

DECLARATION OF JUDGE *AD HOC* WOLFRUM

Modification of provisional measures (Article 76 of the Rules of Court) — Requirement of “some change in the situation”.

1. I agree with the present Order concerning Guyana’s request for the modification of the Order of 1 December 2023 indicating provisional measures. My declaration is intended only to further contribute to the interpretation of Article 76 of the Rules of Court, drawing upon some pertinent jurisprudence of the Court established to date.

2. The starting-point for the Court’s deliberations on such a request is Article 76 of the Rules of the Court. The relevant part of Article 76, paragraph 1 reads:

“At the request of a party or *proprio motu*, the Court may, at any time before the final judgment in the case, revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification”.

The salient question before the Court is whether there has been “some change in the situation” and, if so, whether such change justifies the requested “revocation or modification” of the previous provisional measures. The central issue is thus to gain clarity on what constitutes “some change in the situation”.

3. It is evident that the change must have occurred after the issuance of the Order that is sought to be modified. It should be emphasized that any modifications requested must also satisfy the requirements of Article 41 of the Statute of the Court, meaning that the provisional measures should be designed to preserve the respective rights of either party.

4. In the *Armenia v. Azerbaijan* case, the Court ascertained whether the situation “which warranted the indication of a provisional measure of February 2023 has changed since that time” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Request for the Modification of the Order of 22 February 2023 Indicating a Provisional Measure, Order of 6 July 2023, I.C.J. Reports 2023 (II)*, p. 406, para. 16). The Court continued by stating that “[i]f the Court finds there was a change in the situation since the delivery of its Order, it will then have to consider whether such a change justifies a modification of the measure previously indicated” (*ibid.*, p. 406, para. 16, referring to the original *Order of 12 October 2022, I.C.J. Reports 2022 (II)*, p. 581, para. 12). The Court then concluded that the alleged disruption of movement along the Lachin Corridor remained the same as that noted in its previous Order. Although the means causing the disruption had changed, the effects were materially the same. Therefore, the Court found no justification for the modification of its Order (*ibid.*, p. 410, paras. 28-29).

5. In the *South Africa v. Israel* case, the Court similarly considered South Africa’s request for the modification of the Court’s previous Order of 26 January 2024 indicating provisional measures (*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 of 26 January 2024 Indicating Provisional Measures, Order of 28 March 2024*). The Court again stated that it would take into account both the situation existing at the time of the Order of 26 January 2024 and any changes that had occurred since. The Court referred, in terms of methodology to be followed in the implementation of Article 76 of the Rules of Court, to its earlier jurisprudence in the Order of

12 October 2022 for the *Armenia v. Azerbaijan* case (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, I.C.J Reports 2022 (II)*, p. 581, para. 12). South Africa justified its request by the “horrific deaths from starvation of Palestinian children, including babies” (*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 of 26 January 2024 Indicating Provisional Measures, Order of 28 March 2024*, para. 16).

6. The Court had to determine whether this humanitarian situation in the Gaza Strip was already present at the time of its Order of 26 January 2024 and thus covered by that Order. The Court found that, while the catastrophic humanitarian situation in the Gaza Strip had existed at that time, conditions had since further deteriorated (*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 of 26 January 2024 Indicating Provisional Measures, Order of 28 March 2024*, para. 30). The Court referred to several statements and reports that confirmed this worsening humanitarian situation after it had issued the original Order of 26 January 2024 (*ibid.*, paras. 31-39). Accordingly, the Court specified additional measures to address such “change in the situation”.

7. It is thus evident that the Court’s approach in *South Africa v. Israel* differs somewhat from the approach taken in the case between Guyana and Venezuela now before the Court. In the former, the Court based its reasoning not only on Article 76 of the Rules of Court (e.g. concerning the catastrophic situation in the Gaza Strip), but also on considerations arising under Article 41 of the Statute of the Court.

8. I now turn to the present request by Guyana. After the issuance of the Court’s Order of 1 December 2023, the Government of Venezuela held a “Consultative Referendum” contrary to that Order. Thereafter, the President of Venezuela signed six decrees concerning the area Venezuela refers to as “Guayana Esequiba”. These activities clearly took place after the original Order of 1 December 2023, but they might not, in themselves, necessarily constitute facts establishing a new or changing situation sufficient to meet the threshold of Article 76 of the Rules of Court.

9. However, on 21 March 2025, Venezuela allegedly adopted an “Organic Law” establishing a new administrative entity for the defence of “Guayana Esequiba”, thereby incorporating the territory into Venezuela’s territorial and political organization. In my view, this act does constitute a new situation within the meaning of Article 76 of the Rules of Court, as it manifests an attempt to change the territorial status quo concerning Guyana. Further changes with territorial implications, such as the announced elections to be undertaken in areas currently administered and controlled by Guyana, amount to a prejudice to Guyana’s rights and interests. These developments accordingly justify the modification of the Court’s previous Order of 1 December 2023.

10. To sum up: modifying an order indicating provisional measures under Article 76 of the Rules of Court requires the Court to collect and ascertain all information concerning the situation that gave rise to the indication of the previous provisional measures. Such information, provided by both parties, should cover the period before the original order as well as the period thereafter. If the Court finds that there is a change in the situation compared to the one existing before the indication of the original provisional order and the one thereafter, it must consider whether such a change justifies a modification of the previous provisional measures. The notion of “some change in the situation” has been interpreted narrowly. The new situation has to be established by new facts or new activities by the party against whom the modification of the original provisional measures is sought.

The Court enjoys a wide margin of appreciation in this respect. When deciding on a modification, the Court must also consider whether the new (modified) measure meets the standards set by Article 41 of the Statute of the Court. In deciding on a request for modification of provisional measures, the Court should take into consideration that provisional measures are an established (and often effective) means of ensuring the preservation of the respective rights of either party.

(Signed) Rüdiger WOLFRUM.
