



# INTERNATIONAL COURT OF JUSTICE

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## Summary

Unofficial

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### *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*

#### Request for the modification of the Order of 1 December 2023 indicating provisional measures

On 29 March 2018, the Co-operative Republic of Guyana instituted proceedings against the Bolivarian Republic of Venezuela with respect to a dispute concerning “the legal validity and binding effect of the Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899”. In its Application, Guyana sought to found the jurisdiction of the Court, under Article 36, paragraph 1, of its Statute, on Article IV, paragraph 2, of the “Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana” signed at Geneva on 17 February 1966 (hereinafter the “Geneva Agreement”).

In its Judgment of 18 December 2020 (hereinafter the “2020 Judgment”), the Court found that it had jurisdiction to entertain the Application filed by Guyana on 29 March 2018 in so far as it concerns the validity of the 1899 Award and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela. The Court also found that it did not have jurisdiction to entertain the claims of Guyana arising from events that occurred after the signature of the Geneva Agreement.

In its Judgment of 6 April 2023 (hereinafter the “2023 Judgment”), the Court rejected Venezuela’s preliminary objection concerning the exercise of the Court’s jurisdiction and found that it could adjudicate upon the merits of the claims of Guyana, in so far as they fell within the scope of the operative clause of the 2020 Judgment.

On 30 October 2023, Guyana filed a Request for the indication of provisional measures with reference to the organization by the Government of Venezuela of a “Consultative Referendum” planned for 3 December 2023. After hearing the Parties, the Court, by an Order of 1 December 2023, indicated the following provisional 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;
- (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.)

On 6 March 2025, Guyana, referring to Article 41 of the Statute of the Court and Articles 73, 74 and 76 of the Rules of Court, filed another Request for the indication of provisional measures. In its Request, Guyana asks the Court to indicate the following provisional measures:

- “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, including by doing any of the following acts:
  - (a) purporting to extend the right to vote in any Venezuelan elections to any individuals living within that territory;
  - (b) distributing ballot papers, poll cards, electoral materials or any other physical or electronic electoral documents to individuals within that territory;
  - (c) presenting or naming or otherwise supporting candidates for any Venezuelan elections within that territory;
  - (d) establishing polling stations, counting stations or electoral offices within that territory;
  - (e) purporting to establish, elect or appoint any office of governor, legislative council, deputies or any other legislative or governmental official in respect of any part of that territory; and
  - (f) communicating directly or indirectly with any residents in that territory in regard to any elections planned by Venezuela.
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.”

By a letter dated 10 March 2025, the Agent of Venezuela stated that Venezuela does not recognize the jurisdiction of the Court to entertain Guyana’s Request and made some observations on the Request. Then, by a letter dated 28 March 2025, Venezuela reiterated its position as set out in its letter of 10 March 2025, according to which the Court lacked jurisdiction to rule on the territorial dispute between Guyana and Venezuela and thus to entertain Guyana’s Request for the indication of provisional measures.

#### I. GENERAL OBSERVATIONS (PARAS. 20-31)

The Court considers that Guyana’s Request of 6 March 2025 is a request for the modification of the Court’s Order of 1 December 2023. For this reason, the Court states that it must determine whether the conditions set forth in Article 76, paragraph 1, of the Rules of Court have been fulfilled. The Court also states that it must ascertain whether, taking account of the information that the Parties have provided with respect to the current situation, there is reason to conclude that the situation that warranted the decision set out in its Order of 1 December 2023 has changed since that time. If so, it will consider whether such a change justifies a modification of its earlier decision concerning

provisional measures. Any such modification would be appropriate only if the general conditions laid down in Article 41 of the Statute of the Court were also met in this instance.

The Court observes that, in its Order of 1 December 2023, it described the context of the dispute between the Parties and the situation which warranted the indication of provisional measures at the time. In particular, it noted that the strong tension that characterized the relations between the Parties, the referendum planned for 3 December 2023 and various official statements made in that context presented a serious risk of Venezuela acquiring and exercising control and administration over the territory in dispute.

The Court recalls that following the Court's Order of 1 December 2023, Venezuela held a "Consultative Referendum" on 3 December 2023 concerning the territory in dispute and its population. The Court understands that, after the referendum, on 8 December 2023, the President of Venezuela signed six decrees aimed at acquiring and exercising control and administration over the territory in dispute. In particular, the President: (i) decided to create a "Comprehensive Defense Zone" in the territory in dispute; (ii) designated a Venezuelan official as the "Sole Authority of the Guayana Esequiba"; (iii) authorized two State-owned companies to grant concessions for the exploitation of oil and minerals in disputed areas; (iv) ordered the incorporation of the territory in dispute in Venezuela's official maps; (v) declared environmentally protected areas and natural parks in the territory in dispute; and (vi) established the "High Commission for the Defense and Recovery of the Guayana Esequiba".

The Court further notes that on 21 March 2024, the National Assembly of Venezuela adopted an "Organic Law for the Defense of Guayana Esequiba", which entered into force on 3 April 2024. That law, *inter alia*, creates the state of "Guayana Esequiba" within the territorial and political organization of Venezuela; vests Venezuela with executive, legislative and judicial prerogatives over "Guayana Esequiba"; orders that every map of Venezuela include the territory of the state of "Guayana Esequiba" as an integral part of its national territory; authorizes the President of Venezuela to prohibit the conclusion of contracts with legal entities that operate, or collaborate in operations, in the territory of "Guayana Esequiba" based on concessions or authorizations unilaterally granted by Guyana in violation of the Geneva Agreement and international law; and authorizes the President of Venezuela to adopt the necessary reciprocal measures, in accordance with international law, to guarantee the rights of Venezuela over the territory of "Guayana Esequiba".

The Court observes that on 7 January 2025, the President of Venezuela announced that elections would be organized in which "the people of Guayana Esequiba" would elect the "Governor of Guayana Esequiba state". On 19 February 2025, the President of the National Electoral Council of Venezuela announced that the elections for a governor, along with the legislative council and deputies for "Guayana Esequiba", initially planned for 27 April 2025, would be held on 25 May 2025.

In light of the foregoing, the Court observes that, since the delivery of its Order of 1 December 2023, the serious risk of Venezuela acquiring and exercising control and administration over the territory in dispute has significantly increased as a result of its adoption of measures that are intended to secure control over that territory. The Court considers that the presidential decrees of 8 December 2023, the adoption of the "Organic Law for the Defense of Guayana Esequiba" and the announcement of the preparation for and conduct of elections in the territory in dispute, which Guyana currently administers and over which it exercises control, represent grave developments which constitute a change in the situation within the meaning of Article 76 of the Rules of Court.

The Court is also of the view that the change in the situation described justifies modifying the decision concerning the provisional measures set out in its Order of 1 December 2023, by further specifying its scope. However, in order to modify its earlier decision concerning provisional measures, the Court must still satisfy itself that the general conditions laid down in Article 41 of the Statute of the Court are met in the current situation.

## II. CONDITIONS FOR THE INDICATION OF PROVISIONAL MEASURES (PARAS. 32-40)

The Court recalls that, in the present case, it has already found, in its 2020 Judgment, that it has jurisdiction to entertain the Application filed by Guyana on 29 March 2018 in so far as it concerns the validity of the 1899 Award and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela. The Court considers that it cannot revisit that conclusion for the purpose of deciding on the present Request and proceeds to examine the other requirements for the indication of provisional measures.

The Court further recalls that, in its 2023 Judgment, it found that it can adjudicate upon the merits of Guyana's claims, in so far as they fall within the scope of the first subparagraph of the operative clause of the 2020 Judgment.

The Court also recalls that, in its Order of 1 December 2023, it found that Guyana's right to sovereignty over the territory in question was plausible and sees no reason to depart from this finding for the purpose of deciding on the present Request. It further considers that, by their very nature, at least some of the provisional measures sought in the present Request are aimed at preserving the right claimed by the Applicant that the Court has found to be plausible.

The Court turns next to whether the current situation entails a risk of irreparable prejudice to the plausible right claimed by Guyana and whether there is urgency. It recalls in this regard its previous finding that there was "a serious risk of Venezuela acquiring and exercising control and administration of the territory in dispute in the present case", and its conclusion that

"Venezuela's expressed readiness to take action with regard to the territory in dispute in these proceedings at any moment following the referendum scheduled for 3 December 2023 demonstrates that there is urgency, in the sense that there is a real and imminent risk of irreparable prejudice to Guyana's plausible right before the Court gives its final decision" (*Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures, Order of 1 December 2023, I.C.J. Reports 2023 (II)*, p. 666, para. 37).

The Court notes that by adopting legislative measures and decrees concerning the territory in dispute and by announcing the holding of elections therein, the Respondent has confirmed its intention of acquiring and exercising control and administration over the territory in dispute. The acts taken by Venezuela since 1 December 2023 further confirm that the Respondent intends to incorporate the territory in dispute into its own territory.

The Court observes that the acts taken or planned to be taken by Venezuela after the Court's Order of 1 December 2023 have given rise to expressions of concern by the Security Council in a statement dated 15 April 2024 "about the possible escalation of tensions between Venezuela and Guyana".

Consequently, the Court finds that the current situation arising from Venezuela's planned elections in the territory in dispute entails a risk of irreparable prejudice to the plausible right claimed by Guyana and that there is urgency, in the sense that there is a real and imminent risk that such prejudice will be caused to those rights before the Court gives its final decision on the merits.

## III. CONCLUSION AND MEASURES TO BE ADOPTED (PARAS. 41-45)

The Court concludes, on the basis of the above considerations, that the change in the situation justifies modifying the decision set out in its Order of 1 December 2023, by further specifying its scope in light of the situation underlying the present Request.

The Court considers that Venezuela must, in conformity with its obligations under paragraph 45 of the Order of 1 December 2023, refrain from conducting elections, or preparing to conduct elections, in the territory in dispute, which Guyana currently administers and over which it exercises control.

The Court further considers that in light of the tenuous situation between the Parties, the acts recently taken or planned to be taken by Venezuela concerning the territory in dispute confirm the need for the immediate and effective implementation of the provisional measures indicated in its Order of 1 December 2023. In these circumstances, the Court finds it necessary to reaffirm the measures indicated in that Order.

The Court emphasizes 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.

Lastly, the Court underlines that the present Order is without prejudice to any findings concerning the Respondent's compliance with the Order of 1 December 2023.

#### **OPERATIVE CLAUSE (PARA. 46)**

The full text of the operative clause of the Order reads as follows:

“For these reasons,

The COURT,

(1) Unanimously,

*Reaffirms* the provisional measures indicated in its Order of 1 December 2023, which should be immediately and effectively implemented;

(2) By twelve votes to three,

*Indicates* the following provisional measure:

Pending a final decision in the case, the Bolivarian Republic of Venezuela shall 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.

IN FAVOUR: *President* IWASAWA; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, YUSUF, BRANT, GÓMEZ ROBLEDÓ, CLEVELAND, AURESCU, TLADI; *Judges ad hoc* WOLFRUM, COUVREUR;

AGAINST: *Judges* XUE, BHANDARI, NOLTE.”

Judges XUE, BHANDARI and NOLTE append a joint dissenting opinion to the Order of the Court; Judge BRANT appends a declaration to the Order of the Court; Judge *ad hoc* WOLFRUM appends a declaration to the Order of the Court; Judge *ad hoc* COUVREUR appends a separate opinion to the Order of the Court<sup>1</sup>.

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<sup>1</sup> The summaries of opinions and declarations are annexed in the language available.

### **Joint dissenting opinion of Judges Xue, Bhandari and Nolte**

In their joint dissenting opinion, Judges Xue, Bhandari and Nolte express the reasons for voting against the indication of a new provisional measure as set forth in the second operative paragraph of the Order.

While affirming their agreement with the content of the second provisional measure, they consider that the Court's original Order of 1 December 2023 already clearly addressed the concerns raised by Guyana.

In their view, 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 or sufficient to address the new situation.

### **Declaration of Judge *ad hoc* Wolfrum**

Agreeing with the Court's Order concerning Guyana's request for the modification of the provisional measures indicated on 1 December 2023, Judge *ad hoc* Wolfrum submits his declaration to further contribute to the interpretation of Article 76 of the Rules of Court. Specifically, he focuses on the requirement of "some change in the situation" needed to justify the revocation or modification of provisional measures.

Judge *ad hoc* Wolfrum explains that any requested modification must relate to changes occurring after the original Order was issued and still meet the requirements of Article 41 of the Court's Statute. He draws on the Court's jurisprudence, noting cases like *Armenia v. Azerbaijan* and *South Africa v. Israel*, where the Court assessed whether the situation had changed since its initial Order and whether that change justified modification.

Applying this to the present case, Judge *ad hoc* Wolfrum considers Venezuela's actions following the Order of 1 December 2023, including the "Consultative Referendum" and subsequent decrees. While these might not alone meet the threshold, he views Venezuela's alleged adoption of an "Organic Law" on 21 March 2025, establishing an administrative entity for "Guayana Esequiba" and incorporating the territory, as constituting a "new situation" under Article 76 of the Rules of Court. This action represents an attempt to change the territorial status quo. He concludes that these developments, along with other announced changes with territorial implications, prejudice Guyana's rights and justify the modification of the Court's previous Order.

### **Separate opinion of Judge *ad hoc* Couvreur**

In the opinion that he has appended to today's Order, Judge Couvreur begins by recalling the ins and outs of the Order for the indication of provisional measures of 1 December 2023, aimed at protecting the territorial status quo between the two Parties *pendente lite*.

He then briefly examines the new Request submitted to the Court by Guyana on 6 March 2025 and the consequences, in particular of procedural nature, arising from the Court's re-characterization of that Request as a request "for the modification of the Order of 1 December 2023".

Judge Couvreur then analyses the additional provisional measure indicated by the Court at the end of today's Order. He notes that this measure is strictly within the material limits of the first measure indicated in 2023 and reaffirmed today. In his view, although the "new" measure is entirely contained, in substance, in the previous measure and would therefore not have been indispensable in strict law, it has the advantage of clarifying the meaning and scope of the original measure, as well as its implications (the specific acts that it covers and those that it does *not* cover) in the current

circumstances, marked by the Respondent's announcement of the holding of general elections encompassing the territory in dispute. He interprets this "explanatory" measure as intended to prevent, in accordance with the general law, the Respondent from carrying out any act of coercion in the territory in dispute on that occasion.

Finally, Judge Couvreur sets out the reasons why he could not have agreed to the measures requested by the Applicant, whose *domaine réservé* and lawful exercise of personal jurisdiction must be preserved.

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