DECLARATION OF JUDGE SEBUTINDE

Guyana has two plausible rights that arise out of the Application it has filed, both of which should be recognized and preserved by the provisional measures indicated by the Court — The status quo that should be maintained between the Parties is that Guyana currently exercises sovereignty over the disputed territory. It does not simply exercise administration and control over that territory — That is the status quo that the provisional measures indicated by the Court should seek to preserve, by requiring Venezuela not to take any action likely to jeopardize or modify Guyana's exercise of sovereignty over the disputed territory.

I. INTRODUCTION

1. I have voted with the majority, in favour of the Order on the Request for the indication of provisional measures submitted by the Co-operative Republic of Guyana ("Guyana") because I agree that Guyana has plausible rights that are at risk of irreparable prejudice if Venezuela goes ahead to unilaterally implement the measures or policies implicit in its planned referendum due to take place imminently, on 3 December 2023, and that therefore Guyana's rights should be preserved by the indication of provisional measures pending the final decision of the Court in this case. I am of the view however, that, regrettably, the two provisional measures indicated by the Court do not go far enough in protecting the plausible rights of Guyana. My views on the issue are articulated in this declaration.

2. It will be recalled that on 29 March 2018, Guyana filed an Application before the Court instituting proceedings against the Bolivarian Republic of Venezuela (hereinafter "Venezuela"), wherein Guyana requested the Court "to confirm 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" ("1899 Award"). According to Guyana, that Award was "a full, perfect, and final settlement" of all questions relating to determining the boundary line between the colony of British Guiana and Venezuela (Application of Guyana, paras. 1 and 2).

II. THE RIGHTS OF GUYANA FOR WHICH IT SEEKS PRESERVATION

3. In its Judgment on jurisdiction dated 18 December 2020 (the "2020 Judgment") the Court identified "the subject-matter of the controversy" which the Parties agreed to settle through the mechanisms established under the Geneva Agreement signed by the Parties on 17 February 1966, as "concern[ing] the question of the validity of the 1899 Award, as well as its legal implications for the boundary line between Guyana and Venezuela" (*Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, paras. 66 and 129). The Court then went on to find that it has jurisdiction *ratione materiae* to entertain the Application filed by Guyana "in so far as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the definitive settlement of the land boundary dispute" between Guyana and Venezuela (*ibid.*, para. 138 (1)).

4. In its Request for the indication of provisional measures, Guyana seeks the preservation and protection of not only its right to sovereignty over the territory awarded to it by the 1899 Award and to the integrity of its territory, pending the Court's determination of the validity of that Award, but also of its right, in the alternative, to settlement by the Court of the land boundary between Guyana and Venezuela (Request of Guyana, para. 9). In my view, both the above-stated rights are "plausible" within the meaning contemplated by the Court's settled jurisprudence, and the Court should have

recognized them both as such. In my opinion, by recognizing only one of those rights as "plausible", the Court does not go far enough (see Order, para. 23).

5. Similarly, I am of the view that a link exists between each of Guyana's rights described above and at least some of the provisional measures requested, in particular the fourth measure which states that "Venezuela shall not take any actions that are intended to prepare or allow the exercise of sovereignty or *de facto* control over any territory that was awarded to British Guiana in the 1899 Arbitral Award".

III. IRREPARABLE PREJUDICE AND URGENCY

6. I am also of the view that the conditions of urgency and irreparable prejudice are met with regard to both of Guyana's asserted rights described above, and that the Order of the Court should have reflected this with respect to both those rights. Regrettably it does not. In considering whether the conditions of urgency and irreparable prejudice have been met, the Court takes into account the statements of high-ranking Venezuelan officials, on the basis of which statements the Order states as follows:

> "The Court considers that, in light of the strong tension that currently characterizes the relations between the Parties, the circumstances described above present a serious risk of Venezuela acquiring and exercising control and administration of the territory in dispute in the present case. It therefore concludes that there is a risk of irreparable prejudice to the right claimed by Guyana in the present proceedings that the Court has found plausible . . ." (See Order, para. 37.)

In my opinion, the above is an understatement of the likely consequences of Venezuela's planned policies with respect to the disputed territory. What Venezuela seeks to achieve through its planned referendum and its aftermath, as evidenced by the statements of its high-ranking officials, is more than simply "acquiring and exercising control and administration" of the territory at issue. Venezuela clearly plans to take steps to exercise sovereignty over that territory, for example by "the creation of [a] Guayana Esequiba State" over the disputed territory and incorporating it into the map of Venezuela, as well as the granting of Venezuelan citizenship and identity cards to the population of that territory. Considering that this is territory over which Guyana and its predecessors have exercised sovereignty for over two centuries, these threatened unilateral acts by Venezuela would be tantamount to *de facto* annexation, a situation that would not only prejudice Guyana's rights described above but would also prove difficult to reverse even with a Judgment of the Court. In this regard, I am of the view that the Order does not fully or accurately describe the status quo between the Parties as relates to the disputed territory, which the Order then requires Venezuela not to "modify" pending the final decision in this case (see Order, paras. 41 and 45 (1)). The Applicant does not simply "exercise administration and control" over that territory. The status quo that should be maintained between the Parties is that Guyana currently exercises sovereignty over the disputed territory. That is the status quo that the provisional measures indicated by the Court should seek to preserve, by requiring Venezuela not to take any action likely to jeopardize or modify Guyana's exercise of sovereignty over the disputed territory. Regrettably, the first provisional measure indicated by the Court is, in my view, not strong enough. I would have preferred to see instead of the first provisional measure indicated in paragraph 45 (1), a provisional measure crafted more along the lines of that requested by Guyana in its own fourth measure, for example, that,

"Pending a final decision in the case, the Bolivarian Republic of Venezuela shall refrain from taking any actions that are intended to prepare or allow it to exercise sovereignty or *de facto* control over the territory that was awarded to British Guyana in the 1899 Arbitral Award."

(Signed) Julia SEBUTINDE.

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