more consistent with the reality of the new facts it has before it. Faced with this limited choice, I therefore took the view that it was appropriate, in the case at hand, to reaffirm the provisional measures already indicated in the Order of 1 December 2023, while specifying that Venezuela must "refrain from conducting elections, or preparing to conduct elections, in the territory in dispute, which the Co-operative Republic of Guyana currently administers and over which it exercises control", as stated in the operative clause of the present Order.

(Signed) Leonardo BRANT.