

SEPARATE OPINION OF JUDGE ROBINSON

Mischaracterization of Guyana's extant sovereignty over the disputed territory as control and administration — Serious risk of Venezuela acquiring the territory in dispute in the present case in order to exercise sovereignty.

1. While I agree to grant provisional measures to Guyana, I disagree with the Court's reasoning in certain parts of the Order as well as the formulation of the first provisional measure set out in operative paragraph 45 of the Order.

2. It is surprising that paragraph 41 of the Order reads: "The Court observes that the situation that currently prevails in the territory in dispute is that Guyana administers and exercises control over that area."

3. It is surprising because the situation in Guyana today is the same situation that has prevailed since 1899, when, as stated in paragraph 23 of the Order, "the territory which forms the object of that dispute was awarded to British Guiana in the 1899 Award".

4. Thus, from that time to 1966, British Guiana exercised sovereignty over the disputed territory and, from 1966 to the present time, independent Guyana has exercised sovereignty over the disputed territory. The dispute between Guyana and Venezuela does not alter the factual situation that since 1966 Guyana has exercised sovereignty over the disputed territory. Consequently, instead of observing that today Guyana administers and exercises control over the disputed territory, the Court ought to have observed that today Guyana administers and exercises sovereignty over the disputed territory.

5. Regrettably, the *dispositif* in paragraph 45 (1) repeats the above-mentioned formulation, by ordering Venezuela to "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".

6. The failure to acknowledge that Guyana currently exercises sovereignty over the disputed area does a disservice to Guyana. It is difficult to understand the Court's restraint in acknowledging that position, particularly since the provisional measures Order cannot affect the merits of the case. This is made clear in paragraph 42 of the Order where

“[t]he Court emphasizes that the question of the validity of the 1899 Award and the related question of the definitive settlement of the land boundary

dispute between Guyana and Venezuela are matters for the Court to decide at the merits stage”.

7. The reasoning of the Court is also questionable in its assessment of Venezuela’s ambition in respect of the disputed territory. The fact is that Venezuela has objected to Guyana’s exercise of sovereignty over the disputed territory; it has questioned this exercise and clearly desires to replace Guyana’s exercise of sovereignty over the disputed territory with its own exercise of sovereignty. This plan is clear from the evidence the Court cites in paragraphs 34 to 36 of the Order.

8. In paragraph 34, the Court cites the following evidentiary features of the fifth question of the referendum: first, it notes that the fifth question has an explicit reference to the “creation of the Guayana Esequiba State”. There could hardly be any clearer indication of Venezuela’s plan to exercise sovereignty over the disputed area. The proposed creation of this State must be considered with another aspect of the fifth question which seeks the agreement of the Venezuelan people with the incorporation of a Guayana Esequiba State into Venezuela. When these two elements are considered together, it becomes clear that the Venezuelan intention is to annex and incorporate the disputed territory as part of Venezuela — revealing that the ultimate plan of Venezuela is to exercise sovereignty, and not just control, over the disputed territory. Secondly, the Court cites the reference in the fifth question to “an accelerated and comprehensive plan [to] be developed’ for the ‘granting of Venezuelan citizenship and identity cards’ to the population of that territory”. This is another indication that Venezuela intends to exercise not just control, but sovereignty, over the disputed territory. The granting of citizenship by a State is an exercise of sovereignty, and not just control, over its territory. It should be noted that the radical consequence of this plan is that Venezuelan citizenship would more than likely be foisted on the Guyanese population in the disputed territory. However, the strongest indication of Venezuela’s sovereign intent is the fifth question’s reference to “consequently incorporating the ‘[Guayana Esequiba] State into the map of [the] Venezuelan territory’”. Again, this is very strong evidence of Venezuela’s intent to exercise sovereignty, and not just control, over the disputed territory by annexing it and making it a part of Venezuela. Why would Venezuela create this new Guayana Esequiba State and incorporate it into its territory, if it did not intend to exercise sovereignty over it? It is improbable that Venezuela would exercise sovereignty over all its territory except for the new State of Guayana Esequiba, over which it would merely exercise control.

9. In paragraph 36, the Court refers to Venezuela’s statement during the oral proceedings that it “will not turn its back on what the people decide in

the referendum” of 3 December 2023. We have already seen that an affirmative answer to the fifth question in the referendum demonstrates Venezuela’s intent to annex the Guayana Esequiba State and exercise sovereignty over it. Therefore, the statement serves to confirm and buttress the Venezuelan plan to exercise sovereignty over the disputed territory.

10. In paragraph 36, the Court also refers to statements indicating that Venezuela was “taking steps with a view towards acquiring control over and administering the territory in dispute”. It cites, as an example, the appeal to the armed forces to “‘go to combat’ with reference to the territory in question”, made by the Minister of Defence, General Vladimir Padrino López, on 6 November 2023. Again, this is an indication that Venezuela was aiming to exercise not merely control, but sovereignty, over the disputed territory. This conclusion is reinforced by the fact that the statement was made just two weeks after the publication of the referendum’s list of questions on 23 October 2023. The General would therefore have had in mind the fifth question put to the people of Venezuela, asking whether they agreed to the creation of a Guayana Esequiba State and its consequent incorporation into Venezuela. The International Court of Justice, like any other court of law, is able to draw reasonable inferences from facts. In the context in which this statement was made, it is entirely reasonable to infer that Venezuela intended to exercise not just control, but sovereignty, over the disputed territory. Here, the Court could draw the reasonable inference that the Minister of Defence had urged Venezuela’s armed forces to go to war over the disputed territory so that Venezuela could gain, not just control, sovereignty over that territory. It would be unsafe for the Court to dismiss the General’s statement as mere rhetoric. The Court further refers to a statement made in the oral proceedings by Guyana that Venezuelan military officials announced that Venezuela was taking concrete measures to build an airstrip to serve as a “logistical support point for the integral development of the Essequibo”. Again, in the light of the fifth question in the referendum, asking whether the Venezuelan people agreed with the creation of a Guayana Esequiba State and the incorporation of that State into Venezuela, it is entirely reasonable to infer that Venezuela planned to utilize the airstrip as part of its strategy to engage in activities that would lead to its exercise of sovereignty over the disputed territory.

11. Having regard to the strong indicia of Venezuela’s intent to exercise sovereignty over the disputed territory, it is difficult to understand why the Court concludes in paragraph 37 of the Order that “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”. In light of the foregoing, the Court ought to have concluded that the circum-

stances, described above, present a serious risk of Venezuela acquiring and exercising sovereignty over the territory at issue in the present case.

(Signed) Patrick L. ROBINSON.
