

DECLARATION OF JUDGE XUE

I regret that I could not find myself in full agreement with the majority of the Court on the second provisional measure rendered by the Court in its Order on the Request for the indication of provisional measures submitted by Costa Rica and would like to clarify my position on the vote.

At the outset, I wish to state that in reaching its decision the Court has taken full account of the situation as presented by the Parties and given careful consideration to each and every submission requested by them. I entirely agree with the general thrust and reasoning of the Court in the indication of the Order. My reservation to the second provisional measure primarily rests on one point, which I consider of substantial importance.

The second operative paragraph is based largely on the reasoning stated in paragraph 80 of the Order, in which Costa Rica's obligations under the Ramsar Convention are invoked. Although the Ramsar Convention is about environmental protection, it is an international treaty governed by the law of treaties. Unless otherwise provided in the treaty, the territorial application of a treaty is bound with territorial sovereignty of each contracting State. The fact that the disputed area is situated in the "Humedal Caribe Noreste" wetland and the same wetland is designated under the responsibility of Costa Rica for protection under the Ramsar Convention has direct bearing on the merits of the present case. The current wording of paragraph 80 and the indication of the second provisional measure are liable to be construed as a prejudgment on the merits of the case.

In accordance with Article 41 of the Statute of the Court and its case law, the interim procedure for provisional measures must not prejudice any question relating to the merits of the case before the Court, and must leave intact the rights of the Parties in that respect (see, for example, *Factory at Chorzów, Order of 21 November 1927, P.C.I.J., Series A, No. 12, p. 10; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984, p. 182, para. 31; Frontier Dispute (Burkina Faso/Republic of Mali), Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986, p. 11, para. 29).*

The present case essentially relates to territorial dispute over the area in question. To allow one Party to dispatch to the disputed area personnel, even civilian and for environmental purpose, would very likely lead to undesired interpretation of the Order prejudging on the merits of the case and, more seriously, it may incline to aggravate the situation on the ground.

With the good intention to prevent irreparable prejudice to the wetland for the protection of the ecological environment, the Court could have, pending the final decision on the merits, in my view, indicated the measure to both Parties with the assistance of the Secretariat of the Ramsar Convention, which is fully in line with the object and purpose of the Convention and at the same time devoid of any possibility of involving the merits of the case.

My vote is only meant to draw the attention of both Parties that the second operative paragraph should in no way be construed as affecting the substance of the case, but a measure designed to encourage the Parties, pending the decision of the Court on the case, to engage in consultation and co-operation as required by the Ramsar Convention, if and when actions have to be taken in the disputed area in order to prevent irreparable harm to the environment. For both countries that have placed their full confidence and trust in the jurisdiction of the Court for peaceful settlement of international disputes, I hope that this vote will eventually be proven an unnecessary precaution.

(Signed) XUE Hanqin.