

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
ARBITRAL AWARD OF 3 OCTOBER 1899**

CO-OPERATIVE REPUBLIC OF GUYANA

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

GUYANA'S REQUEST FOR PROVISIONAL MEASURES

27 October 2023

REQUEST OF THE COOPERATIVE REPUBLIC OF GUYANA FOR PROVISIONAL MEASURES

1. Pursuant to Article 41 of the Statute of the Court and Articles 73 and 74 of the Rules, the Co-operative Republic of Guyana (“Guyana”) hereby requests that the Court indicate provisional measures against the Bolivarian Republic of Venezuela (“Venezuela”) as specified below, for the reasons set forth herein.

A. The Events Giving Rise to This Request

2. On 23 October 2023, the Government of Venezuela, through its National Electoral Council, published a list of five questions that it plans to put before the Venezuelan people in a so-called “Consultative Referendum” on 3 December 2023.¹ The purpose of these questions, which is obvious from their nature and timing, and the manner in which they have been drafted, is to obtain responses that would support Venezuela’s decision to abandon these proceedings, and to resort instead to unilateral measures to “resolve” the controversy with Guyana by formally annexing and integrating into Venezuela all of the territory at issue in these proceedings, which comprises more than two-thirds of Guyana.
3. All of these questions, with the exception of the Fourth, relate to the matters in dispute before the Court. They are listed below in English translation. Of particular concern are the First, Third and especially the Fifth, questions:

“FIRST: Do you agree to reject, by all means in accordance with the Law, the line fraudulently imposed by the 1899 Paris Arbitral Award, that seeks to strip us of our *Guayana Esequiba*?

SECOND: Do you support the 1966 Geneva Agreement as the only valid legal instrument for reaching a practical solution satisfactory to

¹ Republic of Venezuela, National Electoral Council, Resolution on Referendum to be held on 3 December 2023 (20 Oct. 2023), Annex 1.

Venezuela and Guyana, in relation to the controversy over the *Guayana Esequiba* territory?

THIRD: Are you in agreement with the historic position of Venezuela of not recognizing the jurisdiction of the International Court of Justice to resolve the *Guayana Esequiba* territorial controversy?

FOURTH: Do you agree to oppose, by all means, in conformity with the Law, Guyana's pretension of unilaterally making use of a sea pending delimitation, illegally and in violation of international law?

FIFTH: Are you in agreement with the creation of a *Guayana Esequiba* State and for an accelerated plan to be developed for comprehensive attention to the present and future population of that territory that would include, among other things, the granting of Venezuelan citizenship and identity cards, in conformity with the Geneva Agreement and International Law, consequently incorporating said State on the map of Venezuelan territory?"

4. Plainly, by the First question, Venezuela intends to secure an overwhelming popular mandate to reject the 1899 Arbitral Award and the boundary with Guyana that it established (and to which Venezuela agreed upon issuance of the Award in 1899, and again in a 1905 demarcation agreement, and consistently, without interruption, until 1962). By the Third question, Venezuela plans for an equally overwhelming mandate to reject the Court's jurisdiction so that it can abandon these proceedings (despite the Court's affirmation of its jurisdiction in two Judgments, on 18 December 2020 and 6 April 2023). And by the Fifth Question, Venezuela anticipates a mandate to proceed unilaterally to formally incorporate "*Guayana Esequiba*" – the territory awarded to Guyana (then British Guiana) by the 1899 Arbitral Award – into Venezuela as a new Venezuelan State (an annexation of Guyana's territory in blatant violation of the UN and OAS Charters, and fundamental rules of general international law).
5. The forthcoming Referendum cannot be seen otherwise than as a reflection of Venezuela's intention to reject not only the 1899 Arbitral Award and the jurisdiction of the Court, but, even more threatening to Guyana, to resort to unilateral action to "resolve" the dispute over the land boundary by unilaterally and unlawfully seizing, annexing and incorporating into

itself the territory that is claimed by both Parties to these proceedings, which was awarded to Guyana 124 years ago with Venezuela's unconditional acceptance, and which the rest of the world recognizes as Guyana's sovereign territory.

6. On 25 October 2023, CARICOM issued the following statement, *inter alia*, in response to Venezuela's announced Referendum:

“...[T]wo of the questions approved to be posed in the Referendum, if answered in the affirmative, would authorise the government of the Bolivarian Republic of Venezuela to embark on the annexation of territory, which constitutes part of the Cooperative Republic of Guyana, and to create a state within Venezuela known as Guyana Essequibo.

CARICOM reaffirms that international law strictly prohibits the government of one State from unilaterally seizing, annexing or incorporating the territory of another state. An affirmative vote as aforesaid opens the door to the possible violation of this fundamental tenet of international law.

[...]

CARICOM notes that the language of two questions approved to be posed in the Referendum seeks an affirmation and implementation of Venezuela's stance on the issue “by all means, according to/with the Law.” It is open to reasonable persons to conclude that “by all means”, includes means of force or war.”²

7. Guyana therefore requests that the Court indicate provisional measures – as specified in Section E below – that would prohibit Venezuela from taking any action, including by means of its purported Referendum, to seize, annex or incorporate, or otherwise attempt to exercise sovereignty over, any territory lying on the Guyanese side of the boundary line established by the 1899 Arbitral Award and the 1905 demarcation agreement, pending the issuance by the Court of its Judgment on the Merits in these proceedings.

B. *Prima Facie* Jurisdiction

8. The Court has already decided, twice, that it has jurisdiction to determine the validity of the 1899 Arbitral Award and the related question of the settlement of the land boundary between

² Statement of the Caribbean Community (CARICOM) on the Guyana-Venezuela Border Controversy, 25 October 2023, Annex 2.

Guyana and Venezuela.³ There can be no doubt, therefore, of its *prima facie* jurisdiction to indicate the provisional measures requested by Guyana, which, as explained below, are urgently required to prevent irreparable harm to the rights claimed by Guyana in these proceedings.

C. The Rights Whose Protection Is Sought and the Link Between Those Rights and the Requested Measures

9. By this request for the indication of provisional measures, Guyana seeks protection for its rights to the territory awarded to it by the 1899 Arbitral Award, pending the Court's determination of the validity of the Award, or, alternatively, the settlement by the Court of the land boundary between Guyana and Venezuela. Guyana's rights to the territory in dispute are directly threatened by Venezuela's planned Referendum and anticipated compliance with "the will of its people" in respect of their inevitable response to the Fifth Question, calling for Venezuela's incorporation of the "*Guayana Esequiba*" (Guyana's Essequibo Region) into Venezuela. Guyana's rights to the territory awarded to it by the 1899 Arbitral Award are plainly plausible at the current procedural stage: any other conclusion would prejudice the outcome of this case on the merits.
10. This situation is thus fully distinguishable from that in *Arbitral Award of 31 July 1989 (Guinea Bissau v. Senegal)*, where the Court found that, although Guinea Bissau's Application asked the Court to determine the validity of an arbitral award, it:

“...does not ask the Court to pass upon the respective rights of the Parties in the maritime areas in question; whereas accordingly the alleged rights sought to be made the subject of provisional measures are not the subject of the proceedings before the Court on the merits of the case; and whereas any such measures could not be subsumed by the Court's judgment on the merits...”⁴

³ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Jurisdiction, ICJ Reports 2020, p.455, para. 138; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Preliminary Objections, Judgment of 6 April 2023, para. 108.

⁴ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Provisional Measures, Order of 2 March 1990, ICJ Reports 1990, p.64, at para. 26.

11. In contrast, the Court’s Judgment of 18 December 2020 in the present case states, in its operative paragraph:

“...that it has jurisdiction to entertain the Application filed by the Co-operative Republic of Guyana on 29 March 2018 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 between the Co-operative Republic of Guyana and the Bolivarian Republic of Venezuela...*”⁵

12. Accordingly, the question of the definitive settlement of the land boundary is before the Court, and this necessarily concerns Guyana’s rights (as well as Venezuela’s alleged rights) in the territory in dispute, sovereignty over which will be determined by the Court either by its validation of the 1899 Arbitral Award or the manner in which it settles the land boundary.
13. Venezuela’s planned imposition of its own settlement of the land boundary, by annexing the territory in dispute and subject to settlement by the Court, unquestionably prejudices Guyana’s rights in that territory.

D. The Risk of Irreparable Prejudice and Urgency

14. If Venezuela proceeds with its scheduled Referendum and the response to the Fifth question leads Venezuela to annex “*Guayana Esequiba*”/the Essequibo Region, grant Venezuelan citizenship to the inhabitants and incorporate the territory into Venezuela – all of which are expressly anticipated by the terms of the question – the harm to Guyana would be irreparable. Even a Judgment of the Court on the Merits, upholding the validity of the 1899 Award or settling the boundary in a manner that leaves all or part of the Essequibo Region under Guyana’s sovereignty might not be sufficient to cause Venezuela to reverse course and respect Guyana’s territorial sovereignty after it has gone as far as to incorporate that territory. This is a particularly exemplary situation in which the rights of the Party requesting provisional measures are irremediably threatened and must be preserved pursuant to Article 41(1) of the Statute of the Court.

⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Jurisdiction, ICJ Reports 2020, p.455, para. 138(1) (emphasis added).

15. The need for provisional measures could not be more urgent. Venezuela's Referendum is scheduled to take place on 3 December 2023. To be meaningful, and to prevent Venezuela's insidious questions from producing a popular mandate for Venezuela to perpetrate internationally unlawful acts, the provisional measures would have to be ordered by the Court before that date. For this reason, Guyana asks that the hearings on its request be scheduled at the earliest possible date in order to avoid the irreparable prejudice to Guyana's rights that would result from the adoption of the measures envisaged by the referendum.

E. The Requested Measures

16. For the foregoing reasons, Guyana submits that the Court should indicate the following provisional measures, which would remain in effect until the issuance of the Court's Judgment on the Merits:
1. Venezuela shall not proceed with the Consultative Referendum planned for 3 December 2023 in its present form;
 2. In particular, Venezuela shall not include the First, Third or Fifth questions in the Consultative Referendum;
 3. Nor shall Venezuela include within the "Consultative Referendum" planned, or any other public referendum, any question encroaching upon the legal issues to be determined by the Court in its Judgment on the Merits, including (but not limited to):
 - a. the legal validity and binding effect of the 1899 Award;
 - b. sovereignty over the territory between the Essequibo River, and the boundary established by the 1899 Award and the 1905 Agreement; and
 - c. the purported creation of the State of "*Guayana Esequiba*" and any associated measures, including the granting of Venezuelan citizenship and national identity cards.

4. 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.
5. Venezuela shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Respectfully submitted,


Agent of the Co-operative Republic of Guyana

27 October 2023

Certification

I certify that the annexes are true copies of the documents reproduced therein and that the translations into English are accurate translations of the documents annexed.


Agent of the Co-operative Republic of Guyana

27 October 2023

List of Annexes

- Annex 1 Republic of Venezuela, National Electoral Council, Resolution on Referendum to be held on 3 December 2023 (20 Oct. 2023)
- Annex 2 Statement of the Caribbean Community (CARICOM) on the Guyana-Venezuela Border Controversy (25 Oct. 2023)