

Editor:
ALLAN R. BREWER-CARÍAS

GUYANA v. VENEZUELA

Arbitral Award 3 October 1899

**Oral Arguments before the
International Court of Justice**

The Hague 4-11 May 2026

Presentation: **Rafael Badell Madrid**

The Future of the Case: **Héctor Faúndez Ledesma**



GUYANA v. VENEZUELA. Arbitral Award of 3 October 1899

Oral Arguments before the International Court of Justice,
The Hague, 4 - 11 May 2026

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Arbitral Award of 3 October 1899
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Texts of the Oral Arguments made by the
Representatives of Guyana and Venezuela, in the
First and Second Rounds of Oral Arguments at
the Hearings held at the International Court of
Justice in The Hague, on May 4, 6, 8 and 11, 2026

Compiled and edited by Allan R. Brewer-Carías
Presentation by Rafael Badell Madrid
The Future of the Case by Héctor Faúndez Ledesma



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THE CASE GUYANA vs. VENEZUELA

Allan R. Brewer-Carías

Emeritus professor, Central University of Venezuela

Individuo de Número, Academia de Ciencias Políticas y Sociales

This volume is a recollection of the text of the *Oral Arguments* of the representatives of *Guyana* and *Venezuela*, in the Hearings convened by the International Court of Justice, in the Case *Arbitral Award of October 3, 1899 (Guyana vs. Venezuela)*, which took place between 4 and 11 May 2026. The texts have been taken, as they were published until May 12, 2026, from the website of the International Court of Justice (<https://icj-cij.org/case/171>).

At the time of the commencement of these Hearings, only Guyana's *Memorial* on the merits of the controversy, filed as the plaintiff State before the Court on March 8, 2022, was publicly accessible.

By contrast, Venezuela's *Counter-Memorial* filed on April 8, 2024, Guyana's *Reply* filed on December 9, 2024, and Venezuela's *Rejoinder* filed on August 25, 2025, until the start of the 4 May 2026 Hearing had not been publicly accessible. Consequently, no one, other than government officials and the Court, was able to consult them. It was since the beginning of the Hearings on May 4, 2026, that the documents were made available to interested parties on the website of the International Court of Justice.

In this state of public knowledge of the documents filed in the judicial process, prior to the beginning of the hearings on May 4,

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2026, without having been able to have access to those documents, I decided to publish in a single volume all the studies on the controversy of Guayana Essequiba that until that moment I had published in various books of my authorship and in collective books and Journals, in a single volume, to leave testimony of what I had worked on the subject until then.

That book was published in April 2026, in the Studies Collection of the Academy of Political and Social Sciences of Venezuela, with the title:

***El territorio de Venezuela y la controversia con Guyana
sobre la Guayana Esequiba. Estudios***

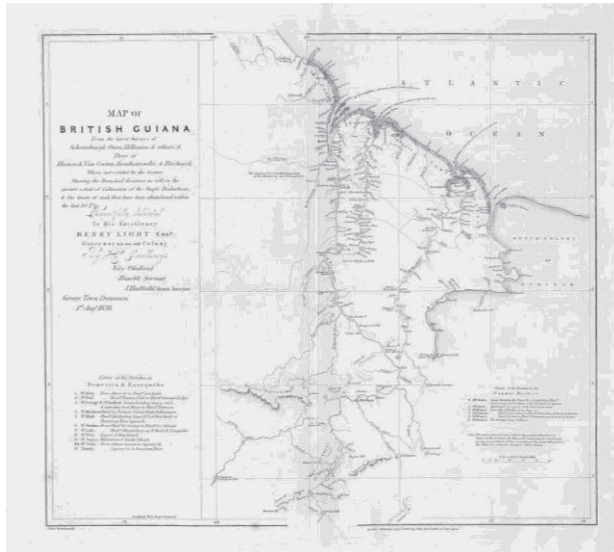
**Academia de Ciencias Políticas y Sociales, Serie Estudios
No. 164, Editorial Jurídica Venezolana, Caracas 2026,
640 pp.**

In the last pages of said book (pp. 639-652), I included the English text of the Lecture I was asked to deliver on March 13, 2026, at the *52nd Annual Conference of the National High School Model United Nations*, which was held in New York on March 13-16 and 18-21, 2026, in which I briefly set out what in my opinion were the central historical and legal aspects that should be highlighted regarding the Controversy, precisely on the eve of the Hearings that then were to take place before the International Court of Justice, and only with the knowledge of what Guyana had stated in its *Memorial*.

In this Presentation of this Compilation of the text of the *First and Second Rounds of the Oral Arguments* at the Hearings before the International Court of Justice that took place on May 4, 6, 8 and 11, 2026, I found it interesting to reproduce the text of said Lecture, both in its original English version and in its Spanish translation, to which I have added the Maps that I presented to illustrate the oral presentation at the said New York Conference.

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I want to begin my Presentation today by referring to the British Colony of Guiana as it was in 1836, when Robert SCHOMBURGK, one of the most experienced explorers of the XIX Century, drew the first Maps of the Colony after exploring its territory in an expedition sponsored by the Royal Geographic Society of

Great Britain.

He showed in a clear and precise way, that the Colony was exclusively made up of three settlements or plantations, all located to the East of the Essequibo River, at the mouths of three specific rivers, the Essequibo, the Demerara and the Berbice Rivers.



Those three settlements were everything the Colony was in 1836, with their border to the West, with Venezuela, in the Essequibo River.

Mapa Geográfico de América Meridional de Juan de la Cruz Cano y Olmedilla (1795),

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They were established beginning in 1598 in territories that were part of the Spanish Colonial Provinces of Guayana and Nueva Andalucía, created in 1568 and 1569, whose territories extended eastward up to the Amazon River.



Carta del Virreinato de Santa Fe (1717) y Provincias de Venezuela

Those three settlements were established by Dutch commercial companies when the Netherlands Provinces were part of the Spanish Empire, and at a moment in which they were in war with the Crown seeking for

their independence. That War, that began in 1568, lasted 80 years until 1648, ending by means of the Treaty of Münster.

In the Treaty, Spain recognized the independence of the United Provinces and the commercial possession they had abroad, namely among others, the three settlements of Berbice, Demerara and Essequibo. Consequently, all the territory to the West of the River, remained under the sovereignty of Spain, being part, since 1777 of the General Captaincy of Venezuela.



Mapa de Venezuela, la Guayana Británica (Guayana Inglesa), la Guayana Holandesa (Hoy Surinam) y la Guayana Francesa, published in Boston, 1821 (Cummings & Hilliard). Shows the Essequibo River as the oriental border of Venezuela

That is why, the incursions of the colonial Dutch settlements into the territory were always repelled by the Spanish colonist of Venezuela.

In 1814, at the end of the Napoleonic Wars, the same three settlements or plantations, and nothing else, were ceded by the Netherlands to Great Britain by means of the London Peace Treaty, in which they were also identified by their names (Demerara, Berbice and Essequibo), which were the only possession that the Netherlands could legally cede. Consequently, all the territory to the west of the Essequibo River, remained this time under the sovereignty of Venezuela, which since 1811 was already an independent State. (6)

Those three settlements were the ones that a few years later, in 1831, Great Britain officially named as British Guiana, as it appears in the Maps of Robert Schomburgk of 1836.

Although Venezuela declared its Independence in 1811, the next year, Spain invaded its territory, originating a war of liberation conducted by Simón Bolívar who, after 5 years of war, in 1817, achieved to liberate the Province of Guayana, incorporating it into the Republic by means of a Decree in which the border of the Province to the East, was established in the Essequibo River.



Parte del Mapa político de la República de Venezuela en 1840, Published in the Atlas físico y político de la República de Venezuela, Agustín Codazzi, 1840

The Decree, nonetheless, acknowledged the existence of a tiny part of land in the seacoast to the West of the mouth of the Essequibo River, extended up to the Moruca River, indicating that it was occupied - said the Decree - by “foreign possession,” initially Dutch and at that time already British. (7)

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These facts were also reflected in all the official Maps of the Republic, first, after 1821, of the Republic of Colombia (which comprised the provinces of Venezuela and of Nueva Granada), and after 1830, in the Maps of Venezuela, showing a very extensive territory to the East, up to the Essequibo River, which Great Britain accepted in 1825, when it recognized the Independence of Colombia in 1825. (8) (9)



Mapa de los tres Departamentos Venezuela, Cundinamarca y Ecuador que formaron la República de Colombia. para servir a la historia de las guerras de independencia de 1821, 1822 y 1823. Agustín Codazzi 1830

A few years later, in 1839, the explorer R. Schomburgk changed his role in the region after he was officially appointed by the British Government to make the survey of the Colony, which he did, but now following the interest of the Colonial power particularly after the discovery of rich mineral deposits.

He then based his work on the demarcation, not considering any historical and political rights regarding the sovereignty over the land, but basically following the areas of the river basins, and the mountain ranges. For such purpose he even managed to plant, without consulting the Venezuelan authorities, a supposed border demarcation in the mouths of the Orinoco River.

This provoked an immediate diplomatic protest by Venezuela, leading to the signing, ten years later, in 1850, of an Agreement with Great Britain in which both countries committed themselves not to occupy the disputed territory west of the Essequibo River, which began to be called the Guayana Essequiba.

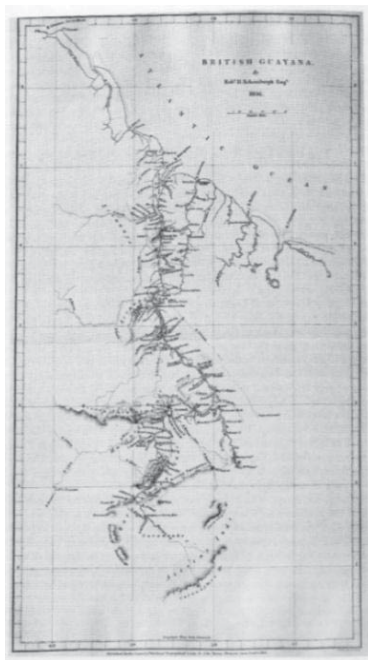
Nonetheless, after the identification of gold deposits in the area, British colonist began to invade the Venezuelan territory, originating, this time, a more important and long international conflict that even lead Venezuela to brake diplomatic relations with Great Britain in 1887.

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After almost ten years of tense international conflict, in 1896, it was the Government of the United States that intervened, invoking the Monroe Doctrine (“America for the Americans”), appointing a Presidential Commission to study the border conflict, and compelling Great Britain to sign with Venezuela the Washington Treaty of 1897.

The purpose of the Treaty was to resolve the dispute by means of an Arbitral Tribunal to be composed by five Judges: two High Judges of the United Kingdom, two Justices of the Supreme Court of the United States (by the Venezuelan interests side), and the fifth, a distinguish Russian International Law Scholar (Professor Frederic de Martens).

The Tribunal issued its Award in October 3, 1899, determining the border between British Guiana and Venezuela, but without any reasoning or motivation; and without determining, as was required by the Washington Arbitration Treaty, the “extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain, respectively, at the time of the acquisition by Great Britain of the Colony of the British Guiana;” that is 1814.



The border that was defined in the Arbitral Award, therefore, was totally arbitrary, limiting the Tribunal, without any motivation, to grant “the entire mouth of the Orinoco River and the land on either side to Venezuela” which had always being an essentially part of its territory; and to grant “to the United Kingdom the land to the east extending up to the Essequibo River,” a land that also always belonged to Venezuela.

British Guayana. By Rob. H. Schomburgk Esq. 1836. Proof copy, Illustrating route of the first expedition. Published in P. Rivière (Ed), *The Guiana Travels of Robert Schomburgk 1835-1844*, The Hakluyt Society, London 2006, Vol. I, p. 32

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The elemental question was and still is: How the three small settlements that composed British Guiana of 1831 were able to become the vast territory assigned to Great Britain by the Arbitral Tribunal?



Unfortunately for Venezuela, the Arbitral Award of October 3, 1899, was issued at a moment in which the country was in the middle of a mayor political change. Only 20 days after the issuance of the Paris Award, on October 23, 1899, a Revolution

(*Revolución Liberal Restauradora*) seized the Government; a situation in which it was practically impossible to raise any political discussion regarding the Arbitral Award.

Unfortunately for Venezuela, the Arbitral Award of October 3, 1899, was issued at a moment in which the country was in the middle of a mayor political change. Only 20 days after the issuance of the Paris Award, on October 23, 1899, a Revolution (*Revolución Liberal Restauradora*) seized the Government; a situation in which it was practically impossible to raise any political discussion regarding the Arbitral Award.

And much less those discussions could take place in the following years, particularly after 1902, when the British Empire Royal Navy, altogether with the German and Italian Navies, conducted a massive military international blockade of the main ports of Venezuela, claiming on behalf of their nationals the preferential payment of debts. An event that led the United States to invoke again the Monroe Doctrine, and that gave rise to the well-known Drago Doctrine.

Therefore, by 1905, when a bilateral Commission was appointed for the demarcation of the border according to the Paris Arbitral Award, it was nothing else than the execution of an

international obligation, not being an international agreement properly signed between the United Kingdom and Venezuela recognizing the borders.

It was 45 years later that an effective interest regarding the 1899 Arbitral Award erupted in Venezuela, after the publication, in 1949, of a recount of a conversation that the lawyer Otto Schoenrich had in New York, in 1944, with Severo Mallet-Prevost, who had been one of the Venezuelan Counsels before the Paris Arbitral Tribunal. Mallet-Prevost died the previous year, leaving a Memorandum explaining the way the Arbitration Award was rendered, authorizing Schoenrich to make it public after his death, which he did in *The American Journal of International Law*, (Vol. 43, No. 3, New York July 1949).

In the Memorandum, Mallet-Prevost said that: “The decision was forced upon” the American arbitrators and that he had “no hesitation in telling [...] that the British Arbitrators were not brought in by any consideration of law or justice and that the Russian Arbitrator [de Martens] was probably compelled to make a decision that he made for reasons unrelated to the matter.” He added that the Arbitral decision “was unjust to Venezuela and deprived her of very extensive and important territory to which, in [his] opinion, Great Britain had not the shadow of a right.”

He explained in his recount, how the Arbitrator de Martens pressed the British and American Judges to issue an unanimous decision based on a border line he proposed, threatening both groups of Judges that if such line was not accepted by either one, the British or the American Arbiters, then he will vote respectively with the American or the British, according to their respective line proposals.

The blackmail was evident, being confirmed by de Martens himself in his Diary (as quoted by Guyana in its Memorial filed before the International Court of Justice), after expressing his “great happiness” of having achieved a unanimous decision according to his proposal.

He explained how he managed to reach the decision, writing the following:

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“It was obvious that if the British had not agreed to my compromise, I would have joined the Americans rather than them.

He explained to the British Arbitrator that “it was not in England's best interest to force [him] to take the Americans' side. This made him [the British Arbiter to] reconsider the issue;” adding that he then told the American arbitrator that “if they do not make a concession,” then -he wrote- “I will have to take the side of the British...” (Guyana Memorial, par. 8.70).

Those were the words of the super arbitrator, the conclusion being that the Arbitral Award of 1899 was issued not according to Justice but based on a process of compromise, pressure and blackmail, namely, procedural fraud. A clear ground for nullification.

And that is why the Award, which had only a few pages, did not have any rational foundation or motivation of any kind. Another clear ground for nullification.

It was based on all the facts revealed in those documents, that the Venezuelan Government began to consider the Award as null and void, raising the matter in 1962 before the United Nations Organization, where after four years of dispute and negotiations the United Kingdom recognized in 1966 the existence of the dispute, signing with Venezuela the “Geneva Agreement,” with the subsequent participation in it of the new independent State of Guyana.

In the Agreement, the Parties agreed to settle the dispute, according to the means provided for UN Charter (art. 33: “negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, recourse to regional bodies or agreements or other peaceful means of their choice”); among which the Secretary General first chose the good offices procedure.

After 27 years of unsuccessful international action, in 2018, based on the same Geneva Agreement (Art. IV.2), he chose the means of “judicial settlement,” through the International Court of Justice.

That is why, two months later, Guyana filed a formal complaint against Venezuela before the International Court of Justice, with respect to the dispute related to “the legal validity and binding effect” of the 1899 Arbitral Award, giving rise to the current “1899 Arbitral Award case.”

In 2020, the Court declared her own jurisdiction and determined that her decision will refer to the “validity of the 1899 Award about the frontier between British Guiana and Venezuela and the related question of the definitive settlement of the dispute regarding the land boundary between the territories of the Parties.”

The parties, in the case, have the international obligation to participate in the judicial process, being clear, as the Court said, that “the non-participation of a party in the proceedings at any stage of the case cannot, under any circumstances, affect the validity of its judgment.”

Up to this date, only the Memorial of Guyana, filed in 2022, has been made public, and we have only not confirmed news that a Hearing at the Court could have been scheduled for next May 2026.

Regarding the Memorial of Guyana, what it can be said is that it contains many evident errors regarding the historical rights over the Guayana Essequiba, like the following:

1. It is historically inexact to say that “The first Europeans to settle in present day Guyana, including the Essequibo Region, were the Dutch,” which only arrived for commercial purposes in 1598, 30 years after the creation of the Provinces of Guayana and Nueva Andalucía.

2. It is historically inexact to say that the Dutch, “Occupied and administered the territory between the Essequibo and Orinoco Rivers until the early nineteenth century, when they were supplanted by the British...” They just had a plantation and fort in the seacoast and in an island in a River.

3. It is historically inexact to say that the West India Company established in 1621, “formally carried out the colonization of the Essequibo Region,” having only established

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small plantations located in the mouths of the Essequibo, Demerara and Berbice Rivers.

4. It is historically inexact to say that there was a “seat of government for the Essequibo Colony” in the island of Kykoveral, from which the United Provinces exercised possession, control and political authority over the territory between the Essequibo and Orinoco Rivers;” being in fact the fort located in such tiny Island the entire Dutch “settlement” that existed until 1748.

5. It is historically inexact to say that: the “Spanish colonization of northern South America began in the sixteenth century,” ignoring the discovery by Cristopher Columbus of the mouth of the Orinoco River in 1498.

6. It is historically inexact that by 1621, the Dutch: “Had already built numerous settlements between the Orinoco and the Essequibo Rivers”. They only established some plantations in the seacoast to the West of the Essequibo River and a few forts including one in a tiny Island in a River.

7. It is historically inexact to say that: “The Spanish did not establish settlements east of the Orinoco River” ignoring the numerous settlements officially governed by the Capuchins Missionaries, in name of the Spanish Crown.

8. It is historically inexact to say that: “By the 1630s, Dutch authority extended to all ports east of the Orinoco River,” being the fact that they had only three establishments in the mouths of the Essequibo, Demerara and Berbice Rivers settled only for commercial purposes, and plantations in the seacoast to the West of the mouth of the Essequibo River up to the Moruco River.

9. It is historically inexact to say that by the time the Treaty of Münster was signed in 1648: “Spain relinquished any claims it might have had,” regarding the territory administered by the Dutch east of the Orinoco River” were the Dutch had only established in 1616 a fort in the Kyk-over-al Island, located at the junction of the Mazaruni River with the Cuyuní River, before its flows into the Essequibo River.

10. It is historically inexact to say that on a Map by William Blaeuw (1667), the Orinoco River was: “The boundary between

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Dutch and Spanish territory in northern South America, in accordance with the Treaty of Münster,” not only because the Map did not defined any border between State possessions, but because the Treaty only recognized the settlements of Demerara, Berbice, and Essequibo in favor of the Dutch Provinces east of the Essequibo River.

New York, 13 March 2026

**

As I said at the beginning, these remarks on the subject of the dispute between Guyana and Venezuela were the ones I presented in the Lecture I gave on March 13, 2026, at the *52nd Annual Conference of the National High School Model United Nations* (New York, March 13-16 and 18-21, 2026), when in the judicial process before the International Court of Justice, only the text of the *Memorial* submitted by Guyana was known.

Now that the texts of the *Counter-Memorial* of Venezuela, of the *Reply* of Guyana and of the *Rejoinder* of Venezuela are known, and also the text of the *Oral Arguments* in the case, a new stage of study on the Controversy is opened, to which we hope to be able to contribute in some way in the future.

Nueva York, 12 May 2026

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NOTA DEL EDITOR: EL CASO GUYANA vs. VENEZUELA

Allan R. Brewer-Carías
Profesor emérito, Universidad Central de Venezuela

Este volumen recoge el texto de los *Argumentos Orales* de los representantes de *Guyana* y *Venezuela*, en las Audiencias convocadas por la Corte Internacional de Justicia, en el Caso del *Laudo Arbitral de 3 de octubre de 1899 (Guyana vs. Venezuela)*, que se desarrollaron entre los días 4 y 11 de mayo de 2026. Los textos han sido tomados, tal como fueron publicados, hasta el día 12 de mayo de 2026, en la página web de la Corte Internacional de Justicia, (<https://icj-cij.org/case/171>).

Al momento de iniciarse dichas Audiencias solo era del conocimiento público en el Caso ante la Corte, la *Memoria* de Guyana sobre el mérito de la controversia, que como Estado demandante fue presentada en el Caso el 8 de marzo de 2022.

En cambio, la *Contra-Memoria* de Venezuela presentada el 8 de abril de 2024, la *Réplica* de Guyana presentada el 9 de diciembre de 2024 y el *Dúplica (Rejoinder)* de Venezuela presentada el 25 de agosto de 2025, hasta el inicio de las Audiencias de mayo de 2026 no habían sido de acceso público. En consecuencia, nadie, fuera de los funcionarios gubernamentales y de la Corte, pudo consultarlos. Fue solo, a partir del inicio de las Audiencias el día 4 de mayo de 2026, que los documentos se hicieron disponibles a los interesados en la página web de la Corte Internacional de Justicia.

En ese estado de conocimiento público de los documentos presentados en el proceso judicial, con anterioridad al inicio de las audiencias el día 4 de mayo de 2026, sin haber podido tener acceso a esos documentos, decidí publicar en un solo volumen todos los estudios sobre la controversia de la Guayana Esequiba que hasta ese momento había publicado en diversos libros de mi autoría y en libros colectivos y Revistas, en un solo volumen, para dejar testimonio de lo trabajado hasta entonces sobre el tema.

Dicho libro salió publicado en abril de 2026, en la Colección Estudios de la Academia de Ciencias Políticas y Sociales de Venezuela, con el título:

***El territorio de Venezuela y la controversia con Guyana
sobre la Guayana Esequiba. Estudios***

**Academia de Ciencias Políticas y Sociales, Serie Estudios
No. 164, Editorial Jurídica Venezolana, Caracas 2026,
640 pp.**

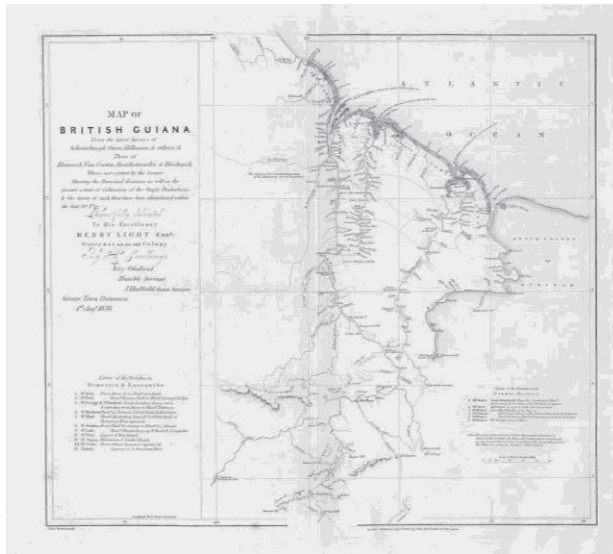
En las últimas páginas de dicho libro (pp. 639-652), incluí el texto en inglés de la Exposición que me solicitaron hiciera el día 13 de marzo de 2026, en la *52nd Annual Conference of the National High School Model United Nations*, que se realizó los días 13-16 y 18-21 de marzo de 2026 en Nueva York, en las cuales expuse brevemente lo que en mi criterio eran los aspectos centrales históricos y jurídicos que debían destacarse respecto de la Controversia, precisamente en la víspera de las Audiencias que debían desarrollarse ante la Corte Internacional de Justicia, y solo con el conocimiento de lo que había expuesto Guyana en su *Memoria*.

En esta Presentación de esta Compilación del texto del *Primer y Segundo Round de los Argumentos Orales* en la Audiencias ante la Corte Internacional de Justicia que se desarrollaron los días 4, 6, 8 y 11 de mayo de 2026, me ha parecido de interés reproducir el texto de dicha Exposición, tanto en su versión original en inglés como fue expuesta, y en su traducción al castellano, a las cuales he

agregado los Mapas que presenté para ilustrar la exposición oral en dicha Conferencia de Nueva York.

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CASO GUYANA vs. VENEZUELA



Quiero comenzar mi presentación refiriéndome a la Colonia Británica de Guayana tal como era en 1836, cuando Robert Schomburgk, uno de los exploradores más experimentados del siglo XIX, elaboró los primeros mapas de la colonia tras explorar su territorio en una expedición patrocinada por la *Royal*

Geographical Society de Gran Bretaña.

Schomburgk mostró de manera clara y precisa que la Colonia estaba compuesta exclusivamente por tres asentamientos o plantaciones, todos ubicados al este del río Esequibo, en las desembocaduras de tres ríos específicos: el Esequibo, el Demerara y el Berbice. Esos tres asentamientos constituían todo lo que era la Colonia Británica en 1836, con su frontera occidental con Venezuela marcada por el río Esequibo.



Mapa Geográfico de América Meridional de Juan de la Cruz Cano y Olmedilla (1795),

Estos asentamientos se establecieron a partir de 1598 en territorios que formaban parte de las Provincias coloniales

españolas de Guayana y Nueva Andalucía, creadas en 1568 y 1569, cuyos dominios se extendían hacia el este hasta el río Amazonas.



Carta del Virreinato de Santa Fe (1717) y Provincias de Venezuela

Los tres asentamientos fueron fundados por compañías comerciales holandesas en un momento en que las Provincias Unidas de los Países Bajos aún formaban parte

del Imperio Español y se encontraban en guerra con la Corona para lograr su independencia. Esa guerra, iniciada en 1568, duró ochenta años y concluyó en 1648 con el Tratado de Münster.

En dicho Tratado, España reconoció la independencia de las Provincias Unidas y las posesiones comerciales que estas tenían en el extranjero, entre ellas los tres asentamientos de Berbice, Demerara y Esequibo, identificadas por sus nombres. Por consiguiente, todo el territorio situado al oeste del río Esequibo permaneció bajo la soberanía española y, desde 1777, formó parte de la Capitanía General de Venezuela.

Por esa razón, las incursiones de los asentamientos coloniales holandeses en ese territorio hacia el oeste del Esequibo que a veces llegaron hasta el río Orinoco fueron siempre rechazadas por los colonos españoles de Venezuela.

En 1814, al final de las guerras napoleónicas, los mismos tres asentamientos o plantaciones: Berbice, Demerara y Esequibo —y nada más— fueron cedidos por los Países Bajos a Gran Bretaña mediante el Tratado de Paz de Londres. En él se identificaron nuevamente por sus nombres (Demerara, Berbice y Essequibo), que

eran las únicas posesiones que los Países Bajos podían ceder legalmente. De esta manera, todo el territorio al oeste del río Esequibo quedó bajo la soberanía de Venezuela, que desde 1811 era ya un Estado independiente.



Mapa de Venezuela, la Guayana Británica (Guayana Inglesa), la Guayana Holandesa (Hoy Surinam) y la Guayana Francesa, published in Boston, 1821 (Cummings & Hilliard). Shows the Esequibo River as the oriental border of Venezuela

Esos tres asentamientos fueron los que, pocos años después, en 1831, Gran Bretaña denominó oficialmente Guayana Británica, tal como aparece en los mapas iniciales de Robert Schomburgk de 1836.

Aunque Venezuela declaró su independencia en 1811, al año siguiente España invadió su territorio, lo que dio origen a una guerra de liberación (la Campaña Admirable) dirigida por Simón Bolívar. Tras cinco años de guerra, en 1817, Bolívar logró liberar la



Provincia de Guayana e incorporarla a la República mediante un Decreto en el que se estableció que la frontera oriental de la provincia era el río Esequibo.

Mapa político de la República de Venezuela en 1840, Published in the Atlas físico y político de la República de Venezuela, Agustín Codazzi, 1840

El Decreto, solo reconoció la existencia de una pequeña franja de tierra en la costa del mar caribe, al oeste de la desembocadura del Esequibo y hasta el río Moruca, indicando su texto que estaba

ocupada —decía el Decreto— por una “posesión extranjera”, que había sido inicialmente holandesa y en ese momento ya era británica.



Mapa de los tres Departamentos Venezuela, Cundinamarca y Ecuador que formaron la República de Colombia. para servir a la historia de las guerras de independencia de 1821, 1822 y 1823. Agustín Codazzi 1830

Estos hechos también quedaron reflejados en todos los mapas oficiales de la República: primero, después de 1821, en los de la República de Colombia (que comprendía las provincias de Venezuela y Nueva Granada), y luego, después de 1830, en los mapas de Venezuela. Estos mostraban un extenso territorio hacia el este hasta el río Esequibo, límite que Gran Bretaña aceptó en 1825 al reconocer la Independencia de Colombia.

Pocos años después, en 1839, el mismo explorador Schomburgk cambió su rol en la región al ser designado oficialmente por el Gobierno británico para realizar el levantamiento topográfico de la Colonia. Esta vez actuó siguiendo los intereses de la potencia colonial, especialmente tras el descubrimiento de ricos yacimientos minerales.

Basó su trabajo de demarcación, no en derechos históricos ni políticos sobre la soberanía del territorio, sino principalmente en las divisiones de las cuencas hidrográficas y las cadenas montañosas. Con ese fin, incluso llegó a colocar, sin consultar a las autoridades venezolanas, una supuesta demarcación fronteriza en las bocas del Orinoco.

Esto provocó una inmediata protesta diplomática de Venezuela, que llevó a la firma, diez años después, en 1850, de un acuerdo con Gran Bretaña en el que ambos países se

comprometieron a no ocupar el territorio en disputa al oeste del río Esequibo, que empezó a denominarse Guayana Esequiba.

Sin embargo, tras la identificación de depósitos de oro en la zona, los colonos británicos comenzaron a invadir territorio venezolano, originando un conflicto internacional más grave y prolongado que incluso llevó a Venezuela a romper relaciones diplomáticas con Gran Bretaña en 1887.

Tras casi diez años de tensa confrontación internacional, a requerimiento de Venezuela, en 1896 intervino el Gobierno de Estados Unidos invocando la Doctrina Monroe (“América para los americanos”). Nombró una Comisión Presidencial para estudiar el conflicto fronterizo y obligó a Gran Bretaña a firmar con Venezuela el Tratado de Washington de 1897.

El propósito del Tratado era resolver la disputa mediante un Tribunal Arbitral compuesto por cinco jueces: dos altos magistrados del Reino Unido, dos jueces de la Corte Suprema de Estados Unidos (por el lado de los intereses venezolanos) y un distinguido jurista ruso de Derecho Internacional (el profesor Frédéric de Martens) como quinto árbitro.

El Tribunal emitió su Laudo Arbitral el 3 de octubre de 1899, fijando la frontera entre la Guayana Británica y Venezuela, pero sin motivación ni razonamiento alguno, y sin determinar, como exigía el Tratado de Washington, “la extensión de los territorios pertenecientes o que pudieran reclamarse legítimamente por los Países Bajos o por el Reino de España, respectivamente, en el momento de la adquisición por Gran Bretaña de la Colonia de la Guayana Británica”, es decir, en 1814.

La frontera definida en el Laudo Arbitral fue, por tanto, totalmente arbitraria. El Tribunal, sin motivación alguna, concedió “toda la desembocadura del río Orinoco y las tierras a ambos lados a Venezuela” —territorio que siempre había formado parte esencial de su dominio— y otorgó “al Reino Unido las tierras hacia el este hasta el río Esequibo”, territorio que también había pertenecido siempre a Venezuela.

NOTA DEL EDITOR:
EL CASO GUYANA vs. VENEZUELA



La pregunta elemental, que sigue vigente, es: ¿cómo tres pequeños asentamientos que componían la Guayana Británica de 1831 pudieron convertirse en el vasto territorio asignado a Gran Bretaña por el Tribunal Arbitral?

British Guayana. By Rob. H. Schomburgk Esq. 1836. Proof copy, Illustrating route of the first expedition. Published in P. Rivière (Ed), *The Guiana Travels of Robert Schomburgk 1835-1844*, The Hakluyt Society, London 2006, Vol. I, p. 32

Desafortunadamente para Venezuela, el Laudo Arbitral del 3 de octubre de 1899 se dictó en un momento en que el país atravesaba un profundo cambio político. Solo veinte días después de cuando se emitió, el 23 de octubre de 1899, una revolución (la Revolución Liberal Restauradora) tomó el poder, situación que hizo prácticamente imposible cualquier discusión política sobre el Laudo.



Y mucho menos pudieron tener lugar tales discusiones en los años siguientes, especialmente después de 1902, cuando la Marina Real británica, junto con las armadas alemana e italiana, impuso un masivo bloqueo militar internacional a los principales puertos de Venezuela para exigir el pago preferencial de deudas de sus nacionales. Este hecho llevó a Estados Unidos a invocar nuevamente la Doctrina Monroe y el conflicto además dio origen a la conocida Doctrina Drago.

Por ello, cuando en 1905 se designó una Comisión bilateral para la demarcación de la frontera según el Laudo de París, se trató simplemente de la ejecución de una obligación internacional, y no de un acuerdo internacional propiamente firmado entre el Reino Unido y Venezuela que reconociera las fronteras.

Fue cuarenta y cinco años después cuando surgió en Venezuela un interés efectivo respecto al Laudo Arbitral de 1899, tras la publicación, en 1949, del relato de una conversación que el abogado Otto Schoenrich sostuvo en Nueva York en 1944 con Severo Mallet-Prevost, quien había sido uno de los abogados venezolanos ante el Tribunal Arbitral de París. Mallet-Prevost había fallecido el año anterior y dejó un Memorándum en el que explicaba cómo se había dictado el Laudo, autorizando a Schoenrich a hacerlo público después de su muerte. Este lo publicó en *The American Journal of International Law* (Vol. 43, N.º 3, Nueva York, julio de 1949).

En el Memorándum, Mallet-Prevost afirmó que “la decisión fue impuesta” a los árbitros estadounidenses y que no dudaba en decir “que los árbitros británicos no se guiaron por consideración alguna de derecho o justicia, y que el árbitro ruso [de Martens] probablemente se vio compelido a tomar la decisión que tomó por razones ajenas al asunto”. Añadió que el Laudo Arbitral “fue injusto para Venezuela y la privó de un territorio muy extenso e importante al que, en su opinión, Gran Bretaña no tenía la más mínima sombra de derecho”.

Explicó cómo el árbitro de Martens presionó a los jueces británicos y estadounidenses para emitir una decisión unánime basada en una línea fronteriza que él propuso, amenazando a ambos grupos con que, si no se aceptaba su línea, votaría respectivamente con los jueces estadounidenses o con los jueces británicos según la propuesta de cada uno.

El chantaje fue evidente y fue confirmado por el propio de Martens en su diario (citado por Guyana en su *Memoria* ante la Corte Internacional de Justicia), donde expresó su “gran felicidad” por haber logrado una decisión unánime según su propuesta.

Explicó cómo llegó a la decisión con las siguientes palabras: «Era obvio que si los británicos no aceptaban mi compromiso, yo me habría unido a los estadounidenses antes que a ellos». Le

explicó al árbitro británico que «no convenía a los intereses de Inglaterra obligarme a tomar el lado de los estadounidenses. Esto hizo que reconsiderara la cuestión»; y luego le dijo al árbitro estadounidense que «si no hacen una concesión, tendré que tomar el lado de los británicos...».

Esas fueron las palabras del super árbitro. La conclusión es que el Laudo Arbitral de 1899 no se dictó conforme a la justicia, sino mediante un proceso de compromiso, presión y chantaje: es decir, un fraude procesal, causa evidente de nulidad.

Por eso el Laudo, que pretendió resolver un conflicto territorial de gran envergadura, penas tiene unas cuantas páginas de extensión, careciendo por completo de fundamentación racional o motivación alguna: otra causa evidente de nulidad.

Fue sobre la base de todos estos hechos revelados en aquellos documentos, cuando el Gobierno venezolano comenzó a considerar el Laudo Arbitral como nulo y sin valor, planteando el asunto en 1962 ante la Organización de las Naciones Unidas. Tras cuatro años de disputa y negociaciones, en 1966, el Reino Unido reconoció la existencia de la controversia y firmó con Venezuela el Acuerdo de Ginebra, con la posterior participación del nuevo Estado independiente de Guyana.

En dicho Acuerdo, las partes convinieron en resolver la controversia por los medios previstos en la Carta de la ONU (art. 33: negociación, investigación, mediación, conciliación, arbitraje, arreglo judicial, recurso a organismos o acuerdos regionales u otros medios pacíficos de su elección). El Secretario General eligió inicialmente el procedimiento de buenos oficios.

Tras 27 años de infructuosa gestión internacional a través del medio de solución escogido, en 2018, con base en el propio Acuerdo de Ginebra (art. IV.2), el mismo Secretario General eligió el medio del “arreglo judicial” ante la Corte Internacional de Justicia.

Por ello, dos meses después, Guyana interpuso una demanda formal contra Venezuela ante la Corte Internacional de Justicia respecto a “la validez jurídica y el efecto vinculante” del Laudo

Arbitral de 1899, dando origen al actual “caso del Laudo Arbitral de 1899”.

En 2020, la Corte declaró su propia competencia y determinó que su decisión se referiría a “la validez del Laudo de 1899 sobre la frontera entre la Guayana Británica y Venezuela y la cuestión conexa del arreglo definitivo de la controversia relativa a la frontera terrestre entre los territorios de las Partes”.

Conforme al Estatuto de la Corte, las partes en un proceso judicial tienen la obligación internacional de participar en el mismo. Como señaló la Corte, “la no participación de una parte en el procedimiento en cualquier etapa del caso no puede, bajo ninguna circunstancia, afectar la validez de su sentencia”.

Hasta la fecha, solo se ha hecho público el Memorial de Guyana, presentado en 2022, y se tiene noticia no confirmada de que una audiencia ante la Corte podría haberse programado para mayo de 2026.

Respecto al Memorial de Guyana, cabe señalar que contiene numerosos errores evidentes sobre los derechos históricos de Venezuela sobre la Guayana Esequiba, entre los cuales destacan los siguientes:

1. Es históricamente inexacto afirmar que “Los primeros europeos en establecerse en la actual Guyana, incluida la Región del Esequibo, fueron los holandeses”, quienes solo llegaron con fines comerciales en 1598, treinta años después de la creación de las Provincias coloniales españolas de Guayana y Nueva Andalucía.

2. Es históricamente inexacto afirmar que los holandeses “ocuparon y administraron el territorio entre los ríos Esequibo y Orinoco hasta principios del siglo XIX, cuando fueron suplantados por los británicos...”. Solo tuvieron unas plantaciones comerciales, y algunos fuertes en la costa y en una isla fluvial.

3. Es históricamente inexacto afirmar que la Compañía de las Indias Occidentales, establecida en 1621, “llevó a cabo formalmente la colonización de la Región del Esequibo”, cuando solo estableció pequeñas plantaciones en las desembocaduras de los ríos Esequibo, Demerara y Berbice.

4. Es históricamente inexacto afirmar que existía una “sede de gobierno para la Colonia del Esequibo” en la isla de Kykoveral, desde la cual las Provincias Unidas ejercían posesión, control y autoridad política sobre el territorio entre los ríos Esequibo y Orinoco; en realidad, el fuerte situado en esa diminuta isla era todo el “asentamiento” holandés que existió hasta 1748.

5. Es históricamente inexacto afirmar que “la colonización española del norte de Sudamérica comenzó en el siglo XVI”, ignorando el descubrimiento de la desembocadura del Orinoco por Cristóbal Colón en 1498, el reconocimiento de toda la costa hacia el este, entre otros por Alonso de Ojeda y el descubrimiento del río Amazonas por Francisco Orellana en 1542.

6. Es históricamente inexacto afirmar que para 1621 los holandeses “ya habían construido numerosos asentamientos entre el Orinoco y el Esequibo”. Solo establecieron algunas plantaciones en la costa al oeste del Esequibo y unos pocos fuertes, uno de ellos en una diminuta isla fluvial.

7. Es históricamente inexacto afirmar que “los españoles no establecieron asentamientos al este del Orinoco”, ignorando los numerosos asentamientos oficialmente gobernados por Misioneros Capuchinos que si actuaban como agentes de la Corona española.

8. Es históricamente inexacto afirmar que “hacia la década de 1630, la autoridad holandesa se extendía a todos los puertos al este del Orinoco”, cuando en realidad solo tenían tres establecimientos en las desembocaduras de los ríos Esequibo, Demerara y Berbice, y plantaciones en la costa al oeste de la desembocadura del Esequibo hasta el río Moruco.

9. Es históricamente inexacto afirmar que en el momento de firmarse el Tratado de Münster en 1648 “España renunció a cualquier reclamación que pudiera tener” respecto al territorio administrado por los holandeses al este del Orinoco, cuando estos solo habían establecido en 1616 un fuerte en la isla Kyk-over-al, en la confluencia de los ríos Mazaruni y Cuyuní antes de su desembocadura en el Esequibo. Al momento de firmarse el Tratado, lo único que reconoció España como posesión holandesa fueron exclusivamente los tres asentamientos en las desembocaduras de los ríos Esequibo, Demerara y Berbice.

10. Es históricamente inexacto afirmar que en un mapa de William Blaeu (1667) el río Orinoco era “la frontera entre el territorio holandés y el español en el norte de Sudamérica, de conformidad con el Tratado de Münster”, no solo porque el Mapa no definía frontera alguna entre posesiones estatales, denominando Guayana a toda el área al este del Orinoco, sino porque el Tratado solo reconoció los asentamientos de Demerara, Berbice y Essequibo a favor de las Provincias Unidas ubicadas al este del río Essequibo.

Nueva York, 13 marzo 2026

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Como dije al inicio, estas notas finales sobre el tema de la controversia entre Guyana y Venezuela, fueron las que presenté el 13 de marzo de 2026, en la *52nd Annual Conference of the National High School Model United Nations* (Nueva York, 13-16 y 18-21 de marzo de 2026), cuando en el proceso judicial ante la Corte Internacional de Justicia, solo se conocía el texto de la *Memoria* presentada por Guyana.

Ahora que se conoce el texto de la *Contra Memoria* de Venezuela, de la *Réplica* de Guyana y de la *Dúplica* de Venezuela, y además el texto de los Argumentos Orales en el caso, se abre una nueva etapa de estudio sobre la Controversia a lo cual esperamos poder contribuir en algo el futuro.

Nueva York, 12 de mayo de 2026

PRESENTATION

Rafael Badell Madrid

President of the Political and Social Sciences Academy

The border dispute between the Bolivarian Republic of Venezuela, first with the United Kingdom and, second, with the Cooperative Republic of Guyana, dating back to its establishment as an independent state, is an issue that has been present in Venezuela for over two hundred years, ever since the presence of English settlers from Demerara and Berbice were detected near the Essequibo River in the territories of Venezuela that were part of the Republic of Colombia in 1822.

In December 1824, the United Kingdom recognized the Republic of Colombia as an independent state. The United Kingdom's decision was notified to Spain that same year, 1824. However, in 1835, despite having expressly recognized the Republic of Colombia as an independent state, the United Kingdom began its incursion into the Essequibo territory with the aim of dominating the Orinoco River, which would allow for river control of the northern part of South America and the exploitation of the mineral resources of this territory.

The United Kingdom's expansion occurred through various actions, including unilateral demarcations, communications between British authorities (which were sometimes contradictory), diplomatic notes exchanged between the British and Venezuelan governments, and the United Kingdom's consistent rejection of

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Venezuela's proposals to resolve the dispute through a legal settlement.

The dispute between Venezuela and the United Kingdom continued to escalate. In 1850, a temporary or provisional treaty was signed between the two countries, under which they undertook to maintain the status quo as it stood at the end of 1850.

This 1850 Status Quo Treaty was subject to serious violations by the United Kingdom, particularly beginning in 1880, during the second administration of Antonio Guzmán Blanco, when, following the discovery of gold deposits, the United Kingdom's claims extended from the mouth of the Orinoco River to nearly the border, passing through the town of Upata.

On February 20, 1887, diplomatic relations between Venezuela and the United Kingdom were severed through a new note sent by Foreign Minister Diego Bautista Urbaneja. Venezuela had requested the support of the United States to mediate in the dispute with the United Kingdom and succeeded in having the U.S. Secretary of State, Richard Olney, send a note to the United Kingdom on July 20, 1888, defending Venezuela's position regarding the disputed territory.

In view of the United Kingdom's advance into Venezuelan territories, U.S. President Grover Cleveland, in a message to Congress on December 17, 1895, invoked the Monroe Doctrine.

Finally, with the support of the United States, Venezuela succeeded in persuading the United Kingdom to agree to participate in a peaceful resolution mechanism for the territorial dispute, and in January 1896, negotiations began for the signing of an arbitration treaty to resolve the controversy; however, Venezuela was unable to participate in the discussion and drafting of the arbitration treaty's provisions.

On February 2, 1897, the Treaty of Washington was signed, whereby the United Kingdom and Venezuela committed to resolving the territorial dispute through arbitration. This arbitration treaty was drafted solely in English, the language of one of the parties, and no provision was made for a corresponding version in Spanish, which was the language of the other party, Venezuela.

Article II of the Washington Treaty established the composition of the arbitral tribunal, which consisted of five jurists. Venezuela did not appoint any arbitrators, unlike the United Kingdom and the United States.

In accordance with that arbitration treaty, on Tuesday, October 3, 1899, at the Palais d'Orsay, the Paris Arbitral Award was read, rendered, and published, whereby, in six paragraphs and eight hundred forty-four words, and without any reasoning, the arbitral tribunal unanimously decided to award the United Kingdom 159,500 square kilometers, considerably more than the 32,186 square kilometers that the Netherlands had ceded to the United Kingdom through the Treaty of London of August 13, 1814.

Precisely, the questionable validity of that Paris Award is the matter now before the International Court of Justice (ICJ) for adjudication, pursuant to the suit filed by the Cooperative Republic of Guyana against Venezuela before that Court, in which it requested:

(i) a declaration of the validity and binding effect of the 1899 award and respect for the boundary established in the 1905 Agreement;

(ii) that Venezuela withdraws its occupation of the eastern part of Anacoco Island and other territories recognized by the Paris Arbitral Award and the 1905 Agreement;

(iii) that Venezuela refrain from threatening or using force to impede the development of Guyana's economic activities within its territory; and

(iv) to declare Venezuela liable for the violation of Guyana's sovereignty and, consequently, for the infringement of its rights.

Initially, Venezuela did not appear in the proceedings and expressed its objection to the jurisdiction of the ICJ. Taking into account Venezuela's position, the ICJ initiated an incidental proceeding regarding its jurisdiction. Venezuela did not appear, so only Guyana's arguments regarding the issue of the ICJ's jurisdiction were heard.

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By judgment of December 18, 2020, the ICJ declared itself competent to hear the case, based on Article IV, paragraph 2, of the Geneva Agreement of February 17, 1966.

In that decision, the ICJ ruled that it has jurisdiction to hear the case brought by the Cooperative Republic of Guyana insofar as it concerns the validity of the Arbitral Award of October 3, 1899, and the related issue of the final settlement of the land boundary dispute between the Cooperative Republic of Guyana and the Bolivarian Republic of Venezuela.

In the same judgment, the ICJ unanimously decided that it lacks jurisdiction to hear the claims of the Cooperative Republic of Guyana arising from events that occurred after the signing of the Geneva Agreement on February 17, 1966. With this, the ICJ established a cut-off date of February 17, 1966, when the Geneva Agreement was signed.

Guyana had until March 8, 2022, to file its memorial, and Venezuela had until March 8, 2023, to file its corresponding counter-memorial. On March 8, 2022, Guyana filed its Memorial, and on June 6, 2022 -almost three months after the deadline for Venezuela to file its counter-memorial had passed- Venezuela sent a communication to the ICJ designating Ambassador Samuel Moncada Acosta, Venezuela's Permanent Representative to the UN, as the Principal Agent in the case, and as Co-Agents, Ambassador Félix Plasencia González and Professor Elsie Rosales García.

On June 7, 2022, Venezuela appeared for the first time before the ICJ and raised preliminary objections regarding the admissibility of the Cooperative Republic of Guyana's application.

Guyana submitted its written observations and arguments regarding the preliminary objections raised by Venezuela, and the ICJ called upon the parties to present their arguments at oral hearings held between November 17 and 22, 2022.

On April 6, 2023, the ICJ issued a judgment in which it ruled on the preliminary objection of inadmissibility of the claim filed on June 7, 2022, by Venezuela and, first, unanimously declared the preliminary objection filed by Venezuela admissible. Then, with fourteen votes in favor and the dissenting vote of Ad Hoc Judge Mr.

Philippe Couvreur, it dismissed the claim, that is, found it to be inadmissible.

Subsequently, on October 30, 2023, Guyana filed a request with the ICJ for provisional measures against Venezuela in response to the Venezuelan government's call for a consultative referendum on Venezuela's rights over the disputed territory.

On December 1, 2023, the ICJ issued a decision on the request for provisional measures. First, the ICJ reaffirmed, once again, its jurisdiction to hear the case, repeatedly citing its judgment of December 18, 2020, by which it declared itself competent to resolve the dispute and decided, unanimously, that:

(i) Venezuela must refrain from taking actions that alter the current status of the disputed territory and

(ii) Both parties must avoid actions that aggravate or extend the dispute or make it more difficult to resolve.

On April 8, 2024, Venezuela filed its counter-memorial containing its arguments, defenses, and evidence regarding the nullity of the Paris Award of October 3, 1899, and, as scheduled, Guyana filed its reply on December 9, 2024, while Venezuela filed its rejoinder on August 11, 2025.

Article 43 of the Statute of the ICJ provides that the proceedings shall consist of two phases: a written phase and an oral phase.

The oral phase of the trial is now finished, and it will be some time before the ICJ issues the judgment that will resolve this delicate matter. During this oral phase, Guyana and Venezuela presented their first round of oral arguments on May 4 and 6, 2026, respectively. Subsequently, a second round took place, initiated by Guyana on Friday the 8th, followed by Venezuela on Monday the 11th of May of this year.

Prominent Venezuelans, including historians, lawyers, and international relations experts, have written on this important topic. The scholar Allan Brewer-Carías stands out in a particular way.

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First of all, through his study on the evolution of the Venezuelan Republic and its territory, titled “Territory of Venezuela. Republican Period,” published in the collective work *Diccionario de Historia de Venezuela*, edited by the Polar Foundation in 1989.

Later, Brewer-Carías published a study titled “Guyana-Venezuela Border Dispute” in the Max Planck Encyclopedia of Public International Law in 2006. He then published a study on Venezuelan territory with special reference to the 19th-century constitutions, in his work “The Formation of the Republic and Its Territory in the 19th-Century Constitutions,” published in the *Boletín de la Academia de Ciencias Políticas y Sociales*, issue 164, in 2021.

In addition, Dr. Allan Brewer-Carías offered important reflections during the closing session of the Academy of Political and Social Sciences’ Colloquium Series on the claim to the Essequibo territory, which were included in the *Boletín de la Academia de Ciencias Políticas y Sociales*, issue 168, published in 2022, under the title “Conclusions of the Colloquium Series of the Academy of Political and Social Sciences on the claim to the Essequibo territory.”

Dr. Brewer-Carías also published an important book on the claim titled “Venezuela’s Rights over the Essequibo Territory, the Nullity of the 1899 Arbitral Award, and the Falsehoods in Guyana’s Memorial to the International Court of Justice,” published by the Academy of Political and Social Sciences and the Editorial Jurídica Venezolana in 2023 and translated into English.

This book is a valuable contribution to understanding Venezuela’s long and complex claim regarding its eastern border. In this work, Dr. Allan Brewer-Carías conducts a thorough analysis of the historical and legal events that have led to this crucial juncture in the dispute. He not only examines the preliminary decisions and the submission of Guyana’s Memorial but also highlights the need for Venezuela to defend its rights before the ICJ.

Another book by Dr. Allan Brewer-Carías is titled “The Vicissitudes of the Useless and Distracting Advisory Referendum and the Defense of Venezuela’s Rights over the Essequibo

Territory,” published by Editorial Jurídica Venezolana and released in late 2023. In this work, which begins with a study by Dr. Asdrúbal Aguiar on the 1966 Geneva Agreement, Dr. Brewer-Carías analyzes the events related to the consultative referendum on the claim to the Essequibo Territory in Venezuela in December 2023 and criticizes the decision to hold the referendum, considering it unconstitutional and irresponsible. The book examines aspects such as the Constitutional Chamber of the Supreme Court of Justice’s ruling on the constitutionality of the referendum questions, the proceedings before the ICJ initiated by the Cooperative Republic of Guyana against Venezuela, and the provisional measures ordered by that high international court.

Scholars Allan Brewer-Carías and León Henrique Cottin have edited two works published under the auspices of the Academy of Political and Social Sciences and the Venezuelan Legal Publishing House. The first is titled *Geographical Report of the U.S. Presidential Commission Appointed to Investigate Upon the True Divisional Line Between the Republic of Venezuela and British Guiana* and is a reproduction of the third volume of the report and annexes prepared by the commission appointed by the President of the United States of America, Grover Cleveland, to investigate and report on the true boundary line between the Republic of Venezuela and British Guiana.

The second work is titled *Case of Venezuela in the Question of Boundary Between Venezuela and British Guiana Presented by Venezuela to the Arbitrators in Conformity with the Treaty of February 2, 1897. Part II* and presents the case submitted by Venezuela on November 19, 1897, to the arbitral tribunal in Paris, in accordance with the provisions of the Treaty of Washington of February 2, 1897.

Recently, in 2026, Dr. Brewer-Carías revisited this important topic with his new book: “The Territory of Venezuela and the Controversy over the Essequibo Guiana.”

Now, as if his contribution were not enough, the dean of scholars, Dr. Allan Brewer-Carías, has had the excellent, timely, and appropriate idea of compiling and publishing everything that took place at the International Court of Justice during this oral

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phase. Thus, the reader will be able to easily find all the arguments and evidence presented by both parties during this round of oral arguments.

Caracas, May 12, 2026.

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Rafael Badell Madrid

Presidente de la Academia de Ciencias Políticas y Sociales

La controversia limítrofe entre la República Bolivariana de Venezuela, primero, con el Reino Unido y, luego, con la República Cooperativa de Guyana, a partir de su creación como Estado independiente, es un asunto que ha estado presente en Venezuela desde hace más de doscientos años, desde que en 1822 se detectó la presencia de ocupaciones de colonos ingleses provenientes de Demerara y Berbice cerca del río Esequibo en los dominios de la Venezuela que formaba parte de la República de Colombia.

En el mes de diciembre de 1824 el Reino Unido reconoció a la República de Colombia como Estado independiente. La decisión del Reino Unido fue notificada a España ese mismo año de 1824. Pero en 1835, a pesar de haber reconocido expresamente a la República de Colombia como Estado independiente, el Reino Unido inició la incursión en el territorio del Esequibo con el objetivo de dominar el río Orinoco, lo que permitiría el control fluvial de la parte septentrional de América del Sur y la explotación de los recursos minerales de este territorio.

La expansión del Reino Unido tuvo lugar a través de diversos actos, tales como demarcaciones unilaterales, comunicaciones entre las autoridades británicas (en ocasiones contradictorias), notas diplomáticas intercambiadas entre el gobierno británico y el venezolano y el constante rechazo del Reino Unido ante las propuestas de Venezuela de resolver la controversia a través de un arreglo de derecho.

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El problema entre Venezuela y el Reino Unido fue agravándose. En 1850 se celebró un tratado temporal o provisional entre ambos países, según el cual se obligaban a mantener el estado de las cosas (status quo), tal y como se encontraba a finales de 1850.

Este Tratado de Status Quo de 1850 fue objeto de graves violaciones por parte del Reino Unido, sobre todo a partir de 1880, durante el segundo gobierno de Antonio Guzmán Blanco, cuando con motivo del descubrimiento de yacimientos auríferos, la pretensión del Reino Unido se extendió desde las bocas del Orinoco hasta casi el lindero que pasa por el pueblo de Upata.

El 20 de febrero de 1887 se rompieron las relaciones diplomáticas entre Venezuela y el Reino Unido mediante una nueva nota enviada por el ministro de Relaciones Exteriores Diego Bautista Urbaneja. Venezuela había solicitado el apoyo de los Estados Unidos para que mediara en la controversia con el Reino Unido y logró que, el 20 de julio de 1888, el secretario de Estado de los Estados Unidos de América, Richard Olney, enviara una nota al Reino Unido defendiendo la posición de Venezuela con relación al territorio en disputa.

Visto el avance del Reino Unido en los territorios de Venezuela, el presidente de los Estados Unidos de América, Grover Cleveland, en un mensaje al Congreso el 17 de diciembre de 1895, invocó la doctrina Monroe.

Finalmente, con el respaldo de los Estados Unidos, Venezuela pudo lograr que el Reino Unido accediera a participar en un mecanismo de solución pacífica para la disputa territorial y en enero de 1896 se iniciaron las negociaciones para la suscripción de un tratado de arbitraje que resolviera la controversia; no obstante, Venezuela no pudo participar en la discusión y redacción de las cláusulas del tratado de arbitraje.

El 2 de febrero de 1897 se suscribió Tratado de Washington mediante el cual el Reino Unido y Venezuela se comprometieron a resolver la disputa territorial a través de un arbitraje. Este tratado de arbitraje fue redactado sólo en inglés, el idioma de una de las partes y no se contempló hacer la correspondiente versión en español que era el idioma de la otra parte, que era Venezuela.

El artículo II del Tratado de Washington estableció la composición del tribunal arbitral que debía estar conformado por cinco juristas. Venezuela no eligió a ningún árbitro, como sí lo hicieron el Reino Unido y los Estados Unidos.

En ejecución de ese tratado arbitral, el día martes 3 de octubre de 1899, en el Palacio de Orsay, se leyó, dictó y publicó el Laudo Arbitral de París, mediante el cual, en seis párrafos, ochocientas cuarenta y cuatro palabras, y sin ninguna motivación, el tribunal arbitral decidió por unanimidad adjudicar al Reino Unido 159.500 kilómetros, bastante más que los 32.186 kilómetros cuadrados que le había cedido Holanda a el Reino Unido, mediante el Tratado de Londres del 13 de agosto de 1814.

Precisamente, la dudosa validez de ese laudo de París es el asunto que ahora concierne juzgar a la Corte Internacional de Justicia (CIJ), en virtud de la demanda que introdujo la República Cooperativa de Guyana contra Venezuela ante esa Corte, mediante la cual solicitó:

(i) declarar la validez y efecto vinculante del laudo de 1899 y el respeto del límite establecido en el Acuerdo de 1905;

que Venezuela retire la ocupación en la parte oriental de la isla de Anacoco y demás territorios reconocidos por el Laudo Arbitral de París y el acuerdo de 1905;

(iii) que Venezuela no amenace ni utilice la fuerza para impedir el desarrollo de las actividades económicas de Guyana en su territorio; y

(iv) declarar la responsabilidad de Venezuela por la violación de la soberanía de Guyana y, en consecuencia, por las lesiones a su derecho.

Inicialmente Venezuela no compareció al proceso y expresó su rechazo a la competencia de la CIJ. Tomando en consideración la posición asumida por Venezuela, la CIJ inició un procedimiento incidental sobre su jurisdicción. Venezuela no compareció, por lo que se escucharon sólo los argumentos de Guyana respecto al asunto de la jurisdicción de la CIJ.

Mediante sentencia del 18 de diciembre de 2020, la CIJ se declaró competente para conocer la demanda, con fundamento en

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el párrafo 2 del artículo IV del Acuerdo de Ginebra de 17 de febrero de 1966.

En la referida decisión la CIJ decidió que es competente para conocer la demanda presentada por la República Cooperativa de Guyana en la medida en que se refiere a la validez del Laudo Arbitral del 3 de octubre de 1899 y a la cuestión conexa de la solución definitiva de la controversia sobre límites terrestres entre la República Cooperativa de Guyana y la República Bolivariana de Venezuela.

En la misma sentencia, de forma unánime, la CIJ decidió que no es competente para conocer de las reclamaciones de la República Cooperativa de Guyana derivadas de hechos ocurridos después de la firma del Acuerdo de Ginebra de fecha 17 de febrero de 1966. Con esto la CIJ estableció una fecha crítica que es el 17 de febrero de 1966, cuando se firmó el Acuerdo de Ginebra.

Guyana tenía hasta el 8 de marzo de 2022 para presentar su memoria y Venezuela hasta el 8 de marzo de 2023 para producir su correspondiente contra memoria. El 8 de marzo de 2022, Guyana presentó su Memoria y el 6 de junio de 2022, cuando habían ya transcurrido casi tres meses del plazo para que Venezuela consignara su contra memoria, Venezuela envió una comunicación a la CIJ mediante la cual designó como Agente principal del juicio al Embajador Samuel Moncada Acosta, Representante Permanente de Venezuela ante la ONU, y como Co-Agentes al Embajador Félix Plasencia González y a la profesora Elsie Rosales García.

El 7 de junio de 2022, Venezuela compareció por primera vez ante la CIJ y opuso excepciones preliminares sobre la admisibilidad de la demanda de la República Cooperativa de Guyana.

Guyana presentó sus observaciones y alegatos escritos sobre las objeciones preliminares planteadas por Venezuela y la CIJ llamó a las partes a exponer sus alegatos en audiencias orales que se desarrollaron entre el 17 y 22 de noviembre de 2022.

El 6 de abril de 2023 la CIJ dictó sentencia por medio de la cual resolvió la excepción preliminar de inadmisibilidad de la demanda propuesta el 7 de junio de 2022 por Venezuela y, en primer lugar, declaró unánimemente admisible la excepción preliminar

presentada por la Venezuela. Luego, con catorce votos a favor y el voto en contra del Juez ad hoc Sr. Philippe Couvreur, la declaró sin lugar, es decir, improcedente.

Posteriormente, el 30 de octubre de 2023, Guyana presentó ante la CIJ una solicitud de medidas provisionales contra Venezuela con ocasión de la convocatoria efectuada por el gobierno venezolano para la celebración de un referéndum consultivo acerca de los derechos de Venezuela sobre el territorio en disputa.

El 1 de diciembre de 2023 la CIJ dictó decisión sobre la solicitud de medidas provisionales. En primer lugar, la CIJ ratificó, una vez más, su competencia para conocer del caso, para lo cual citó en reiteradas ocasiones su sentencia del 18 de diciembre de 2020, por medio de la cual se declaró competente para resolver la controversia y decidió, por unanimidad, que:

(i) Venezuela debe abstenerse de ejecutar acciones que modifiquen la situación actual del territorio en disputa y

(ii) ambas partes deben evitar acciones que agraven o extiendan la disputa o la hagan más difícil de resolver.

El día 8 de abril del año 2024, Venezuela presentó su contra memoria contentiva de sus alegatos, defensas y pruebas en relación a la nulidad del Laudo de París del 3 de octubre de 1899 y, como estaba programado, Guyana realizó la réplica el 9 de diciembre de 2024, en tanto que Venezuela ejerció su contra réplica el 11 de agosto de 2025.

El artículo 43 del Estatuto de la CIJ establece que el procedimiento constará de dos fases: una escrita y otra oral.

Ahora, avanza la fase oral del juicio y transcurrirá algún tiempo hasta que la CIJ dicte la sentencia que resolverá este delicado asunto.

Durante esta fase oral, Guyana y Venezuela presentaron su primera ronda de alegatos orales el 4 y 6 de mayo de 2026, respectivamente. Posteriormente, se llevó a cabo una segunda ronda iniciada por Guyana el viernes 8, seguida por Venezuela el lunes 11 de mayo del año en curso.

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Sobre este importante tema han escrito destacados venezolanos, entre ellos historiadores, abogados e internacionalistas. Destaca especialmente el académico Allan Brewer-Carías.

Primero, con su estudio sobre la evolución de la República venezolana y su territorio, titulado “Territorio de Venezuela. Período Republicano”, publicado en la obra colectiva *Diccionario de Historia de Venezuela*, editado por la Fundación Polar en 1989,

Más adelante, Brewer-Carías publicó una investigación titulada “Guyana-Venezuela Border Dispute”, en la *Max Planck Encyclopedia of Public International Law* del año 2006. Luego publicó un estudio sobre el territorio venezolano con especial referencia a las constituciones del siglo XIX, en su trabajo “La formación de la república y de su territorio en las constituciones del siglo XIX”, publicado en el *Boletín de la Academia de Ciencias Políticas y Sociales*, número 164, en 2021.

Además, el Dr. Allan Brewer-Carías formuló importantes reflexiones durante el cierre del Ciclo de Coloquios de la Academia de Ciencias Políticas y Sociales sobre la reclamación del territorio Esequibo, que fueron incluidas en el *Boletín de la Academia de Ciencias Políticas y Sociales*, número 168 publicado en 2022, bajo el título “Conclusiones Coloquios de la Academia de Ciencias Políticas y Sociales sobre la reclamación del territorio Esequibo”.

El Dr. Brewer-Carías publicó también un importante libro sobre la reclamación titulado *Derechos de Venezuela sobre el territorio Esequibo, la nulidad del Laudo Arbitral de 1899 y las falsedades en la memoria de Guyana ante la Corte Internacional de Justicia*, editado por la Academia de Ciencias Políticas y Sociales y la Editorial Jurídica Venezolana en 2023 y traducido al inglés.

Este libro es una valiosa contribución a la comprensión de la larga -y compleja- reclamación venezolana sobre su frontera oriental. En esta obra el Dr. Allan Brewer-Carías realiza un denso análisis de los eventos históricos y jurídicos que han llevado a este punto crucial en la disputa. No sólo examina las decisiones preliminares y la presentación de la Memoria de Guyana, sino que

también destaca la necesidad que Venezuela defienda sus derechos ante la CIJ.

Otro libro del Dr. Allan Brewer-Carías se titula *Las vicisitudes del inútil y distractivo referendo consultivo y la defensa de los derechos de Venezuela sobre el territorio Esequibo*, editado por Editorial Jurídica Venezolana y publicado a finales de 2023. En esta obra, que inicia con un estudio del Dr. Asdrúbal Aguiar sobre el Acuerdo de Ginebra de 1966, el Dr. Brewer-Carías analiza los eventos relacionados con el referendo consultivo sobre la reclamación del Territorio Esequibo en Venezuela en diciembre de 2023 y critica la decisión de realizar el referendo por considerarla inconstitucional e irresponsable. Se estudian aspectos como la declaración de constitucionalidad de las preguntas por parte de la Sala Constitucional del Tribunal Supremo de Justicia, el procedimiento ante la CIJ iniciado por la República Cooperativa de Guyana en contra de Venezuela y las medidas provisionales dictadas por ese alto tribunal internacional.

Los académicos Allan Brewer-Carías y León Henrique Cottin han editado dos obras que han sido publicadas bajo los auspicios de la Academia de Ciencias Políticas y Sociales y la Editorial Jurídica Venezolana. La primera se titula *Geographical Report of the U.S. Presidential Commission Appointed to Investigate Upon the True Divisional Line Between the Republic of Venezuela and British Guiana* y es una reproducción del tercer volumen del informe y anexos preparados por la comisión designada por el Presidente de los Estados Unidos de América, Grover Cleveland, para investigar e informar sobre la verdadera línea divisoria entre la República de Venezuela y la Guyana Británica.

La segunda obra lleva por título *Case of Venezuela in the Question of Boundary Between Venezuela and British Guiana Presented by Venezuela to the Arbitrators in Conformity with the Treaty of February 2, 1897. Part II* y recoge la teoría del caso presentada por Venezuela el 19 de noviembre de 1897 ante el tribunal arbitral de París, de conformidad con lo previsto en el Tratado de Washington del 2 de febrero de 1897.

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Recientemente, este año 2026, el Dr. Brewer-Carías vuelve sobre este importante tema con su nuevo libro: *El territorio de Venezuela y la Controversia sobre la Guyana Esequiba*.

Ahora, como si fuera poca su contribución, el decano de los académicos, Dr. Allan Brewer-Carías, ha tenido la muy buena, oportuna y conveniente idea de compilar y publicar todo lo ocurrido en la Corte Internacional de Justicia en esta fase oral. De modo que el lector podrá encontrar fácilmente todos los argumentos y pruebas a que se han hecho valer ambas partes en estas ronda de argumentación oral.

Caracas, 12 de mayo de 2026.

THE FUTURE OF THE CASE

Héctor Faúndez Ledesma

Member of the Political and Social Sciences Academy

On May 11 of the current year, the parties' pleadings concluded at the International Court of Justice, in the case regarding the lawsuit filed by Guyana against Venezuela, requesting a determination of the validity of the arbitral award of October 3, 1899, which established Venezuela's boundary with the then British Colony of Guiana.

It must be celebrated that, finally, the authorities of the country have decided to appear at those hearings to make Venezuela's voice heard regarding this matter. On the other hand, we had to wait until last May 4, with the start of those hearings, to gain access to Venezuela's counter-memorial and rejoinder in the written process before the Court. It is unconceivable that, in a matter of the utmost national interest, universities, national academies, political parties, and civil society were not consulted in the preparation of these documentary pieces; with certainty, they had something to say regarding the nullity of the award and the Venezuelan tittles to the territory under dispute. As a matter of fact, Venezuelans were not informed of the arguments submitted to the Court, and we learned about some of them -from the mouths of Guyana's lawyers- on May 4, at the start of the hearings. This could not have been treated as if it were a state secret and deserved to be shared with the Venezuelans. Nevertheless, those who are in the exercise of power preferred to be the only ones to assume this serious responsibility.

Being this a matter of national interest, of the utmost importance for Venezuela, it seemed to be the right thing for the acting president to attend the closing hearing, and that she addressed the Court. That would have been expected from anyone who is at the head of the State leadership, regardless of their ideology, their legal status (*de jure* or *de facto*), or the circumstances under which that person is in that position. But, precisely because this is a matter of national interest, I regret that the rector of the Central University of Venezuela, the president of the Academy of Political and Social Sciences, the president of the National Academy of History, the president of Fedecámaras, the president of the CTV (or whatever is left of it), and leaders of the different political parties of Venezuela were not invited to be part of the Venezuelan delegation. Since this is a matter of national interest, it would have been good to show that the whole country is behind this claim, and not just a political faction.

Contrary to the usual practice in this type of proceedings, Venezuela decided to appear without any Anglo-Saxon lawyer trained in international law, and with sufficient experience in that field; what was needed were lawyers who did not need to define themselves as 'international jurists,' who are known to the Court's judges. It would have been outstanding that, due to their intellectual and moral authority, our counsels could speak on equal terms with the judges. The government preferred to opt for very meritorious lawyers, but, on average, younger and less experienced than those of the Guyanese team. Strategically, having had a legal team made up of German, Italian, Senegalese, Greek, and Spanish lawyers may have served to give the impression that we are not so alone in our claim; but it would not have harmed, and, on the contrary, it would have helped to include some prestigious English or American lawyer.

Regarding the parties' arguments, my overall assessment is that Guyana did very well in the first round, on Monday, May 4, although not so much in the second, on Friday, May 8. As for Venezuela, both in the first and in the second round, its foreign lawyers did very well, particularly regarding the reasons why the award is null. It is understandable that, with a fixed time - six hours available for the first round and three for the second - there was little room to better develop these arguments; in any case, I assume that they have been extensively addressed in the written pleadings.

Precisely because time was limited and had to be allocated appropriately, I think that the intervention of Attorney General Arianny Seijo –who presented herself as an "international jurist"– was unnecessary. This was not a university competition, nor a vanity contest, and there was no time for making jokes. Those precious minutes could have been better used by jurists such as Andreas Zimmermann, Paolo Palchetti, Christian Tams, or Jean-Marc Thouvenin, who had the knowledge and skillful to address the issues submitted to the Court. And, probably, the intervention of the acting president could have been cut by a few minutes, so that these same professionals could had elaborate further on their legal explanations, which was what needed to be conveyed to the Tribunal.

As is sufficiently known, there is already a ruling on jurisdiction, in which the Court has declared itself competent to decide on the validity of the Arbitral Award and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela. Since the judgments of the Court are binding, it seemed wrong to insist that Venezuela does not recognize the Court's jurisdiction. First of all, the final judgment on the merits of the case will be binding, and -if it is adverse to Venezuela's claims- there is nothing reasonable that can be done to recover a territory that will be under the sovereignty of Guyana, with the legitimacy provided by a ruling of the International Court of Justice. I imagine that no one in their right mind is thinking about a military adventure, which -assuming it were possible- would be repudiated by the international community as a whole, and which, in the region, would not even have the support of Argentina or Guatemala (despite their territorial claims against Great Britain). What it was to be done was properly defending Venezuela's rights, an issue that -in my view- was done quite well. But, if we have such strong arguments (as was shown in the hearings), it seems incomprehensible to assume that a judicial settlement is a threat, and not an opportunity to assert the Venezuelan claim. It is a pity that, because of that stubbornness, we have wasted so much time wandering away from the right path.

The argument of the novation of preexisting obligations by the new obligations assumed by the parties through the Geneva Agreement, presented by Makane Mbengue, would have been a very strong argument in the jurisdictional phase, in which Venezuela decided not to appear. Now, in the merits phase, it was

an untimely argument. However, Zimmermann's contention, that just as political or diplomatic means are inadequate to decide on the nullity of the award, judicial settlement does not allow for a satisfactory resolution of the dispute, could lead the Court to find that the matter it is called to decide is not a legal dispute, and that, accordingly, it must refrain from ruling on the merits of it. There are already precedents in which, to preserve its jurisdictional function, the Court has refused to decide on the merits of the dispute. So, it is not impossible for something like this to happen, although it is unlikely in this case. But it should be borne in mind that this would leave us in the same position we were in before Guyana's sue.

Philippe Sands, a lawyer for Guyana, denied any value to the Mallet-Prevost memorandum, and -assuming it existed- he questioned the facts reported in it, or rejected that they had legal relevance. But some of the facts referred to in the memorandum are corroborated by other sources, including Martens' diary, and a letter from Russell to Prime Minister Salisbury, dated just a few days after the award was issued. In any case, if it is argued that the award is null, it is not because of what the Mallet-Prevost Memorandum may say, but because of what the award itself says.

Professor Nilufer Oral referred to Venezuela's conduct which, with its silence or acquiescence after the award was issued, supposedly would have consented to it. But if the award is vitiated by absolute nullity, it will not cease to be so because of the conduct of one of the parties. Furthermore, even assuming that -according to Guyana's thesis- Venezuela's long silence purports to her acceptance of the validity of the award, the Geneva Agreement would have reopened that controversy, and that would be the reason why we are in Court. In said Treaty, England and Guyana accepted that the Essequibo controversy is a matter that is still to be resolved.

Venezuela argues that the award is null because the arbitration agreement is null, or because it exceeded the authority granted to the Tribunal and, furthermore, because it lacks grounds.

The circumstances under which the 1897 Arbitration Treaty was negotiated, without the participation of Venezuela, and concealing commitments made by the United States and Great Britain to the detriment of Venezuela, have led counsels for Venezuelan to maintain that the arbitration agreement is null, because it is the result of fraud and coercion, and because Venezuela

was misled regarding the prescription clause, which was an essential part of said Treaty. Despite the weight of the facts and the arguments presented by Venezuela, it is most likely that this allegation will be dismissed, because Venezuela ratified the agreement and participated in the arbitration procedure. However, these facts are the tip of the thread of the skein that led to the farce of the Paris award, and it is good for the Court to be acquainted with them.

Venezuela convincingly argued that the award exceeded its authority, either because it did not resolve one of the tasks assigned to it -such as verifying which territories belonged to whom- or because it decided on matters it was not called to decide -such as the free navigation of the Amacuro and Barima rivers- or because it did not decide according to law. That argument could not be rebutted by Guyana. It may be said that the ruling on the free navigation of the rivers nullifies that part of the award, and not the rest. But it cannot be maintained that an award that does not decide on what was the fundamental premise for determining a border is a valid one.

Another argument of Venezuela was that the award is null because it lacks reasoning, in the terms required by the law in force at the time the award was rendered. Counsels for Guyana argued that, in 1899, it was not mandatory to provide reasoning for awards and that, moreover, the 1897 arbitration agreement did not require it. But the truth is that contemporary doctrine and practice required that awards be duly reasoned. Between 1795 and 1872, the practice was that awards by kings were not always reasoned; in contrast, awards adopted by arbitration commissions usually were. Up to that point, it can be accepted that there was no generally accepted practice as law. However -in a controversy between the United States and Great Britain- since 1872, with the arbitral award rendered in the Alabama case, the obligation to provide reasoning for awards began to take shape. That process went through a project approved in 1875 by the *Institut de Droit International*, and came to an end in July 1899, with the Hague Convention for the peaceful settlement of international disputes. Additionally, between 1872 and 1899, several arbitral awards were issued, under the understanding that they had to be reasoned; in 1897 it had been the turn of the Costa Rica Packet case (a dispute between the United Kingdom and the Netherlands, in which Martens had been the sole arbitrator), and that award was duly reasoned. It is hard to believe

that if the controversy had been between the United States and England, between Russia and England, or between France and England, the Tribunal would have neglected to state the reasons for its decision.

However it may be, the arbitration agreement signed between the United Kingdom and Venezuela outlined the tasks assigned to the Tribunal, established the order in which those tasks were to be carried out, set the rules the Tribunal had to follow, and indicated that all of this had to be done "impartially and carefully." These were not mere recommendations, but the conditions under which the parties had agreed to submit themselves to arbitration. The Tribunal had to show that it had fulfilled each of those steps. The arbitrators had to explain that they had carried out the tasks assigned to them, that they had investigated and established the extent of the territories belonging to, or that could legally be claimed by either party at a determined critical date, that they had adhered to the rules agreed upon by the parties to determine who had a lawful title and what the boundary was, and they had to show that they had done it "impartially and carefully." An award -or a judgment- is like a syllogism; given some specified premises, a conclusion follows; if the premises are missing, there is no reasonable way to reach a conclusion. That is why, according to George Scelle, an award that is not reasoned is not a judgment, but merely an opinion.

Excess of power and lack of reasoning of the Paris award are the two most obvious grounds for its nullity. Although they are Venezuela's strongest cards, there is more. First of all, there is the irregular composition of the tribunal, with one party being represented and the other not, with one party having access to the Tribunal's internal debates and the other not, in breach of the sovereign equality of States, and in breach of the principles on which international arbitration is founded. Secondly, something must be said on the participation of Federico Martens (or Martens), an Anglophile arbitrator, a Russian chancery official and advisor to the Tsar of Russia. Martens believed that international law applied only to the countries of Christian Europe and not to savage or semi-savage nations, and promoted an entente between Russia and England in Central Asia. With those ideas and interests, and with that attachment to the Russian chancery, Martens could not be impartial in this case. In fact, under the rules applicable to judges of the International Court of Justice, Martens could never have

served as arbitrator in this case. The two previous circumstances (the integration of the Tribunal with the participation of two English arbitrators, but without any Venezuelan in the panel of arbitrators, and the participation of Martens), made it impossible for that Tribunal to act with independence and impartiality. Thirdly, the violation of due process must also be mentioned because, as a consequence of the way the proceedings were conducted, showing the bias of the British arbitrators, refusing to require the presentation of evidence that was in the possession of the United Kingdom government, and violating the principle of equality of arms, Venezuela was left defenseless. In short, the fact that the ruling was made through the coercion of one of their own over the rest of the Tribunal, without proper deliberation in full, but in hallway confabs, and without a debate on the merits of the parties' arguments, but with a mere political compromise, devoid of any legal basis, made the award equally null.

It is my believe that, within the limitations of the available time, the lawyers for the parties addressed the issue of the annulment or validity of the award very well, and I think that, on that point, Venezuela prevailed. Christian Tams, on behalf of Venezuela, argued that the validity of the award could not pass any test. But the issue of territorial titles is another matter; because, if it is concluded that the award is null, the Court will have to determine the definitive land boundary between the two countries and, on that point, Guyana's arguments were almost nonexistent, and Venezuela's focused briefly on some maps.

While Guyana bases its claim on the alleged occupation of the disputed territory, Venezuela primarily invokes historical titles. Guyana maintains that the Spaniards had been confined to the Orinoco, and that, at the time the award was rendered, there were no Venezuelan settlements in the disputed area; according to Guyana, the religious missions of the Catalan Capuchins were located west of the boundary indicated by the award. Additionally, Guyana states that the disputed territory was occupied by England; but the evidence shows that Dutch settlements, first, and then English settlements, were located on the coast; the maps of the time show everything else as a vast uninhabited region.

In reply to the allegation that there was no Spanish or Venezuelan presence in the disputed region, Thouvenin cited the cases of Castillo el Burgo at the confluence of the Cuyuní and Mazaruni rivers, and the Santa Rosa Mission at the mouth of the

Essequibo River. Additionally, Thouvenin commented on some maps, starting with that of the Spaniard Luis Surville, from 1778, which marks the boundary on the Essequibo River (except for the Pomerón-Moroco region, on the coast and on the western side of the Essequibo). Among the English maps, those of Aaron Arrowsmith, from 1806, another published by Sherwood, Neely and Jones (the map of the Scottish cartographer John Thomson), from 1822, and a map by Joseph Hadfield, from 1838, were shown. All the maps show the boundary on the Essequibo River, except for Hadfield's, which shows some English plantations on the western coast of the Essequibo. In the case of Hadfield, it should be noted that he was a surveyor of the Crown and that he served as superintendent for Demerara of rivers and streams in the colony of British Guiana. According to Hadfield (as shown in the cartouche), his map was "based on the latest measurements of Schomburgk" and other cartographers. Thouvenin took the opportunity to highlight the discrepancies between the boundary on Hadfield's 1838 map and that of Schomburgk's 1840 map. The fact is that the maps of Dutch, French, English, Spanish, Colombian, Brazilian, and Venezuelan cartographers, as well as many maps from independent cartographers, support Venezuela's thesis.

In a matter in which Venezuelan historians have not done their homework (providing more opinions than properly supported information that might have any evidentiary value in a court), neither party paid close attention to the territorial titles that support their respective claims. We will have to look their written pleadings in search for what they have to say on this point. For the moment, it is recalled that, in 1824, when Gran Colombia requested recognition from England as an independent nation, it precisely indicated that its eastern boundary was the Essequibo River; when such recognition occurred, the British government made no objection or reservation to the border claimed by Colombia.

It would be paradoxical that, as a consequence of the trial in the Court, which Venezuela was so averse to, after hearing Venezuela's arguments, it now turns out that Guyana is willing to sit down and negotiate. It would not be the first time that this has happened either. But, for the moment, let us wait for what the Court may say, and, whatever its ruling, let us behave as a civilized nation and abide by the verdict. That is what is expected of people who respect the law

Caracas, May 15, 2026.

EL FUTURO DEL CASO

Héctor Faúndez Ledesma

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El 11 de mayo del año en curso concluyeron los alegatos de las partes en la Corte Internacional de Justicia, en relación con la demanda introducida por Guyana en contra de Venezuela, pidiendo que se determine la validez del laudo arbitral del 3 de octubre de 1899, que fijó la frontera de Venezuela con la entonces Colonia Británica de Guayana.

Hay que celebrar que, finalmente, las autoridades del país hayan decidido comparecer en esas audiencias, para hacer oír la voz de Venezuela en relación con este asunto. Pero hubo que esperar hasta el 4 de mayo pasado, con el inicio de esas audiencias, para tener acceso a la contra memoria y a la dúplica de Venezuela en el proceso escrito ante la Corte. Resulta incomprensible que, en un asunto del mayor interés nacional, no se haya consultado a las universidades, a las Academias nacionales, a los partidos políticos, y a la sociedad civil para la preparación de esas piezas documentales, con los argumentos que permiten afirmar que el laudo es nulo, y que el territorio en disputa es de Venezuela. En realidad, esos argumentos ni siquiera fueron informados al país, y de algunos de ellos nos enteramos -por boca de los abogados de Guyana-, el 4 de mayo, al inicio de las audiencias. Esto no podía ser tratado como si fuera un secreto de Estado, y merecía ser compartido con los venezolanos. Sin embargo, quienes están en el ejercicio del poder prefirieron ser los únicos que asumieran esta grave responsabilidad.

Siendo este un asunto de Estado, que tiene una importancia trascendental para Venezuela, me ha parecido correcto que la presidente encargada haya asistido a la audiencia de cierre, y que se haya dirigido a la Corte. Eso se hubiera esperado de cualquiera que estuviera al frente de la jefatura del Estado, sin perjuicio de su ideología, de su condición jurídica (de jure o de facto), o de las circunstancias por las que dicha persona está en ese cargo. Pero, precisamente por ser este un asunto de Estado, lamento que no se haya invitado a formar parte de la delegación venezolana al rector de la Universidad Central de Venezuela, al presidente de la Academia de Ciencias Políticas y Sociales, a la presidente de la Academia Nacional de la Historia, al presidente de Fedecámaras, al presidente de la CTV (o lo que quede de ella), y a dirigentes de los distintos partidos políticos de Venezuela. Porque éste es un asunto de Estado, hubiera sido bueno mostrar que es todo el país el que está detrás de esta reclamación, y no sólo una facción política.

Contrario a la práctica corriente en este tipo de procesos, Venezuela decidió comparecer sin ningún abogado anglosajón formado en el derecho internacional, y con suficiente experiencia en ese campo; lo que hacía falta eran abogados que no necesitaran autodefinirse como “juristas internacionales”, que sean conocidos de los jueces de la Corte, y con quienes -gracias a su autoridad intelectual y moral- puedan hablar de igual a igual. El gobierno prefirió optar por abogados muy meritorios, pero, en promedio, más jóvenes y menos experimentados que los del equipo guyanés. Estratégicamente, haber contado con un equipo jurídico integrado por abogados alemanes, italianos, senegaleses, griegos, y españoles, puede haber servido para dar la impresión de que no estamos tan solos en nuestra reclamación; pero no hubiera hecho daño, sino que, muy por el contrario, hubiera ayudado incluir a algún prestigioso abogado inglés o estadounidense.

En cuanto a los alegatos de las partes, mi apreciación global es que -en términos generales- Guyana estuvo muy bien en la primera ronda, del día lunes 4 de mayo, aunque no tanto en la segunda, del viernes 8. En cuanto a Venezuela, tanto en la primera como en la segunda ronda, sus abogados extranjeros estuvieron muy bien, particularmente en lo que se refiere a las razones por las que el laudo es nulo. Es comprensible que, con un tiempo tasado -seis horas disponibles para la primera ronda y tres para la segunda-, había poco espacio para desarrollar mejor esos argumentos; en

todo caso, asumo que estos han sido ampliamente abordados en los alegatos escritos.

Precisamente porque el tiempo era escaso y había que distribuirlo apropiadamente, pienso que la intervención de la procuradora Arianny Seijo -que se presentó como “*jurista internacional*”- sobraba. No era esta una competencia universitaria, ni un concurso de vanidades, o el momento de hacer bromas. Ese tiempo pudo ser mejor aprovechado por juristas como Andreas Zimmermann, Paolo Palchetti, Christian Tams, o Jean-Marc Thouvenin, que habrían abordado con destreza las cuestiones que han sido sometidas a la Corte. Y, probablemente, la intervención de la presidente encargada habría podido recortarse algunos minutos, para que esos mismos profesionales pudieran extenderse en sus explicaciones jurídicas, que es lo que había que transmitir al Tribunal.

Como es de conocimiento público, ya hay una sentencia sobre jurisdicción, en la que la Corte se declaró competente para conocer de la nulidad o validez del laudo de París y de la cuestión relacionada con la determinación de la frontera terrestre definitiva entre Guyana y Venezuela. Por eso, me pareció equivocado insistir en que Venezuela no reconoce la competencia de la Corte. En primer lugar, la sentencia que se dicte será obligatoria, y -de ser adversa a las pretensiones de Venezuela- no hay nada razonable que se pueda hacer para recuperar un territorio que estará bajo la soberanía de Guyana, con la legitimidad que le dará una sentencia de la Corte Internacional de Justicia. Me imagino que nadie en su sano juicio está pensando en una aventura militar, que -suponiendo que fuera posible- sería repudiada por la comunidad internacional en su conjunto, y que, en la región, no contaría ni siquiera con el respaldo de Argentina o Guatemala (a pesar de sus reclamos territoriales en contra de Inglaterra). De lo que se trataba era de defender apropiadamente los derechos de Venezuela, cuestión que -en mi opinión- se hizo de manera bastante atinada. Pero, si tenemos tan buenos argumentos (como se demostró en las audiencias), me parece incomprensible creer que la Corte es una amenaza, y no una oportunidad para hacer valer la reclamación venezolana. Es una lástima que, por esa terquedad, hayamos perdido tanto tiempo desviándonos del camino correcto.

El argumento de la novación de las obligaciones preexistentes por las nuevas obligaciones asumidas por las partes mediante el Acuerdo de Ginebra, expuesto por Makane Mbengue, hubiera sido

un argumento de mucho peso en la fase de jurisdicción, en la que Venezuela decidió no comparecer. Ahora, en la fase de fondo, era un argumento extemporáneo. Sin embargo, el argumento de Zimmermann, en el sentido de que, del mismo modo que los medios políticos o diplomáticos son inadecuados para decidir sobre la nulidad del laudo, el arreglo judicial no permite llegar a una solución satisfactoria de la controversia, podría conducir a que la Corte determine que el asunto que ella está llamada a decidir no es una controversia jurídica, y que, en consecuencia, debe abstenerse de pronunciarse sobre el fondo de la misma. Ya hay precedentes en los que, para preservar su función jurisdiccional, la Corte se ha negado a decidir sobre el fondo de la controversia. De manera que no es imposible que algo así pueda ocurrir en este caso, aunque es poco probable. Pero hay que advertir que eso nos dejaría en el mismo punto en el que estábamos antes de la demanda de Guyana.

Philippe Sands, abogado de Guyana, negó todo valor al memorándum de Mallet-Prevost, y -asumiendo que éste existiera- puso en duda los hechos relatados en dicho memorándum, o rechazó que tuvieran relevancia jurídica. Pero algunos de esos hechos están corroborados por otras fuentes, incluyendo el diario de Martens, y una carta de Russell al primer ministro Salisbury, fechada escasos días después de dictado el laudo. Como quiera que sea, si se sostiene que el laudo es nulo no es por lo que dice el Memorándum de Mallet-Prevost, sino por lo que dice el propio laudo.

La profesora Nilufer Oral, se refirió a la conducta de Venezuela que, con su silencio o aquiescencia después de dictado el laudo, supuestamente habría consentido en éste. Pero, si el laudo está viciado de nulidad absoluta, no dejará de estarlo por la conducta de una de las partes. Además, incluso asumiendo que -según la tesis de Guyana-, el largo silencio de Venezuela se hubiera traducido en la aceptación de la validez del laudo, el Acuerdo de Ginebra habría reabierto esa controversia, y sería la razón por la que estamos en la Corte. En dicho Tratado, Inglaterra y Guyana aceptaron que la controversia del Esequibo es un asunto que todavía está por resolver.

Venezuela ha alegado que el laudo es nulo porque el compromiso arbitral es nulo, o porque -de no serlo- el laudo incurrió en exceso de poder y, además, porque carece de fundamentos.

Las circunstancias en que se negoció el Tratado de Arbitraje de 1897, sin la participación de Venezuela, y ocultándole compromisos asumidos por Estados Unidos y Gran Bretaña en perjuicio de Venezuela, han llevado a los abogados de Venezuela a sostener que el compromiso arbitral es nulo, porque es el fruto del fraude y la coacción, y porque Venezuela fue inducida a error respecto de la cláusula de prescripción, que era una parte esencial de dicho Tratado. A pesar de la contundencia de los hechos y de los argumentos expuestos por los abogados de Venezuela, es muy probable que esta alegación será desestimada, porque Venezuela ratificó el compromiso y participó en el procedimiento arbitral. Sin embargo, esos hechos son la punta del hilo de la madeja que condujo a la farsa del laudo de París, y es bueno que hayan sido conocidos por la Corte.

Venezuela alegó, en forma coherente, que el laudo incurrió en exceso de poder, ya sea porque no resolvió una de las tareas que se le encomendó -como era la determinación de los territorios que pertenecían a unos o a otros-, o porque decidió sobre cuestiones que no estaba llamado a decidir -como era la libre navegación de los ríos Amacuro y Barima-, o porque no decidió conforme a Derecho. Ese argumento no pudo ser desmontado por Guyana. Se podrá decir que el pronunciamiento sobre la libre navegación de los ríos anula esa parte del laudo, y no el resto. Pero no se puede sostener que un laudo que no decide sobre lo que era la premisa fundamental para determinar una frontera sea un laudo válido.

Otro argumento de Venezuela fue que el laudo es nulo porque carece de motivación, en los términos requeridos por el Derecho en vigor al momento de dictarse el laudo. Los abogados de Guyana sostuvieron que, en 1899, no era obligatorio motivar los laudos y que, además, el compromiso arbitral de 1897 no lo requiere. Pero la verdad es que la doctrina y la práctica contemporánea requerían que los laudos fueran debidamente razonados. Entre 1795 y 1872, la práctica era que los laudos de reyes no siempre eran motivados; en cambio, los laudos adoptados por comisiones arbitrales usualmente lo eran. Hasta ese momento, puede aceptarse que no había una práctica generalmente aceptada como Derecho. Sin embargo -en una controversia entre Estados Unidos y Gran Bretaña-, desde 1872, con el laudo arbitral dictado en el caso del Alabama, comenzó a cristalizar la obligación de motivar los laudos. Ese proceso pasó por un proyecto aprobado en 1875 por el *Institut de Droit International*, y culminó, en julio de 1899 con la

Convención de La Haya para el arreglo pacífico de controversias internacionales. Además, entre 1872 y 1899, se dictaron varios laudos arbitrales, en el entendido de que ellos debían ser motivados; en 1897 había sido el turno del asunto del Costa Rica Packet -una disputa entre el Reino Unido y Holanda, en que Martens había sido árbitro único-, y ese laudo fue debidamente motivado. Cuesta creer que, si la controversia hubiera sido entre Estados Unidos e Inglaterra, entre Rusia e Inglaterra, o entre Francia e Inglaterra, el Tribunal hubiera prescindido de indicar las razones de su decisión.

En todo caso, el compromiso arbitral suscrito entre el Reino Unido y Venezuela señalaba las tareas que se le encomendaba al Tribunal, establecía el orden en que esas tareas debían ejecutarse, fijaba las reglas a las que el Tribunal debía ceñirse, e indicaba que todo eso debía hacerse “imparcial y cuidadosamente”. Estas no eran meras recomendaciones, sino las condiciones en que las partes habían aceptado someterse al arbitraje, y el Tribunal tenía que mostrar que había cumplido con cada uno de esos pasos. Los árbitros tenían que explicar que habían cumplido con las tareas que se les encomendó, que habían investigado y establecido la extensión de los territorios que pertenecían, o que legalmente podían ser reclamados por cualquiera de las partes al momento de una fecha crítica determinada, que se habían ajustado a las reglas acordadas por las partes para determinar quién tenía un justo título y cuál era la frontera, y tenían que mostrar que todo eso lo habían hecho “imparcial y cuidadosamente”. Un laudo -o una sentencia. Es como un silogismo; a ciertas premisas les sigue una conclusión; si faltan las premisas, no hay forma razonable de llegar a la conclusión. Por eso, según George Scelle, un laudo que no está motivado no es una sentencia, sino una mera opinión.

El exceso de poder y la falta de fundamentación del laudo de París son las dos causales más obvias de su nulidad, y son las cartas más fuertes de Venezuela. Pero hay otras. En primer lugar, está la integración irregular del tribunal, con una parte que estaba representada y la otra no, con una parte que tenía acceso a los debates internos del Tribunal y la otra no, en violación de la igualdad soberana de los Estados, y de los principios en que se funda el arbitraje internacional. En segundo lugar, debe mencionarse la participación de Federico Martens (o *de* Martens), un árbitro anglófilo, funcionario de la cancillería rusa y asesor del Zar de Rusia, que entendía que el derecho internacional sólo se aplicaba a los países de la Europa cristiana y no a naciones salvajes

o semi salvajes, que propiciaba un entendimiento entre Rusia e Inglaterra en Asia Central, y que no podía ser imparcial en este caso. En realidad, con las reglas aplicables a los jueces de la Corte Internacional de Justicia, Martens nunca podría haber sido árbitro en este caso. Las dos circunstancias anteriores -la integración del Tribunal con la participación de dos árbitros ingleses, pero sin que hubiera árbitros venezolanos, y la participación de Martens-, hacían imposible que ese Tribunal pudiera actuar con independencia e imparcialidad. En tercer lugar, debe citarse la violación del debido proceso, como consecuencia de la forma en que se condujo el procedimiento, mostrando la parcialidad de los jueces británicos, rechazando exigir la presentación de pruebas que estaban en posesión del gobierno del Reino Unido, y violando el principio de igualdad de armas. En fin, el hecho de que el fallo se adoptara mediante la coacción de uno de los suyos sobre el resto del Tribunal, sin la debida deliberación en pleno, sino en conciliábulos de pasillo, y sin un debate sobre los méritos de los argumentos de las partes, sino con un mero compromiso político, carente de todo fundamento jurídico, hacía que el laudo fuera igualmente nulo.

Creo que, dentro de las limitaciones del tiempo disponible, los abogados de las partes abordaron muy bien el tema de la nulidad o validez del laudo, y creo que allí se impuso Venezuela. Christian Tams, en representación de Venezuela, sostuvo que la validez del laudo no podría pasar ningún test. Pero la cuestión de los títulos territoriales es otra cosa; porque, si se concluye que el laudo es nulo, la Corte tendrá que determinar la frontera terrestre definitiva entre ambos países y, sobre ese punto los alegatos de Guyana fueron casi inexistentes, y los de Venezuela se centraron brevemente en algunos mapas.

Mientras Guyana basa su reclamación en la supuesta ocupación del territorio en disputa, Venezuela invoca, fundamentalmente, títulos históricos. Guyana sostiene que los españoles habían estado reducidos al Orinoco, y que, al momento de dictarse el laudo, no había asentamientos venezolanos en la zona en disputa; según Guyana, las misiones religiosas de los capuchinos catalanes estaban instaladas al oeste de la frontera indicada por el laudo. Adicionalmente, Guyana afirma que el territorio en disputa estaba ocupado por Inglaterra; pero la evidencia indica que los asentamientos holandeses, primero, y luego los ingleses, estaban situados en la costa; los mapas de la época muestran todo lo demás como una inmensa región deshabitada.

Respondiendo al alegato de que no había presencia española o venezolana en la región en disputa, Thouvenin citó los casos del Castillo el Burgo en la confluencia de los ríos Cuyuní y Mazaruni, y la Misión Santa Rosa, en la desembocadura del río Esequibo. Adicionalmente, Thouvenin comentó algunos mapas, comenzando por el del español Luis Surville, de 1778, que marca la frontera en el río Esequibo (excepto por la región Pomerón-Moroco, en la costa y al costado occidental del Esequibo). Entre los mapas ingleses, se mostró el de Aaron Arrowsmith, de 1806, otro publicado por Sherwood, Neely and Jones, de 1822, y un mapa de Joseph Hadfield, de 1838, todos los cuales muestran la frontera en el río Esequibo, excepto por el de Hadfield, que muestra algunas plantaciones inglesas en la costa occidental del Esequibo. En el caso de Hadfield, hay que hacer notar que él era topógrafo de la Corona y que, en la colonia de Guayana Británica, se desempeñó como superintendente para Demerara de ríos y arroyos; según su autor, el mapa en cuestión habría sido elaborado “a partir de las últimas mediciones de Schomburgk” y de otros cartógrafos. Thouvenin no desperdició la oportunidad que tenía de destacar las discrepancias que hay entre la frontera del mapa de Hadfield, de 1838, y la del mapa de Schomburgk, de 1840. Lo cierto es que los mapas de cartógrafos holandeses, franceses, ingleses, españoles, colombianos, brasileños, y venezolanos, al igual que muchos mapas provenientes de cartógrafos independientes, favorecen la tesis de Venezuela.

En un asunto en el que los historiadores venezolanos no han hecho su tarea -aportando más opiniones que información debidamente sustentada y que tenga algún valor probatorio en un tribunal-, ninguna de las partes se ocupó con detenimiento de los títulos territoriales que asisten sus respectivas reclamaciones. Habrá que ver qué es lo que dicen sus alegatos escritos. Por el momento, se recuerda que, en 1824, cuando la Gran Colombia solicitó el reconocimiento de Inglaterra como nación independiente, señaló precisamente que su límite oriental era el río Esequibo; cuando se produjo dicho reconocimiento, el gobierno británico no hizo ninguna objeción o reserva a la frontera reclamada por Colombia.

Sería paradójico que, como consecuencia del juicio en la Corte al que Venezuela le tenía tanta aversión, después de escuchar las razones de Venezuela, ahora resulte que Guyana esté dispuesta a sentarse a negociar. Tampoco sería primera vez que eso ocurre.

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

Pero, por el momento, esperemos lo que pueda decir el Tribunal y, cualquiera que sea su sentencia, comportémonos como una nación civilizada, y acatemos el veredicto. Eso es lo que se espera de gente respetuosa del Derecho.

Caracas, 12 de mayo de 2026.

INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

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Arbitral Award of 3 October 1899 (Guyana v. Venezuela)

**Public hearings on the merits to be held from Monday 4 to
Monday 11 May 2026**

THE HAGUE, 23 April 2026. The International Court of Justice will hold public hearings in the case concerning Arbitral Award of 3 October 1899 (Guyana v. Venezuela) from Monday 4 to Monday 11 May 2026.

It is recalled that, on 29 March 2018, Guyana filed an *Application instituting proceedings* against Venezuela with respect to a dispute concerning “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”.

As basis for the jurisdiction of the Court, the Applicant invoked Article IV, paragraph 2, of the Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela

and British Guiana, signed at Geneva on 17 February 1966, and the decision of 30 January 2018 by which the Secretary-General of the United Nations, in accordance with that Agreement, chose the Court as the means to be used for the settlement of the controversy.

On 18 June 2018, Venezuela informed the Court that it considered that the Court manifestly lacked jurisdiction to hear the case and that it had decided not to take part in the proceedings. The Court then decided to address first the question of its jurisdiction.

In a *Judgment delivered on 18 December 2020*, the Court found that it had jurisdiction 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.

Further to the filing of a preliminary objection by Venezuela on 7 June 2022, the Court, in its *Judgment of 6 April 2023*, rejected that preliminary objection and found that it could adjudicate upon the merits of Guyana's claims, in so far as they fall within the scope of the Court's jurisdiction as defined in the operative clause of its Judgment of 18 December 2020.

On 30 October 2023, Guyana filed a *Request for the indication of provisional measures*, expressing concern about the Government of Venezuela's stated intention to hold a "Consultative Referendum" on 3 December 2023 regarding the purported creation, within Venezuela, of the State of "Guayana Esequiba", comprising the territory at issue in the current proceedings.

In its *Order of 1 December 2023*, the Court stated that, in light of the high level of tension that characterized the relations between the Parties, it considered that the conduct of Venezuela — in organizing such a referendum and asserting that it would take concrete action on the basis of the results of that referendum — presented a serious risk of Venezuela acquiring and exercising control and administration of the territory in dispute. The Court therefore directed Venezuela to refrain from taking any action, pending a final decision in the case, which would modify the situation that currently prevails in the territory at issue, whereby Guyana administers and exercises control over that area. The Court further instructed both Parties to refrain from any action which

might aggravate or extend the dispute or make it more difficult to resolve.

On 6 March 2025, Guyana filed a further Request for the indication of provisional measures, which, it contended, was prompted “by Venezuela’s announcement that it w[ould] soon hold elections in Guyana’s sovereign territory, which Venezuela ha[d] purported to annex in violation of the Court’s Order of 1 December 2023 and fundamental norms of international law”.

In its *Order of 1 May 2025*, the Court concluded that the change in the situation justified modifying the decision set out in its Order of 1 December 2023, by further specifying its scope. It reaffirmed the provisional measures previously indicated and added that, pending a final decision in the case, Venezuela must “refrain from conducting elections, or preparing to conduct elections, in the territory in dispute, which Guyana currently administers and over which it exercises control”.

Earlier *press releases* relating to this case are available on the Court’s website.

The hearings will be devoted to the merits of the case.

Schedule for the hearings.

The schedule for the hearings is as follows:

Monday 4 May 2026 10 a.m.-1 p.m.: First round of oral argument (Guyana)

3 p.m. - 6 p.m.: First round of oral argument (Guyana)

Wednesday 6 May 2026 10 a.m. - 1 p.m.: First round of oral argument (Venezuela)

3 p.m. - 6 p.m.: First round of oral argument (Venezuela)

Friday 8 May 2026 3 p.m. - 6 p.m.: Second round of oral argument (Guyana)

Monday 11 May 2026 3 p.m.-6 p.m.: Second round of oral argument (Venezuela)

**FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)**

Monday 4 May 2026

10 am – 1 pm

Non corrigé
Uncorrected

CR
2026/24

**International Court
of Justice**

**Cour
internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2026

*Public sitting
held on Monday 4 May 2026, at 10 a.m., at the Peace Palace,
President Iwasawa presiding,
in the case concerning Arbitral Award of
3 October 1899 (Guyana v. Venezuela)*

VERBATIM RECORD

ANNÉE 2026

*Audience publique
tenue le lundi 4 mai 2026, à 10 heures, au Palais de la Paix,
sous la présidence de M. Iwasawa, président,
en l'affaire de la Sentence arbitrale du 3 octobre 1899
(Guyana c. Venezuela)*

COMPTE RENDU

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

Present: President Iwasawa

Vice-President Sebutinde

Judges Tomka

Xue

Nolte

Brant

Gómez Robledo

Cleveland

Aurescu Tladi

Hmoud

Okowa

Judges *ad hoc* Wolfrum

Couvreur

Registrar Gautier

□□□□□□

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

M. *Présents :* Iwasawa,
président
M^{me} Sebutinde, vice-
présidente
MM. Tomka
M^{me} Xue
MM. Nolte
Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi
Hmoud
Mme Okowa, juges
MM. Wolfrum
Couvreur, juges
ad hoc
M. Gautier, greffier

□ □ □ □ □ □

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

The Government of the Co-operative Republic of Guyana is represented by:

Hon. Hugh Hilton Todd, Minister for Foreign Affairs and International Cooperation,

as Head of Delegation;

Hon. Carl B. Greenidge, former Minister for Foreign Affairs and International Cooperation,

as Agent;

Ms Sharon Roopchand-Edwards, Permanent Secretary of the Ministry of Foreign Affairs and International Cooperation,

HE Mr Keith George, Ambassador, Adviser to the Minister of Foreign Affairs and International Cooperation,

as Co-Agents;

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk, London, member of the Bars of the Supreme Court of the United States of America and of the District of Columbia,

Mr Philippe Sands, KC, Professor of International Law, University College London, 11 King's Bench Walk, London,

Mr Alain Pellet, Emeritus Professor of the University of Paris Nanterre, former Chairman of the International Law Commission, member and former President of the Institut de droit international,

Mr Pierre d'Argent, *Professeur ordinaire*, Université catholique de Louvain, member of the Institut de droit international, member of the Bar of Brussels,

Ms Nilüfer Oral, Director, Centre for International Law, National University of Singapore, member of the International Law Commission,

Mr Edward Craven, KC, Matrix Chambers, London,

Ms Donnette Streete, Director of the Frontiers Department,
Ministry of Foreign Affairs and International Cooperation,

as Counsel and Advocates;

Hon. Mohabir Anil Nandlall, Attorney General and Minister
of Legal Affairs,

HE Ms Trishala Persaud, Ambassador, Deputy Permanent
Representative at the Permanent Mission of Guyana to the United
Nations,

Ms Christina L. Beharry, Foley Hoag LLP, Washington,

Ms Lucy Jones, 11 King's Bench Walk, London,

Ms Héloïse Bajer-Pellet, FAR Avocats, Paris,

Mr Romain Piéri, FAR Avocats, Paris,

***Le Gouvernement de la République coopérative du Guyana
est représenté par :***

L'honorable Hugh Hilton Todd, ministre des affaires
étrangères et de la coopération internationale, *comme*
chef de la délégation ;

L'honorable Carl B. Greenidge, ancien ministre des affaires
étrangères et de la coopération internationale,
comme agent ;

M^{me} Sharon Roopchand-Edwards, secrétaire permanente du
ministère des affaires étrangères et de la coopération internationale,

S. Exc. M. Keith George, ambassadeur, conseiller auprès du
ministre des affaires étrangères et de la coopération internationale,
comme coagents ;

M. Paul S. Reichler, avocat au cabinet 11 King's Bench Walk
(Londres), membre des barreaux de la Cour suprême des États-Unis
d'Amérique et du district de Columbia,

M. Philippe Sands, KC, professeur de droit international au
University College London, cabinet 11 King's Bench Walk
(Londres),

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

M. Alain Pellet, professeur émérite de l'Université Paris Nanterre, ancien président de la

Commission du droit international, membre et ancien président de l'Institut de droit international,

M. Pierre d'Argent, professeur ordinaire à l'Université catholique de Louvain, membre de l'Institut de droit international, membre du barreau de Bruxelles,

M^{me} Nilüfer Oral, directrice du centre de droit international de l'Université nationale de Singapour, membre de la Commission du droit international,

M. Edward Craven, KC, Matrix Chambers (Londres),

M^{me} Donnette Streete, directrice du département des frontières, ministère des affaires étrangères et de la coopération internationale,

comme conseils et avocats ;

L'honorable Mohabir Anil Nandlall, *Attorney General* et ministre des affaires juridiques,

S. Exc. M^{me} Trishala Persaud, ambassadrice, représentante permanente adjointe de la mission permanente du Guyana auprès de l'Organisation des Nations Unies,

M^{me} Christina L. Beharry, cabinet Foley Hoag LLP (Washington),

M^{me} Lucy Jones, cabinet 11 King's Bench Walk (Londres),

M^{me} Héloïse Bajer-Pellet, cabinet FAR Avocats (Paris),

M. Romain Piéri, cabinet FAR Avocats (Paris),

Mr Ysam Soualhi, Researcher in International Law, University of Angers,

as Counsel;

HE Mr Sasenarine Singh, Ambassador of the Co-operative Republic of Guyana to the Kingdom of Belgium and Permanent Representative to the European Union and the Organisation of African, Caribbean and Pacific States,

HE Mr Rajendra Singh, High Commissioner of the Co-operative Republic of Guyana to the United Kingdom of Great Britain and Northern Ireland,

Mr Galo Carrera, International Consultant,

HE Mr Ronald Austin, Ambassador, Consultant to the Ministry of Foreign Affairs and International Cooperation,

Mr Lloyd Gunraj, First Secretary, Embassy of the Co-operative Republic of Guyana to the Kingdom of Belgium and the European Union,

as Advisors;

Mr Scott Edmonds, International Mapping, Ms Nancy Lopez, Foley Hoag LLP,

as Technical Assistants.

The Government of the Bolivarian Republic of Venezuela is represented by:

HE Mr Yván Eduardo Gil Pinto, Minister for Foreign Affairs of the Bolivarian Republic of Venezuela;

HE Mr Samuel Reinaldo Moncada Acosta, PhD, University of Oxford,

as Agent;

HE Mr Reinaldo Muñoz Pedroza, Adviser on Border Affairs to the Bolivarian Republic of Venezuela,

as Co-Agent;

HE Mr Larry Devoe Márquez, Prosecutor General of the Bolivarian Republic of Venezuela,

HE Ms Arianny Seijo Noguera, Attorney General of the Bolivarian Republic of Venezuela, PhD, University of Westminster,

HE Mr Raúl Li Causi Pérez, Deputy Minister for the Caribbean, Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela,

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

HE Mr Héctor Constant Rosales, Ambassador, Permanent Mission of the Bolivarian Republic of Venezuela to the OPCW, ICC and other international tribunals and organizations,

as Senior National Authorities;

M. Ysam Soualhi, chercheur en droit international à l'Université d'Angers,

comme conseils ;

S. Exc. M. Sasenarine Singh, ambassadeur de la République coopérative du Guyana auprès du Royaume de Belgique et représentant permanent auprès de l'Union européenne et de l'Organisation des États d'Afrique, des Caraïbes et du Pacifique,

S. Exc. M. Rajendra Singh, haut-commissaire de la République coopérative du Guyana auprès du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord,

M. Galo Carrera, consultant international,

S. Exc. M. Ronald Austin, ambassadeur, conseiller auprès du ministère des affaires étrangères et de la coopération internationale,

M. Lloyd Gunraj, premier secrétaire, ambassade de la République coopérative du Guyana auprès du Royaume de Belgique et de l'Union européenne,

comme conseillers ;

M. Scott Edmonds, International Mapping, M^{me} Nancy Lopez, cabinet Foley Hoag LLP,

comme assistants techniques.

Le Gouvernement de la République bolivarienne du Venezuela est représenté par :

S. Exc. M. Yván Eduardo Gil Pinto, ministre des relations extérieures de la République bolivarienne du Venezuela ;

S. Exc. M. Samuel Reinaldo Moncada Acosta, PhD, Université d'Oxford,

comme agent ;

S. Exc. M. Reinaldo Muñoz Pedroza, conseiller de la République bolivarienne du Venezuela sur les questions frontalières,

comme coagent ;

S. Exc. M. Larry Devoe Márquez, *Fiscal General* de la République bolivarienne du Venezuela,

S. Exc. M^{me} Arianny Seijo Noguera, *Procuradora General* de la République bolivarienne du Venezuela, PhD, Université de Westminster,

S. Exc. M. Raúl Li Causi Pérez, ministre adjoint chargé des Caraïbes, ministère des relations extérieures de la République bolivarienne du Venezuela,

S. Exc. M. Héctor Constant Rosales, ambassadeur, mission permanente de la République bolivarienne du Venezuela auprès de l'OIAC, de la CPI et d'autres juridictions et organisations internationales,

comme hauts représentants de l'État ;

Mr Antonio Remiro Brotóns, Professor Emeritus of Public International Law, Universidad

Autónoma de Madrid, member of the Institut de droit international,

Mr Carlos Espósito, Professor of Public International Law, Universidad Autónoma de Madrid,

Mr Alfredo De Jesús O., PhD, Paris 2 Panthéon-Assas University, member of the Bars of Paris and the Bolivarian Republic of Venezuela, Member of the Permanent Court of Arbitration,

Mr Makane Moïse Mbengue, Professor of International Law, University of Geneva, member of the Institut de droit international,

Ms Esperanza Orihuela Calatayud, Professor of Public International Law, Universidad de Murcia,

Mr Paolo Palchetti, PhD, Professor, Paris 1 Panthéon-Sorbonne University,

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

Mr Christian J. Tams, Professor of Public International Law, King's College London, Associate Member, 11 King's Bench Walk,

Mr Jean-Marc Thouvenin, Professor, Paris Nanterre University, Secretary-General of The Hague Academy of International Law, member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Mr Andreas Zimmermann, LL.M., Harvard, Professor of International Law, University of Potsdam, Member of the Permanent Court of Arbitration, President of the OSCE Court of Conciliation and Arbitration,

Ms Danae Azaria, Associate Professor, Faculty of Laws, University College London, Mr Edgardo Sobenes, Consultant in International Law, ESILA B.V.,

as Counsel and Advocates;

Mr Damien Charlotin, Senior Research Fellow, HEC Paris, and Associated Researcher, Sciences Po Paris,

Ms María Isabel González, Legal Assistant, Office of the Attorney General of the Bolivarian

Republic of Venezuela, law student, Universidad Metropolitana,

Ms Églantine Jamet, member of the Paris Bar, Sygna Partners,

Ms Lea Köhne, Research Associate and Lecturer at the Chair of European and International Law, University of Potsdam,

Mr Lucas Carlos Lima, Professor of International Law, Universidade Federal de Minas Gerais,

Ms Eleni Methymaki, Lecturer, University of Glasgow,

Mr Niccolò Ridi, Senior Lecturer in Public International Law, King's College London,

as Assistant Counsel;

HE Mr Pompeyo Torrealba Rivero, member of the National Assembly of the Bolivarian Republic of Venezuela,

HE Mr Jorge Luis Fuguet, member of the National Assembly of the Bolivarian Republic of Venezuela,

M. Antonio Remiro Brotóns, professeur émérite de droit international public, Université autonome de Madrid, membre de l'Institut de droit international,

M. Carlos Espósito, professeur de droit international public, Université autonome de Madrid,

M. Alfredo De Jesús O., PhD, Université Paris 2 Panthéon-Assas, membre des barreaux de Paris et de la République bolivarienne du Venezuela, membre de la Cour permanente d'arbitrage,

M. Makane Moïse Mbengue, professeur de droit international à l'Université de Genève, membre de l'Institut de droit international,

M^{me} Esperanza Orihuela Calatayud, professeure de droit international public, Université de Murcie,

M. Paolo Palchetti, PhD, professeur à l'Université Paris 1 Panthéon-Sorbonne,

M. Christian J. Tams, professeur de droit international public au King's College London, membre associé au cabinet 11 King's Bench Walk,

M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général de l'Académie de droit international de La Haye, membre de l'Institut de droit international, membre du barreau de Paris, cabinet Sygna Partners,

M. Andreas Zimmermann, LLM, Harvard, professeur de droit international à l'Université de Potsdam, membre de la Cour permanente d'arbitrage, président de la Cour de conciliation et d'arbitrage de l'OSCE,

M^{me} Danae Azaria, professeure associée à la faculté de droit du University College London, M. Edgardo Sobenes, consultant en droit international, cabinet ESILA B.V.,

comme conseils et avocats ;

M. Damien Charlotin, chargé de recherche principal à HEC Paris, chercheur associé à Sciences Po Paris,

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

M^{me} María Isabel González, assistante juridique à la *Fiscalía General* de la République bolivarienne du Venezuela, étudiante en droit à la Universidad Metropolitana,

M^{me} Églantine Jamet, membre du barreau de Paris, cabinet Sygna Partners,

M^{me} Lea Köhne, chercheuse associée et chargée d'enseignement à la chaire de droit international et européen de l'Université de Potsdam,

M. Lucas Carlos Lima, professeur de droit international à l'Université fédérale du Minas Gerais,

M^{me} Eleni Methymaki, chargée d'enseignement à l'Université de Glasgow,

M. Niccolò Ridi, maître de conférences en droit international public au King's College London,

comme conseils adjoints ;

S. Exc. M. Pompeyo Torrealba Rivero, membre de l'Assemblée nationale de la République bolivarienne du Venezuela,

S. Exc. M. Jorge Luis Fuguetta, membre de l'Assemblée nationale de la République bolivarienne du

Venezuela,

Mr Jorge Arturo Reyes Hernández, Minister Counsellor, Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations,

Ms Haymara Correa Díaz, Assistant to the Minister for Foreign Affairs of the Bolivarian Republic of Venezuela,

as Members of the Delegation.

The PRESIDENT: Please be seated. The sitting is open.

Before we start our judicial proceedings today, I would first like to pay solemn tribute to the memory of Judge Stephen Schwebel, our esteemed former colleague, who sadly passed away on 9 April. The late Judge Schwebel was a Member of the Court from 1981 until 2000 and he was elected by his peers as Vice-President from 1994 to 1996, and as President from 1997 to 2000.

Born in 1929 in New York, Judge Schwebel received a BA with highest honours in government from Harvard University, and then chose to focus his studies on international law, first at Cambridge University and then at Yale Law School, where he received an LLB. During his long and illustrious professional life, Judge Schwebel combined legal careers as a practitioner, an academic, a legal adviser to his Government, a judge and an arbitrator. In 1959, he was appointed Assistant Professor at Harvard Law School, where he founded what later became the Jessup Competition, where hundreds of universities around the planet participate every year. He then became the Burling Professor of International Law at Johns Hopkins School of Advanced International Studies. In the 1960s and 1970s, he served at the US State Department in various capacities, including as Assistant Legal Adviser and Deputy Legal Adviser. In parallel, from 1977 to 1981, he was a member of the International Law Commission. Judge Schwebel thus arrived at the Peace Palace in 1981 with a wealth of valuable experience which he translated into a rigorous intellectual approach to the Court's judicial deliberations without ever overlooking the importance of maintaining a grounded appreciation of the practical effects of the Court's rulings. By his own account, he had followed the creation and development of the United Nations with great enthusiasm, and thus relished the opportunity to

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put himself at the service of the principal judicial organ of the United Nations.

During his two mandates, Judge Schwebel was extremely active in the judicial work of the Court, in particular, overseeing plenary meetings and Drafting Committee sessions in his capacity as President. As a judge, he was involved in the adjudication of 38 cases, covering a range of complex and often profoundly far-reaching questions of international law. While he fervently believed that the strength of the Court lay in the collective nature of its deliberations, Judge Schwebel nonetheless remained a fiercely independent thinker. It was not uncommon for him to dissent from the majority view, and his persuasively crafted opinions and declarations continue to provide much food for thought for students, scholars and practitioners.

Judge Schwebel left an indelible mark in terms of the general administration of the Court, thanks to various significant innovations he launched to improve the working conditions of the institution. In that regard, in the 1990s he was instrumental in negotiating with the host country an extension to the Judges' Wing of the Peace Palace in order to accommodate the increased number of *ad hoc* judges and to create a dining facility for judges for the first time. Just prior to his departure from the Court, he also spearheaded the initiative to establish the University Trainee Programme with New York University, which later became the Judicial Fellowship Programme and now involves recent law graduates from all over the world.

Following his retirement from the Court, Judge Schwebel channelled his indefatigable energy into international arbitration work. During the 2000s, he served as an arbitrator in various cases administered by the Permanent Court of Arbitration. He was also appointed as an arbitrator on various ICSID panels dealing with investment disputes and was a member of the Administrative Tribunal of the World Bank. In addition, he published widely on many topics of international law and was the recipient of numerous prestigious awards and honours.

Throughout his life, Judge Schwebel dedicated himself to international law and justice with unwavering commitment and

integrity. He will be remembered as an exemplary judge who was greatly respected by his peers for his brilliant legal mind and his charming disposition. We extend our deepest sympathy to his family at this sad time.

I would now like to invite you to stand and observe a minute's silence in memory of Judge Stephen Schwebel.

The Court observes a minute of silence.

*

Thank you very much. Please be seated. I shall now turn to the judicial proceedings before the Court. The Court meets today and in the coming days to hear the oral arguments of the Parties on the merits in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

For reasons duly made known to me, Judge Bhandari is unable to participate in these proceedings, and Judge Abraham is unable to sit with us today.

I note that, in addition to interpretation from and into the Court's two official languages, English and French, interpretation from and into Spanish is available, in accordance with a specific arrangement made at the request of Venezuela.

*

Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Guyana first chose Ms Hilary Charlesworth. Following Ms Charlesworth's election as a Member of the Court, Guyana chose Mr Rüdiger Wolfrum. Judge Charlesworth subsequently indicated that, in the circumstances, she had decided no longer to take part in the decision of the case. Venezuela chose Mr Philippe Couvreur to sit as judge *ad hoc* in the case. Mr Wolfrum and Mr Couvreur were duly installed as judges *ad hoc* on 17 November 2022, during the phase of the present case that was devoted to the preliminary objections raised by Venezuela.

*

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I shall now recall the principal steps of the procedure in the present case.

On 29 March 2018, Guyana filed in the Registry of the Court an Application instituting proceedings against Venezuela with respect to a dispute concerning “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”, to which I shall refer as the “1899 Award” or the “Award”. To found the jurisdiction of the Court, Guyana invoked Article 36, paragraph 1, of the Statute of the Court, and Article IV, paragraph 2, of the Agreement to resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the frontier between Venezuela and British Guiana signed at Geneva on 17 February 1966, to which I shall refer as the “Geneva Agreement”. Pursuant to Article IV, paragraph 2, of the Geneva Agreement, the Secretary-General of the United Nations decided, on 30 January 2018, to choose judicial settlement by the Court as the means of settlement of the controversy.

By an Order of 19 June 2018, having been informed that the Venezuelan Government considered that the Court manifestly lacked jurisdiction and that Venezuela had decided not to take part in the proceedings, the Court decided that it was necessary first of all to resolve the question of its jurisdiction. Following the filing of a Memorial by Guyana on the question of jurisdiction, and the submission by Venezuela of a document titled “Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29th, 2018”, a public hearing was held on 30 June 2020 on the question of jurisdiction, in which Venezuela did not participate. In its Judgment of 18 December 2020, the Court found that it had jurisdiction to entertain the Application filed by Guyana in so far as it concerns the validity of the 1899 Award and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela.

By an Order of 8 March 2021, the Court fixed 8 March 2022 and 8 March 2023 as the respective time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela on the merits. Guyana filed its Memorial within the time-limit thus fixed.

On 7 June 2022, Venezuela raised preliminary objections to the admissibility of the Application with reference to Article 79*bis* of the Rules of Court. Consequently, by an Order of 13 June 2022, the Court fixed 7 October 2022 as the time-limit within which Guyana could present a written statement of its observations and submissions on the preliminary objections raised by Venezuela. Guyana filed its written statement on 22 July 2022. Hearings on Venezuela's preliminary objections were held from 17 to 22 November 2022. By a Judgment dated 6 April 2023, the Court, which understood Venezuela to be making in substance only a single preliminary objection, rejected that objection and found that it could adjudicate upon the merits of the claims of Guyana, in so far as they fell within the scope of its competence according to the 2020 Judgment.

By an Order of 6 April 2023, the Court fixed 8 April 2024 as the new time-limit for the filing of the Counter-Memorial of Venezuela.

On 30 October 2023, Guyana filed a Request for the indication of provisional measures. By an Order of 1 December 2023, the Court, having heard the Parties, indicated two provisional measures, one addressed to Venezuela and the other addressed to both Parties.

On 8 April 2024, Venezuela filed its Counter-Memorial, within the time-limit fixed by the Court.

By an Order of 14 June 2024, the Court authorized the submission of a Reply by Guyana and a Rejoinder by Venezuela, and fixed 9 December 2024 and 11 August 2025 as the respective timelimits for the filing of those written pleadings. The Reply was filed within the time-limit prescribed.

On 6 March 2025, Guyana filed a new Request for the indication of provisional measures. By an Order of 1 May 2025, the Court □ having heard the Parties by means of a written procedure □ reaffirmed the provisional measures indicated in its Order of 1 December 2023 and indicated an additional provisional measure addressed to Venezuela.

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On 11 August 2025, Venezuela filed its Rejoinder, within the time-limit fixed by the Court, and the case thus became ready for hearing on the merits of the case.

*

Pursuant to Article 53, paragraph 2, of its Rules, the Court decided, after consulting the Parties, that copies of the written pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings. Further, in accordance with the Court's practice, these pleadings and documents annexed will be placed on the Court's website from today.

*

I would now like to welcome the eminent representatives of the Guyana and Venezuela who are in the Great Hall of Justice today. In particular, I note the presence of His Excellency Honourable Hugh Hilton Todd, Minister for Foreign Affairs and International Cooperation of Guyana, His Excellency Mr Yvan Eduardo Gil Pinto, Minister for Foreign Affairs of the Bolivarian Republic of Venezuela, as well as of the Agent of Guyana and the Agent of Venezuela, each accompanied by members of their respective State's delegation. In accordance with the arrangements on the organization of the proceedings which have been decided by the Court, the hearings will comprise a first and second round of oral argument. The first round of oral argument will begin today with the statements of Guyana and will close on the afternoon of Wednesday 6 May 2026, following Venezuela's first round of oral pleading. Each Party has been allocated two sessions of three hours for the first round. The second round of oral argument will begin on the afternoon of Friday 8 May 2026 and conclude on the afternoon of Monday 11 May 2026. Each Party will have a maximum of three hours to present its reply.

In this first sitting, Guyana may, if required, avail itself of a short extension beyond 1 p.m., in view of the time taken up by my introductory remarks.

I shall now give the floor to the Minister of Foreign Affairs of Guyana, His Excellency Honourable Hugh Hilton Todd. You have the floor, Sir.

Mr TODD:

OPENING STATEMENT

1. Mr President, Members of the Court, it is a singular honour to appear before you today on behalf of my country, the Co-operative Republic of Guyana. To open the proceedings in this matter is both a privilege and a solemn responsibility. This case has an existential quality for Guyana. At stake is more than 70 per cent of our sovereign territory, which has been recognized to be an integral part of the country for more than 126 years, including the past 60 years since independence. The Essequibo, as this land is known in Guyana, is named for the Essequibo River, the largest and most remarkable in Guyana, which runs through it.

2. For the Guyanese people, it is tragic even to think about having our country dismembered, by stripping from us a vast majority of our land, together with its people, its history, its traditions and customs, its resources and precious ecology. Guyana would no longer be Guyana without it, without them.

3. It is for this reason, and because we are convinced of our right and entitlement to the territory under international law, and in the fairness and scrupulous integrity of this Court, that the President of Guyana, His Excellency President Mohamed Irfaan Ali, has asked me, as Minister for Foreign Affairs and International Cooperation, to lead Guyana's delegation and to deliver the opening remarks. In Guyana's view, it is appropriate here, in these circumstances, to underscore the existential nature of this case for Guyana and the Guyanese people.

4. Mr President, Members of the Court, Guyana respectfully submits that this case is as straightforward as it is consequential. It is about title to territory. Almost 160,000 sq km of territory. That

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territory was recognized to be a part of British Guiana, then a colony of Great Britain, by the award of a unanimous arbitral tribunal — consisting of five of the most eminent and highly-respected jurists of that era, in October 1899. That award was the culmination of an exhaustive legal process which involved the submission of more than 5,000 pages of written arguments and documentary evidence, followed by a hearing that lasted more than three months and which involved more than 200 hours of oral submissions by distinguished legal counsel, 54 sessions of four hours each. All of this was in conformity with the terms of a prior written *compromis*, executed in the form of a Treaty - the Treaty of Washington - in 1897.

5. The case is also about Venezuela's total and unreserved acceptance of that Award, not least by the Agreement of 1905, which faithfully implemented the boundary determined by the tribunal. For six decades, Venezuela fully respected and complied with that Award and that Agreement. Throughout that period, it never protested or challenged the Award or the Agreement. It is fact — established and uncontested — that Venezuela consistently respected the Award and the Agreement in practice, and that the boundary established by the Award and the Agreement were consistently reflected in Venezuela's official acts, maps, legislation and international agreements until at least 1962.

6. Mr President, Members of the Court, it is Guyana's submission that the 1899 Award is, without question, legally valid and binding on the parties, and that the 1905 Boundary Agreement is legally valid and binding on the Parties. It is Guyana's submission that none of the arguments Venezuela has raised prior to and during these proceedings against the Award or the Agreement has any merit whatsoever, and that Venezuela's challenges to the Award and the Agreement are in any event decades — no, a century — too late to be raised as a matter of international law. The inevitable consequence is that the international boundary described in the 1899 Award and demarcated in the 1905 Agreement is, in fact - and has for more than a century been - the lawful border between Guyana and Venezuela. Venezuela is obligated, under international law, to accept and respect that border, and to refrain from any activities that

infringe on the territory across that border, which constitutes Guyana's sovereign territory.

7. This is a historic moment. This is a moment of truth for Guyana and for Venezuela. More than eight years have passed since Guyana filed its Application commencing these proceedings. We have now arrived at the final stage: the oral hearings on the merits, after which the Court will deliberate and issue its Judgment on the validity of the 1899 Award and the course of the international boundary between Guyana and Venezuela. We have arrived at this historic moment, despite Venezuela's persistent efforts to stop us from getting here. First, it objected to the Court's jurisdiction based on a strained and untenable reading of the 1966 Geneva Agreement, which the Court soundly rejected in its Judgment of 18 December 2020. Then it objected to the admissibility of Guyana's claims. The Court again resolutely rejected this effort in its Judgment of 6 April 2023.

8. Unable to derail the case, Venezuela decided to take matters into its own hands. In late 2023, it purported to stage a so-called national referendum seeking popular support for rejecting the jurisdiction of the Court and disassociating itself in advance from any judgment the Court might issue on the merits of the case. The referendum called for endorsement of Venezuela's assertion of sovereignty over the Essequibo, and plan to formally incorporate it into Venezuela. On 1 December 2023, the Court, acting on Guyana's request, indicated provisional measures prohibiting Venezuela from taking any of these steps pending the final Judgment in the case. Venezuela proceeded to do exactly what the Court ordered it not to do: it issued executive decrees, followed by national legislation rejecting the Court's jurisdiction and including any judgment that might be forthcoming and formally incorporating the Essequibo into Venezuela. Last year, after Venezuela announced that it would hold elections in Essequibo to choose a governor and legislative assembly for the territory, the Court issued another provisional measures Order prohibiting that intended activity.

9. Mr President, Members of the Court, Guyana is extremely grateful for the actions the Court has taken thus far: upholding its jurisdiction for Guyana's Application, upholding the admissibility

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of Guyana's claims, and issuing provisional measures orders to preserve the rights claimed by Guyana that are at issue in this case. We know that these rulings were based on the Court's faithful application of international law, nothing more and nothing less. But we are grateful, nonetheless.

10. Notwithstanding these actions, Guyana has suffered, and continues to suffer, greatly from Venezuela's unlawful claim and threats to the majority of our territory. This has been a blight on our existence as a sovereign State from the very beginning of our existence. It has been a threat to our peace and security, exacerbated in recent years by the ominous growth of Venezuela's military activities: construction of new bases and new airfields, and by its deployment of aircraft, heavy weapons and troops to the border area. Venezuela's intentions are unmistakable, as revealed in the executive decrees and national legislation to which I referred: the acquisition of our territory and its incorporation into Venezuela.

11. Facing a larger and more powerful neighbour's designs on our territory has not only threatened our peace and security; it has held back our development. To be sure, the international community supports Guyana's sovereignty and territorial integrity, including its title to all of the territory east of the international boundary, as defined in the 1899 Award and the 1905 Agreement. But economic development has been slowed by Venezuela's claims and its threats. Foreign investors, in particular, have been reluctant to risk their capital in such circumstances, and far too little investment has been the consequence.

12. For Guyana, which acceded to the 1966 Geneva Agreement upon its independence, it has taken 60 years to reach this climactic moment, and to be in a position to obtain a final, definitive and binding judgment from the world's highest judicial authority on the validity and permanence of the 1899 Arbitral Award and the boundary that it established. My predecessors scrupulously followed the processes mandated by the 1966 Agreement, and exhausted all of them, until, in January 2018, the Secretary-General, acting pursuant to his authority under Article IV (2) of the Agreement, decided that the controversy over the validity of the 1899 Award should be resolved by this honourable Court.

13. Sadly, not all of the Guyanese statesmen and stateswomen who were instrumental in bringing us to this point have survived to bear witness. As a Guyanese, and as head of our delegation, I would be remiss if I did not honour two of them this morning. Our first Agent was a truly towering figure, internationally as well as in Guyana: our friend and mentor, Sir Shridath Ramphal, after serving as Foreign Minister and Attorney General of Guyana, became Secretary-General of the Commonwealth, where, among other contributions, he worked long and hard for the freedom of Nelson Mandela. Less well known to you, but equally beloved in Guyana and the diplomatic community that she enriched, Ambassador Elisabeth Harper, the heart and soul of Guyana's delegations to the Court in earlier oral proceedings, sadly passed away in September 2025. It is in their honour, as well as in the name of the entire Guyanese people, of past, present and future generations, that we carry on this struggle for Guyana's sovereignty and territorial integrity based on the rule of international law.

14. Mr President, Members of the Court, Guyana is privileged to be represented by a team of highly experienced and outstanding international lawyers, from whom you will hear today, and again on Friday. Our next speaker, who will follow me to the podium, is Professor Pierre d'Argent. He will respond to Venezuela's ongoing objections to the Court's jurisdiction, which consume more than half of its Rejoinder, its final written pleading and which Professor d'Argent will demonstrate to reflect a gross misreading and misinterpretation of the 1966 Geneva Agreement. We will then turn from jurisdiction to the merits. To introduce that part of the case, two of my fellow Guyanese will make brief presentations. First, Ambassador Donnette Streete of the Foreign Ministry will introduce you to the territory that underlies this controversy, focusing on its geography and its human and natural resources; and then Guyana's Agent, Mr Carl Greenidge, a former Minister for Foreign Affairs, will speak on the history of the territory, and the dispute between Great Britain and Venezuela, leading to the 1897 Treaty that provided for arbitration of the territorial dispute between the two States.

15. Mr Greenidge will be followed by Mr Paul Reichler, who will address you on the 1897 Treaty itself. Venezuela claims that

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the 1899 Award is invalid, based *inter alia* on the invalidity of the 1897 Treaty. Mr Reichler will demonstrate that Venezuela's arguments have no merit and that the 1897 Treaty was a valid treaty and agreement to arbitrate the territorial dispute.

16. In the afternoon session, Professor Alain Pellet will address and refute Venezuela's other arguments challenging the lawfulness of the 1899 Arbitral Award. He will be followed by Professor Nilufer Oral, who will describe Venezuela's acceptance, respect and compliance with the 1899 Award, as well as its failure to protest, for over 60 years, and the legal consequences to be drawn from such acquiescence.

17. Professor Philippe Sands, KC, who will demonstrate that the so-called Mallet-Prevost memorandum, which appeared in 1949 and, 13 years later, Venezuela invoked as grounds for nullifying the 1899 Award, provides no basis for calling the Award into question on any grounds. Guyana's final speaker will be Mr Edward Craven, KC, who will address Venezuela's breaches of the Court's two Orders on provisional measures and Guyana's submissions regarding the validity of the 1899 Award.

18. In closing, I would like to emphasize that Guyana places its fullest confidence in this Court, with no doubt that, whatever the Court ultimately decides, it will be a fair and just result, based entirely on the evidence before it and the even-handed application of international law. As we have done previously, Guyana reiterates its pledge to honour and comply with the Court's Judgment, whatever it may be, as it is bound to do in any event by the United Nations Charter and the Statute of the Court. Guyana hopes that Venezuela will make the same pledge.

19. Mr President, Members of the Court, I thank you for giving me the honour to appear before you, and for your generous indulgence in listening to my remarks. I ask you to please invite Professor d'Argent to the podium.

The PRESIDENT: I thank His Excellency for his statement. Je donne maintenant la parole au professeur Pierre d'Argent. Monsieur, vous avez la parole.

M. D'ARGENT :

Merci, Monsieur le président.

**LES PROPOS DU VENEZUELA AU
SUJET DE L'ACCORD DE GENÈVE ET
LA COMPÉTENCE DE LA COUR**

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur de prendre la parole devant vous, ce matin, au soutien de la République coopérative du Guyana.

2. Comme vous l'avez certainement constaté, et comme vient de le rappeler S. Exc. M. le ministre des affaires étrangères, près de la moitié de la duplique du Venezuela est consacrée à l'accord de Genève. Selon le Venezuela, par son contenu et son effet □ mais d'une manière qui demeure toutefois largement inexpliquée □, l'accord de Genève rendrait sans objet la compétence que la Cour a déclaré posséder par l'arrêt de 2020 et qu'elle a également déclaré pouvoir exercer par l'arrêt de 2023. Ces arguments n'ont rien de nouveau et ils ont déjà été rejetés par la Cour. Toutefois, parce que les écritures du Venezuela sont longues, inutilement polémiques et confuses, il a paru nécessaire au Guyana d'y répondre brièvement. Et c'est la tâche qui me revient, à la lumière de vos arrêts ayant force de chose jugée que le Venezuela s'entête néanmoins à défier, en violation des obligations qui sont les siennes au titre de la Charte et du Statut.

3. Alors, compte tenu du fait que la composition de la Cour a fort changé depuis l'arrêt du 18 décembre 2020, le Venezuela se dit peut-être, et dans ce cas très étrangement, qu'il n'a rien à perdre. La tentative est assurément vaine en plus d'être sans fondement. La

modification de la composition de la Cour est néanmoins, pour moi, un motif de solliciter votre indulgence pour une plaidoirie qui, en réalité, ne devrait pas être.

4. Monsieur le président, avant de répondre aux arguments présentés par le Venezuela dans sa duplique, il faut s'arrêter un instant sur les raisons profondes qui font qu'alors qu'il a enfin l'occasion de faire triompher sa thèse juridique devant la Cour, le défendeur fait tout pour éviter qu'elle ne se prononce. Cette situation paradoxale s'explique en réalité très simplement par le piège que le Venezuela s'est tendu à lui-même et dans lequel il s'est enfermé depuis plus de soixante ans.

5. Présentant l'accord de Genève au Congrès national en mars 1966, le ministre vénézuélien des affaires étrangères avait en effet souligné que cet accord « exige[] du Venezuela qu'il mobilise toutes ses forces de manière à pouvoir asseoir sa revendication sur une étude sérieuse et approfondie »¹. L'exhortation du ministre Iribarren Borges est sans doute l'aveu le plus éclatant que la prétention de nullité de la sentence de 1899 avait été formulée en l'absence de toute « étude sérieuse et approfondie ». Cette prétention de nullité fut donc formulée de manière instinctive, émotionnelle et irréfléchie □ sauf quant à son moment, alors que l'indépendance du Guyana se profilait à l'horizon. Comme mes collègues le démontreront, au cours des soixante années qui se sont écoulées depuis l'accord de Genève, le Venezuela n'a pas réussi à mieux asseoir sa revendication de nullité. Toutefois, une fois formulée et relayée à tous les échelons de la société, cette prétention est devenue un article de foi dont aucun politicien vénézuélien ne peut se départir sans immédiatement passer pour un traître à la patrie. Après tant d'années, ce qui compte désormais pour le Venezuela, c'est, comme l'indique l'intitulé de ses écritures, que sa « vérité » survive et ne soit pas contredite par un arrêt de la Cour mettant à nu ce récit infondé et fallacieux. C'est pourtant, Mesdames et Messieurs de la Cour, en substance, la tâche qui vous revient.

¹ M. Ignacio Iribarren Borges, ministre des affaires étrangères du Venezuela, 17 mars 1966, duplique du Venezuela (ci-après, « DV »), vol. II, annexe 2, p. 38 (p. 25 de la traduction du Greffe en français).

6. L'argumentation du Venezuela au sujet de l'accord de Genève n'a donc pas d'autre but que d'essayer, une fois encore, de repousser ce moment de vérité. Après soixante ans, ce moment est toutefois venu et rien de ce qu'a déjà dit la Cour au sujet de sa compétence et de son exercice ne saurait être remis en cause par cette argumentation.

7. Monsieur le président, pour la clarté des débats, je vais rencontrer l'argumentation du Venezuela dans l'ordre de présentation de la duplique elle-même. Je commencerai donc par expliquer que le Guyana était fondé à ne plus revenir de manière détaillée sur l'accord de Genève dans sa réplique (I). Ensuite, je montrerai que l'interprétation de l'accord de Genève présentée par le Venezuela est erronée, et qu'elle a déjà été jugée comme telle par la Cour (II). J'examinerai enfin l'argument de la décolonisation (III) et l'argument de la novation juridique (IV) nouvellement présentés par le Venezuela. Ces arguments n'ajoutent rien au débat, mais, bien compris et comme je le montrerai, ils permettent en réalité de conforter et non d'infirmer les conclusions auxquelles la Cour est parvenue en 2020 et en 2023 lesquelles, et ce sera mon dernier point, sont à tous égards *res judicata* pour les Parties et pour la Cour (V).

I. Les prétendues omissions du Guyana dans sa réplique

8. Monsieur le président, dans le premier chapitre de sa duplique, le Venezuela reproche au Guyana d'ignorer délibérément l'accord de Genève dans sa réplique. Le reproche est évidemment déplacé dans la mesure où la réplique porte sur le fond et qu'elle fut déposée après les arrêts de 2020 et de 2023. Dans son mémoire de 2018 sur les questions de compétence, le Guyana s'était longuement expliqué sur l'accord de Genève, et il fut encore au centre des audiences de juin 2020 auxquelles le Venezuela décida de ne pas participer et qui débouchèrent sur l'arrêt du 18 décembre 2020. À nouveau, lors de la phase portant sur l'exception préliminaire soulevée par le Venezuela en juin 2022, les échanges écrits et oraux des Parties ont porté sur l'accord de Genève, tout comme l'arrêt du 6 avril 2023. Et c'est parce que le Venezuela n'accepte pas les arrêts de 2020 et de 2023 qu'il accuse le Guyana

de ne pas s'attarder sur l'accord de Genève dans sa réplique alors que son sens et sa portée ont été examinés et fixés par ces arrêts.

9. Le premier chapitre de la duplique est donc l'occasion pour le Venezuela d'essayer de convaincre la Cour du fait que l'accord de Genève ne serait pas ce qu'elle a pourtant très clairement dit qu'il était. Et je lis le paragraphe 66 de votre arrêt de 2020 : « le différend que les parties sont convenues de régler au moyen du mécanisme établi en vertu de l'accord de Genève concerne la question de la validité de la sentence de 1899 ainsi que ses implications juridiques pour le tracé de la frontière entre le Guyana et le Venezuela »². Pourtant, la duplique soutient que l'accord de Genève serait « en réalité bien plus qu'un simple mécanisme procédural ; il s'agit d'un instrument *de fond* [dit le Venezuela] conçu pour régler un différend spécifique et ouvrir la voie vers une solution pratique mutuellement acceptable »³. Selon le Venezuela, l'accord de Genève aurait délibérément tiré un trait⁴ sur la question de la validité de la sentence, de telle manière que cette question serait dépassée et ne pourrait donc pas être tranchée, avec pour conséquence que la Cour n'aurait aucun rôle à jouer puisqu'une solution pratique mutuellement acceptable suppose l'accord des Parties tandis qu'un arrêt - nous dit le Venezuela - statuant dans un sens ou dans l'autre sur la validité de la sentence aboutirait prétendument à une situation de déséquilibre entre les Parties.

10. Monsieur le président, Mesdames et Messieurs les juges, il est évidemment piquant de constater que, tout en professant rechercher une solution *mutuellement* acceptable et négociée⁵ à un différend qui ne serait pas celui que la Cour a identifié, le Venezuela considère en réalité, comme il l'avait déjà fait en 1965⁶ et qu'il a continué de le faire *ne varietur* depuis, que la seule solution acceptable à ses yeux est celle lui reconnaissant ce qu'il estime être

² *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 474, par. 66.*

³ DV, vol. I, par. 1.27 [traduction du Greffier].

⁴ DV, vol. I, par. 1.23. ⁵

⁵ DV, vol. I, par. 2.14.

⁶ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 466, par. 39, et p. 491, par. 132.*

ses droits sur l'Essequibo tout entier⁷. Ainsi, c'est sans doute parce que le Venezuela recherche une solution mutuellement acceptable par voie de négociation qu'il a unilatéralement et illégalement cherché à annexer l'Essequibo tout entier au terme d'un référendum et d'élections ayant fait l'objet de deux ordonnances en indication de mesures conservatoires... ! Par son comportement unilatéral, par le fait accompli qu'il essaie d'imposer en violation des ordonnances de la Cour, force est donc de constater que le Venezuela contredit sa propre compréhension de l'accord de Genève □ signe sans doute que l'attachement à ce dernier qu'il ne manque pas de proclamer est fictif et de pure forme. Les reproches adressés au Guyana dans le premier chapitre de la duplique relèvent donc d'une gesticulation à laquelle la Cour ne devrait pas prêter trop d'importance.

11. Monsieur le président, c'est toutefois dans ce premier chapitre de la duplique, au paragraphe 1.39, que l'on trouve la seule tentative du Venezuela d'expliquer comment la Cour pourrait décider de ne pas exercer sa compétence, retenue par l'arrêt de 2020, de statuer sur la validité de la sentence arbitrale. Selon le Venezuela, il en irait de la préservation de la fonction judiciaire de la Cour, de manière comparable à ce qui fut décidé dans l'affaire du *Cameroun septentrional*. Les deux affaires sont pourtant bien différentes. En effet, en 1963 la Cour décida de ne pas exercer sa compétence car toute décision judiciaire sur le fond du différend aurait été sans objet puisque, comme le Cameroun l'avait reconnu, un arrêt de la Cour ne pouvait avoir d'effet sur la décision de l'Assemblée générale rattachant le Cameroun septentrional au Nigéria conformément aux résultats du plébiscite surveillé par les Nations Unies. À l'opposé et en l'occurrence, une décision judiciaire tranchant la question de la validité de la sentence ne manquerait pas d'avoir un effet juridique, d'avoir « des conséquences pratiques », sur l'objet même du différend. Pour reprendre les mots de la Cour dans l'affaire du *Cameroun septentrional*, votre futur arrêt « dissip[era] ... toute incertitude dans le[s] relations juridiques » des Parties⁸. Alors, bien sûr, dans la logique du Venezuela, une telle décision n'est pas permise car

⁷ DV, vol. I, par. 4.48.

⁸ *Cameroun septentrional (Cameroun c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 1963, p. 34.*

l'accord de Genève aurait un autre objet □ mais à nouveau, ce n'est pas ce qu'a décidé la Cour en 2020, de telle manière que l'invocation de l'affaire du *Cameroun septentrional* est erronée car elle présuppose ce qu'elle entend obtenir et que la Cour a déjà rejeté.

12. Le premier chapitre de la duplique se termine par une menace à peine voilée à l'intention de la Cour □ et je cite l'original en anglais : « the Court has no role to play in resolving the territorial dispute over the Guayana Esequiba. Any other approach would exacerbate the dispute. »⁹ Monsieur le président, Mesdames et Messieurs les juges, il est difficile de lire ces mots autrement que comme une forme d'intimidation car le Venezuela annonce ainsi, en substance et sans vergogne, qu'il aggravera lui-même le différend si la Cour le tranche. Le Guyana ne doute pas que la Cour ne sera guère impressionnée et que, fidèle à sa mission, elle tranchera le différend qu'elle a correctement identifié et au sujet duquel elle a retenu sa compétence.

II. La Cour a déjà rejeté l'interprétation de l'accord de Genève présentée par le Venezuela

13. Monsieur le président, Mesdames et Messieurs les juges, le deuxième chapitre de la duplique soutient que les parties à l'accord de Genève entendaient par celui-ci « remplacer la sentence arbitrale de 1899, sur laquelle elles avaient des vues fondamentalement divergentes et inconciliables, par un nouveau règlement pratique, et ce, indépendamment du statut juridique de la sentence »¹⁰. Tout au long de son argumentation, le Venezuela prétend donc en substance que par l'accord de Genève, le Royaume-Uni et le Guyana auraient, à défaut de reconnaître explicitement la nullité de la sentence - ce qui ne fût évidemment pas fait dans l'accord de Genève - , accepté de renoncer à son bénéfice en s'engageant à chercher une solution négociée mutuellement acceptable.

⁹ DV, vol. I, par. 1.42.

¹⁰ DV, vol. I, par. 2.46.

14. Alors cette tentative de réécrire l'accord de Genève tout en s'en prévalant est, vous le savez, profondément erronée et totalement contraire à l'arrêt par lequel la Cour s'est déclarée compétente.

15. La Cour a en effet déjà statué, en la rejetant, sur l'affirmation du Venezuela selon laquelle « la question de la validité de la sentence de 1899 ne fait pas partie du différend visé par l'accord de Genève », cet instrument ayant prétendument « été adopté en partant du principe que la position consistant à soutenir que la[] sentence est nulle ne pouvait faire l'objet de discussions entre les Parties »¹¹. Comme la Cour l'a relevé, le Royaume-Uni et le Guyana ont constamment considéré que l'assertion suivant laquelle la sentence aurait été nulle « était sans fondement »¹² et n'ont accepté l'accord de Genève que parce qu'il préservait les positions des parties à cet égard. Se penchant sur sa compétence *ratione materiae* et confirmant, comme je l'ai rappelé, que l'objet du différend que les parties étaient convenues de régler en vertu de l'accord de Genève était - je cite encore - « la validité de la sentence de 1899 et les implications de cette question sur la frontière terrestre entre le Guyana et le Venezuela »¹³, la Cour souligna qu'en utilisant l'expression « la position du Venezuela, qui soutient », l'article premier de l'accord de Genève exprimait le désaccord subsistant entre les parties au sujet de la validité de la sentence, lequel justifiait la recherche de solutions selon le mécanisme convenu dans l'accord. Comme la Cour l'a expressément relevé - je cite l'arrêt de 2020 - , « [c]ela ne signifie en rien que le Royaume-Uni ou le Guyana aient souscrit à la position défendue par le Venezuela, que ce soit avant ou après la conclusion de cet instrument »¹⁴.

16. Ainsi, l'arrêt de 2020 a dit pour droit que la compétence matérielle de la Cour s'étendait à la question de la validité de la sentence arbitrale, cette question n'ayant pas été dépassée ni

¹¹ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 489, par. 126.

¹² *Ibid.*, p. 491, par. 132.

¹³ *Ibid.*, p. 474, par. 66, et p. 490, par. 129.

¹⁴ *Ibid.*, p. 490, par. 129.

remplacée par l'accord de Genève et constituant d'ailleurs, ainsi que la Cour l'a relevé, un préalable nécessaire à tout règlement définitif du différend frontalier¹⁵. La Cour souligna encore que

« l'argument du Venezuela selon lequel l'accord de Genève ne couvre pas la question de la validité de la sentence de 1899 est contredit par l'allocution prononcée par le ministre vénézuélien des affaires étrangères devant le Congrès national peu après la conclusion de cet instrument »¹⁶.

La Cour releva en particulier que le ministre avait déclaré : « [à] supposer que la sentence de 1899 soit déclarée nulle, que ce soit d'un commun accord entre les parties concernées ou par une décision rendue par une autorité internationale compétente communément désignée [as per Agreement], la question se poserait de nouveau dans les termes initiaux »¹⁷. Outre ce passage, l'allocution ministérielle de 1966 manifestait clairement à deux autres reprises encore que la prétention de nullité, raison du différend créé par le Venezuela, devait être réglée par le mécanisme mis en place par l'accord de Genève : d'une part, le ministre vénézuélien estima qu'« une fois la nullité de la sentence reconnue, le Venezuela devrait considérer comme irrecevable ... toute prétention visant lesdits territoires » ; d'autre part, il émit une opinion au sujet du territoire vénézuélien susceptible d'être revendiqué « si la nullité de la sentence était prononcée »¹⁸. Il est donc indubitable que « la validité de la sentence de 1899 se trouvait au cœur du différend à résoudre »¹⁹ pour reprendre les mots de votre arrêt de 2020.

17. Les arguments présentés dans la duplique ont donc déjà été examinés et rejetés par la Cour, et il n'est assurément pas

¹⁵ *Ibid.*, p. 490, par. 130.

¹⁶ *Ibid.*, p. 491-492, par. 134.

¹⁷ *Ibid.*, p. 492, par. 134.

¹⁸ M. Ignacio Iribarren Borges, ministre des affaires étrangères du Venezuela, 17 mars 1966, DV, vol. II, annexe 2, p. 36-37 (p. 25 de la traduction du Greffe en français).

¹⁹ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 492, par. 134.

nécessaire de les examiner à nouveau. Je relève par ailleurs qu'aucun juge ayant voté contre le premier point du dispositif de l'arrêt de 2020 n'a estimé que la question de la validité de la sentence aurait été mise de côté par l'accord de Genève et ne relevait pas du différend qu'il entendait régler.

III. L'argument déduit de la décolonisation

18. Monsieur le président, la conclusion du troisième chapitre de la duplique soutient qu'« il y a lieu de voir en l'accord de Genève une étape cruciale du processus de décolonisation, qui témoigne de la volonté de répondre aux griefs de l'époque coloniale et de rechercher une solution juste et équitable à un différend territorial né des inégalités de cette période de l'histoire »²⁰. Le Venezuela affirme en outre qu'en supposant même que la sentence de 1899 soit valable (je cite la duplique dans sa version anglaise), « its territorial consequences could not be applied in absolute and unconditional terms in a dispute where the law of decolonisation is the governing legal framework »²¹.

19. Le Guyana ne conteste pas l'existence des principes bien établis du droit de la décolonisation mis en avant par le Venezuela dans sa duplique, pas plus qu'il ne nie que de nombreuses injustices résultent encore à travers le monde de la décolonisation et de la colonisation. Toutefois, il est douteux qu'un État ayant déclaré son indépendance en 1811, un État qui est un Membre fondateur de l'Organisation des Nations Unies (ONU) et qui n'a jamais été un territoire non autonome au sens de la Charte, puisse être considéré comme l'objet et le bénéficiaire du droit de la décolonisation. En effet, ce droit s'est développé dans la deuxième moitié du XX^e siècle, « la résolution 1514 (XV) du 14 décembre 1960 constitu[ant] [comme la Cour l'a dit] un moment décisif »²² à cet égard. Le droit de la décolonisation entendait libérer les peuples

²⁰ DV, vol. I, par. 3.29.

²¹ DV, vol. I, par. 3.19.

²² *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif*, C.I.J. Recueil 2019 (I), p. 132, par. 150.

alors colonisés du joug colonial, y compris le peuple du Guyana britannique.

20. Quoi qu'il en soit, Mesdames et Messieurs de la Cour, il est difficile de voir à quoi le Venezuela veut concrètement en venir en invoquant le droit de la décolonisation.

21. S'il s'agit de soutenir que le traité de Washington ou la sentence arbitrale sont nuls car ils résulteraient d'une contrainte de la part d'une puissance coloniale contre un État alors indépendant depuis près de quatre-vingt-dix ans et bénéficiant du soutien de la plus grande puissance continentale, le Venezuela devrait le prouver et non simplement l'affirmer. Dans ses écritures, le Guyana a déjà répondu à l'argument fallacieux tardivement avancé par le Venezuela selon lequel il aurait été contraint d'accepter le traité de 1897. Mon collègue et ami M. Reichler y reviendra tout à l'heure.

22. S'il s'agit d'autre part de soutenir, comme semble le dire le Venezuela dans l'extrait de sa duplique que je viens de lire en anglais, que le Guyana n'aurait pas été en droit de succéder au Royaume-Uni sur le territoire délimité par la sentence alors même qu'elle était valable, le Venezuela devrait apporter la preuve de l'existence d'une telle exception à l'un des principes fondamentaux du droit de la décolonisation que la Cour a encore récemment rappelé²³. Dans une telle et improbable hypothèse, voire même dans le cas où la sentence serait entachée de nullité, il appartiendrait aussi au Venezuela de prouver que la frontière convenue dans le traité de 1905 qui confirmait le tracé décidé par la sentence n'a pas acquis la « permanence que le traité lui-même ne connaît pas nécessairement »²⁴.

23. Au lieu d'adosser ses prétentions à une analyse juridique rigoureuse rencontrant précisément les obstacles que le droit international met sur sa route, le Venezuela se contente d'évoquer de manière très générale et très opportuniste le droit de la décolonisation alors qu'il ne lui est d'aucune assistance et que le

²³ *Délimitation terrestre et maritime et souveraineté sur des îles (Gabon/Guinée équatoriale)*, arrêt du 19 mai 2025, par. 128.

²⁴ *Différend territorial (Jamahiriya arabe libyenne/Tchad)*, arrêt, C.I.J. Recueil 1994, p. 37, par. 73.

véritable bénéficiaire de ce droit est le Guyana libéré du joug colonial en 1966.

24. Pour le reste, le Guyana estime que l'accord de Genève est un remarquable instrument de décolonisation car il témoigne de l'acceptation par la puissance coloniale de la possibilité de remettre en cause de prétendues injustices coloniales dans la mesure où elles seraient dûment établies au regard du droit international applicable. C'est tout le sens de la compétence de la Cour pour examiner la validité de la sentence arbitrale. Que le défendeur conteste cette compétence tout en se prévalant des principes de la décolonisation est profondément paradoxal □ mais en même temps révélateur de la conscience qu'il a de l'absence de fondement juridique de ses prétentions. De plus, et ainsi qu'il résulte de l'arrêt de 2023 rejetant l'exception tirée du principe de l'Or monétaire soulevée par le Venezuela, la puissance coloniale accepta par l'accord de Genève que son comportement de l'époque puisse servir de fondement à la prétention de nullité. Ainsi, loin de défavoriser le Venezuela, l'accord de Genève lui a offert la possibilité de « rouvr[ir] le dossier de la Guayana Esequiba »²⁵ pour reprendre les mots du président vénézuélien Raúl Leoni au moment de sa conclusion. L'accord de Genève deviendrait toutefois un instrument de décolonisation se retournant contre le Guyana décolonisé s'il permettait à son voisin d'indéfiniment entretenir une prétention juridique exorbitante et infondée, faisant peser une épée de Damoclès sur près de trois quarts du territoire hérité lors de l'accession à l'indépendance.

IV. L'argument déduit de la novation

25. Monsieur le président, Mesdames et Messieurs les juges, le quatrième chapitre de la duplique présente l'accord de Genève « en tant qu'instrument de novation » ayant « substitu[é] à une situation antérieure fondée sur la domination coloniale [un] nouveau cadre négocié »²⁶. Selon le Venezuela, en concluant l'accord de Genève, le Venezuela, le Royaume-Uni et le futur État du Guyana sont « convenus d'un processus novatoire qui a exclu

²⁵ M. Ignacio Iribarren Borges, ministre des affaires étrangères du Venezuela, citant le président Leoni, 17 mars 1966, DV, vol. II, annexe 2, p. 38 (p. 26 de la traduction du Greffe en français).

²⁶ DV, vol. I, par. 4.2.

toute possibilité d'invoquer par la suite la sentence arbitrale nulle et non avenue de 1899 »²⁷.

26. Sous un nouvel habit aux apparences savantes puisant ses racines dans le droit romain²⁸ et adossé au droit de la décolonisation, l'argument de la novation ressemble à celui, rejeté par la Cour en 2020 mais réitéré avec obstination dans la duplique, selon lequel l'accord de Genève aurait tiré un trait sur la question de la validité de la sentence.

27. L'argument de la novation s'en distingue néanmoins car, en soutenant que l'accord de Genève aurait entièrement remplacé le régime juridique antérieurement établi par la sentence, il présuppose nécessairement que ce régime avait institué des obligations. En effet, comme le Venezuela l'écrit, la novation est la « transformation ... opérée par le remplacement mutuellement convenu d'un ensemble d'obligations par un autre »²⁹. La novation, c'est donc le remplacement d'obligations existantes, et donc valables, par un autre ensemble d'obligations. Toutefois, puisque le Venezuela soutient que la sentence est nulle, son argument de novation est profondément bancal. En effet, cet argument suppose ce que le défendeur rejette : si la sentence est nulle, elle ne peut pas être source d'obligations, et s'il n'y a pas d'obligations, il ne saurait être question de les remplacer pour le tout par un nouveau régime obligataire contenu dans l'accord de Genève. L'argument vénézuélien de la novation est donc affecté d'une contradiction interne indépassable.

28. S'il était sérieux, le point de départ de tout argument de novation devrait donc accepter que la sentence est valable et ainsi créatrice d'obligations car, pour reprendre les mots de la Cour permanente de Justice internationale (CPJI), elle est

« de la nature d'un jugement déclaratoire qui ... est destiné à faire reconnaître une situation de droit une fois pour toutes et avec effet obligatoire entre les Parties, en sorte que la situation juridique ainsi fixée ne puisse plus être mise en

²⁷ DV, vol. I, par. 4.22.

²⁸ DV, vol. I, par. 4.5.

²⁹ *Ibid.*

discussion, pour ce qui est des conséquences juridiques qui en découlent »³⁰.

Partant de là, le Venezuela devrait démontrer que l'accord de Genève contient un consentement, comme il le dit, « sans équivoque ni ambiguïté »³¹ d'opérer une novation, c'est-à-dire de remplacer la situation de droit établie par la sentence avec effet obligatoire, par une autre situation obligatoire régissant le même objet. Mais, Mesdames et Messieurs de la Cour, l'accord de Genève n'a en rien eu un tel effet juridique. L'effet de l'accord de Genève n'est pas d'avoir reconnu la nullité de la sentence, ni d'avoir tiré un trait sur cette question, ni d'avoir par lui-même remplacé les effets obligatoires de la sentence par un nouveau régime juridique puisqu'il ne dessinait pas une nouvelle frontière. Le seul effet de l'accord de Genève est d'avoir permis qu'une discussion au sujet de la validité de la sentence puisse avoir lieu et d'avoir institué un mécanisme pour que cette discussion aboutisse à un règlement définitif du différend né de la prétention de nullité vénézuélienne, débouchant, soit sur la confirmation de la sentence et de sa validité et donc de la situation juridique établie par elle, soit sur une déclaration de nullité et une nouvelle délimitation de la frontière entre le Guyana et le Venezuela si le traité de 1905 et la frontière ainsi convenue devaient également et distinctement en être affectés. En somme, l'accord de Genève ne peut raisonnablement pas être interprété comme opérant une novation, sous quelque forme que ce soit.

V. Res judicata

29. Monsieur le président, Mesdames et Messieurs les juges, je termine : il est indubitable que la première partie de la duplique du Venezuela vise à remettre en cause vos arrêts de 2020 et de 2023. Le défendeur ne s'en cache pas puisqu'il les rejette. Pourtant, il n'en remet jamais frontalement en cause la force de chose jugée et il n'a pas introduit de demande de révision au titre de l'article 61 du Statut, seule procédure permettant de remettre en cause le

³⁰ *Interprétation des arrêts n^{os} 7 et 8 (usine de Chorzów), arrêt n^o 11, 1927, C.P.J.I. série A n^o 13, p. 20.*

³¹ DV, vol. I, par. 4.7.

principe de la chose jugée³². Il faut donc en déduire que le Venezuela n'a découvert aucun « fait nouveau » « de nature [s'il avait été connu] à exercer une influence décisive » sur les conclusions auxquelles la Cour est parvenue dans ses arrêts de 2020 et de 2023.

30. Dans ces conditions, ces arrêts demeurent *res judicata* pour les Parties et pour la Cour elle-même. Dans l'arrêt de 2020, la Cour a d'ailleurs souligné qu'« [u]n arrêt sur la compétence, comme sur le fond, est définitif et obligatoire pour les parties aux termes des articles 59 et 60 du Statut »³³. Dès lors, « [p]river une partie du bénéfice d'un arrêt rendu en sa faveur doit, de manière générale, être considéré comme contraire aux principes auxquels obéit le règlement judiciaire des différends »³⁴.

31. En l'espèce, tous les arguments présentés dans la duplique portent sur des points qui ont déjà été tranchés soit explicitement, soit par implication logique³⁵, points qui sont dès lors revêtus de la force de chose jugée. Le critère utilisé par la Cour pour accepter d'examiner une question de compétence au stade du fond n'est en effet pas de savoir si les arguments qui lui sont présentés sont nouveaux ou s'ils recyclent des arguments antérieurement formulés, mais de savoir si la décision devant être rendue à leur sujet est « susceptible de contredire la conclusion par laquelle la Cour s'était déclarée compétente dans l'arrêt antérieur »³⁶. Or, il est

³² *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine*

c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I), p. 92, par. 120.

³³ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela)*, compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 464, par. 26.

³⁴ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine*

c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I), p. 91, par. 116.

³⁵ *Ibid.*, p. 95, par. 126 ; *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela)*, exception préliminaire, arrêt, C.I.J. Recueil 2023 (I), p. 282, par. 67.

³⁶ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine*

c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I), p. 96, par. 128.

indéniable que « s'ils étaient retenus, les arguments avancés par le défendeur dans la [duplique] auraient pour effet □ et tel est d'ailleurs leur but □ de renverser »³⁷ les décisions prises par la Cour dans ses arrêts de 2020 et de 2023.

32. Le Guyana demande donc respectueusement à la Cour de ne pas le priver du bénéfice de ces arrêts et de procéder au règlement du différend portant sur la validité de la sentence arbitrale de 1899.

33. Je remercie la Cour pour sa bienveillante attention et puis-je vous demander, Monsieur le président, de bien vouloir donner la parole à M^{me} l'ambassadrice Donette Streete au sujet du contexte géographique du différend ?

Le PRÉSIDENT : Je remercie le professeur d'Argent. I now give the floor to Ambassador

Donnette Streete. You have the floor, Madam.

Ms STREETE:

**THE ESSEQUIBO REGION:
GUYANA'S GEOGRAPHY AND THE
TERRITORY AT STAKE**

1. Mr President, Members of the Court, it is my privilege to address the Court on the nature of the territory that lies at the very heart of this case — the Essequibo.

2. Before the Court turns to the legal questions surrounding the 1899 Arbitral Award and its validity, Guyana considers it appropriate to set out, concretely, what is at stake in these proceedings. As the Court will see, Venezuela's claim is not directed at some remote frontier land. It is directed at the heart of

³⁷ *Ibid.*, p. 96, par. 128.

my country, the vast majority of its sovereign territory, over 70 per cent of it.

I. The scale of the territory in dispute

3. Let me begin with the sheer scale of what is being claimed. Guyana is the third-smallest country by geographic area in South America comprising no more than 215,000 sq km of land³⁸. Venezuela, by contrast, is more than four times larger³⁹.

4. The area claimed by Venezuela comprises all of Guyana's land territory lying to the west of the Essequibo River, after which the region is named. It accounts for almost three-quarters of Guyana's total land territory — a vast expanse of about 159,500 sq km⁴⁰. Six of Guyana's ten administrative regions are located within it⁴¹.

5. I respectfully ask the Court to pause on this figure: Venezuela is claiming almost three-quarters of Guyana's sovereign territory — the land in which much of Guyana's population lives; where much of its economic activity takes place; and where its most precious natural, ecological and cultural treasures are found. For a small, developing nation, the loss of nearly three-quarters of its territory would not be a border adjustment; it would be the dismemberment — indeed the effective destruction — of the country.

³⁸ Guyana Lands and Surveys Commission, "Fact Page on Guyana: Geographic Location of Guyana", available at <https://factpage.glsc.gov.gy/geography/>.

³⁹ Government of Guyana, Ministry of Foreign Affairs, Memorandum on the Guyana/Venezuela Boundary (2 Nov. 1981), reprinted in UN General Assembly, 36th Session, Review of the Implementation of the Declaration on the Strengthening of International Security, UN doc A/C.1/36/9 (9 Nov. 1981), p. 2, Memorial on the merits of Guyana (MMG), Vol. III, Annex 54.

⁴⁰ Guyana Ministry of Foreign Affairs, Annual Report, 1998, p. 101, available at https://parliament.gov.gy/documents/acts/4979-annual_report_foreign_affairs_1998.pdf.

⁴¹ Guyana Lands and Surveys Commission, "Fact Page on Guyana: Administrative Regions", available at <https://factpage.glsc.gov.gy/admin-regions-detailed/>.

II. Geographical, ecological and economic features

6. I turn now from the size to the character of the territory Venezuela claims, because its significance to Guyana is not only a matter of size — it is a matter of what the land contains and what it means to our Guyanese people.

7. Guyana’s name is aptly derived from an Amerindian word “Guiana”, meaning the “land of many waters”. That is because Guyana possesses a vast hydrographic network consisting of 14 major drainage basins⁴². The Essequibo River is by far the longest, extending some 1,014 km, making it one of the largest rivers in South America. Its major tributaries — the Potaro, the Cuyuni, the Mazaruni and the Rupununi — all flow through the Essequibo region⁴³.

8. These rivers are the arteries of our national life. For the people who live in the Essequibo, they are how communities stay connected and communicate and trade with one another; they are the source of fresh water, and the lifeblood of ecosystems that support biodiversity and vital carbon sinks for current and future generations.

9. The natural endowment of the Essequibo region includes more than its rivers. The region is also lined by interconnected mountain ranges, including the Pakaraima Mountains. This is where Guyana’s highest mountain — Mount Roraima — forms a tripartite boundary among Guyana, Venezuela and Brazil⁴⁴.

10. In the very centre of the Essequibo region, lies the Iwokrama Rainforest — the “green heart” of Guyana — one of the last four untouched tropical rainforests in the world and a site of global ecological significance. This pristine and delicate

⁴² U.S. Army Corps of Engineers, “Water Resources Assessment of Guyana” (Dec. 1998), available at [https://www.sam.usace.army.mil/Portals/46/docs/military/engineering/docs/WRA/Guyana/Guyan a%20WRA.pdf](https://www.sam.usace.army.mil/Portals/46/docs/military/engineering/docs/WRA/Guyana/Guyan%20WRA.pdf), p. 17.

⁴³ Guyana Lands and Surveys Commission, “Fact Page on Guyana: Major Rivers” (undated), MMG, Vol. II, Figure 2.2.

⁴⁴ *Ibid.*, Figure 2.3.

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environment encompasses a vast area that is universally recognized as rich in diverse species of plants, animals and insects⁴⁵ — including many threatened with extinction⁴⁶. It is a sanctuary for conservation, scientific research and ecotourism⁴⁷.

11. Guyana has designated 371,000 hectares of pristine forest at Iwokrama to “promote the conservation and the sustainable and equitable use of tropical rainforests”⁴⁸.

12. The ecological significance of the Essequibo region is matched by its economic importance. The region is the engine of our economic development. Gold-mining in parts of the region dates back to the nineteenth century⁴⁹. Considerable deposits of bauxite and manganese are also found in the Essequibo region⁵⁰. There is significant potential for the exploitation of oil and natural gas in the waters adjacent to its coasts⁵¹. These natural endowments are essential to Guyana’s economic development.

13. The region also supports substantial agricultural activity, from rice cultivation⁵² along the low-lying coastal areas — to cattle

⁴⁵ Counter-Memorial of Venezuela on the Merits, 8 April 2024, Appendix, p. 9. See also Wildlife World, “Iwokrama Rainforest”, available at <https://www.wildlifeworldwide.com/locations/iwokrama-rainforest>.

⁴⁶ Dr Mark Engstrom & Dr Burton Lim, Guide to the Mammals of the Iwokrama (1999), p. 14.

⁴⁷ Iwokrama Rainforest, “Wildlife World”, available at <https://www.wildlifeworldwide.com/locations/iwokramarainforest>.

⁴⁸ Memorial of Guyana on Jurisdiction, 19 November 2018, Vol. IV, Annex 106: Address of the President of the Republic of Guyana to the UN General Assembly, 71st Session, UN doc. A/71/PV.8 (20 Sept. 2016), p. 23.

⁴⁹ M. Moohr, “The Discovery of Gold and the Development of Peasant Industries in Guyana, 1884-1914: A Study in the Political Economy of Change”, *Caribbean Studies*, Vol. 15, No. 2 (July 1975), p. 61.

⁵⁰ Counter-Memorial of Venezuela (CMV), 8 April 2024, Appendix at p. 12.

⁵¹ Extractive Industries Transparency Initiative Guyana: Oil and Gas Sector, available at <https://eiti.gy/oil-gassector/>.

⁵² Guyana Lands and Surveys Commission, “Fact Page on Guyana: Major Rivers” (undated), available at <https://factpage.glsc.gov.gy/region-ii/>. See also, Ministry of Communities, “Child-Friendly Regional Profile: Region Two: Pomeroon-Supenaam”, available at <https://www.unicef.org/lac/>

ranching in the Upper Essequibo area, which supplies beef for export⁵³.

III. Human settlement and governance

14. I have described our land. Let me now speak of the people — because the Essequibo is not merely territory. It includes the people who inhabit it, who administer it and who belong to it, including my own family.

15. According to the most recent census, conducted in 2022, the Essequibo region has a population of 313,175, more than one-third of Guyana's entire population⁵⁴. These include members of nine indigenous groups, the first inhabitants of this land⁵⁵. The remainder of the population reflects Guyana's rich ethnic and racial diversity, including descendants of Dutch settlers — the first Europeans to occupy the territory — and descendants of Africans and Asians brought to this land, as slaves and indentured servants — respectively, by Dutch and later British colonizers between the seventeenth and nineteenth centuries⁵⁶. As Guyana's Agent, Mr Greenidge, will shortly explain, it is a historical fact that there was no Spanish colonization or permanent settlement anywhere in this territory. The Spanish may have been the first Europeans to set their eyes on the vast northern coast of South America, or to claim it, but they never established a presence of any significance there. Nor have they ever administered it.

16. As Mr Greenidge will explain, the British followed the Dutch into the Essequibo region during the first half of the nineteenth century, forged alliances with the various indigenous

media/4581/file/PDF%20Portada%20Region%20two :%20Pomeroon-Supenaam.pdf.

⁵³ *Ibid.*

⁵⁴ Guyana Bureau of Statistics, "Population and Housing Census – 2022, Household by Dwelling Ownership and by Village", available at <https://statisticsguyana.gov.gy/census/>.

⁵⁵ Inter-American Development Bank, p. 7, available at <https://publications.iadb.org/publications/english/document/Guyana-Technical-Note-on-Indigenous-Peoples.pdf>.

⁵⁶ Encyclopedia Britannica, "People of Guyana", available at <https://www.britannica.com/place/Guyana/People>.

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communities, explored and mapped the area, and expanded British settlement and administration beyond the coast, into the interior. There was never any Spanish or Venezuelan administration there. British administration deepened in the second half of the nineteenth century and continued until Guyana's independence in May 1966. Since then, Guyana has exercised full sovereignty and governance over the Essequibo region. It administers education through schools across the region⁵⁷. It operates postal services⁵⁸, manages fisheries⁵⁹, enforces environmental regulations⁶⁰ and invests in infrastructure projects⁶¹. It collects taxes through the Guyana Revenue Authority⁶².

17. Guyana also conducts national and regional elections in the Essequibo region, as it does everywhere in Guyana⁶³. In the last elections, held on 1 September 2025, nine Members of Parliament

⁵⁷ Guyana Ministry of Education, "List All Schools", available at <https://education.gov.gy/web2/index.php/otherresources/other-files/list-of-schools>.

⁵⁸ Guyana Post Office Corporation, "About Us", available at <https://guypost.gy/about-us/>; Guyana Post Office Corporation, "Post Office Telephone Directory", available at <https://guypost.gy/directory/>.

⁵⁹ Guyana Ministry of Agriculture, "Fisheries", available at <https://agriculture.gov.gy/fisheries/>.

⁶⁰ See e.g. Government of the Cooperative Republic of Guyana, Proceedings and Debates of the National Assembly of the First Session (2015-2016) of the Eleventh Parliament of Guyana under the Co-operative Republic of Guyana held in the Parliament Chamber, Public Buildings, Brickdam, Georgetown (11 Feb. 2016), p. 90. MMG, Vol. IV, Annex 102. See also, Iwokrama, "About Us", available at <https://iwokrama.org/about-us/>.

⁶¹ See e.g. World Bank, "Staff Appraisal Report, Guyana, Infrastructure Rehabilitation Project" (22 Feb. 1993), available at <http://documents1.worldbank.org/curated/en/263761468250853522/text/multi-page.txt>.

⁶² Guyana Revenue Authority, "About Us", available at <https://www.gra.gov.gy/about-us/>.

⁶³ Guyana Elections Commission (GECOM), About GECOM, available at <https://www.gecom.org.gy/public/home/about>; GECOM, Election Result: 2025 – General and Regional, available at <https://www.gecom.org.gy/public/home/results/gre2025>.

were elected from geographical constituencies in the Essequibo⁶⁴. These are not abstractions. In exercising their democratic right to vote and choosing their representatives, the people of the Essequibo affirm their commitment to, and identification with, the sovereign State of Guyana.

IV. Conclusion

18. Mr President, Members of the Court, I have sought to show — in concrete, human and physical terms — what the Essequibo region is. It is an integral and essential part of Guyana. Its geography, its economic activity, its culture and the continuous governance of its land and peoples — first by the Dutch, and then by the British, and since 1966 by Guyana itself — are not matters of abstract historical interest. They are the substance of Guyana's national life; they are an indelible feature of Guyana's national and cultural identity; and they are the crucial foundation for Guyana's security and development.

19. Guyana has no designs on anyone else's territory. But we insist on our rights to our own territory, which by virtue of the Arbitral Award of 3 October 1899, includes Essequibo. Guyana's legal team will explain why that Award remains legally valid and binding on both Venezuela and Guyana and why Venezuela's challenges to it should be rejected.

20. I am very grateful for the Court's attention and I ask that you invite Mr Carl Greenidge to the podium to make Guyana's next presentation. Thank you.

The PRESIDENT: I thank Ambassador Streete. I now invite the Agent of Guyana, HE Mr Carl Greenidge, to address the Court. Sir, you have the floor.

⁶⁴ Parliament of the Co-Operative Republic of Guyana, "Who's Who in Parliament", available at <https://www.parliament.gov.gy/about-parliament/who-in-parliament>.

Mr GREENIDGE:

**THE COLONIAL HISTORY AND
ORIGINS OF THE BOUNDARY
DISPUTE**

1. Mr President, Members of the Court, it is my great privilege to address you this morning. I will continue Guyana's presentation on the territory in dispute. Ms Streete discussed the land and its people; I will now briefly describe its history as part of a Dutch and then a British colony, in the period leading up to the boundary dispute with Venezuela that began in the middle of the nineteenth century. Mr Reichler will then carry the story forward through efforts by Great Britain and Venezuela to resolve this dispute, with the support of the United States, culminating in 1897 with the execution and ratification of the Treaty of Washington which enshrined the agreement to submit the dispute to arbitration.

**I. The Dutch legacy and the British
acquisition**

2. The post-Columbian history of our territory begins with the arrival of the Dutch in 1598. They were the first Europeans to establish themselves in what is now Guyana. By 1616, they had founded the Colony of Essequibo, erected Fort Kykoveral along the Mazaruni River west of the Essequibo as their seat of government and begun to settle and administer the territory stretching westward toward the Orinoco⁶⁵. Five years later, in 1621, the States General granted the Dutch West India Company its Charter, by which it took

⁶⁵ Jacobus van der Schley, "Caart van Essequibo en Demerary" (G. Tielenburg, 1770). MMG, Vol. II, Figure 2.4.

charge of running the colony⁶⁶. In 1744, the seat of Dutch administration was moved to Fort Zeelandia⁶⁷.

3. And the Spanish? They were nowhere to be found □ not east of the Orinoco at any rate. Their nearest outpost was Santo Thomé, on the banks of the Orinoco. This was the easternmost Spanish settlement. The Spanish Governor there was candid about his predicament: the settlement, he wrote, was “so far distant from” other Spanish possessions, “the nearest being Venezuela” □ more than 650 km away⁶⁸. Later, a settlement at Upata, slightly south of Santo Thomé, was established. Spain never settled any territory farther east of the Orinoco. Spanish attempts to do so were repelled by the Dutch.

4. The reality was enshrined by the Treaty of Münster in 1648. Spain recognized Dutch independence and expressly accepted the territorial status quo on South American mainland⁶⁹. In 1713, the Treaty of Utrecht reinforced that of 1648, confirming Dutch authority over the territory and settlements it had established in its South American colonies, which then included territory west of the Essequibo River⁷⁰.

5. Over the course of the eighteenth century, the Dutch moved deeper into the interior of the Essequibo region and further westward along the Atlantic Coast. This map, produced in 1781, shows the extent of Dutch settlement and administration of the Essequibo River at that time. The Dutch were then settled along the

⁶⁶ Venezuela-British Guiana Boundary Arbitration, The Case of the United States of Venezuela (1898), Vol. I, pp. 54-55. MMG, Vol. IV, Annex 123; Venezuela-British Guiana Boundary Arbitration, The Case of the United States of Venezuela (1898), Vol. I, p. 75. MMG, Vol. IV, Annex 124.

⁶⁷ Boundary between the Colony of British Guiana and the United States of Venezuela, The Case on behalf of the Government of Her Britannic Majesty (1898), pp. 35-36.

⁶⁸ Letter of the Request of the City of Santo Thomé and Island of Trinidad of the Presidency of Guayana for Help (undated, likely issued in 1621), p. 50. MMG, Vol. III, Annex 11.

⁶⁹ Articles of the Peace of Münster (30 Jan. 1648), Art. V. MMG, Vol. IV, Annex 78.

⁷⁰ Treaty of Utrecht (1713) available at <https://primarydocuments.ca/wp-content/uploads/2018/04/TreatyUtrecht1713.pdf>.

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Pomeroon River, which still bears its original name, as well as at Cape Nassau, Moruga, Spruyt, Wayma and Amacura, at the mouth of the Orinoco River. The extensive Dutch settlement of this territory during the seventeenth and eighteenth centuries is evidenced by the Dutch names maintained to the present day, of the villages, towns, rivers and other geographic features. Thirty-five of these place names are now listed on your screens, at tab 4 of your folders, along with their geographical co-ordinates.

6. In sharp contrast to the widespread Dutch settlement of the territory lying between the Essequibo and Orinoco Rivers, there were no Spanish settlements east of the Orinoco. Venezuela recognizes “Dutch presence on the west bank of the Essequibo” but seeks to characterize this as “very limited” and “temporary” in nature⁷¹: that is historically inaccurate and not supported by the evidence. What Venezuela does not say - and what it cannot say - is that there was any Spanish settlement or administration in this territory.

7. By the early nineteenth century, the Dutch were displaced, but neither by Spain nor by Venezuela. They were displaced by Great Britain. After tensions arose between the two Powers □ in part because the Dutch had backed the American colonies in their struggle for independence □ Britain seized the Dutch possessions in this area and in the early 1800s. In 1803, the Netherlands ceded its colonies to Britain under the Articles of Capitulation of Demerara and Essequibo⁷².

8. At the close of the Napoleonic Wars, the Dutch formalized the transfer. The 814 Convention of London ceded the colonies of Essequibo-Demerara and Berbice to Britain⁷³. The Treaty of Paris

⁷¹ CMV, paras. 4.52, 4.54, 4.55.

⁷² Articles of Capitulation of Demerara and Essequibo (18-19 Sept. 1803). MMG, Vol. IV, Annex 79.

⁷³ Convention of London (1814) available at <https://hansard.parliament.uk/Commons/1815-0609/debates/0e7491ad-421f-4e13-9843-e5a4e4591f6c/ConventionBetweenGreatBritainAndTheNetherlands>.

of 1815 confirmed it⁷⁴. Only Suriname, in the east, was territory returned to the Dutch.

9. For the first decade and a half after the Treaty of Paris, Britain maintained the separation of Berbice and Essequibo-Demerara. In 1831, King William IV merged them into one, to form the colony of British Guiana⁷⁵.

II. Schomburgk and the demarcation of British Guiana's boundaries

10. With a newly consolidated colony, Britain set about increasing its understanding of what it possessed. It began by commissioning a survey of the territory which included an effort to determine its western boundary, that is, where British Guiana ended and the nascent Republic of Venezuela began⁷⁶.

11. Robert Schomburgk was entrusted with this task. Schomburgk, a German-born botanist, surveyor and geographer of considerable distinction. Between 1835 and 1839 Schomburgk carried out three major expeditions into the territory west of the Essequibo under the auspices of the Royal Geographical Society⁷⁷. In the process he traversed vast swathes of the interior. Venezuela's Counter Memorial dismisses Schomburgk as a mere "Prussian technician" who drew boundary lines "different from the one that had been known until then"⁷⁸. In fact, until then there was no known boundary, much less one that was recognized or agreed. The Schomburgk expedition was an effort to establish such a boundary.

⁷⁴ Treaty of Paris (1815) available at https://avalon.law.yale.edu/19th_century/conv1816.asp.

⁷⁵ British Guiana, Letters Patent constituting the Colony of British Guiana and appointing Major General Sir Benjamin D'Urban, KCB, Governor (4 Mar. 1831). MMG, Vol. IV, Annex 80.

⁷⁶ Letter from Mr Schomburgk to Governor Light (1 July 1839) (Inclosure in Letter from the Colonial Office to the Foreign Office (6 Mar. 1840)). MMG, Vol. III, Annex 16.

⁷⁷ "Map Depicting the Expeditions of Robert Schomburgk (1835-1839)" in Vol. II, Annex of Maps and Figures shows the routes that Schomburgk followed on these expeditions. MMG, Vol. II, Figure 3.1 (in Vol. II only).

⁷⁸ CMV, paras. 4.80-4.81.

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12. In 1840, following his earlier excursions through the territory west of the Essequibo River, Great Britain directly commissioned Schomburgk to map out the colony's borders. The intention had been to share the results with Brazil and Venezuela, and to inform Venezuela in advance of Schomburgk's mission and its objectives⁷⁹. The Venezuelan President, José Antonio Páez, did not protest. In fact, he welcomed Schomburgk's mission. British colonial records report that President Páez "conceived this to be the best opportunity to settle definitively this affair, which interests both nations"⁸⁰. He also proposed that the two countries set up a joint commission to conduct the survey, prefatory to concluding a Treaty of Limits⁸¹. But, by the time the Venezuelan President's message reached London, Schomburgk had already set out on his mission⁸².

13. Between 1841 and 1844, Schomburgk conducted five expeditions into the interior shown on this map. In the first trip (shown on the map as "Trip 1"), he journeyed along the Barima and Cuyuni Rivers and raised British flags and markers at Barima Point on the coast⁸³. In his own words:

"The British Empire acquired, therefore, Guiana, with the same claims to the termini of its boundaries as held by the Dutch before it was ceded by Treaty to Great Britain . . . Of equal importance is the determination of the western boundary

⁷⁹ Letter from Lord J. Russell to Governor Light (23 Apr. 1840) (Inclosure in Letter from Colonial Office to Foreign Office (28 Apr. 1840)). MMG, Vol. III, Annex 17.

⁸⁰ Letter from Viscount Palmerston to Sir R. Ker Porter (28 Nov. 1840), Letter from Mr O'Leary to Viscount Palmerston (24 Jan. 1841) and Letter from Mr O'Leary to Viscount Palmerston (2 Feb. 1841). MMG, Vol. III, Annex 18 (charging Sir Ker Porter to communicate the commission of Mr Schomburgk to the Government of Venezuela). ⁸¹ *Ibid.*

⁸¹ *Ibid.*

⁸² Letter from Señor Aranda to Governor Light (31 Aug. 1841) and Letter from Governor Light to Señor Aranda (20 Oct. 1841) (Inclosures in Letter from Governor Light to Lord Stanley (21 Oct. 1841)). MMG, Vol. III, Annex 19.

⁸³ *Ibid.*

of British Guiana, the limits of which have never been completely settled.”⁸⁴

14. In this report, Schomburgk documented the chain of Dutch settlements stretching westward to the Barima River and noted that disinterested scholars in the eighteenth century had uniformly treated the Barima River as the western edge of Dutch territory⁸⁵. He placed the British frontier at the Amakura River, four miles west of Barima Point □ “as it is no doubt the most natural limit west of the former possessions of the Dutch”⁸⁶.

15. The map and boundary line he produced became what is known as the “Schomburgk Line”. It became the basis of British territorial claims in the late nineteenth century, including in the arbitration against Venezuela, that resulted in the Award of 3 October 1899. The Schomburgk Line that the British presented to the arbitral tribunal is shown here, highlighted in yellow. The actual British claim line in the arbitration is highlighted in green.

III. Venezuela’s reaction — A claim is born

16. The Schomburgk line triggered consternation in Venezuela, which protested it and asserted its own claim to the territory east of the Orinoco River, extending to the Essequibo River □ as shown here, highlighted in red⁸⁷.

17. In asserting this claim, Venezuela did not point to any military bases or to settlements it had built, officials it had posted, or taxes it had collected. It pointed to the heavens □ quite literally. Venezuela invoked the Papal Bull of 1493, issued by Pope Alexander VI, a Spaniard, and declared on that basis that “[t]he right of Spain to the territory of America has always been

⁸⁴ Letter from Mr Schomburgk to Governor Light (1 July 1839) (Inclosure in Letter from the Colonial Office to the Foreign Office (6 Mar. 1840)). MMG, Vol. II, Annex 16.

⁸⁵ Letter of Mr Schomburgk to Governor Light (30 Nov. 1841) enclosing Memorandum by Mr Schomburgk. MMG, Vol. III, Annex 21.

⁸⁶ *Ibid.*

⁸⁷ See e.g. Letter from Señor de Rojas to the Earl of Derby (13 Feb. 1877). MMG, Vol. III, Annex 23.

indisputable in the eyes of all the nations of the world”⁸⁸. The treaties by which Britain inherited the Dutch colonies were, in Venezuela’s view, void because the Netherlands had conveyed to England “what did not belong to her and what she knew did not belong to her”⁸⁹.

18. Great Britain rejected Venezuela’s claim and continued to promote settlement of the region under its administration within the area encompassed by the Schomburgk line⁹⁰. The British made efforts to reach an understanding with Venezuela on the location of the boundary⁹¹. Various proposals were exchanged, beginning in the 1840s, but no agreement was reached. In the meantime, British settlement continued to expand westward within the Schomburgk line⁹². Venezuela felt powerless to stop it and grew increasingly desperate in attempting to prevent further British consolidation.

⁸⁸ Letter from Señor Calcaño to the Earl of Derby (14 Nov. 1876). MMG, Vol. III, Annex 22.

⁸⁹ *Ibid.*

⁹⁰ *British Guiana Boundary, Arbitration with the United States of Venezuela, The Case on Behalf of the Government of Her Britannic Majesty*, London, 1898, Volume I (extracts), p. 26. MMG, Vol. III, Annex 27 (“The journals and reports of the Superintendents of Rivers and Creeks and of the Postholder at Moruka also show that planting, boatbuilding, and wood-cutting were actively prosecuted in the Pomeroon district, giving employment to a large number of Indians from all the rivers as far as the Amakuru. Mention is also made of residents and wood-cutters in the Essequibo, Massaruni, and Cuyuni.”). See also, Extracts from Letter of Henry Light, Governor of British Guiana to Lord Glenelg, 1 September 1838, CMV, Annex 16 (“The Pomeroon river, at the western extremity of Essequibo, may be taken as a limit to the country, though there is a mission supported by the colony on the Maracca river or creek, a short distance westward, where 500 Spanish Indians are collected in a settlement under a Roman-catholic priest, recommended from Trinidad for that purpose; he is reported to be effecting good.”)

⁹¹ Letter from The Marquess of Salisbury to Señor de Rojas (10 Jan. 1880), MMG, Vol. III, Annex 24.

⁹² Memorandum by the Ministry of Foreign Affairs of Venezuela: relative to the note of Lord Salisbury to Mr Olney, dated 26 November 1895, pp. 34-35. Rejoinder of Venezuela (RV), Vol. II, Annex 33 (“From these citations, it results that from 1844 new settlements began to be secretly founded on the territory to which Lord Aberdeen’s line referred; that the agreement of

IV. The 1850 Agreement — marking a standstill period

19 Some progress toward a resolution was made in 1850, when Britain and Venezuela exchanged letters in which each undertook not to encroach further on any disputed territory until a final settlement on the boundary was reached⁹³. There was a problem with the so-called “1850 agreement,” however: it did not define or describe the territory that was disputed, leaving this for each party to determine for itself. Over the course of the following decades, Venezuela repeatedly complained about what it considered Britain’s frequent violations of the 1850 Agreement, including its extension of control over the disputed territory between the Essequibo and Orinoco Rivers.

V. Failed diplomatic negotiations and the call for arbitration

20. In 1877, Venezuela’s Minister in London, José Rojas approached the British Foreign Office with a proposal for an amicable settlement⁹⁴. By 1880, formal negotiations had begun but no progress was made.

21. In November 1883, with the prospects for a diplomatic settlement bleak, Venezuela proposed, for the first time, that the territorial dispute be settled by arbitration, pursuant to which “the decision of an Arbitrator who, freely and unanimously chosen by the two Governments, would judge and pronounce a sentence of a definite character”⁹⁵.

22. Great Britain rejected Venezuela’s proposal for arbitration. Ultimately, it offered to arbitrate only the territory west of the Schomburgk line □ that is, on Venezuela’s side of that line. This

1850 not to occupy any part of the territories in dispute, did not serve as an obstacle to the fresh occupations; that consequently the British Government and its authorities violated it, notwithstanding the emphatic assertions and promises of Mr Wilson”).

⁹³ CMV, Vol. I, 8 April 2024, paras. 4.90-4.92.

⁹⁴ Letter from Señor de Rojas to the Earl of Derby (13 Feb. 1877). MMG, Vol. III, Annex 23.

⁹⁵ Letter from Señor Seijas to Colonel Mansfield (15 Nov. 1883). MMG, Vol. III, Annex 25.

was, quite understandably, not acceptable to Venezuela. Faced with British intransigence on the scope of the arbitration, on 20 February 1887, Venezuela broke off diplomatic relations with Great Britain⁹⁶.

23. In its exasperation with the British, Venezuela turned to the United States for support and assistance, asking the United States to use its power and influence to persuade the British to submit to arbitration title to the entire territory claimed by both Britain and Venezuela, that is, all the land lying between the Essequibo and Orinoco Rivers. The history is clear and established by the evidence before the Court. It was *Venezuela* that insisted on arbitration. It was *Venezuela* that brought the United States into the picture to help it obtain the arbitration agreement with Great Britain that it was unable to obtain on its own.

24. And, ultimately, as Mr Reichler will show you, with the support of the United States, Venezuela secured the arbitration agreement on which it had been insisting for more than a decade, in the form of the 1897 Treaty of Washington. Right up to the President, Venezuela heralded and celebrated the Treaty as the accomplishment of its long-sought objective and profusely expressed gratitude to the United States for its indispensable contribution to that end. Venezuela maintained this attitude toward the Treaty □ and its implementation □ for the next 60 years. It neither questioned, challenged nor criticized the Treaty.

25. In contrast, in these proceedings, Venezuela takes exactly the opposite position: it attacks that very Treaty, claiming now that it was unlawful and invalid on several grounds. At this point, I pass the baton to Mr Reichler, and invite you to call him to the bar, to show that there is no merit to any of Venezuela's belated and totally unpersuasive challenges to the Treaty.

26. Mr President, Members of the Court, I thank you for your kind attention, and I ask that you invite Mr Reichler to the podium, perhaps after a short break.

⁹⁶ Letter from Señor Urbaneja to Mr F.R. St. John (20 Feb. 1887). MMG, Vol. III, Annex 28, p. 131.

The PRESIDENT: I thank the Agent for his presentation. Before I give the floor to the next speaker, the Court will observe a break of 10 minutes. The hearing is suspended.

The Court adjourned from 11.40 a.m. to 12 noon

The PRESIDENT: Please be seated. The sitting is resumed. I now call Mr Paul Reichler to the podium. You have the floor, Sir.

Mr REICHLER:

**THE VALIDITY OF THE TREATY
OF WASHINGTON**

1. Thank you. Mr President, Members of the Court, it is, as always, an honour for me to appear before you. And it is a privilege, as well as a great responsibility, *for* me to represent the Cooperative Republic of Guyana in a case that the Honourable Foreign Minister has described as “existential” for his State.

2. I will address you on the 1897 Treaty of Washington, the treaty between Venezuela and Great Britain by which they agreed to arbitrate their territorial dispute, and pursuant to which the dispute was arbitrated two years later, resulting in the Award of 3 October 1899.

3. In these proceedings, of course, Venezuela challenges the validity of that Award. The first reason it gives for the alleged invalidity of the Award is the purported invalidity of the 1897 Treaty. Venezuela contends that the Treaty was invalid and therefore that the arbitration that was conducted pursuant to it was also invalid. For this reason, the legality of the 1897 Treaty has been put into issue in this case.

4. As the Court is well aware, Venezuela accepted, respected and complied with the 1899 Arbitral Award for more than 60 years.

The very first time it formally challenged the validity of the Award was in a letter from its Permanent Representative to the United Nations to the Secretary-General in February 1962⁹⁷. At that time, and in subsequent presentations to the United Nations, Venezuela made clear that, although it had changed its position on the Award of 1899, it continued to regard the 1897 Treaty as a valid treaty. It was not until 1963, 66 years after it ratified the Treaty, that Venezuela first began to find fault with it.

5. My presentation on the Treaty will be in four parts. In the first part, I will set out the issues in this case on which both Venezuela and Guyana agree, or, at least, which they do not dispute. In Parts II to IV, I will address the three specific challenges Venezuela has made to the Treaty's validity, all of which Guyana considers groundless. I turn to part I.

I. Issues that are agreed or undisputed

6. As a general matter, the Parties do not dispute the circumstances that led up to the 1897 Treaty. In particular, they agree that the dispute over the boundary between Venezuela and British Guiana began to heat up in the 1840s, and that, between then and the early 1880s, Venezuela and Great Britain exchanged various proposals for delimitation of the boundary, all without success. Both States claimed the entire territory between the Essequibo River in the east and the Orinoco River in the west. Their respective proposals and counterproposals failed to resolve, or even substantially narrow, this dispute.

7. Throughout this 40-year period, Venezuela complained about what it considered the westward expansion of British settlement in the territory between the two rivers. Although, as you have heard, an agreement was reached in 1850 not to expand further into what they both referred to as "disputed" territory, Venezuela complained that British expansion continued. Recognizing that it was unable to stop the British diplomatically or militarily,

⁹⁷ Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations (14 Feb. 1962), reprinted in UN General Assembly, Fourth Committee, 16th Session, *Information from Non-Self-Governing Territories transmitted under Article 73 of the Charter*, UN Doc A/C.4/536 (15 Feb. 1962). MMG, Vol. II, Annex 17.

Venezuela implored them to settle the dispute by arbitration, but the British refused. As Venezuela acknowledged in its Counter-Memorial, it “had repeatedly proposed to Great Britain to settle the territorial dispute by arbitration”, but “Great Britain had systematically refused such solution”⁹⁸.

8. It is also undisputed that between 1883 and 1895, in the face of what it claimed to be ongoing British settlement in the disputed territory, Venezuela turned to the United States for support, specifically requesting US intervention with the British to obtain their agreement to settle the dispute by arbitration.

9. To this end, this is what Venezuela’s Foreign Minister wrote to the US Secretary of State in 1883:

“To carry this controversy to a practical ground and possible termination, there is, in the opinion of the President of Venezuela, only one and at the same time very simple way □ arbitration. And for arbitration, there is only one Government who could propose it with real effect and decide the question of boundaries to the satisfaction of Venezuela □ the United States of America.”⁹⁹

10. It is also agreed that the United States responded sympathetically to Venezuela’s entreaties, that it remonstrated with the British over the alleged westward expansion of British Guiana, and that it insisted on arbitration of the territorial dispute¹⁰⁰. No less a figure than the President of the United States, Grover Cleveland, championed Venezuela’s cause. In September 1888, Venezuela’s mission in Washington wrote this:

⁹⁸ CMV, para. 5.9.

⁹⁹ Letter from the Venezuelan Foreign Minister, Mr Simón Camacho, to United States Secretary of State, Mr Frederic Frelinghuysen (15 Jan. 1883). Reply of Guyana (RG), Vol. III, Annex 2.

¹⁰⁰ Letter from Mr Olney to Mr Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at <https://history.state.gov/historicaldocuments/frus1895p1/d527>.

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“To the President of the United States, Grover Cleveland, my country is largely indebted for his sympathy and the notion taken by him toward the Government of Great Britain, in showing that Government that the United States was not indifferent to the unwarranted acts of encroachment by Great Britain on the territory of the Republic of Venezuela.

The timely interference on the part of President Cleveland has for the present stopped the English Government in her attempted acts of spoliation, encroachment, and appropriation to herself of very nearly one-third of our whole republic . . . My government and people feel that in President Cleveland they have a friend and protector.”¹⁰¹

11. Despite the efforts of President Cleveland and his administration, the British remained opposed to arbitration with Venezuela, leading Venezuela to break diplomatic relations¹⁰². In December 1894, with the territorial dispute continuing to fester, Venezuela’s Minister in Washington, José Andrade, a name you will hear frequently in this presentation, wrote to the US Secretary of State citing the threat of further British expansion and urging the United States once again to intervene on Venezuela’s behalf:

“As your Excellency will understand, the dispute already has a phase that we would call threatening, given that the Colonial Authorities are preparing to expand their jurisdiction even further . . . and to thus enter into regions where the Republic has established regular centers. In view of this . . . [my Government] reiterate[s] to the United States Government its request for effective and direct intervention, which our Minister Plenipotentiary presented to the Department of State in

¹⁰¹ Letter from Venezuelan Chargé d’Affaires in the United States of America, Fr. Antonio Silva, to Diplomatic Agent of Venezuela in New York, Col. George Gibbons (18 Sep. 1888), available at <http://www.guyananeews.org/Western/1888-1891.pdf>, p. 910.

¹⁰² CMV, para. 23.

Washington some time ago and has continually ratified.”¹⁰³

12. Within days, President Cleveland responded in an address to the US Congress:

“I shall renew the efforts heretofore made to bring about a restoration of diplomatic relations between the disputants and to induce a reference to arbitration, a resort to which Great Britain so conspicuously favors in principle and respects in practice and which is earnestly sought by her weaker adversary.”¹⁰⁴

13. When the British continued to resist President Cleveland’s demand for arbitration, the United States applied greater pressure. In July 1895, the new US Secretary of State, Richard Olney, another name that features prominently in the narrative, instructed the US Mission in London to convey the following admonition to the British authorities:

“The duty of the President appears to him unmistakable and imperative. Great Britain’s assertion of title to the disputed territory combined with her refusal to have that title investigated being a substantial appropriation of the territory to her own use, not to protest and give warning that the transaction will be regarded as injurious to the people of the United States as well as oppressive in itself would be to ignore an established policy with which the honor and welfare of this country are closely identified.”¹⁰⁵

¹⁰³ Letter from Mr Andrade to Mr Gresham (19 Dec. 1894). MMG, Vol. III, Annex 29.

¹⁰⁴ Speech of President Grover Cleveland of 3 December 1894, available at <https://millercenter.org/the-presidency/presidential-speeches/december-3-1894-second-annual-message-second-term>.

¹⁰⁵ Letter from Mr Olney to Mr Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at <https://history.state.gov/historicaldocuments/frus1895p1/d527>.

14. When the British ignored this warning, President Cleveland took matters into his own hands. In his December 1895 address to the US Congress, he expressly invoked the Monroe Doctrine against the expansion of British Guiana, warning the British that “its enforcement is important to our peace and safety as a nation and is essential to the integrity of our free institutions and the tranquil maintenance of our distinctive form of government.”¹⁰⁶

15. Sentiments in the United States □ including at its highest levels of government □ ran so strongly in favour of Venezuela and against Great Britain that, as Venezuela’s Foreign Minister told the UN General Assembly in 1962: “the United States was on the verge of going to war with Great Britain.”¹⁰⁷

16. In this “extremely grave situation”¹⁰⁸ □ that is how Venezuela described it □ President Cleveland, with the full support of the US Congress, went beyond words to concrete action. He announced the creation of a new presidential commission of experts, headed by a US Supreme Court Justice, David Brewer, to investigate and report on the “true” boundary between Venezuela and British Guiana, which the United States would then seek to enforce. As President Cleveland explained:

“When such report is made and accepted it will, in my opinion, be the duty of the United States to resist by every means in its power, as willful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.”¹⁰⁹

¹⁰⁶ Speech of Grover Cleveland, “Message Regarding Venezuelan-British Dispute” (17 Dec. 1895), available at <https://millercenter.org/the-presidency/presidential-speeches/december-17-1895-message-regarding-venezuelan-british-dispute>.

¹⁰⁷ UN General Assembly, 17th Session, Statement of Dr Marcos Falcón Briceño, Minister for External Relations of Venezuela, UN doc. A/SPC/71 (12 Nov. 1962), p. 9. CMV, Annex 143, Vol. III.

¹⁰⁸ *Ibid.*

¹⁰⁹ Speech of Grover Cleveland, “Message Regarding Venezuelan-British Dispute” (17 Dec. 1895), available at <https://millercenter.org/the-presi>

17. This measure, with its implicit suggestion of military intervention by the United States, finally broke Britain's resistance to arbitration of the dispute. In its written pleadings, Venezuela acknowledges this:

“If the British finally accepted to enter into an arbitration process, it was under US pressure, and to ward off the risk of seeing the work of the Venezuelan Boundary Commission concluding, as it had to, that the ‘true boundary’ had always been the one claimed by Venezuela.”¹¹⁰

18. As Venezuela further acknowledged in its Counter-Memorial, it is “a fact” that

“Venezuela requested the protection of the United States in order to resist Great Britain's conduct and reach a peaceful solution to the territorial dispute. It was clear that the possibility of submitting the dispute to arbitration could have materialized only with the support of the United States.”¹¹¹

19. And Venezuela continued: “Great Britain accepted arbitration only because of the pressure put on it by the United States.”¹¹²

20. Neither this conclusion, nor the antecedent events that led up to it, can legitimately be disputed by Venezuela at this stage of the proceedings.

21. Nor can the fundamental features of the ensuing negotiations that led to the 1897 Treaty. In particular, it is beyond dispute that the negotiations were conducted, until the final stage, directly between US Secretary of State Richard Olney and the British Ambassador in Washington, Lord Julian Pauncefote. It is uncontested that Venezuela appointed a team of two representatives

dency/presidential-speeches/december-17-1895-message-regarding-venezuelan-british-dispute.

¹¹⁰ CMV, para. 5.1.

¹¹¹ CMV, para. 5.10.

¹¹² CMV, para. 5.12.

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□ José Andrade, its Minister in Washington, and James Storrow, an American attorney who had represented Venezuela before President Cleveland's boundary commission - to liaise and engage directly with Secretary Olney and assure that Venezuela's interests were reflected in the treaty negotiations.

22. It is also undisputed that the negotiation of the Treaty took place between January and November 1896; that a draft agreement was presented to the Venezuelan government in November 1896; that further negotiations took place directly between Venezuela and Great Britain thereafter; and that Venezuela then authorized Mr Andrade, as Minister Plenipotentiary, to sign it, which he did, in Washington, on 2 February 1897. Later that month, on 20 February, the President of Venezuela, General Joaquín Crespo, submitted the Treaty to the Venezuelan Congress with a message calling for its ratification. In so doing, the Venezuelan President expressed gratitude to the United States for the part it played in negotiating the Treaty:

“It is eminently just to acknowledge that the Great Republic endeavoured persistently to direct the matter by the most favourable route, and that the outcome achieved represents an effort of intelligence and will, worthy of praise and gratitude from those of us who are familiar with the intricate details of this very complicated matter.”¹¹³

23. The Treaty was ratified by the Venezuelan Congress by a legislative Decree on 17 April 1897. The final page of the Decree is at tab 5.1 of your folders. None of these facts, none of them, are or can legitimately be disputed¹¹⁴.

**II. Alleged collusion and fraud in the
negotiation of the Treaty**

24. I turn to Part II: Venezuela's main challenge to the validity of the 1897 Treaty. This is its contention that it was excluded from

¹¹³ *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, p. 99. RG, Vol. III, Annex 13.

¹¹⁴ *El Libro Amarillo de los Estados Unidos de Venezuela 1898*, p. 16. RG, Vol. III, Annex 16.

the treaty negotiations and that the Treaty was, in its words, negotiated by the US and Great Britain “behind Venezuela’s back” in collusion with one another, to further Britain’s interests at Venezuela’s expense¹¹⁵. With the result that, to cite Venezuela’s written pleadings, the Treaty was “prejudicial to the interests and dignity of Venezuela in respect to crucial issues”¹¹⁶. Venezuela argues, in particular, that as a result of this purported British and American conspiracy, its views on two issues that it considered most critical □ concerning the acquisition of title by prescription and respect for the 1850 agreement between Venezuela and Great Britain □ were not taken into account or reflected in the Treaty. The argument is that this purported AngloAmerican cabal not only prejudiced its interests, but constituted a fraud on Venezuela, within the meaning of Article 49 of the Vienna Convention on the Law of Treaties, sufficient to invalidate the Treaty. On the same allegations, Venezuela argues that it ratified the 1897 Treaty in error, as defined by Article 48 of the Vienna Convention, on the mistaken understanding that the Treaty text negotiated on its behalf by the United States had protected its vital interests only to find out during the arbitration, two years later, that it did not.

25. Mr President, neither Venezuela’s contention of fraud nor its contention of error withstands scrutiny or is even plausible. In the first place, its contentions are counter-intuitive. They strain credulity, requiring you to conclude that the United States, which between 1883 and 1896 had consistently supported Venezuela in opposing British colonial expansion and demanding that Britain accede to arbitration of the territorial dispute, made a complete volte-face when negotiation of the arbitration agreement began, by switching sides and supporting Britain’s interests in the disputed territory to the prejudice of Venezuela’s. For Venezuela, this would be a hard sell in any case, let alone a case in which it expressly agrees □ as you have seen □ that, but for the full support of the United States and the pressure it applied to Great Britain □ including the threat of US military intervention □ the British would never have agreed to arbitration, and would have continued to

¹¹⁵ RV, para. 25.

¹¹⁶ CMV, para. 5.7.

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strengthen their hold on the disputed territory in the face of Venezuela's incapacity to stop them.

26. Beyond its illogic, Venezuela's argument is also counterfactual. Completely so. It is thoroughly contradicted by the contemporaneous documentary evidence of the treaty negotiation process that is part of the record in this case. I will take you to the key documents presently.

27. The arbitration agreement was largely negotiated directly by the British Ambassador to the United States, Lord Pauncefoot, and the US Secretary of State, Richard Olney, on behalf of Venezuela. At the time, there was no objection by Venezuela. There is no evidence of any kind of such an objection. To the contrary, the evidence shows that Venezuela trusted Mr Olney — as well as his boss, President Cleveland — to protect its interests, and it believed Secretary Olney would have more influence with the British than its own representatives. This is confirmed by what Venezuela's Ministry of Foreign Affairs reported contemporaneously in August 1896, upon reviewing the correspondence between the US and Great Britain in the negotiation process:

“This correspondence once again highlights the positive role of the Great Republic of the North in an issue of paramount interest to the entire hemisphere, due to its close connection with the integrity of the territories constituted as free and sovereign Nations. Furthermore, having been considered by the President of the Republic in the Council of Ministers, the nature of this publication — expertly and wisely defended by the Department of State in Washington, and setting out the principles and doctrines to which Venezuela adheres in order to uphold its rights and dignity in one of the gravest issues recorded in its political annals — has led to the decision to produce a special edition in Spanish of all the notes comprising the above-mentioned correspondence . . . as both a pledge of recognition to the Government of the United States and a welcome contribution to the promotion of principles so gallantly supported by the Great People of

the North in support of common security and international peace.”¹¹⁷

28. This contemporaneous Venezuelan assessment of the role played by the United States demonstrates that Venezuela was manifestly content with the way Secretary of State Olney handled the treaty negotiations to that point. Venezuela thus focuses on a later stage of the negotiations, between September and November 1896, during which the subjects about which it expresses most concern — the acquisition of title by prescription and preservation of the 1850 Agreement — were directly addressed by Secretary of State Olney and Lord Pauncefoot. Venezuela’s principal contention now — as opposed to what it said contemporaneously — is that, during this stage of the negotiations, the two representatives of Venezuela, Messrs Andrade and Storrow, were kept in the dark by Secretary of State Olney and denied the opportunity to defend or even explain Venezuela’s interests. This is entirely fallacious. It is completely refuted by the documentary evidence, as you will now see.

29. Far from keeping Venezuela’s representatives at arm’s length, on 12 September 1896, Secretary of State Olney sent Mr Storrow an early draft of the clause on prescription, indicating he would come to meet Mr Storrow at Mr Storrow’s home in the evening, prior to a meeting with Lord Pauncefoot the following day. On your screens is a copy of Mr Olney’s message to Mr Storrow, and the enclosed treaty text on prescription. You will note the highlighted portion of the text showing a proposed prescription period of 40 years, explaining that any of the disputed territory which had been under the actual, exclusive and continuous dominion and control of one of the parties for that period would be held to form part of the territory of that party¹¹⁸.

30. Mr Storrow wrote back to Mr Olney on 17 September 1896. Referring to their recent meeting at his home, he said: “Our views agreed the other day so that I thought it enough to answer

¹¹⁷ *Correspondencia entre los Estados Unidos y la Gran Bretaña*, Caracas, 1896, pp. 3-4. RG, Vol. III, Annex 18.

¹¹⁸ Letter from Mr Olney to Mr Storrow (12 Sep. 1896). RG, Vol. III, Annex 8.
¹¹⁹

your telegram ‘no change’”. Mr Storrow continued, however, by advocating for a longer period of prescription than the 40-year period initially presented by Mr Olney: “Settlements by British subjects, living under British rule, in territory administered solely by British rule, if long continued, will certainly (I think) give title. Sixty years is the classic period. I would agree to less as a rule rather than lose an arbitration.”¹¹⁹

31. Further down the page, Mr Storrow also highlighted the importance to Venezuela of the 1850 Agreement: “I do not think that the truce of 1850 could be waived or impaired or that it ought to be.”¹²⁰

32. The evidence shows, that far from ignoring them, Mr Olney received Mr Storrow’s proposals, acted upon them and incorporated them into his own proposals to Lord Pauncefote. And he succeeded in achieving them.

33. This is apparent from the next set of documents, from October 1896, which comprise the written communications between Mr Storrow and Mr Olney, and between Mr Olney and Lord Pauncefote. On these issues □ prescription and the 1850 Agreement □ they show unmistakably that Venezuela’s views were fully taken into account and advanced by Mr Olney in his negotiations with Lord Pauncefote. And Venezuela’s objectives were achieved.

34. On 26 October, for example, Mr Storrow sent Mr Olney a revised draft of the prescription clause, accompanied by a handwritten note. It states, in reference to the number of years required for prescription to take effect: “Filling in the blanks with 60, I see no objection to the actual occupation part.” Mr Storrow’s note continues: “I will try to write a couple of sentences more . . . and send these to your house this afternoon.”¹²¹

¹¹⁹ Letter from Mr Storrow to Mr Olney (17 Sep. 1896). RG, Vol. III, Annex 9.

¹²⁰ *Ibid.*

¹²¹ Letter from Mr Storrow to Mr Olney (26 Oct. 1896). RG, Vol. III, Annex 10.

35. And Mr Storrow did just that. Here is the text he sent to Mr Olney that afternoon:

“The arbitrators shall adjudge a title by prescription or adverse occupation to be a good title, and shall consider 60 years as a sufficient period to establish a title by prescription. But the arbitrators may and shall [illegible] and apply all the rules of law and of fact appropriate to this case, as far as they do not contravene the foregoing provision.”

36. The British position was that the prescription period should be no more than 30 years, which would have facilitated their claim of title to any of the disputed territory that they had consistently occupied since as late as 1867, 30 years before the treaty then under negotiation would enter into effect. The British proposal can be found in Venezuela’s Counter-Memorial, at Annex 169¹²².

37. Mr Storrow sent another note to Mr Olney on 28 October 1896 — and again it shows the intimacy of the relationship between Venezuela’s representatives and the US Secretary of State: “Mr Andrade and I will come to your house at 8.15 tonight unless we hear to the contrary.”¹²³

38. The date of this meeting was propitious, because the following day, 29 October, after consulting with Venezuela’s two representatives the previous evening, Mr Olney sent to Lord Pauncefote a new draft of the treaty. In respect of prescription, Mr Olney wrote: “I cannot recede from my original suggestion as to a conventional term of prescription further than to consent to fifty years being substituted for sixty.”¹²⁴

39. Mr Olney explained to Lord Pauncefote that he could not agree to a shorter term than 50 years, because anything less might

¹²² Letter from Pauncefote to Salisbury (29 Oct. 1896). CMV, Vol. III, Annex 169.

¹²³ Letter from Mr Storrow to Mr Olney (28 Oct. 1896). RG, Vol. III, Annex 11.

¹²⁴ Letter from Mr Storrow to Mr Olney (26 Oct. 1896). RG, Vol. III, Annex 10.

undermine the force of the 1850 Agreement, by which the parties had pledged to forego further expansion into the disputed territory. A 50-year prescription period would preserve the 1850 Agreement, because it would disregard any occupation of the disputed territory that commenced after 1847 (assuming again that the treaty would enter into force in 1897). By contrast, the 30-year prescription period proposed by the British, or even a 40-year period, would have conferred title on any continuous occupation commenced by 1857, and that of course would contravene the 1850 Agreement, which is why Mr Olney would not agree to that. As Mr Olney explained: “If a shorter term be stipulated it is certain to be urged, and with great force, that the Agreement of 1850 is thereby waived at least *pro tanto*.”¹²⁵ The documentary evidence thus shows Mr Olney’s firm advocacy of Venezuela’s positions on both the prescription period and on the 1850 Agreement.

40. Earlier in that letter, Mr Olney explained to Lord Pauncefote that, with a 50-year prescription period, there would be no need for the arbitration agreement to include an express reference to the 1850 Agreement, because the 50-year prescription period would accomplish the same result, precluding recognition of any occupation of the disputed territory that commenced after 1850. In fact, the 1850 Agreement had a major gap — a major lacuna, as our Agent told you earlier this morning. Consisting of an exchange of letters between Great Britain and Venezuela, in which they each abjured any further expansion into “disputed territory”, they conspicuously failed to identify what or where the “disputed territory” was, leaving this critical term open to interpretation.

Hence, Mr Olney wrote to Lord Pauncefote:

“An attempt to construe it will involve us in protracted debate and indefinitely postpone the attainment of the object we now have in view. The Agreement will come, and should come, before the arbitral Tribunal in the natural course and will be interpreted by that Tribunal by the aid of facts,

¹²⁵ Letter from Mr Olney to Sir Julian Pauncefote (29 Oct. 1896). RG, Vol. III, Annex 12.

documents and considerations of which we cannot now know anything.”¹²⁶

41. On 30 October, Lord Pauncefote reported to his Prime Minister, Lord Salisbury, on his exchanges with Mr Olney on these subjects:

“I have in vain tried every argument and put the greatest pressure on him to obtain a further reduction. He says he cannot consent in justice to Venezuela. He contends that a limit of thirty, or even forty, years would nullify the Agreement of 1850, to which the Arbitrators must be left to give such effect as they think right, and that fifty years is the lowest period of prescription suggested by jurists, and does not preclude or affect claims to the territory based on any other title.”¹²⁷

42. It bears emphasis that what this evidence shows is that, far from turning his back on Venezuela’s representatives or colluding with the British to protect their interests rather than Venezuela’s, the US Secretary of State did exactly the opposite of what Venezuela has pleaded in this case. As these contemporaneous documents demonstrate, Mr Olney took Venezuela’s representatives directly into his confidence; shared drafts of the treaty text with them; received their proposals on the key issues with which Venezuela was concerned; incorporated them into his exchanges with Lord Pauncefote; refused to concede any ground in spite of what Lord Pauncefote called “every argument” and “the greatest pressure”; and, ultimately, he delivered what Venezuela’s representatives had requested: a prolonged period of prescription of 50 years, and preservation of the 1850 Agreement.

43. The terms of the draft treaty were in fact agreed with the approval of Venezuela’s two representatives. This is what Mr Olney reported to Justice Brewer, then the Chairman of President Cleveland’s Venezuela Boundary Commission, on 10 November

¹²⁶ *Ibid.*

¹²⁷ Letter from Pauncefote to Salisbury (29 Oct. 1896), p. 2. CMV, Vol. III, Annex 169.

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1896, shortly after the conclusion of his exchanges with Lord Pauncefote:

“The United States and Great Britain are in entire accord as to the provisions of a proposed treaty between Great Britain and Venezuela. The treaty is so eminently just and fair as respects both parties □ so thoroughly protects the rights and claims of Venezuela □ that I cannot conceive of it not being approved by the Venezuelan President and Congress. It is thoroughly approved by the counsel of Venezuela here and by the Venezuelan Minister at this capital”¹²⁸ □ referring to Mr Storrow and Minister Andrade.

44. Mr President, the evidence you have now seen — from the contemporaneous documentary record — thoroughly defeats Venezuela’s challenge to the 1897 Treaty: that it was somehow negotiated behind Venezuela’s back without involvement of its representatives, and failed to take account of its interests. There is absolutely nothing in this record to contradict Mr Olney’s statement that the Treaty he negotiated with Lord Pauncefote was “thoroughly approved by the counsel of Venezuela and by the Venezuelan Minister in this capital”. Mr Olney’s sense that the Treaty would be approved by the President and Congress of Venezuela also proved to be spot on, as you will now see.

45. At the very time of Mr Olney’s letter to Justice Brewer, Mr Storrow and Mr Andrade were en route to Caracas to obtain the Venezuela government’s approval of the draft treaty. On 29 November, Mr Storrow sent Mr Olney a detailed report of their meetings with the President, the Foreign Minister, other government officials and a commission of experts the government had established to analyse the Treaty. Because of the report’s length □ nine pages □ I will show you now only the most important parts, but I think you will find it helpful to read it in its entirety. For that reason, we have included it at tab 5.2 of your folders.

¹²⁸ Letter from Mr Olney to Mr Brewer (10 Nov. 1896). RG, Vol. III, Annex 5.

46. At page 2, the report describes the reactions of the Venezuelan President and other senior officials with whom Mr Storrow and Mr Andrade had met. This is Mr Storrow writing:

“Mr Andrade afterwards had a long talk with him [the President], and afterward with the Minister of Foreign Affairs and Dr Bruynal Arra, Minister of the Treasury, the strongest man in the Cabinet. They were all satisfied with the treaty and said that there should not be a moment’s hesitation about adopting it. I have myself seen Dr Bruynal and Dr Rojas [that is the Minister of Foreign Affairs], the latter quite frequently, and they are entirely clear on the subject.”¹²⁹

47. At page 4, the report describes the meeting Mr Storrow and Mr Andrade had with the commission of experts appointed to analyse the treaty, and their discussion on the subject of prescription. One of the experts, Dr Seijas, opposed, on constitutional grounds, any recognition by Venezuela of prescription as a source of title to territory. He was the only commission member to take this view. However, “Dr Seijas finally admitted that he had no doubt prescription applied, and that the arbitrators would apply it: but that to admit it in terms of the treaty would be to violate the rule of the Constitution against cessions of territory”¹³⁰.

48. Mr Storrow and Mr Andrade responded: “[W]e said it was *not* a concession. Prescription was, *I* thought, *our* strongest ground, and I wanted G.B. to agree to it; and of all possible terms, 50 years was the best for us.”¹³¹

49. week later, on 7 December, Mr Andrade, sent a telegram to Mr Olney, in which he reported this:

¹²⁹ Letter from Mr Storrow to Mr Olney (29 Nov. 1896), p. 2. RG, Vol. III, Annex 15.

¹³⁰ Letter from Mr Storrow to Mr Olney (29 Nov. 1896). RG, Vol. III, Annex 15.

¹³¹ *Ibid.*

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“Memorandum accepted. Will be published here Monday afternoon. Extra session of Congress will be called as soon as possible. Am authorized to sign the treaty with small exceptions such as provisions filling vacancies in case of death or disability but Venezuela expect by treaty or by diplomatic correspondence through you agreement to prevent aggressive or unfriendly acts near line of contact and also no new mine concessions shall be granted.”¹³²

50. Two days later, Dr Rojas, the Foreign Minister, wrote to Mr Andrade indicating Venezuela’s desire for other changes to the Treaty, two of which he regarded as particularly important. One involved the appointment of arbitrators, which I will discuss in Part III of my presentation. The other concerned prescription. Dr Rojas was content with prescription as a source of title to territory, noting that “Venezuela has declared itself in favor of this system”¹³³. He was also content with the 50-year prescription period already included in the draft treaty. But he wanted to add to the Treaty a clause requiring application of the principles of international law to territorial claims based on prescription. He proposed that the following text be inserted into the Treaty: “The adverse possession for fifty years referred to in rule (a) must be, in accordance with the principles of international law, possession in the name of the State and in the capacity of owner, public, continuous, uninterrupted, and peaceful.”¹³⁴

51. Dr Rojas’s letter is particularly significant because it directly and fully contradicts Venezuela’s argument in the Rejoinder that they were opposed to prescription as a source of title, and that Mr Olney betrayed them, and even defrauded them, by agreeing with the British on a 50year prescription rule. That argument is entirely false.

¹³² Telegram of Minister Andrade to Mr Olney (7 Dec. 1896). RG, Vol. III, Annex 19.

¹³³ Letter from Rojas to Andrade (9 Dec. 1896), p. 2. CMV, Vol. II, Annex 59.

¹³⁴ *Ibid.*

52, At the conclusion of his letter, Dr Rojas gave this instruction to Mr Andrade:

“If despite the efforts that are urged upon you to make, any of the stated modifications should be rejected in terms that make clear the impossibility of their acceptance, you may dispense with it in the course of the negotiations and even sign the document without the need for new consultation with this Office.”¹³⁵

53. So determined was Venezuela to get this Treaty signed. Mr Andrade communicated Dr Rojas’s proposal to Mr Olney in a telegram sent the following day, on 10 December. Later that month, on 28 December, after he returned to Washington, he met with Mr Olney at his home to discuss the proposals. After the meeting, Mr Andrade wrote this to Dr Rojas in Caracas:

“Mr Olney found all the additions commendable, save the one regarding prescription, about which he expressed some discouragement that he deemed it superfluous, believing such an interpretation as that here [that is, one that is inconsistent with international law] to be neither possible or likely, and that, without need, it would give occasion for Great Britain to delay us with a discussion lasting months or perhaps years, from which no benefit would ultimately result.”¹³⁶

54. Mr Andrade, to whom Venezuela granted full powers to sign the Treaty, then described how he responded to Mr Olney: “I hinted that if such were his view, I would not insist upon submitting the aforementioned clarification to the British Ambassador □ and with a nod unmistakable in its meaning, he approved of such disposition.”¹³⁷

55. To conclude part II of this presentation, it is crystal clear that Venezuela has no legal or evidential basis — none whatsoever — to argue that the 1897 Treaty is invalid on the grounds that the

¹³⁵ *Ibid.*

¹³⁶ Letter from José Andrade to Pedro Ezequiel Rojas (28 Dec. 1896). RV, Vol. II, Annex 39.

¹³⁷ *Ibid.*

United States failed to consult with Venezuela during negotiation of the Treaty, or that it colluded with Britain behind Venezuela's back, or that it accepted terms that favoured British interests to the prejudice of those of Venezuela. The evidence makes clear that United States did not contravene Venezuela's position on prescription, which was duly reflected in the Treaty's final text, or on the continuing validity of the 1850 Agreement. In both cases, the United States considered that it had fully protected Venezuela's interests, and the contemporaneous documentary evidence shows that Venezuela agreed that it had done so.

III. Alleged prejudice in the appointment of arbitrators

56. I turn to Part III, which I can cover much more quickly. In its written pleadings, Venezuela challenges the validity of the 1897 Treaty on the ground that, without its consent, the Treaty excluded the appointment of any Venezuelan arbitrators. This, too, is a groundless argument, again, completely defeated by the contemporaneous evidence.

57. The draft treaty delivered to Caracas in November 1896 addressed the appointment of arbitrators in Article II. It provided for a tribunal of five members, two to be nominated by "the Judges of the Supreme Court of the United States", two to be nominated by "the British High Court of Justice, and the fifth to be appointed by the four so nominated"¹³⁸. This left open the possibility that a Venezuelan could be appointed to the tribunal by the US Justices, a possibility of which the British were quite aware and quite uncomfortable. On 8 December 1896, Lord Pauncefote wrote to his Prime Minister that he was "a little uneasy whether the US judges may not be urged by [Mr Olney] to appoint a Venezuelan as Arbitrator", because "we know of no Venezuelan jurist worthy of the name, or whom we could consent to entrust with the function of Arbitrator in such a case"¹³⁹. The statement is certainly offensive,

¹³⁸ Letter from Pauncefote to Salisbury (29 Oct. 1896), p. 3. CMV, Vol. III, Annex 169.

¹³⁹ Letter from Sir Julian Pauncefote, British Ambassador in Washington, to Lord Salisbury (8 Dec. 1886), in *Report on the Boundary Question with*

to us as well as to Venezuela. We call attention to it only to underscore the adamance of Britain's stance on the clause regarding appointment of arbitrators.

58. Understandably, Venezuela bristled at Lord Pauncefote's dismissive view of its desire to appoint one of its nationals to the arbitral tribunal. On 10 December, Venezuela's representative Mr Storrow cabled Mr Olney from Caracas that the "Treaty stands accepted as cabled but there are sharp attacks about the appointment of arbitrators and Cabinet very desirous have one Venezuelan on the Tribunal. This would help much with public and Congress"¹⁴⁰.

59. Mr Olney duly transmitted Mr Storrow's message to Lord Pauncefote the next day. The day after that, on 12 December, Lord Pauncefote responded to Mr Olney rejecting Venezuela's request. In his words:

"It would be a most dangerous departure from the long established practice of International Arbitration. The very reason for taking the nomination of the arbitrators on the side of Venezuelan [sic] out of the hands of the Venezuelan Govt and confiding that duty to two judges of the Supreme Court was that the latter should appoint arbitrators of U.S. nationality."¹⁴¹

60. Faced with this British rejection, Mr Olney sent a telegram to Mr Storrow informing him that "Matter closed between Great Britain and United States. Changes Treaty must be made between Great Britain and Venezuela."¹⁴²

British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 36. CMV, Vol. III, Annex 150.

¹⁴⁰ Cable sent by James Storrow to Richard Olney (10 Dec. 1896) (Library of Congress, Manuscript Division, Richard Olney Papers, Reel 24, Box 67, p. 11990).

¹⁴¹ Letter of Lord Pauncefote to Secretary Olney (12 Dec. 1896), pp. 2-3 (Library of Congress, Manuscript Division, Richard Olney Papers, Reel 24, Box 68, p. 12010).

¹⁴² Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

61. And that is precisely what happened. On 28 December, Mr Andrade, having returned to Washington from Caracas, met first with Mr Olney and then directly with Lord Pauncefote, and they reached an agreement on the appointment of arbitrators, an agreement reached by Mr Andrade with Lord Pauncefote, his British counterpart. As recorded in Mr Andrade's report to Dr Rojas of 9 January 1897, he, Mr Andrade, and Lord Pauncefote agreed that Article II of the Treaty would be revised to "attribute to Venezuela the appointment of only one of the arbitrators on her side, and the other to the United States, it being noted that the Venezuelan appointee would be a judge from the Supreme Court of this country [the United States]."¹⁴³

62. Mr Andrade added that he considered this agreement beneficial to Venezuela: "The more I think of it, the more I think that Venezuela, far from wishing to restrict the participation of the United States in the composition of the Tribunal, should seek to augment it"¹⁴⁴.

63. The Venezuelan government agreed to the arrangement negotiated by Mr Andrade and Lord Pauncefote, and it decided to exercise its right of appointment by nominating the Chief Justice of the US Supreme Court, Melville Fuller. This meant that Venezuela would be represented on the tribunal by two US Supreme Court Justices, since it had already been decided that the other representative would be Justice David Brewer, the same Justice David Brewer who was serving as the Chairman of President Cleveland's Venezuela Boundary Commission. Mr Storrow, Venezuela's counsel, considered that this solution gave Venezuela exactly what it wanted. On 26 January, he wrote to Foreign Minister Rojas: "I think you have got what you desired □ a clear and formal appointing power of Venezuela on the face of the treaty; precisely the same two Jurists whom, at Caracas, you told me you preferred."¹⁴⁵

¹⁴³ Letter from Minister Andrade to Minister Ezequiel Rojas (9 Jan. 1897). RG, Vol. III, Annex 21.

¹⁴⁴ *Ibid.*

¹⁴⁵ Letter from James J. Storrow to Dr P. Ezequiel Rojas, Venezuelan Minister for Foreign Relations (26 Jan. 1897). MMG, Vol. III, Annex 31.

64. President Crespo also regarded this as a win for Venezuela. In his address of 20 February 1897, he emphasized that “[t]he Government deemed it indispensable to introduce into the Treaty a modification aimed at ensuring the appointment of the arbitral tribunal with the effective participation of the Venezuelan authorities. This proposal was promptly submitted and the arbitration was accepted.”¹⁴⁶

65. Plainly, there was no fraud or error in regard to the agreement on appointment of the arbitrators. Venezuela was fully informed of the draft treaty text, the subsequent exchanges between Mr Olney and Lord Pauncefoot, and the necessity of direct negotiations between Venezuela and Great Britain to resolve the issue; and those negotiations resulted in an agreement with which Venezuela professed its satisfaction. These indisputable facts doom Venezuela’s challenge to the validity of the 1897 Treaty based on the appointment of arbitrators.

IV. Alleged coercion to sign the Treaty

66. I come to Part IV, the final part of my presentation, and this concerns Venezuela’s claim that it agreed to the 1897 Treaty under coercion, as prohibited by Article 52 of the 1969 Vienna Convention. It will take me even less time to dispense with this argument. In the first place, Article 52 of the 1969 Convention has no retroactive application. As the ILC commented: “The Commission considered that there is no question of the article having retroactive effects on the validity of treaties concluded prior to the establishment of the modern law.”¹⁴⁷ In 1897, customary international law did not recognize coercion as a basis for invalidating a treaty. For the legal discussion, I refer the Court to Guyana’s Reply, at paragraphs 2.102 to 2.110. But even if there were such a rule in 1897, *quod non*, what coercion is Venezuela talking about? How was it coerced into signing the 1897 Treaty and by whom? There is absolutely no evidence that Mr Olney or President Cleveland or the United States coerced Venezuela in any

¹⁴⁶ *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, pp. 188-189. RG, Vol. III, Annex 13.

¹⁴⁷ Draft Articles on the Law of Treaties with commentaries, Art. 49, p. 247, para. 7.

way. The evidence is all to the contrary □ particularly, as Mr Olney wrote to Justice Brewer, both of Venezuela's representatives, Mr Andrade and Mr Storrow, were fully satisfied with the draft treaty that had been negotiated. In February 1897, in submitting the Treaty to the Venezuelan Congress for ratification, President Crespo himself made clear that Venezuela was not coerced into signing the Treaty. These are his words: "The settlement plan was presented to Venezuela for its consideration, with no coercive intent and in full respect of the sovereignty and independence of the Republic . . ."¹⁴⁸. How can they say they were coerced?

67. The official yearbook published by Venezuela's Foreign Ministry for 1897 declared that the final terms of the Treaty demonstrated that "the Government has neither paused nor spared any effort in the task of safeguarding the territorial integrity of the Republic", and it included this statement by the Foreign Minister expressing gratitude to the United States for its support in the Treaty negotiations:

"[A]llow me to express my conviction that the foundations of this Treaty represent, on the part of the United States, a noble and eminent effort for the sake of continental peace. These terms alone . . . will serve as an enduring reminder for Venezuela of the interest with which its powerful sister nation sought to reconcile it with the Great British Nation in a dispute lasting more than half a century, marked by bitter incidents and perilous situations."¹⁴⁹

68. Faced with this contemporaneous documentary evidence, how can Venezuela, in the present case, possibly argue that it was coerced to accept the Treaty? In fact, it fails to identify any acts of coercion against it, or any persons or entities who might have perpetrated such acts. Instead, it complains of what it calls "structural coercion". In Venezuela's telling, it found itself in a situation in which it had no choice but to accept arbitration of its

¹⁴⁸ *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, p. 99. RG, Vol. III, Annex 13.

¹⁴⁹ *El Libro Amarillo de los Estados Unidos de Venezuela 1897*, p. XXXV. RG, Vol. III, Annex 23.

territorial dispute with Great Britain because the alternative would have been to subject itself to further British expansion which it was powerless to stop.

69. But in making this argument, Venezuela conveniently forgets, or deliberately ignores the fact that it had been pleading for precisely this outcome — an arbitration agreement with Great Britain — for the better part of two decades; that it repeatedly beseeched the United States to come to its assistance and to press the British to accept arbitration of the territorial dispute; that under US pressure the British finally agreed; and that the treaty negotiated by the United States in close consultation with Venezuela's representatives was deemed by Venezuela to be acceptable and worthy of signature. Venezuela's very belated contention — 66 years after the fact — that it was coerced into signing the Treaty, physically or structurally, has no factual support. It is completely contradicted by the evidence before you.

70. The bottom line, Mr President, is that Venezuela cannot come up with any basis — any legitimate basis whatsoever — for invalidating the 1897 Treaty, or for invalidating the 1899 Arbitral Award on the basis of an allegedly invalid *compromis*. This afternoon, my colleagues will demonstrate convincingly that there are no other bases, no other bases, for invalidating the 1899 Award, or the international boundary that resulted from it, and that the Award was and remains valid and binding on both Venezuela and Guyana.

71. Mr President, Members of the Court, I thank you for your kind courtesy and patient attention. This concludes Guyana's submissions in this session. We wish you a pleasant lunch, and we look forward to resuming our submissions this afternoon.

The PRESIDENT: I thank Mr Reichler. This concludes this morning's sitting. The oral proceedings will resume this afternoon, at 3 p.m.

The sitting is closed.

The Court rose at 1 p.m.

**FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)**

**Monday 4 May 2026
3 pm – 6 pm**

Non corrigé
Uncorrected

CR 2026/25

*International Court
of Justice*

*Cour
internationale
de Justice*

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

*held on Monday 4 May 2026, at 3 p.m., at the Peace Palace,
President Iwasawa presiding,*

*in the case concerning Arbitral Award of 3 October 1899
(Guyana v. Venezuela) _____*

VERBATIM RECORD

____ ANNÉE 2026

Audience publique

*tenue le lundi 4 mai 2026, à 15 heures, au Palais de la Paix,
sous la présidence de M. Iwasawa, président,*

*en l'affaire de la Sentence arbitrale du 3 octobre 1899
(Guyana c. Venezuela)*

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

COMPTE RENDU

Present: President Iwasawa
Vice-President Sebutinde
Judges Tomka
Xue
Nolte
Brant
Gómez Robledo
Cleveland

Aurescu
Tladi
Hmoud
Okowa
Judges *ad hoc* Wolfrum
Couvreur

Registrar Gautier

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

Présents : . Iwasawa, président
Mme Sebutinde, vice-présidente
M. Tomka
Mme Xue
MM. Nolte
Brant
Gómez Robledo
Mme Cleveland
MM. Aurescu
Tladi
Hmoud
Mme Okowa, juges
MM. Wolfrum
Couvreur, juges *ad hoc*
M. Gautier, greffier

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

The Government of the Co-operative Republic of Guyana is represented by: Hon. Hugh Hilton Todd,
Minister for Foreign Affairs and International
Cooperation,

as Head of Delegation;

Hon. Carl B. Greenidge, former Minister for Foreign Affairs
and International Cooperation,

as Agent;

Ms Sharon Roopchand-Edwards, Permanent Secretary of
the Ministry of Foreign Affairs and International Cooperation,

HE Mr Keith George, Ambassador, Adviser to the Minister
of Foreign Affairs and International Cooperation,

as Co-Agents;

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench
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Mr Philippe Sands, KC, Professor of International Law,
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Mr Alain Pellet, Emeritus Professor of the University of Paris
Nanterre, former Chairman of the

International Law Commission, member and former President
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Mr Pierre d'Argent, *Professeur ordinaire*, Université
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Ms Nilüfer Oral, Director, Centre for International Law,
National University of Singapore, member of the International
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Mr Edward Craven, KC, Matrix Chambers, London,

Ms Donnette Streete, Director of the Frontiers Department,
Ministry of Foreign Affairs and International Cooperation,

as Counsel and Advocates;

Hon. Mohabir Anil Nandlall, Attorney General and Minister
of Legal Affairs,

HE Ms Trishala Persaud, Ambassador, Deputy Permanent
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Ms Christina L. Beharry, Foley Hoag LLP, Washington,

Ms Lucy Jones, 11 King's Bench Walk, London,

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Mr Romain Piéri, FAR Avocats, Paris,

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est représenté par :***

L'honorable Hugh Hilton Todd, ministre des affaires
étrangères et de la coopération internationale, *comme*
chef de la délégation ;

L'honorable Carl B. Greenidge, ancien ministre des affaires
étrangères et de la coopération internationale,
comme agent ;

M^{me} Sharon Roopchand-Edwards, secrétaire permanente du
ministère des affaires étrangères et de la coopération
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FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

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M^{me} Donnette Streete, directrice du département des frontières, ministère des affaires étrangères et de la coopération internationale,

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HE Mr Rajendra Singh, High Commissioner of the Co-operative Republic of Guyana to the United Kingdom of Great Britain and Northern Ireland,

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Edmonds,
International
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The Government of the Bolivarian Republic of Venezuela is represented by:

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HE Mr Samuel Reinaldo Moncada
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HE Ms Arianny Seijo Noguera, Attorney General of the Bolivarian Republic of Venezuela, PhD, University of Westminster,

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

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M. Galo Carrera, consultant international,

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S. Exc. M^{me} Arianny Seijo Noguera, *Procuradora General* de la République bolivarienne du Venezuela, PhD, Université de Westminster,

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GUYANA v. VENEZUELA
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S. Exc. M. Jorge Luis Fuguetta, membre de l'Assemblée nationale de la République bolivarienne du Venezuela,

Mr Jorge Arturo Reyes Hernández, Minister Counsellor, Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations,

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

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M. Jorge Arturo Reyes Hernández, ministre conseiller,
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M^{me} Haymara Correa Díaz, assistante du ministre des relations
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comme membres de la délégation.

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon to resume hearing the first round of oral argument of Guyana on the merits in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

Je donne maintenant la parole à M. Alain Pellet. Vous avez la parole, Monsieur.

M. PELLET :

Merci, Monsieur le président.

LA VALIDITÉ DE LA SENTENCE ARBITRALE

1. Monsieur le président, Mesdames et Messieurs les juges, nous sommes le 3 octobre 1899. C'est le jour où, il y a 127 ans, la sentence dont le Venezuela conteste aujourd'hui la validité a été rendue. C'est à cette date qu'il faut se placer pour comprendre son contexte, pour comprendre le droit applicable à cette institution, encore naissante, qu'était l'arbitrage international : c'était quelque chose entre le règlement juridictionnel tel que nous le connaissons et la négociation diplomatique. Comme l'écrivait Frédéric Passy en

1892, « l'arbitrage n'est pas encore une institution, "c'est un accident heureux" »¹.

2. Le modèle le plus abouti en était le fameux arbitrage de l'*Alabama*², mais la masse des précédents était constituée par les sentences rendues par des souverains choisis par les parties au différend ou par des commissions mixtes composées de représentants des États en cause, qui recherchaient une solution de compromis □ comme celles instituées par le traité Jay conclu entre les États-Unis et la Grande-Bretagne en 1794 ou par celui entre les États-Unis et le Mexique de 1868³. Les sentences étaient souvent peu ou pas motivées. Le président du tribunal qui a rendu la sentence objet du différend soumis à la Cour, Friedrich Fromhold Martens (on a ajouté la particule « de » *ex post*), et ses coarbitres étaient profondément imprégnés de ces pratiques dans lesquelles on ne pouvait guère entrevoir de règles coutumières en dehors du caractère obligatoire de la sentence.

3. C'est dans ce contexte qu'elle a été rendue. Et il faut avoir cela à l'esprit car sa validité doit être appréciée à la lumière du droit de l'époque. C'est l'un des axiomes de base du droit international intertemporel tel que Max Huber l'a énoncé dans sa célèbre sentence de l'*Île des Palmes*. Ce principe avait déjà été appliqué

¹ Frédéric Passy, *La question de la paix*, Conférence au familistère de Guise (avril 1891), cité par F. Dreyfus, *L'arbitrage international*, Calmann-Lévy, Paris, 1892, p. 294.

² *Réclamations des États-Unis d'Amérique contre la Grande-Bretagne relatives à l'Alabama*, sentence rendue le 14 septembre 1872 par le tribunal d'arbitrage constitué en vertu de l'article premier du traité de Washington du 8 mai 1871, *Recueil des sentences arbitrales (RSA)*, vol. XXIX, p. 125-134. Voir aussi, par exemple : D. Schindler, « Les progrès de l'arbitrage obligatoire depuis la création de la Société des Nations », *Recueil des cours de l'Académie de droit international de La Haye (RCADI)*, vol. 25, 1928, p. 241.

³ Voir le traité d'amitié, de commerce et de navigation entre Sa Majesté britannique et les États-Unis d'Amérique (ou traité Jay), 19 novembre 1794, ou la convention entre les États-Unis d'Amérique et le Mexique □ règlement des réclamations, 4 juillet 1868.

dans des sentences antérieures⁴ et il l'a été fréquemment dans des décisions plus récentes⁵ : « un acte juridique doit être apprécié à la lumière du droit de l'époque, et non à celle du droit en vigueur au moment où s'élève ou doit être réglé un différend relatif à cet acte »⁶.

4. C'est à l'aune de ce principe qu'il faut apprécier les sept chefs d'invalidité de la sentence qu'invoque le Venezuela dans le chapitre V de la duplique avec autant de véhémence que de frivolité. Vous pouvez les voir sur vos écrans. M. Reichler a démontré ce matin l'inanité du premier de ces moyens fondés sur la prétendue invalidité du compromis de 1897. Pour ce qui concerne la sentence elle-même, j'éprouve quelque difficulté à voir comment on peut répondre séparément aux griefs vénézuéliens, formulés dans la section D et sous les chiffres 1, 2 et 5 de la section E : du fait que les arbitres n'ont pas motivé et n'avaient pas l'obligation de motiver leur sentence, la réponse à ces trois objections se trouve nécessairement dans celle à la question E.4 : c'est de la procédure qu'il a suivie, des délibérations entre ses membres et de l'attention qu'ils ont prêtée aux plaidoiries des parties que l'on peut déduire que le tribunal a parfaitement respecté son mandat. Quant au moyen E.3 □ j'ai quelquefois un peu l'impression de jouer à la bataille navale □, je montrerai brièvement pour terminer que le tribunal n'a pas statué *ultra petita*.

⁴ Voir *Affaire des Grisbådarna (Norvège/Suède)*, sentence, 23 octobre 1909, *RSA*, vol. XI, p. 159 ou *The North Atlantic Coast Fisheries Case (Grande-Bretagne/États-Unis)*, sentence, 7 septembre 1910, *RSA*, vol. XI, p. 196.

⁵ *Indo-Pakistan Western boundary (Rann of Kutch) between India and Pakistan*, sentence, 19 février 1968 ; *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, sentence, 7 octobre 2020, par. 264.

⁶ *Île de Palmes (Pays-Bas/États-Unis d'Amérique)*, CPA, sentence, 4 avril 1928, p. 845 (traduction française de Charles Rousseau in *Revue générale de droit international public (RGDIP)*, t. XLII, 1935, p. 172 □ texte anglais originel : *RSA*, vol. II, p. 845 ; « a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when the dispute in regard to it arises or falls to be settled ». Voir aussi mémoire du Guyana (ci-après, « MG »), par. 6.44, ou réplique du Guyana (ci-après, « RéG »), par. 3.12.

I. L'absence de motivation de la sentence

5.5. Le Venezuela voit dans l'absence de motivation une cause d'invalidité et d'annulation qui se suffit à elle-même. Je dois dire qu'il est un peu lassant d'avoir à le répéter car la duplique n'apporte aucun élément nouveau, mais le doute n'est pas permis, ni le texte du compromis (A), ni aucune règle coutumière n'imposait qu'elle soit motivée (B).

A. Le compromis n'impose ni expressément, ni implicitement, que la sentence fût *motivée*

6. Il est patent que, à la différence d'autres compromis conclus à la même époque ou antérieurement, le traité de Washington, dont les dispositions sont, comme le Venezuela y insiste, « précises » et « détaillée[s] »⁷ en ce qui concerne la substance du différend et la procédure à suivre, ne contient *aucune* disposition imposant au tribunal de motiver sa sentence.

7. Le Venezuela n'en tente pas moins de déduire de cette obligation « un certain nombre d'éléments caractéristiques » □ ces soi-disant éléments caractéristiques ne sauraient emporter la conviction⁸ :

- La composition du tribunal ? Oui, il s'agit de juristes ; et, s'il est exact que les sentences rendues à la fin du XIX^e siècle par des commissions mixtes sont plus nombreuses □ mais pas unanimes □ à être motivées que ne le sont celles émanant de chefs d'État, il est impossible de déduire une obligation coutumière de cette pratique inconstante.

- Le délai pour rendre la sentence ? Cette clause a été mécaniquement copiée sur celles, identiques, que l'on trouve dans les compromis de 1871 entre les États-Unis et la Grande-Bretagne concernant l'affaire *Halifax*⁹ ou de 1892 entre les États-Unis et le Venezuela qui organisent la soumission des

⁷ Voir notamment DV, par. 5.125 5.139, 6.67, 6.94, 6.163, etc.

⁸ RéG, par. 3.9-3.11.

⁹ *Traité entre les États-Unis et la Grande-Bretagne*, 8 mai 1871, reproduit dans *Papers Relating to the Foreign Relations of the United States, Transmitted to Congress with the Annual Message of the President*, December 4, 1871, Doc. No. 236.

réclamations de la *Venezuela Steam Transportation Company* à la commission mixte entre le Venezuela et les États-Unis¹⁰. Il paraît donc fort hasardeux d'en tirer quelque conclusion que ce soit, d'autant plus que le délai était purement indicatif. Mais, qu'importent les arrière-pensées supposées, dès lors que les méthodes de travail du tribunal lui ont permis de s'acquitter de sa fonction.

- La précision de la mission confiée aux arbitres ? Je vais y revenir. Pour l'instant, il suffit de constater qu'en dépit de la précision de la description de la tâche impartie au tribunal □ d'une manière générale et tout particulièrement par les articles III et IV □, l'obligation de motiver n'y figure justement pas □ malgré la précision générale de la fonction donnée au tribunal.

8. Cela dit, je remarque au passage que ces directives sont énoncées en termes permissifs comme le montrent les extraits surlignés de l'article IV du compromis dans la projection en cours. Et je me permets d'attirer votre attention en particulier sur le dernier membre de phrase, qui réunit en une même formule « la raison, la justice, les principes du droit international et les considérations d'équité propres à l'affaire ».

B. Il n'existait pas, en 1899, de règle coutumière imposant la motivation

9. Faute de texte conventionnel pertinent, le Venezuela affirme que le tribunal aurait dû motiver sa sentence en vertu du droit coutumier : selon « *le droit international applicable à l'époque* [l]es arbitres étaient ... soumis à une obligation générale de motiver la sentence »¹¹. Je note au passage que le Venezuela reconnaît du même coup que c'est bien *au moment où la sentence a été rendue* qu'il faut se placer - ou peut-être même plutôt en 1897, quand le compromis a été signé. Nous sommes d'accord sur ce point, mais assurément pas sur le contenu du droit coutumier ni même sur son existence. La pratique antérieure □ que nos

¹⁰ *Convention pour soumettre à l'arbitrage les réclamations de la Venezuela Steam Transportation Company*, 19 janvier 1892, reproduite dans H. La Fontaine, *Pasicrisie internationale 1794-1900 : histoire documentaire des arbitrages internationaux*, 1902, p. 420-422.

¹¹ DV, par. 5.91.

contradicteurs négligent totalement - était partielle et inconstante et l'obligation de motiver n'était certainement pas « acceptée comme étant le droit » (1). Faute de pouvoir établir son existence par la pratique suivie durant le XIX^e siècle, le Venezuela se réclame de celle du siècle suivant¹² (2). Curieux concept je dois dire que celui de « pratique *ex post* »...

1) La pratique antérieure à la sentence du 3 octobre 1899

10. Le cœur de la « démonstration » □ si c'en est une □ menée par le Venezuela se lit ainsi :

« En somme, la sentence de 1899 fut rendue à une époque où l'obligation de motiver une décision arbitrale était *largement reconnue* par les États, et sur le fondement d'un traité d'arbitrage dont les caractéristiques particulières *laissaient escompter* que le tribunal motiverait sa décision. »¹³

11. Alors, je ne veux pas me livrer à une glose de la prose de nos contradicteurs, mais je ne peux m'empêcher de rendre hommage à la relative prudence de cette affirmation : le devoir de motiver était « *largement reconnu* » et les circonstances de l'époque « *laissaient escompter* que le tribunal motiverait sa décision ». On est loin d'une affirmation carrée. Et c'est à raison.

12. Il est en effet manifeste qu'aucune pratique « suffisamment répandue et représentative, ainsi que constante »¹⁴, susceptible d'établir l'existence d'une règle coutumière ne peut être identifiée à la date critique. Et c'est encore plus vrai s'agissant de l'*opinio juris*.

13. La sentence du 3 octobre 1899 est, à l'époque, loin d'être isolée. Vous trouverez dans vos dossiers, sous l'onglet n° 6.1, une liste, non exhaustive, des sentences non motivées ou dont la motivation est réduite à presque rien. Cette liste confirme le constat

¹² Voir contre-mémoire du Venezuela (ci-après, « CMV »), par. 6.19-6.20 et 6.78 ; DV, par. 5.103 et 6.90.

¹³ DV, par. 5.95.

¹⁴ Commission du droit international (ci-après, la « CDI »), Projet de conclusion sur la détermination du droit international coutumier, tel que reproduit dans *Annuaire de la Commission du droit international (ACDI)*, 2018, vol. II, deuxième partie, conclusion 8, p. 104.

de Charles Rousseau : la motivation « ne s'est imposée qu'assez tard dans la procédure arbitrale internationale »¹⁵.

14. Pour neutraliser ces très nombreux précédents, le Venezuela avance :

- Que certains sont très anciens¹⁶ ; c'est exact mais ils n'en sont que plus significatifs : ils ont précédé la sentence de 1899, ils ont donné le « la », et ils ont inspiré la pratique postérieure.

- Que ces précédents émanent en partie de chefs d'État de pays tiers dont les raisons pour ne pas motiver pouvaient être particulières¹⁷ ; c'est peut-être vrai aussi en partie mais ils n'en font pas moins partie d'une pratique, alors acceptée comme étant le droit, dont il résultait que la motivation des sentences arbitrales, pour utile ou souhaitable qu'elle puisse être, n'était nullement une condition de leur validité.

- Le Venezuela relève également que, dans certains cas, les compromis appelaient le tribunal à décider conformément aux principes de la justice et de l'équité¹⁸ ; certes, mais avant l'adoption du Statut de la CPJI □ et comme l'attestent encore les travaux préparatoires à ce Statut¹⁹ □, la séparation entre ces « principes » et « le droit international » n'était pas rigide. Le texte de l'article IV du compromis de 1897 et le libellé de plusieurs autres, mêlant ces diverses sources en un énoncé

¹⁵ C. Rousseau, *Droit international public*, t. V, *Les rapports conflictuels*, Sirey, Paris, 1983, p. 348.

¹⁶ DV, par. 5.98.

¹⁷ CMV, par. 6.64.

¹⁸ DV, par. 5.98.

¹⁹ Voir CPJI, Comité consultatif de juristes, *Documents présentés au Comité et relatifs à des projets déjà existants pour l'établissement d'une Cour permanente de Justice internationale*, 1920, p. 359 ; *Prises d'eau à la Meuse*, arrêt, 1937, C.P.J.I. série A/B no 70, opinion individuelle du juge Hudson, p. 76. Voir aussi A. Pellet, *Recherche sur les principes généraux de droit en droit international*, thèse soutenue le 9 février 1974, p. 384 et suiv.

unique, témoignent de cette imprécision et de cette perméabilité²⁰.

- Toujours selon le Venezuela, parmi les sentences que nous avons citées, certaines devraient être exclues de la liste car elles seraient motivées²¹ ; en les lisant, vous ne pourrez, Mesdames et Messieurs les juges, que convenir que les motivations y sont réduites à leur plus simple expression.

- Le Venezuela relève enfin que certains compromis prévoyaient expressément que les arbitres n'étaient pas appelés à motiver la décision²² ; alors c'est inexact s'agissant de certaines des affaires que cite le Venezuela²³ ; et l'on doit plutôt en déduire *a contrario* que, en l'absence de telles mentions, la motivation n'était pas obligatoire. De même, le fait que d'autres compromis, antérieurs à 1899, prévoyaient expressément que le tribunal devait motiver sa décision doit être interprété comme signifiant que cela n'allait pas de soi²⁴.

²⁰ Voir *Traité entre les États-Unis et la Grande-Bretagne*, 8 mai 1871, reproduit dans *Papers Relating to the Foreign Relations of the United States, Transmitted to Congress with the Annual Message of the President*, December 4, 1871, Doc. No. 236 ; *Convention pour soumettre à l'arbitrage des prétentions de Venezuela Steam Transportation Company*, 19 janvier 1892, reproduite dans H. La Fontaine, *Pasicrisie internationale 1794-1900 : histoire documentaire des arbitrages internationaux*, 1902, p. 420-422. Voir aussi l'*Affaire du chemin de fer de Lourenco Marques (Grande-Bretagne et États-Unis c. Portugal)*, sentence, 29 mars 1900, et *ACDI*, 1953, vol. I, p. 235.

²¹ DV, par. 5.99. ²²

²² DV, par. 5.98.

²³ Voir, par exemple, les actes signés à Santiago, le 2 novembre 1898, convenant de tenir une conférence et une commission à Buenos Aires afin de tracer la ligne de démarcation dans la Puna d'Atacama, article IV, reproduit dans H. La Fontaine, *Pasicrisie internationale 1794-1900 : histoire documentaire des arbitrages internationaux*, p. 585-586.

²⁴ Voir, par exemple, les conventions d'arbitrage conclus par le Chili avec la France le 2 novembre 1882, article VI, et avec la Grande-Bretagne le 26 septembre 1893, article V (<https://history.state.gov/historicaldocuments/frus1883/d46?ut>). Voir aussi *Convention between Great Britain and Nicaragua for the settlement of certain claims arising out of the*

15. Il est vrai que le Venezuela semble faire remonter l'obligation de motiver au projet de règlement adopté en 1875 par l'Institut de droit international²⁵. Ce texte, qui était novateur à l'époque, implique très exactement le contraire de ce que nos contradicteurs veulent en déduire : il s'agit non pas de la codification (qui de toute manière n'aurait été que doctrinale) d'une norme coutumière, mais *d'un vœu* que formule l'Institut sous forme de recommandation adressée aux États.

16. Selon le préambule, l'Institut,

« *[d]ésirant* que le recours à l'arbitrage pour la solution des conflits internationaux soit de plus en plus pratiqué par les peuples civilisés, *espère concourir utilement à la réalisation de ce progrès en proposant*, pour les tribunaux arbitraux, le règlement *éventuel* suivant. Il le *recommande* à l'adoption entière *ou partielle* des États qui concluraient des compromis » (les italiques et le soulignement sont de nous).

L'article 23 dispose que « [l]a sentence arbitrale doit être rédigée par écrit et contenir un exposé des motifs *sauf dispense* stipulée par le compromis » (les italiques sont de nous). Et surtout, aux termes de l'article 24, « [l]a sentence, *avec les motifs s'ils sont exposés* □ cela veut dire qu'ils pourraient ne pas l'être - , est notifiée à chaque partie » (les italiques et le soulignement sont de nous) - ce qui signifie clairement que l'Institut n'excluait pas la possibilité de sentences non motivées même s'il recommandait que l'on y renonce. Comme on l'a écrit quelques années plus tard, le projet de l'Institut était « un projet à consulter, “un règlement éventuel” »²⁶.

17. Bien sûr, Monsieur le président, je ne prétends pas qu'il existait, avant l'adoption de la sentence de 1899, une norme *excluant* la motivation des sentences arbitrales □ ce serait contraire

disturbances in the Mosquito Reserve in 1894, 1^{er} novembre 1895 (https://history.state.gov//historicaldocuments/frus1896/d247?utm_).

²⁵ Voir CMV, par. 6.60, et DV, par. 5.89. Voir aussi Institut de droit international, *Projet de règlement pour la procédure arbitrale internationale*, session de La Haye, 1875.

²⁶ F. Dreyfus, *L'arbitrage international*, Calmann-Lévy, Paris, 1892, p. 293.

à l'idée même qui est à la base de l'institution arbitrale : l'autonomie de la volonté des parties contractantes. Mais ce que montre très clairement l'étendue des précédents que je viens de discuter, c'est qu'il n'existait pas non plus de règle coutumière imposant que la sentence soit motivée et faisant de l'absence de motivation une cause de nullité. Pour qu'une telle règle se forme, il est indispensable qu'« existe une pratique générale qui est acceptée comme étant le droit (*opinio juris*) »²⁷. Une telle pratique n'existait pas en 1899 ; elle n'était évidemment pas « acceptée comme étant le droit ». Ce n'est qu'ensuite qu'elle s'est cristallisée pour devenir une obligation coutumière.

2) *L'affirmation progressive postérieure de l'obligation de motiver est sans effet sur la validité de la sentence*

18. Du reste, le Venezuela n'insiste pas : il abandonne très vite le projet de règlement de 1875 pour affirmer, en citant Castberg, que l'obligation de motiver fut « définitivement consacrée par le droit international positif en vertu de l'article 52 de la convention de 1899 pour le règlement pacifique des conflits internationaux »²⁸ □ ce qui implique, *a contrario*, que la norme ne préexistait pas à la convention. On peut noter aussi que, à une exception près, « le droit positif » dont il est question ici □ celui de la convention de 1899 □ est purement conventionnel.

19. Cette exception □ car il y a une exception □, rétroactive, lui est *postérieure* de plus de 60 ans. Selon le contre-mémoire, la Cour aurait « confirmé », dans son arrêt *de 1960* sur la *Sentence arbitrale rendue par le roi d'Espagne*, que « l'absence de motivation dans une sentence est une cause de nullité »²⁹, c'est ce que disent les Vénézuéliens. Comme Nilufer Oral le montrera tout à l'heure, la Cour ne fait rien de tel.

²⁷ CDI, Projet de conclusions sur la détermination du droit international coutumier, conclusion 2 (Deux éléments constitutifs); voir l'article 38, par. 1 *b*), du Statut de la Cour ou *Plateau continental de la mer du Nord (République fédérale d'Allemagne/Danemark; République fédérale d'Allemagne/Pays-Bas)*, arrêt, *C.I.J. Recueil 1969*, p. 44, par. 77.

²⁸ CMV, par. 6.60 citant Castberg, « L'excès de pouvoir dans la justice internationale », *RCADI*, vol. 35 (1931), p. 389.

²⁹ CMV, par. 6.62; voir aussi DV, par. 5.90.

20. Quant à l'article 52 du règlement de l'Institut, il dispose en effet que « [l]a sentence arbitrale, votée à la majorité des voix, est motivée » ; mais il s'agit toujours d'un texte de développement progressif, disposant *pour l'avenir*, qui ne prétend pas codifier une règle existante. Et d'ailleurs, Castberg ajoute immédiatement (à propos de la sentence Cleveland dans l'affaire *Cerruti*) que l'« on ne pouvait pas encore, à l'époque où cette sentence fut rendue, à savoir en 1897 - c'est l'année de la signature du compromis pour nous - , considérer comme acquise au droit international positif la règle que les sentences arbitrales doivent être motivées »³⁰.

21. Dans la foulée de ce premier argument d'autorité qui se retourne contre lui, le Venezuela en a invoqué un autre, tout aussi imprudent : l'affirmation d'Augusto Pierantoni selon lequel « [l]es motifs en fait et en droit, s'ils sont une garantie exigée par la loi de procédure, sont *un besoin* de la société internationale »³¹. Cette citation est tirée d'une consultation rédigée par ce juriste italien à la demande du Gouvernement colombien, mécontent de la solution retenue par le président Cleveland dans cette même affaire *Cerruti*. Il s'agit d'un plaidoyer *pro domo en faveur* des avantages de l'arbitrage tel qu'il *devrait*, selon lui, être pratiqué, et il ne s'agit pas d'une démonstration de *l'existence* d'une norme de droit positif exigeant la motivation et faisant de son absence une cause de nullité. Certes, la sentence fut ensuite soumise à révision, mais il fallut pour cela que les deux États concluent un *nouveau* compromis à cette fin³².

22. Quant aux travaux préparatoires à la convention de La Haye de 1899, ils montrent certes que la position de Martens, qui était opposée à faire de la motivation un principe conventionnel, était sinon « marginale »³³ du moins minoritaire (et d'ailleurs il y a

³⁰ F. Castberg, « L'excès de pouvoir dans la justice internationale », *RCADI*, vol. 35 (1931), p. 389.

³¹ A. Pierantoni, « La nullité d'un arbitrage international » (1898) 30, *Revue de droit international et de législation comparée*, p. 459, cité in CMV, par. 6.60 (les italiques sont de nous).

³² *Affaire Cerruti (Colombie/Italie)*, sentence, 6 juillet 1911, *RSA*, vol. XI, p. 337-395.

³³ DV, par. 5.88.

eu un vote), mais pas que les délégués à la conférence considéraient que la motivation était une obligation *déjà ancrée* dans le droit positif. Bien plutôt qu'aux yeux de la majorité elle était éminemment souhaitable, position d'ailleurs que Martens a partagée dans son principe³⁴.

23. La sentence qui est l'objet du différend n'est pas motivée parce qu'elle n'avait pas à l'être, ni en vertu du traité de 1897, ni en droit coutumier. Elle n'avait de ce fait rien de scandaleux, ni d'inhabituel, ni d'illicite. Est-ce que vous voulez vraiment, Mesdames et Messieurs les juges, ouvrir la porte à la remise en cause des sentences non motivées rendues tout au long du XIX^e siècle et inciter les parties perdantes, il y a plus d'un siècle, à demander des rejugements ? Je ne suis pas sûr que ce soit une très brillante idée...

II. La sentence du tribunal a été rendue conformément au compromis de 1897

24. Monsieur le président, dans la section E du chapitre V de sa duplique, le Venezuela impute à charge au tribunal arbitral cinq autres prétendus manquements à ses obligations qui seraient autant de motifs d'annulation pour excès de pouvoir. Ils sont pour l'essentiel des conséquences directes de l'absence de motivation et tombent de ce chef. Je vais cependant les analyser, en distinguant ceux qui reviennent à accuser le tribunal de n'avoir pas respecté le compromis faute d'avoir exercé la compétence qu'il leur conférait (A) du troisième qui, au contraire, consiste à lui reprocher d'être allé au-delà en statuant *ultra petita* (B).

A. Il n'existait pas, en 1899, de règle coutumière imposant la motivation

1. Le tribunal a statué conformément aux articles III, IV et V du traité de Washington

25. Monsieur le président, le tribunal a exercé sa compétence conformément à son statut. L'article III du traité de Washington fixe

³⁴ J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 740.

l'objet du différend ; l'article IV précise la manière dont celui-ci doit être réglé.

26. En application de l'article III, les arbitres ont

« recherché et établi jusqu'où s'étendaient les territoires qui appartenaient respectivement aux Pays-Bas Unis et au Royaume d'Espagne, ou étaient susceptibles d'être *licitement* revendiqués par ceux-ci, au moment de l'acquisition par la GrandeBretagne de la colonie de la Guyane britannique »³⁵.

À cette fin, les arbitres ont expliqué avoir « entendu et examiné les exposés oraux et écrits des conseils représentant respectivement Sa Majesté la Reine et les États-Unis du Venezuela » et examiné « de façon impartiale et attentive ... les questions qui leur ont été soumises ». C'est exactement ce qu'ils ont fait. J'y reviendrai dans quelques instants.

27. Quant à prétendre que le tribunal aurait dû répondre séparément à la partie de la question concernant l'étendue du territoire d'une part et la détermination de la ligne frontière d'autre part, je me souviens qu'un jeune avocat avait essayé, en 1986, de persuader la chambre de la Cour constituée dans l'affaire *Burkina Faso/République du Mali* du bien-fondé de la distinction³⁶. En vain : non sans bon sens, la chambre a considéré que □ et je cite la chambre □ « l'effet d'une décision judiciaire, qu'elle soit rendue dans un conflit d'attribution territoriale ou dans un conflit de délimitation, est nécessairement d'établir une frontière »³⁷.

28. À l'appui de son accusation d'excès de pouvoir, le Venezuela se fonde sur la célèbre décision du comité *ad hoc* CIRDI dans l'affaire *Klöckner* rendue en 1985, pour affirmer que les tribunaux ne sont pas appelés à « se borner à “postuler” »

³⁵ Les italiques sont de nous.

³⁶ *Différend frontalier (Burkina Faso/République du Mali)*, procès-verbaux des audiences publiques, 1986, p. 69 (Pellet) ; voir aussi p. 46 (Salembere) et mémoire du Burkina Faso (3 octobre 1985), p. 65-72, par. 14-41.

³⁷ *Différend frontalier (Burkina Faso/République du Mali)*, arrêt, C.I.J. Recueil 1986, p. 563, par. 17.

l'existence d'un principe, sans le démontrer³⁸. C'est un raisonnement qui se tient peut-être mais qui est anachronique. Il revient à reprocher à la sentence de 1899 de n'être pas motivée ; or, comme je l'ai rappelé, elle n'avait pas à l'être. Le raisonnement - si c'en est un □ du Venezuela me rappelle ces fabulettes enfantines dont la dernière strophe renvoie à la première : « La sentence n'est pas motivée - le Venezuela prétend qu'elle est nulle - parce qu'elle n'est pas motivée □ il est impossible de prouver qu'elle est nulle □ parce qu'elle n'est pas motivée, etc. ».

2. Le tribunal s'est prononcé en droit et en toute impartialité conformément au traité de Washington

29. le président, selon le Venezuela, au lieu de débattre des arguments juridiques présentés par les parties, « les arbitres ont pris une décision à la hâte » et le tribunal « a cru bon de trancher les diverses questions juridiques complexes dont il était saisi en moins de six jours, avant de prononcer une sentence dépourvue de motivation le 3 octobre 1899, en fin de matinée »³⁹.

30. Plus que la sentence elle-même, les retranscriptions des audiences tenues en 1899 et les témoignages écrits des membres du tribunal sur le déroulement de la procédure et des délibérations témoignent de l'attention qu'ont portée les arbitres aux titres revendiqués par les deux États.

31. Comme y insiste le Venezuela, les délibérations entre les arbitres sont intervenues après le dépôt de longs mémoires écrits et la présentation des plaidoiries orales des parties dans le cadre d'« “un long débat judiciaire”⁴⁰ étalé sur 56 audiences, qui ont donné lieu à 3 200 pages de transcription »⁴¹. Pendant ces longues journées passées à écouter les arguments de droit et de fait des parties, dans le respect total du principe du contradictoire, les

³⁸ DV, par. 5.125, se référant à : « *Klöckner v. Cameroon*, Decision on Annulment, 3 May 1985, para. 79. 238-239 ».

³⁹ CMV, par. 5.112-5.113.

⁴⁰ CMV, par. 5.112, note 515; H. Lauterpacht, « The Function of Law in the International Community », *British Contributions to International Law*, 1933, p. 149.

⁴¹ CMV par. 5.112.

arbitres ont eu amplement le temps d'échanger leurs impressions à leur sujet et ils l'ont fait. Les échanges entre les cinq membres du tribunal relatés dans la lettre de Lord Russell à Lord Salisbury du 7 octobre 1899, qui est résumée au paragraphe 8.44 de notre mémoire, sont un exemple emblématique, parmi d'autres, de l'existence et du sérieux de ces délibérations⁴².

32. De nombreux autres éléments du dossier qui concernent le déroulement des audiences confirment pleinement que le tribunal a fidèlement appliqué le compromis. Les arbitres ont interrogé les parties sur les aspects juridiques et factuels de l'affaire à de multiples occasions durant les audiences ⁴³. Par exemple : sur l'application des règles contenues à l'article IV du compromis ⁴⁴, sur les activités hollandaises et espagnoles dans la zone disputée⁴⁵, sur la date critique⁴⁶, sur le titre territorial⁴⁷ ou sur la prescription cinquantenaire⁴⁸.

33. Il ressort aussi du dossier que Martens était profondément soucieux d'aboutir à l'adoption d'une sentence unanime. Ce

⁴² Letter from Lord Russell to Lord Salisbury (7 Oct. 1899), in Papers of 3rd Marquess of Salisbury, Vol. A/94, Doc. No. 2, p. 126. MG, vol. III, annexe 36.

⁴³ Voir, par exemple, MG, par. 3.48, 8.47, 8.59-8.60 et 8.91, et DV, par. 3.20 et 3.51.

⁴⁴ *Boundary between the Colony of British Guiana and the United States of Venezuela*, Second Day's Proceedings (15 June 1899), MG, vol. IX, annexe 98, p. 18; voir, d'une manière générale, p. 17-21

⁴⁵ Voir, par exemple, *Boundary between the Colony of British Guiana and the United States of Venezuela*, Third Day's Proceedings (21 June 1899), p. 100-115 (Brewer, Webster, Russel, Collins) et Fourteenth Day's Proceedings (13 July 1899), p. 818-827 (Russel, Webster, Harrison, Soley, Collins, Fuller).

⁴⁶ Sur la date critique, *ibid.*, Twenty-Eighth Day's Proceedings (12 August 1899), p. 1750-1756 (Russel, Soley, Martens, Brewer, Harrison, Fuller, Collins).

⁴⁷ Sur le titre territorial (Martens): *ibid.*, Thirty-Second Day's Proceedings, p. 2025-2030 (Martens, Coley, Collins, Russel, Webster, Mallet-Prevost).

⁴⁸ Voir MG, par. 8.47-8.48.

souhait, que critique âprement le Venezuela⁴⁹, n'avait (et n'a) rien de répréhensible.

34. À la date du 21 octobre 1899, Martens écrit dans son journal qu'il considérait qu'il avait « non seulement [le] droit, mais surtout le devoir moral, de mener de telles négociations pour obtenir une parfaite communauté de vues entre les arbitres et atteindre l'objectif ultime, une sentence arbitrale rendue à l'unanimité »⁵⁰. Mais □ et ce « mais » est très important □ il n'a pas sacrifié pour autant les principes fondamentaux qui gouvernaient la procédure arbitrale : après s'être fait une opinion personnelle sur les faits et le droit applicable, il a recherché l'approbation de ses collègues⁵¹.

35. Le journal de Martens⁵² et l'interview du juge Brewer, l'un des arbitres américains nommés par le Venezuela, parue dans le *New York Times* du 5 octobre 1899⁵³, confirment que c'est bien ainsi que les choses se sont passées. Faute de temps, je ne peux pas commenter en détail les pages pertinentes de ces deux documents, mais ils sont fort importants. Nous les avons inclus dans les dossiers des juges (ils figurent aux onglets n^{os} 6.2 et 6.3). Je me permets, Mesdames et Messieurs de la Cour, de vous engager à les lire attentivement : ces extraits montrent que chacun des arbitres s'était fait une opinion en droit et qu'ils se sont ensuite tous ralliés à la solution proposée par le président □ d'assez mauvaise grâce pour ce qui est des deux membres anglais du tribunal, que l'on peut qualifier de minoritaires ; toutefois, ils ont tous signé la sentence sans protester. Le travail du tribunal a d'ailleurs été salué dans les derniers jours des audiences par Harrison, le *lead counsel* de la partie vénézuélienne, qui a félicité le tribunal pour avoir « mené

⁴⁹ DV, par. 5.156.

⁵⁰ Private Diary Entries of Prof Fyodor Fyodorovich Martens (4 June 1899-3 October 1899), RéG, annexe 33, p. 11 de l'annexe.

⁵¹ Voir Letter from Lord Russell to Lord Salisbury (7 October 1899) (MG, vol. III, annexe 36).

⁵² Voir Private Diary Entries of Prof Fyodor Fyodorovich Martens (4 June 1899-3 October 1899), RéG, annexe 33, p. 9-12 (la traduction est de nous).

⁵³ « Judge Brewer's Opinion, Venezuela's Arbitrator Tells How the Verdict Was Reached », *The New York Times*, 5 October 1899.

avec minutie cette longue enquête historique et ... retracé l'histoire du titre des Pays-Bas et ... de celui de l'Espagne [en] remontant jusqu'en 1814 »⁵⁴.

36. Ces mêmes arguments font justice du moyen que le Venezuela veut tirer de la violation de l'article V du compromis qui prévoit que les arbitres « procéderont à l'examen impartial et minutieux des questions qui leur auront été soumises ». En se fondant sur deux lettres⁵⁵, le Venezuela soutient que les conseils nommés par la Grande-Bretagne auraient communiqué de façon irrégulière avec les arbitres britanniques⁵⁶. Ici encore, le Venezuela s'obstine à ignorer deux siècles d'évolution de l'arbitrage international qui restait, en 1899, influencé par la pratique des négociations diplomatiques⁵⁷. Et la preuve en est du reste que, pour leur part, les conseils vénézuéliens ont rencontré les arbitres nommés par le Venezuela à l'issue des audiences et avant le rendu de la sentence⁵⁸. Aujourd'hui de tels conciliabules seraient assurément mal vus (sans nécessairement entraîner, d'ailleurs, l'annulation de la sentence⁵⁹), mais nous sommes obstinément en 1899.

B. Le tribunal n'a pas excédé sa compétence

37. J'en arrive au dernier des moyens invoqués par le Venezuela à l'appui de son accusation d'excès de pouvoir selon lequel « [l]e tribunal a agi hors du cadre de sa compétence, en

⁵⁴ Boundary between the Colony of British Guiana and the United States of Venezuela, Fifty Second Day's Proceedings (21 Sept. 1899), p. 3087 (General Harrison). MG, vol. IV, annexe 114 (la traduction est de nous).

⁵⁵ Letter from Sir Richard Webster to Joseph Chamberlain, 19 July 1899 (CMV, annexe 64) et Letter from Sir Richard Webster to Lord Salisbury, 19 July 1899 (CMV, annexe 63) auxquelles se réfère le Venezuela dans CMV, par. 6.155-6.156, et DV, par. 5.148.

⁵⁶ RéG, par. 3.60-3.64. Voir aussi DV, par. 5.150.

⁵⁷ Voir *supra*, par. 1.

⁵⁸ CMV, par. 5.111, et DV, par. 3.64-3.65.

⁵⁹ Voir, par exemple, *Methanex Corporation v. United States of America*, sentence finale sur la juridiction et le fond, CNUDCI, 3 août 2005, par. 58-60. Voir aussi *Arbitration Between the Republic of Croatia and the Republic of Slovenia*, PCA Case No. 2012-04, sentence partielle, 30 juin 2016, par. 177.

statuant sur des questions étrangères au traité de Washington » □ autrement dit, il aurait statué *ultra petita*⁶⁰.

38. Je le dis d'emblée, nous sommes tout à fait conscients qu'un tribunal a le devoir de répondre aux demandes des parties telles qu'elles s'expriment dans le compromis □ et c'est bien ce qu'a fait la sentence —, mais aussi celui de s'abstenir de statuer sur des points non compris dans ces demandes⁶¹. À cet égard également, le tribunal Martens s'est conformé aux exigences du droit de l'arbitrage. Cela est vrai qu'il s'agisse de la prétendue atteinte aux droits du Brésil (1) ou du régime des eaux des rivières Amakuru et Barima (2).

1. La prétendue atteinte aux droits du Brésil

39. Monsieur le président, le Venezuela lit dans la sentence une décision portant atteinte aux droits du Brésil. Elle ne fait rien de tel.

40. *Primo*, il suffit de lire le texte de son unique paragraphe dans lequel figure le mot « Brésil » pour constater que le tribunal ne se prononce pas sur les droits de ce pays et qu'il prend même, au contraire, soin de les préserver :

« [L]a ligne de délimitation est fixée par la présente sentence *sous réserve et sans préjudice* des éventuelles questions actuelles ou futures *qu'il reviendra au Gouvernement de Sa Majesté britannique et à la République du Brésil, ou à ladite République et aux États-Unis du Venezuela, de trancher* »⁶².

⁶⁰ Voir CMV, p. 288-295, par. 6.138-6.142, et DV, p. 182-186, par. 5.133-5.143 et 6.46.

⁶¹ Cf. *Demande d'interprétation de l'arrêt du 20 novembre 1950 en l'affaire du droit d'asile (Colombie c. Pérou)*, arrêt, C.I.J. Recueil 1950, p. 402. Voir aussi *Barcelona Traction, Light and Power Company, Limited (nouvelle requête : 1962) (Belgique c. Espagne)*, deuxième phase, arrêt, C.I.J. Recueil 1970, p. 37, par. 49 ; ou *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, compétence et recevabilité, arrêt, C.I.J. Recueil 1984, p. 431, par. 88.

⁶² Les italiques sont de nous.

Le tribunal ne pouvait pas être plus clair : il n'a pas voulu statuer, et il n'a pas statué, sur les droits du Brésil.

41. *Secundo*, si le tribunal « a déterminé la frontière entre le Brésil et la Guyane britannique »⁶³, cela n'a porté atteinte aux droits ni du Brésil, ni du Venezuela. S'agissant du Brésil, il n'était pas partie à l'instance et la sentence est pour lui *res inter alios acta*⁶⁴. Quant aux droits du Venezuela, ils sont intégralement préservés et il ne prétend d'ailleurs pas le contraire : les quelques développements pertinents de ses écritures sur cet aspect du différend⁶⁵ concernent la prétendue atteinte que la sentence aurait portée aux droits *du Brésil* et non à ceux du Venezuela □ aucune *cause of action* donc.

42. *Tertio*, la sentence du roi d'Italie Victor-Emmanuel II rendue en 1904 en application du traité du 6 novembre 1901 entre la Grande-Bretagne et le Venezuela a du reste reconnu expressément que la sentence de 1899 « ne peut être opposée au Brésil, qui n'a pas été affecté par cette sentence »⁶⁶. En outre, ultérieurement, durant les années 1920, les trois États ont conclu une série de traités précisant la délimitation de leurs frontières respectives⁶⁷ et, en 1932, ils ont fixé définitivement le tripoint sur la ligne retenue par la sentence de 1899 conformément à la demande insistante *du Venezuela* lui-même⁶⁸. La professeure Oral y reviendra dans un instant.

⁶³ DV, par. 5.133.

⁶⁴ Voir, par exemple, *Anglo-Iranian Oil Co. (Royaume-Uni c. Iran)*, exception préliminaire, arrêt, C.I.J. Recueil 1952, p. 109 ; *Différend territorial et maritime (Nicaragua c. Colombie)*, requête du Honduras à fin d'intervention, arrêt, C.I.J. Recueil 2011 (II), p. 444, par. 72.

⁶⁵ Voir *supra* note 60.

⁶⁶ Sentence du 6 juin 1904, *The Guiana Boundary Case (Brazil v. Great Britain)*, RSA, Vol. XI, p. 22 (la traduction est de nous).

⁶⁷ Voir MG, par. 4.33-4.37 ; RéG, par. 4.63.

⁶⁸ Voir MG, par. 4.33 et 9.17 ; RéG, par. 4.58.

2. Licéité de la fixation du régime des eaux des rivières Amakuru et Barima

43. Monsieur le président, le Venezuela soutient aussi que le tribunal aurait *excédé* sa compétence en fixant un régime de liberté de navigation sur les rivières Amakuru et Barima, toutes deux affluents du fleuve Orénoque.

44. Le *passage* pertinent est assez long. Il est en partie projeté à l'écran. Il en résulte qu'en temps de paix les deux rivières sont « ouvert[e]s^[69] à la navigation des navires marchands de tous les pays » moyennant paiement de redevances et de droits de douane.

45. Les deux rivières, l'Amakuru et la Barima, ont toujours joué un rôle essentiel pour les transports et le commerce des populations des deux côtés de la frontière, car ils constituaient la seule voie d'accès à la mer.

46. Selon nos contradicteurs, le traité n'aurait pas autorisé le tribunal à se prononcer sur le régime de navigation de ces cours d'eau⁷⁰ et il est vrai que le compromis n'appelait pas expressément les arbitres à aménager le régime des cours d'eau frontaliers. Mais la règle c) énoncée à l'article IV les incite à aménager le *régime* frontalier puisque

« [s/]i, lors de la détermination du tracé de la ligne frontière, *le tribunal juge* qu'un territoire de l'une des Parties était, à la date de conclusion du présent traité, occupé par les sujets ou citoyens de l'autre Partie, *il sera donné à cette occupation l'effet qu'exigent selon lui la raison, la justice, les principes de droit international et les considérations d'équité propres à l'affaire* ».

Il n'est pas question ici de modification de la frontière mais de modifier, en équité, les effets humains négatifs que sa détermination pouvait avoir.

⁶⁹ Le Greffe, dont la traduction officieuse est précieuse, traduit l'anglais « rivers » par « fleuves ». Dès lors que ces cours d'eau se jettent dans le fleuve Orénoque et non directement dans la mer, le mot français « rivières » me semble plus approprié.

⁷⁰ Voir notamment DV, par. 5.143.

47. C'est d'ailleurs très exactement la position qu'avait prise *le Venezuela* dans sa plaidoirie écrite du 1^{er} novembre 1898 devant le tribunal arbitral⁷¹. Cette plaidoirie aurait mérité une longue citation. Un petit extrait est projeté à l'écran □ je ne sais pas si on arrive à le lire □ mais le temps m'est compté et, ici encore, je me permets, Mesdames et Messieurs les juges, de vous renvoyer à ce que plaidaient alors les avocats du Venezuela. Nous en avons reproduit d'autres extraits à l'onglet n° 6.4 de vos dossiers. C'est aussi très exactement ce que nous plaidons aujourd'hui : l'ajustement envisagé à l'article IV, règle c), du compromis intervient *après que la frontière a été fixée*, non pas en tant que modification de son tracé, mais pour atténuer les inconvénients qui pourraient résulter du tracé pour les riverains, ressortissants de l'un ou l'autre État. Comme l'écrivaient aussi *les avocats du Venezuela* en 1898 : « *Le traité est muet quant aux modalités de l'ajustement auquel les arbitres devront, le cas échéant, procéder aux fins de l'exécution de la règle c). Ce point est tout entier laissé à leur jugement et à leur discernement.* »⁷²

48. Dans sa duplique, le Venezuela fait machine arrière et s'efforce de neutraliser cette interprétation pourtant irrécusable. Il y affirme que cette disposition « prévoyait de possibles ajustements du tracé de la ligne frontière eu égard à des facteurs spécifiques »⁷³. C'est évidemment faux. Comme le Venezuela □ *le Venezuela*, Monsieur le président □ l'avait noté durant ses plaidoiries de 1898, une fois cette détermination faite (et il n'est pas question ici de la modifier mais d'en tirer les conséquences)

« [s]e poserait *alors* la question de savoir comment, de la façon la plus juste tant pour l'État sur le territoire duquel ces colons se trouvent que *pour ces colons eux-mêmes*, il pourrait être procédé à un ajustement des relations entre eux ; il a donc été prévu dans le traité qu'il

⁷¹ Voir MG, par. 8.52.

⁷² *Boundary between the Colony of British Guiana and the United States of Venezuela. The Printed Argument on Behalf of the United States of Venezuela* (1898), vol. I. p. 56-57 (les italiques sont de nous).

⁷³ DV, par. 5.139.

incomberait au tribunal de procéder à l'ajustement définitif »⁷⁴.

Cet ajustement porte non pas sur la frontière mais *sur les relations entre les deux États*, et doit intervenir au bénéfice des habitants. C'est exactement ce qu'ont fait les arbitres en prévoyant un régime spécial de navigation sur les eaux des deux rivières dans l'intérêt des nationaux des deux parties.

49. Pour surplus de droit, je rappelle que, quand bien même le *compromis* n'aurait pas énoncé la règle IV c), rien n'aurait empêché le tribunal de procéder, en vertu de son pouvoir inhérent, à un tel ajustement dans l'intérêt des habitants des territoires en cause⁷⁵.

50. Au paragraphe 5.104 de sa duplique, le Venezuela *s'enferme* à nouveau dans un intéressant cercle vicieux. Il y écrit : « La sentence ... ne permet en rien de savoir si ces dispositions ont été respectées. Il est ainsi impossible de déterminer si le tribunal a agi dans le cadre de son mandat et, partant, la sentence est nulle et non avenue pour cause d'excès de pouvoir. » Retour aux fabulettes enfantines...

51. On peut pourtant en sortir, Mesdames et Messieurs les juges :

- la sentence n'est pas motivée ;
- parce que le compromis ne l'impose pas et, lorsqu'elle a été rendue, il n'existait aucune règle non écrite l'imposant ;

⁷⁴ *Boundary between the Colony of British Guiana and the United States of Venezuela. The Printed Argument on behalf of the United States of Venezuela* (1898), vol. I, p. 56, MG, annexe 134 (les italiques sont de nous). Voir aussi les échanges entre le représentant britannique, Sir Richard Webster, et Lord Russel, agissant en sa qualité d'arbitre, *ibid.*, Second Day's Proceedings (15 June 1899), p. 22.

⁷⁵ *Sentence du tribunal arbitral rendue au terme de la première étape de la procédure entre l'Érythrée et la République du Yémen (Souveraineté territoriale et portée du différend), décision du 9 octobre 1998, RSA*, vol. XXII, p. 329-330, par. 526. Voir aussi, *mutatis mutandis*, *Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn), fond, arrêt, C.I.J. Recueil 2001*, p. 117, par. 252 2) b).

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- s'il est vrai que l'obligation de motiver, devenue coutumière après l'adoption des conventions de La Haye et du fait de leur application, a sûrement constitué un progrès ;

- en l'espèce, l'abondant dossier soumis à la Cour, permet incontestablement de s'assurer de la validité de la sentence de 1899 au moment où elle a été prononcée ;

- dès lors, il ne peut faire de doute que le tribunal est resté dans les limites de sa compétence tout en résolvant aussi largement que possible le différend qui lui avait été soumis.

52. Si vous voulez bien lui donner la parole, Monsieur le président, ma collègue et amie, la professeure Nilufer Oral, montrera que ces conclusions s'imposent avec d'autant plus de force que le Venezuela, qui a accueilli positivement la sentence dès son prononcé, a laissé passer plus de 60 ans avant de s'aviser de sa prétendue nullité. Quant à moi, il ne me reste qu'à vous remercier de votre attention.

Le PRÉSIDENT : Je remercie le professeur Pellet. I now give the floor to Professor Nilüfer Oral. Madam, you have the floor.

Ms ORAL:

THE POST-AWARD CONDUCT

1. Mr President, distinguished Members of the Court. It is a great honour for me to *appear on* behalf of the Co-operative Republic of Guyana in these proceedings.

2. *Today*, I will address the six decades of conduct by Venezuela during which it freely accepted the validity of and meticulously complied with the 1899 Arbitration Award and the boundary established by the 1905 Boundary Agreement.

3. Mr President, my presentation will be in two parts. In Part 1, starting in 1899 through the early 1960s, a period spanning more than 60 years, I will present the *numerous* instances of Venezuela's constant and fully given acceptance of and compliance with the

Award. There were no deviations, not a single one, throughout this period. In Part II, I will address the legal effects of this prolonged acceptance of and acquiescence to the 1899 Award and the 1905 Boundary Agreement.

I. Venezuela's contemporaneous acceptance and six decades of consistent conduct (1899-1962)

4. 4. Mr President, I will now take us back in time and provide overwhelming evidence that between 1899 and 1962, Venezuela accepted and recognized the legal validity of the Arbitration Award. Indeed, at times, Venezuela insisted that the Award be implemented to the letter, and no matter how minor, refused to accept any alterations to the boundary as determined by the Award!

A. Immediate acceptance of the Award as final and binding (1899)

5. Venezuela accepted the Award as valid and binding from the moment it was issued on 3 October 1899. Venezuela celebrated the result as a victory, at least in part, because Venezuela had acquired the most valuable part of the disputed territory □ the mouth of the Orinoco River, with the territory on both banks. This gave Venezuela control over the largest and most strategically and commercially important river on the north coast of South America. Venezuela's success and the importance of the area were underscored by its counsel, former US President Harrison and his co-counsel, Mr Mallet-Prevost, in statements published by *The Times*, on 4 October 1899, the day after the Award was issued:

“Within the Schomburgk line lay the Amakuru river and Point Barima, the latter forming the southern entrance to the great mouth of the Orinoco. No portion of the entire territory possessed more strategic value than this, both from a commercial and a military standpoint, and its possession by Great Britain was most jealously guarded.”⁷⁶

⁷⁶ “Declarations from Mallet-Prevost and General Harrison, Venezuelan's Agents before the 1899 Tribunal”, *The Times* (4 Oct. 1899), p. 612.

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6. Counsel continued highlighting the territory that the British had lost:

“This in no way expressed the extent of Venezuela’s victory. Great Britain had put forward a claim to more than 30,000 square miles of territory west of the Schomburgk line, and it was this territory which in 1890 Great Britain was disposed to submit to arbitration. Every foot of this territory had been awarded to Venezuela.”⁷⁷

7. Venezuela’s Agent in the arbitration, Dr José Rojas, agreed with his counsel’s assessment in a telegram to the Foreign Minister. That telegram is preserved and quoted in a message dated 7 October 1899 from Venezuelan Ambassador José Andrade, and states the following:

“Sentence of Tribunal: England gives up Point Barima and the coast until Point Playa from thence the line goes until Schomburgk’s (line) which it follows until the junction of the Cuyuni and Wenamu. This gives us five thousand square miles east of the Schomburgk line. Arbiters and Counsel for Venezuela were brilliant.”⁷⁸

8. The reference to Point Barima and the coastline west of Point Playa shows the great importance that both parties attached to this territory. This was equally voiced by Ambassador José Andrade’s letter of 7 October 1899, who in glowing words said: “Greatly indeed did justice shine forth when in the determination of the frontier we were given exclusive dominion over the Orinoco which was the principal aim we sought to achieve through arbitration.”⁷⁹

⁷⁷ *Ibid.*

⁷⁸ Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 Oct. 1899), p. 1. MMG, Vol. II, Annex 3.

⁷⁹ Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 Oct. 1899). MMG, Vol. II, Annex 3.

9. A press article from *Nouvelles de l'Étranger* quoted similar satisfaction with the Award from the President of Venezuela, Mr Ignacio Andrade, dated 11 October 1899 saying: “the award was a source of satisfaction for the country, as international justice had returned a part of its territory that had been usurped and vindicated its right”⁸⁰.

10. While Venezuela’s reactions to the 1899 Award included some disappointment at not receiving a greater share of the disputed territory, this does not equate to challenging the Award as being invalid or void. Venezuela never challenged the legality or the validity of the 1899 Arbitral Award for the next 62 years.

11. Venezuela’s failure to challenge the legality of the Award for 62 years is especially prejudicial to its current claim that the Award is invalid. Each and every one of the challenges to the Award Venezuela now makes in these proceedings were available to it since October 1899. Yet, during the next six decades Venezuela did not make any of these claims.

12. Let’s take them one at a time, as they appear in Venezuela’s Rejoinder. *The first reason* invoked for the Award’s alleged invalidity is that “it was rendered on the basis of an invalid treaty”. Mr Reichler showed you this morning that Venezuela’s arguments against the validity of the 1897 Treaty of Washington are entirely unsustainable. Venezuela could not help but be aware of each of these alleged deficiencies in the Treaty at the time it was being negotiated, agreed and ratified. Yet, neither in 1897 nor in 1899 did Venezuela give voice to any of these allegations. Nor did it do so for another 60-plus years.

13. Second, Venezuela argues that the Award is invalid “because the Tribunal failed to state the reasons on which it was based”⁸¹. Professor Pellet has amply demonstrated that this is not a valid basis for challenging an arbitral award issued in 1899. This point is also raised in a very telling report dated 4 May 1900 □

⁸⁰ «Nouvelles de l'Étranger: Venezuela », *Le Temps* (11 Oct. 1899) (Translation of Guyana).

⁸¹ RV, Chapter V.D.

exactly 126 years ago from today □ prepared by Dr Rafael Seijas⁸². Dr Seijas, an international lawyer and former Foreign Minister who was also a member of the committee tasked with examining the wording of the 1897 Treaty which conferred jurisdiction on the Court, in fact expressly advised Venezuela that there were no grounds for challenging the Award, including the absence of reasons. Plainly and clearly, Venezuela knew in 1899, at the moment of issue, that the Award did not include a statement of reasons. Yet Venezuela chose not to complain about this or challenge the Award on that basis for over 60 years.

14. Third, Venezuela argues that the arbitral tribunal manifestly exceeded its power, in particular, by failing to respond to all the questions put to it, failing to apply the applicable law, deciding matters outside the scope of its competence, failing to act impartially, *and* failing to issue a decision based on law. Here again, Professor Pellet addressed these issues. Importantly for present purposes, all these alleged shortcomings of the Award would have been obvious to Venezuela upon its first reading. And the facts show that for the next six decades none was invoked as a basis for challenging the Award.

15. Venezuela argues in these proceedings that it only *first* acquired evidence of the purported legal defects in the 1899 Award *after* the 1949 publication of the Mallet-Prevost memorandum⁸³. This is plainly untrue. It is entirely contradicted by the evidence. Every one of the challenges Venezuela now makes to the validity of the Award is based on facts that were known to Venezuela *at the time* the Award was issued in October 1899, or very shortly thereafter. One example, among many that could be offered, on 22 October 1900, Venezuela's Minister for Foreign Affairs wrote to Venezuela's Commissioner on the joint Boundary Commission that the 1899 Award was "more the result of a compromise than of an essentially judicial examination", and that the boundary established by the Award was "a line *de facto*, determined without any support

⁸² Report of Counsellor Dr Rafael Seijas (4 May 1900), p. 189. MMG, Vol. IV, Annex 66.

⁸³ RV, paras. 27, 6.73.

or reason”⁸⁴. That was more than 61 years before Venezuela first challenged the Award on these grounds.

B. Affirmation Through Implementation: The 1900–1905 Demarcation and Boundary Agreement

16. Mr President, Venezuela did more than to fail to protest or challenge the validity of the 1899 Award; in fact, it positively endorsed the Award and insisted on strict compliance with it. As much as Venezuela would like to discount the relevance of its conduct during the five-year demarcation period between 1900 and 1905 as merely a technical exercise, the 1905 Agreement is a legally binding treaty that represents years of collaborative hard work between the representatives of British Guiana and of Venezuela which Venezuela willingly and freely signed. As detailed in Guyana’s pleadings, soon after the delivery of the 1899 Award, Venezuela and Great Britain established a Joint Boundary Commission. Now, today, more than one century later, Venezuela would have us believe that it was coerced into participating in the boundary demarcation by Great Britain. The evidence offered is that Great Britain refused Venezuela’s request to delay the start of the work responding that it, Great Britain, would start demarcation without Venezuela. Venezuela’s current argument, in its Rejoinder, that it was “forced to endure against its will the line described in the 1899 Award” simply does not hold up against the facts. Indeed, it was Venezuela that first insisted, in a letter from its Foreign Minister, Mr Andueza Palacio, to the British Foreign Office dated 29 March 1900 □ less than six months after the arbitral award was issued □ that the demarcation of the boundary was “a matter of such importance” and that “it is mutually beneficial to proceed in all that concerns the sentence of October 1899, by concerted and simultaneous action”⁸⁵. How can Venezuela now argue, with any credibility, that it was forced to engage in the boundary demarcation against its will?

⁸⁴ Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 21, para. 28. CMV, Vol. III, Annex 150.

⁸⁵ Letter from Mr Andueza Palacio to British Foreign Office, 29 March 1900. RG, Vol. III, Annex 39.

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17. Between 1900 and 1905, the joint Venezuela-British Boundary Commission engaged in the demarcation of the 825 km-boundary. During this time there was not a single utterance from Venezuela expressing any objection, reservation or concern about the boundary being demarcated. To the contrary, the Venezuelan members of the joint Boundary Commission □ who reported directly to the Venezuelan Ministry of Foreign Affairs □ worked with great commitment and meticulous care to comply with the 1899 Award.

18. When the work of the joint Boundary Commission ended, Dr Tirado, the Venezuelan Chief Commissioner, reported to the Foreign Ministry: “I am personally very proud of being able to present a plan of the outcome of our work which, considering the very unfavourable conditions under which our various journeys were made, is wonderfully accurate.”⁸⁶

19. On 10 January 1905, a formal and official international agreement was concluded on the location of the entire land boundary between British Guiana and Venezuela. Dr Tirado, who signed the 1905 Agreement, described the demarcation as an “honourable task”: “The honourable task is ended, and the delimitation between our Republic and the Colony of British Guiana an accomplished fact.”⁸⁷

20. The evidence shows that Venezuela fully and willingly participated in the five-year long demarcation process and freely and consensually signed the final 1905 Boundary Agreement. There is no evidence to the contrary. Indeed, just months after the signing of the Boundary Agreement, Venezuela’s Foreign Minister, in his annual address to the Congress on 23 May 1905, voiced his “satisfaction” that the territorial dispute with Great Britain had been finally resolved:

“It gives me particular satisfaction to inform you
that the Commission charged with representing

⁸⁶ Letter from F.M. Hodgson to Alfred Lyttelton enclosing Abraham Tirado, Minister of Foreign Affairs, Report of the Frontier towards British Guiana (20 Mar. 1905), p. [pdf] 33. MMG, Vol. III, Annex 42.

⁸⁷ *Ibid.*

Venezuela in the boundary delimitation with British Guiana, pursuant to the Arbitral Award rendered in Paris on October 3, 1899, has successfully completed its mandate. This effectively resolves the significant territorial dispute that Venezuela maintained with Great Britain for approximately three-quarters of a century.”⁸⁸

21. There is simply no evidence that the Foreign Minister felt coerced to make this very positive statement that the dispute with Great Britain had been resolved. Venezuela then went on to further affirm its acceptance of the boundary by duly recording the 1905 Agreement in the official record of the Ministry of Foreign Affairs of Venezuela, with no reservations⁸⁹.

C. Venezuela’s insistence on strict conformity with the Award

22. On the other hand, there is abundant evidence, Mr President, that, in the course of demarcating the boundary, Venezuela was very strict in ensuring that the boundary followed the 1899 Award. It refused to accept any modifications to the boundary as described in the Award, even in cases when Venezuela’s own Chief Boundary Commissioner, Dr Tirado, advised it would be to Venezuela’s advantage.

23. For example, in October 1905, Venezuela rejected a British proposal for the replacement of the circuitous portion of the boundary line conforming to the watershed between the Orinoco and the Essequibo Rivers □ as provided for by the Award, with the straighter Venamo River. Although the proposal was supported by Dr Tirado, the Government of Venezuela rejected the proposed deviation from the Award⁹⁰. The fact that Venezuela felt free to

⁸⁸ *El Libro Amarillo de los Estados Unidos de Venezuela*, 1905, p.xii (emphasis added). RG, Vol. III, Annex 41.

⁸⁹ *Ministerio de Relaciones Exteriores, Tratados Públicos y Acuerdos internacionales de Venezuela: Vol. 3 (1920-1925) [1927]*, p. 604. RV, Vol. III, Annex 40.

⁹⁰ Letter from Señor Paúl to Mr O’Reilly (4 Sept. 1907) (Inclosure in Letter from Mr O’Reilly to Sir Edward Grey (5 Sept. 1907)), pp. 1-2. MMG, Vol. III, Annex 48.

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reject Britain's request further counters its claim of so-called "structural coercion".

24. An incident that took place in 1911 further evidences Venezuela's insistence that the boundary strictly follow the 1899 Award. When a boundary marker near the Atlantic Coast was swept away by the sea, Venezuela insisted that the new marker

"must be placed at the precise site in which the boundary line between the two countries out the new coast which was fixed in the year nineteen hundred in accordance with the award signed at Paris the 3rd of October 1899 by the Mixed Commission Anglo Venezuelan"⁹¹.

25. As the Court can now see on its screens, that same year, 1911, Venezuela published a Physical and Political Map of its territory. As shown in the enlarged map, the map follows the boundary established by the 1899 Award and as drawn by the 1905 Agreement. Also, the legend clarifies that this map was commissioned and signed by the then President of Venezuela, General Juan Vicente Gomez, on the occasion of the Centennial of Venezuela's independence⁹². This is but one of many official Venezuelan maps, issued over decades, that consistently gave effect to the 1899 Award, a record we will examine with you today.

D. Venezuela's insistence on strict conformity with the Award

26. For decades on Venezuela continued to respect the line fixed by the 1899 Award and implemented by the 1905 Agreement. For instance, on 22 February 1922, the Venezuelan Ministry of Home Affairs entered into an agreement with the Caroní religious mission, which established the territory where the Mission would be responsible for the "civilization and evangelization" of tribes⁹³. The limits of the Mission's territory were established in accordance

⁹¹ Letter from General Juan Vicente Gomez, President of the United States of Venezuela (1 Feb. 1911). MMG, Vol. III, Annex 52.

⁹² MMG, fig. 4.6.

⁹³ *Convenio de la Misión del Caroní* (22 February 1922), art. 1. RG, Vol. III, Annex 43.

with the boundary as decided by the 1899 Award and enshrined in the 1905 Boundary Agreement⁹⁴.

27. Venezuela continued to freely affirm that boundary. In 1926, Brazil and the United Kingdom agreed that their boundary lay “where Venezuelan territory commences . . . on the said Roraima mountains”, as established by the 1899 Award and the 1905 Boundary Agreement⁹⁵. There was no protest from Venezuela to this agreement between Brazil and Great Britain. As shown by subsequent events, it was quite the contrary: *first*, only two years later, in 1928, President of Venezuela, Juan Vicente Gómez, re-commissioned the production of an official Physical and Political map of the country. As shown in the enlarged image on your screen, that map implemented, again, the line of the 1899 Award and the 1905 Boundary Agreement⁹⁶.

28. *Second*, and most importantly, the following year, 1929, Venezuela implemented *that same* boundary in its frontier delimitation with Brazil, as shown by the text of that agreement projected on your screens: “the frontier between the two countries should be clearly defined, from the island of Sao Jose to a point on Mount Roraima where the frontiers of Brazil, Venezuela and British Guiana meet”⁹⁷.

29. This was explicit recognition of the fact that the frontier between Venezuela and British Guiana had already been determined.

30. Another compelling example is while fixing the tri-junction point, it became apparent that the boundary marker installed by the Venezuelan-British Guiana Boundary Commission in 1904 had been placed on the edges of Mount Roraima, not on its

⁹⁴ *Ibid.*, art. 2. RG, Vol. III, Annex 43.

⁹⁵ United Kingdom, Brazil, Treaty Series No. 14, Treaty and Convention for the settlement of the Boundary between British Guiana and Brazil (22 Apr. 1926). MMG, Vol. IV, Annex 83.

⁹⁶ MMG, Figure 4.8.

⁹⁷ Protocol between Brazil and Venezuela respecting the Demarcation of the Frontier, Ratification exchanged at Rio de Janeiro 31 Aug. 1929 (24 July 1928), available at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015035801896&view=1up&seq=4&skin=2021>, p. 448.

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summit, as mandated by the 1899 Award. The British suggestion to maintain this 1904 marker was rejected by Venezuelan Foreign Minister Pedro Itriago Chacín. In his reply on 31 October 1931, he demanded the re-establishment of the marker as mandated by the 1899 Award. In his message, he described that boundary as a “frontier de droit”⁹⁸. And he explained that “[the] Venezuelan government regret that for constitutional reasons they are unable to depart from the letter of the award”⁹⁹. The British ultimately acceded to the Venezuelan position.

31. Thus, that same year of 1931, the marker on your screens of the tri-junction point between Brazil, Venezuela and British Guiana was established exactly where this point was placed by the 1899 Award.

32. The following year, on 3 November 1932, the Venezuelan Foreign Minister provided yet another statement, now expressing satisfaction with the placement:

“The Government of the Republic has noted with satisfaction that His Majesty’s Government has decided to accept the Venezuelan proposal that the boundary in question should be a straight line drawn from the source of the Wenamu river to the point of trijunction on Mount Roraima of the frontiers of Venezuela, British.”¹⁰⁰

33. Five years later, in 1937, the official map of Venezuela was once again updated. As shown on your screens, that update continued to depict the border with neighbouring British Guiana *in accordance* with the 1899 Award and the 1905 Boundary Agreement¹⁰¹.

34. The following year, in November 1939, the Venezuelan Ministry of Promotion published a map of the Venezuelan state of

⁹⁸ Letter from the Venezuelan Minister for Foreign Affairs, P. Itriago Chacín, to W. O’Reilly (31 Oct. 1931). MMG, Vol. III, Annex 53.

⁹⁹ *Ibid.*

¹⁰⁰ Letter from P. Itriago Chacín, No. 1157/2 (3 Nov. 1932). MMG, Vol. III, Annex 55.

¹⁰¹ MMG, Figure 4.9.

Bolivar, which borders Guyana. This map also implements the frontier of the 1899 Award and the 1905 Boundary Agreement¹⁰².

35. Moving on, as you can see on your screens, in 1940, Venezuela's Ministry of Public Works and its National Cartography Directorate prepared the *Atlas of Venezuela*, which likewise reflected the boundary as determined by the 1899 Arbitral Award and implemented through the 1905 Boundary Agreement¹⁰³.

E. Venezuela's confirmation of the Award's validity after World War II and through 1962

36. In the post-World War II period, as Great Britain began to prepare British Guiana for independence, there was no suggestion from Venezuela that the 1899 Award or the 1905 Boundary Agreement were legally invalid, or null and void. To the contrary, Venezuela continued to accept and recognize the binding authority of the Award and the Agreement.

37. Indeed, in 1945, Venezuela adhered to the map presented by the United Nations upon its creation. The map clearly follows the border of the 1899 Award and the 1905 Boundary Agreement, as shown on your screens¹⁰⁴.

38. Two years later, in 1947, Venezuela produced two different official maps, again implementing the same frontier. *First*, the Physical and Political map shown on your screens¹⁰⁵. *Second*, the index map of Venezuela's landing sites, now on your screens¹⁰⁶.

39. Shortly thereafter, and of great relevance, in 1948, Venezuela's Congress promulgated the Organic Law of the Federal Territories¹⁰⁷. Article 5 provided that "The Delta Amacuro Federal Territory" of Venezuela "is formed by the region found within the

¹⁰² RG, Figure 4.1.

¹⁰³ MMG, Figure 4.10.

¹⁰⁴ MMG, Figure 4.12.

¹⁰⁵ MMG, Figure 4.13.

¹⁰⁶ RG, Figure 4.2.

¹⁰⁷ United States of Venezuela, [*Ley orgánica de los Territorios Federales*] *Organic Federal Territories Law* (14 Sept. 1948), Article 5. MMG, Vol. IV, Annex 89.

following boundaries: the Gulf of Paria and the Atlantic Ocean to the north, the Atlantic Ocean and British Guyana to the east, as defined by the Border Treaty between Venezuela and Great Britain”¹⁰⁸.

40. In the following year, 1949, the infamous Mallet-Prevost memo was published by the *American Journal of International Law*. Professor Sands will address that memo in some detail. The point I want to make is that nothing in that memo altered the Venezuelan Government’s consistent position on the legality of the 1899 Arbitral Award or the 1905 Boundary Agreement. Indeed, Venezuela continued throughout the following decade to regard them as legally valid and binding. This is clearly reflected in the official maps it published during this period.

41. I will take you through them. *First*, in 1950, right after the publication of the Mallet-Prevost memorandum article, it published not one, not two, not three, but four different, official maps, all incorporating the 1899 Award “to the letter”.

(a) The first one, on your screens, is yet another official Physical and Political map of Venezuela¹⁰⁹.

(b) The second, now on your screens, is a geological map published by Venezuela’s Ministry of Promotion¹¹⁰.

(c) The third map depicts the eastern natural resources of Venezuela and was published by its Ministry of Mining and Hydrocarbons¹¹¹.

(d) The fourth and final one is a mining and geological map of the Venezuelan state of Bolivar, published again by its Ministry of Mining and Hydrocarbons¹¹².

42. Again, all these maps faithfully implemented the 1899 Award.

¹⁰⁸ *Ibid.*

¹⁰⁹ MMG, Figure 4.14.

¹¹⁰ RG, Figure 4.3.

¹¹¹ RG, Figure 4.4.

¹¹² RG, Figure 4.5.

43. Venezuela continued to implement this Award throughout the 1950s. In 1955, Venezuela published an updated version of its Physical and Political map, the one commissioned in 1911, and updated in 1928, 1937 and in 1950. As in its previous four iterations, this map implemented *again* the frontier of the 1899 Award¹¹³. The following year, in 1956, the Ministry of Public Works published a “Map of the Republic of Venezuela”, again depicting the boundary of the 1899 Award¹¹⁴. Four years later, the same Ministry maintained that same boundary in another “Map of the Republic of Venezuela” published in 1960¹¹⁵.

44. Mr President, Members of the Court, as you are well aware, two years later, in 1962, Venezuela voiced for the first time its legal challenge to the validity of the Arbitral Award. Yet, that same year of 1962, Venezuela published another “Map of the Republic of Venezuela”, which respects the 1899 Award¹¹⁶.

F. Official cartography as continuous State practice (1911-1962)

45. Mr President, we have shown to the Court through a period of decades, multiple official statements of Venezuela recognizing and expressing satisfaction with the 1899 Award, as well as clear and consistent conduct demarcating and defending the boundary drawn in accordance with the Award. We have presented to you at least 16 official Venezuelan maps spanning the period from 1911 to 1962, all showing the boundary between Venezuela and British Guiana exactly following the line described in the 1899 Arbitral Award and as demarcated in the 1905 Boundary Agreement. We have looked for official maps showing a different boundary. We have found none. Not a single one. Certainly, there are none in Venezuela’s pleadings in this case. If they have found one since the filing of their Rejoinder last August, and if it is admissible in evidence as a readily available publication, we look forward to seeing it on Wednesday.

¹¹³ MMG, Figure 4.15.

¹¹⁴ MMG, Figure 4.16.

¹¹⁵ MMG, Figure 4.17.

¹¹⁶ MMG, Figure 4.18.

FIRST ROUND OF ORAL ARGUMENTS
(GUYANA)

46. In Guyana's view, the consistent depiction of the international boundary on Venezuela's official maps as conforming strictly to the 1899 Arbitral Award and the 1905 Boundary Agreement, over a period of at least 61 years, should be given considerable weight by the Court. In its jurisprudence, the Court has paid particular regard to such maps.

47. In the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)* the dispute centred on a particular map which depicted a boundary line produced by a mixed boundary commission established between France and Siam in 1904 which placed the Temple of Preah Vihear in Cambodian territory. Thailand's failure to challenge the validity of the map until 1958 – some 54 years later, despite opportunities to do so, was a determining factor for the Court¹¹⁷. The Court found it significant that Siamese and Thai officials continued to produce the map showing the Temple of Preah Vihear on Cambodian Territory all during this time, without placing any reservations or notations on these maps challenging the boundary¹¹⁸. The same could be said for Venezuela between 1911 and 1962, which could have included a reservation or notation on its official maps – but never did so.

48. Based on the consistent conduct of Siamese and Thai officials for more than five decades, in the Temple of Preah Vihear case, the Court explained as follows:

“[L]ooked at as a whole, Thailand's subsequent conduct confirms and bears out her original acceptance, and that Thailand's acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line.”¹¹⁹

¹¹⁷ *Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 27.

¹¹⁸ *Ibid.*, p. 29.

¹¹⁹ *Ibid.*, pp. 32-33.

II. The legal consequences of Venezuela's prolonged acceptance and acquiescence

49. I come now to Part II of my presentation, on the legal consequences of Venezuela's consistent, open, clear and freely given recognition and acceptance of the validity of the 1899 Arbitral Award and 1905 Boundary Agreement for more than 60 years, between 1899 and 1962.

A. The *King of Spain* case: recognition and preclusion after acceptance

50. The consistent conduct of a State, including by its highest officials, over a period of years, can produce legal consequences. One of the leading cases is *Arbitral Award Made by the King of Spain on 23 December 1906*¹²⁰.

51. That case is factually and legally similar to the current case and thus of particular relevance here. As in the present case, in 1906, Honduras and Nicaragua had by treaty submitted a disputed part of their boundary to arbitration. The outcome of the 1906 Arbitration Award favoured Honduras. However, it was not until 1912, when, for the first time Nicaragua challenged the validity of the Award □ and only after decades of failed negotiations did the case reach the Court in 1960 through agreement by the Parties.

52. Briefly, Nicaragua challenged the validity of that arbitral award for reasons similar to those invoked by Venezuela. In particular, Nicaragua claimed that the arbitrator exceeded his jurisdiction, that he committed essential error, and that he provided inadequate reasons to support his conclusions.

53. Honduras defended the arbitral award based on the conduct of Nicaragua which until 1912 had accepted the award as valid¹²¹. Nicaragua responded, much like Venezuela, claiming that it was unable to challenge the award earlier because it had been

¹²⁰ *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, *Judgment*, *I.C.J. Reports* 1960, p. 192 (hereinafter the “*King of Spain* case”).

¹²¹ *King of Spain* case, p. 210.

“unaware” of the award’s defects at the time it was issued, and for six years thereafter. This argument failed.

54. This Court ruled that

“Nicaragua, by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to challenge the validity of the Award. Nicaragua’s failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion at which the Court has arrived.”¹²²

55. While no case will be identical on all points, the *King of Spain* case is nearly identical in the relevant aspects. With one notable difference: in the *King of Spain* case, the time between the arbitral award and Nicaragua’s challenge to its validity was just six years, whereas in our case the time gap is more than 60 years — ten times longer. Venezuela’s failure to challenge the 1899 Award thus produces legal consequences. By 1962, it was too late for Venezuela to make a viable legal challenge on grounds known to it for more than six decades.

56. In its more candid moments, Venezuela itself recognized the weakness of its argument. The same Foreign Minister who asserted the first formal challenge to the 1899 Award in February 1962, Dr Falcón Briceño, wrote that existing jurisprudence would “oppose a situation of this kind” — namely a challenge to an award whose validity had already been long accepted. He therefore suggested proceeding *ex aequo et bono*¹²³. In other words, Venezuela itself recognized that, under applicable international law, its claim could not succeed.

57. In these proceedings, Venezuela has conjured up a new argument to avoid the legal reality that for over 60 years it has accepted, applied and acquiesced in the 1899 Award. Venezuela now contends that the 1966 Geneva Agreement gave it a new right

¹²² *Ibid.*, p. 213

¹²³ Dr Marcos Falcón Briceño, “*Orígenes de la Actual Reclamación de la Guyana Esequiba*” (1981), p. 58. RG, Vol. III, Annex 25.

to challenge the 1899 Award it had clearly supported during those six decades. That is not a persuasive argument. By the 1966 Agreement Great Britain and Guyana only recognized that Venezuela claimed (since 1962) that the 1899 Award was a nullity. It did no more than that. It certainly did not address the substance of Venezuela's claim, or the grounds on which Great Britain and Guyana could oppose it, or Venezuela's right to raise it 60 years later. It is now for the Court to determine whether Venezuela is precluded from challenging the validity of the Award on the same bases it could have asserted in 1899 or at any time shortly thereafter □ or 60 years later. The Geneva Agreement did not revive a right that had long been lost. It did not create a new right.

B. Independent validity of the 1905 Boundary Agreement

58. Mr President, it is Guyana's submission that both the 1899 Award and the 1905 Agreement are fully valid and that no grounds exist for challenging the legal validity of either. However, we should underscore that the 1899 Award and the 1905 Boundary Agreement are two legally distinct juridical acts, and any possible defect affecting the validity of one of them has no bearing on the validity of the other. As stated by the arbitral tribunal in the *Laguna del Desierto* case, between Argentina and Chile: "A decision on a frontier dispute and its demarcation are two distinct acts, each of which has its own legal force."¹²⁴

59. Venezuela has not disputed □ and could not dispute — the validity of the 1905 Agreement, which has stood as a valid treaty for more than 115 years. In any event, by 1962 and pursuant to the principle reflected in Article 45 of the Vienna Convention on the Law of Treaties, Venezuela had lost the right to invoke any grounds for invalidating the 1905 Agreement because of its prolonged acceptance not only of the Award but also, and particularly, of the 1905 Agreement itself.

60. Moreover, as a boundary agreement, the agreed boundary has a life independent of the treaty. As the Court explained in its

¹²⁴ *Case concerning a boundary dispute between Argentina and Chile concerning the frontier line between boundary post 62 and Mount Fitzroy*, Decision of 21 October 1994, United Nations, *Reports of Arbitral Awards (RIAA)*, Vol. XXII, p. 24, para. 67 (*Laguna del Desierto*).

2007 ruling on preliminary objections in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*,

“it is a principle of international law that a territorial régime established by treaty ‘achieves a permanence which the treaty itself does not necessarily enjoy’ and the continued existence of that régime is not dependent upon the continuing life of the treaty under which the régime is agreed”¹²⁵.

61. Venezuela’s failure to challenge the Boundary Agreement and the boundary it established for 57 years between 1905 and 1962 constitutes its acquiescence and results in its forfeiture, under Article 45 (b) of the Vienna Convention on the Law of Treaties, of any right to challenge their validity.

62. Venezuela cannot avoid these consequences by arguing that it is not a party to the Convention. In *Somalia v. Kenya*, the Court held

“that under customary international law, reflected in Article 45 of the Vienna Convention, a State may not invoke a ground for invalidating a treaty . . . if, after having become aware of the facts, it must by reason of its conduct be considered as having acquiesced in the validity of that treaty”¹²⁶.

63. Mr President, in conclusion, the evidence is resoundingly clear that from the very instant when the 1899 Award was delivered some 127 years ago □ until 1962, Venezuela constantly accepted, recognized, complied with and insisted on strictly following the Award. It was well aware of any possible grounds for challenging the award. As much as Venezuela now denies this, its officials repeatedly expressed their satisfaction and depicted the outcome as a victory having gained the most valuable part of the disputed territory, the mouth of the Orinoco River.

¹²⁵ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2007 (II), p. 832, p. 861, para. 89.

¹²⁶ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 3, p. 24, para. 49.

64. Mr President, Members of the Court, this is the end of my presentation. I thank you for your courtesy, and I ask that you invite Guyana's next speaker, Professor Philippe Sands KC, to the podium, but perhaps after a coffee break.

The PRESIDENT: I thank Professor Oral. Before I give the floor to the next speaker, the Court will indeed observe a break of 15 minutes. The hearing is suspended.

Court adjourned from 4.30 p.m. to 4.45 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite Professor Philippe Sands to address the Court. You have the floor, Sir.

Mr SANDS:

THE MALLET-PREVOST MEMORANDUM

1. Mr President, Members of the Court, it is truly an honour for me to appear in this case on behalf of Guyana, a case that is of such importance for this country.

2. I am going to address the document that has come to be known as the Mallet-Prevost memorandum. The story of this document is so fantastical it could rather feature in a novel by Gabriel García Márquez, or an opera by Verdi. And the document is, of course, to a very great extent, the basis for Venezuela's contention of the nullity of the 1899 Award, first evoked only in 1962. Yet the memorandum's origin — and its purpose — are shrouded in uncertainty and mystery. Indeed, even its very existence is open to question.

3. Two things are clear. First, the memorandum is not an accurate or reliable account of events relating to the 1899

Arbitration. And second, it provides no support whatsoever for Venezuela's claim that the 1899 Award is a nullity. As I will show, far from being a true and authoritative account, the memorandum is simply a mishmash of unreliable anecdotes, a farrago of entirely groundless speculation and outlandish allegations about a so-called illicit Anglo-Russian "deal", one that is said to have been secretly conceived, and then consummated, during the Arbitration.

4. The memorandum purports to describe events that occurred in 1899, during the conduct of the proceedings. Yet it was apparently written almost half a century later, and it took even longer to see the light of day and be made vaguely public. It was said to have been created in the mid-1940s by a partisan author, a lawyer who purported to recount events and conversations which had allegedly taken place more than four decades earlier, and who □ for reasons known only to himself □ insisted that the memorandum and its contents must remain secret until after his death. It is a most curious document, replete with demonstrable inaccuracies and devoid of any credible or corroborated new information about the Arbitration. In short, it is about as far from an independent and reliable account of events as it is possible to get.

I. The origin of the Mallet-Prevost memorandum

5. Before addressing its content, let me say something about its origins. The story begins — or maybe it is more accurate to say ends — in July 1949, when an article appeared in the *American Journal of International Law* by an American lawyer named Otto Schoenrich, who happened to be a retired partner of the Curtis, Mallet-Prevost law firm¹²⁷. Mr Schoenrich's article purported to recite the contents of a document supposedly produced five years earlier, in 1944, by one Mr Severo MalletPrevost.

6. Some 45 years earlier, Mr Mallet-Prevost had been a member of Venezuela's legal team at the 1899 Arbitration in Paris. Prior to that Arbitration, he had spent several years as the Secretary to the US President Grover Cleveland's Commission on the

¹²⁷ Otto Schoenrich, "The Venezuela-British Guiana Boundary Dispute", *The American Journal of International Law*, Vol. 43, No. 3 (July 1949), p. 523. MMG, Vol. III, Annex 1.

Boundary Between Venezuela and British Guiana. As a young lawyer, Mr Mallet-Prevost had spent years studying, developing and advocating Venezuela's territorial claims in respect of the Essequibo region.

7. In later life, Mr Mallet-Prevost became a partner in the same American law firm as Mr Schoenrich. And, according to Mr Schoenrich's article, in February 1944 Mr Mallet-Prevost produced a memorandum which purported to recount certain experiences and impressions of the 1899 Arbitration. Now that document was allegedly "found among his papers" following his death in December 1948. And it was supposedly accompanied by an instruction that it not be made public while Mr Mallet-Prevost was still alive. After his death, Mr Schoenrich, by unexplained means, somehow obtained the memorandum from Mr Mallet-Prevost's archives, and then submitted an article to the *American Journal of International Law* which purported to posthumously publish the text of the memorandum. It is a sort of groundhog day here: last year I appeared before you in a case concerning a treaty that no one could find or had seen, this year it is a document that no one could find or had seen.

8. One of the many curious features of the supposed memorandum is that the *only* evidence that exists about it is in the article written by Mr Mallet-Prevost's former colleague in 1949. The original memorandum has never been located or produced or seen by any other human being. Indeed, apart from Mr Schoenrich, no one has seen this memorandum. It has disappeared without a trace — assuming it ever existed at all. There is no evidence before this Court to show that the supposed document might have been anything other than a figment of Mr Schoenrich's fertile imagination. Nor is there any explanation whatsoever as to why Venezuela waited 13 years before the outing of the supposed memorandum, in 1949, before it did anything at all. As Professor Oral has said, throughout those 13 years between 1949 and 1962, Venezuela continued faithfully to accept, respect and apply the Award and the 1905 Agreement that drew the boundary. It did not act on the memorandum, nothing.

9. Notwithstanding this behaviour, Venezuela now places great weight on a supposed memorandum that no living person has

ever seen; that is said to have been written 82 years ago; and which claims to describe alleged events that occurred 127 years ago.

10. Nevertheless, and we would say, improbably, Venezuela asserts in its Rejoinder — without any caveat — that the memorandum “is the first eyewitness testimony of the unlawful process leading to the 1899 Award”¹²⁸. And it asserts that it was only because of the publication of the memorandum that what it calls “the ‘inner history’ of the 1899 Award came to light”¹²⁹. Those are its words. The memorandum, in Venezuela’s words, “reveals . . . what until then was only assumed: that the 1899 Award had nothing to do with an award based on the application of international law”¹³⁰. According to Venezuela’s Counter-Memorial, “[t]he Mallet-Prevost Memorandum of July 1949, in disclosing a ‘fait nouveau’, changed everything”¹³¹. In other words, they seem to be saying, but for this memorandum, we would not be here gathered today.

11. Since Venezuela places so much reliance on the memorandum, my speech will proceed on the assumption, but it is only that, that the memorandum somehow existed and that its contents were as described in the 1949 article. But since the original has never been located or produced, that is only an assumption; it is not an admission. In the 77 years since the publication of the 1949 article, the existence and authenticity of the supposed memorandum have never been corroborated, and it is highly doubtful that they ever will be.

12. But let us assume, hypothetically, that the memorandum did exist, what do we know about its origins and purpose? The answer is: very little. The text of the so-called memorandum itself says nothing whatsoever about why or in what circumstances it was created. In the 1949 article, Mr Schoenrich claims that, following a conversation about the 1899 Arbitration with Mr MalletPrevost in early 1944, Mr Schoenrich had urged Mr Mallet-Prevost to produce

¹²⁸ RV, p. 225.

¹²⁹ RV, para. 6.71.

¹³⁰ *Ibid.*

¹³¹ CMV, para. 7.25.

a written account of the matters they had discussed, and that his colleague had subsequently done this. Note, there is no indication of any verbatim record, any contemporaneous notes or anything like that. Beyond Mr Schoenrich's brief words, however, there is no evidence whatsoever about why Mr Mallet-Prevost suddenly decided, in February 1944 — at the age of 84, and just four years before his death¹³² — to supposedly put pen to paper.

13. Nor does the memorandum offer any insight as to why Mr Mallet-Prevost was apparently unwilling for the matters described in the memorandum to be made public during the remaining four years of his life. His reluctance to publicly stand by the claims in the memorandum is striking; it is unexplained, and inferences can be drawn.

14. One thing we do know, however — amazing coincidence — is that just one month before he purportedly wrote the memorandum in February 1944, Venezuela had conferred its highest national award on him: the Order of the Liberator. That decoration, personally presented to Mr Mallet-Prevost by Venezuela's President in January 1944, was bestowed in recognition of his services as a “long-standing . . . friend and adviser”¹³³ to Venezuela.

15. In the words of Venezuela's Ambassador to the United States, the honour recognized “the high estimation in which the Venezuelan people hold and will always hold” Mr Mallet-Prevost, “to whom Venezuela owes a long-standing debt”¹³⁴. According to Mr Schoenrich's 1949 article, the decoration was specifically

¹³² See Obituary of Mr Mallet-Prevost, *New York Times*, 11 December 1948. Available at <https://www.nytimes.com/1948/12/11/archives/-viallet-prevost-legal-leader-88-lawyer-a-founder-of-the-pan-i.html>.

¹³³ Speech by the Venezuelan Ambassador to the United States to the Pan-American Society of the United States (1944). MMG, Vol. II, Annex 9.

¹³⁴ *Ibid.*

conferred on the gentleman “in recognition of his services in connection with the boundary dispute”¹³⁵.

16. In the absence of any explanation from Mr Mallet-Prevost about what prompted him, in February 1944, to produce the memorandum, it is difficult to escape the reasonable inference that it might somehow have been connected to his receipt of that prestigious Venezuelan accolade just a few weeks earlier. What is certain is that Mr Mallet-Prevost was, throughout his life, a loyal servant of Venezuela, whose commitment to Venezuela’s territorial claims was celebrated and recognized with Venezuela’s highest civilian honour. As a senior official in the British Government noted shortly after Venezuela first raised its contention of nullity in the early 1960s, the Mallet-Prevost memorandum represents “an aged lawyer’s flights of fancy” produced while “he was suffering from the immediate after-effect of the receipt of a high Venezuelan decoration”¹³⁶. This is a colourful description but, we would say, it is apt.

17. As a dedicated servant of, and advocate for, Venezuela, Mr Mallet-Prevost was no doubt disappointed that Venezuela had not been awarded even more territory by the 1899 Award. Indeed, in a December 1899 letter, from Mr Olney to US President Grover Cleveland, the writer described Mr Mallet-Prevost as being consumed by “intense wrath and bitterness of soul at the course and decision of the Arbitral Tribunal”¹³⁷. There is no indication that Mr Mallet-Prevost’s wrath and bitterness about the Award subsequently diminished.

18. But on any view, it cannot seriously be disputed that the supposed memorandum was not written by a man who can be said

¹³⁵ Otto Schoenrich, “The Venezuela-British Guiana Boundary Dispute”, *The American Journal of International Law*, Vol. 43, No. 3 (July 1949), p. 526. MMG, Vol. III, Annex 1.

¹³⁶ United Kingdom, Department of External Affairs, *Memorandum: Venezuelan Claim to British Guiana Territory*, No. CP(64)82 (25 Feb. 1964) (emphasis omitted). MMG, Vol. II, Annex 26.

¹³⁷ Extract from letter from Richard Olney to President Grover Cleveland (27 December 1899) quoted in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 43. CMV, Vol. III, Annex 150.

to have been independent of Venezuela or impartial, if indeed it was ever written at all. On the contrary, he was an impassioned, devoted, lifelong friend, servant and advocate for Venezuela.

II. The inaccurate and unreliable contents of the memorandum

19. Whatever its true provenance, one thing about the supposed Mallet-Prevost memorandum is crystal clear: on its own terms it is not — and cannot be treated as — an accurate and reliable account of events. Indeed, the memorandum contains numerous factual inaccuracies.

20. I will just limit myself to one glaring example. The supposed memorandum describes how Mr Mallet-Prevost attended a dinner in London in January 1899, during which he spoke with Lord Russell about international arbitration. According to the memorandum, Lord Russell told Mr Mallet-Prevost that “international arbitration should . . . take into consideration questions of international policy” rather than being determined exclusively on legal grounds. The memorandum goes on to state — you will be able to now see it on the screen — “[f]rom that moment I knew that we could not count upon Lord Russell to decide the boundary question on the basis of strict rights”¹³⁸.

21. Now, there is a little problem with the timing of this memorandum: at the date of the alleged dinner and the conversation between Mr Mallet-Prevost and Lord Russell, in January 1899, Lord Russell had no connection with the Arbitration concerning the boundary between Venezuela and British Guiana. The two British arbitrators appointed to the Arbitral Tribunal under the Treaty of Washington were Lord Herschell and Lord Justice Collins. If Lord Russell had been an arbitrator, perhaps — but not even necessarily — there may have been some interest in some words he may have said. But he was not an arbitrator. He was not a participant in the Arbitration at that time.

¹³⁸ Otto Schoenrich, “The Venezuela-British Guiana Boundary Dispute”, *The American Journal of International Law*, Vol. 43, No. 3 (July 1949), p. 529. MMG, Vol. III, Annex 1 (emphasis added).

22. It was only after Lord Herschell's unexpected and untimely death following an accident in March 1899 — two months after the supposed dinner conversation recounted in the memorandum — that Lord Russell was appointed to the Tribunal in place of the late Lord Herschell. At the date of Mallet-Prevost's conversation with Lord Russell in January 1899, Lord Russell had no role in the Arbitration, and no one — including Mr Mallet-Prevost — could have had any reason to imagine that he might become involved. It follows that the claim in the memorandum that, “[f]rom that moment” Mr Mallet-Prevost knew Venezuela could not rely upon Lord Russell to determine the boundary question based on strict rights is a claim which cannot be true.

23. Shortly after the publication in 1949 of Mr Schoenrich's article, a British researcher and official, Clifton Child, undertook a detailed analysis of the claims contained in the memorandum. Child's critique was published in the *American Journal of International Law* in 1950. It is blunt and it is scathing on the accuracy of the memorandum's supposed claims. As Child notes, it was “sheer nonsense for Mr Mallet-Prevost to suggest that, from the moment when he dined with the Lord Chief Justice in January [1899], he knew that he could not count upon the latter to be fair”¹³⁹.

24. Child's 1950 article identified this as but one of several “major errors” in the memorandum¹⁴⁰. Child identified various “misstatements of fact in Mr Mallet-Prevost's narrative which also show how badly his memory must have served him”¹⁴¹. Pause: he was 84 years old at the time he supposedly wrote the memorandum. These included, for instance, inaccuracies regarding the timing and duration of the Tribunal's hearings and its recesses. Through a careful examination of the facts, Mr Child's article — which is well worth reading (you can find it at tab 8.1 of your folders) — lays bare the complete unreliability of the memorandum on its own

¹³⁹ Clifton J. Child, “The Venezuela-British Guiana Boundary Arbitration of 1899”, *American Journal of International Law*, Vol. 44, No. 4 (1950), p. 684. MMG, Vol. III, Annex 3.

¹⁴⁰ *Ibid.*, p. 683.

¹⁴¹ *Ibid.*, p. 685.

grounds and provides a comprehensive rebuttal of the claims set out in it.

III. The memorandum's claim of a secret Anglo-Russian "deal"

25. The most serious allegation in the supposed memorandum is that during the Arbitration proceedings, Great Britain and Russia somehow struck a secret "deal" concerning the outcome of the Arbitration, which the President of the Tribunal, Mr Martens, and the two British arbitrators then conspired to foist upon the two hapless Americans. The memorandum claims that during a recess in August 1899, "the two British arbitrators returned to England and took Mr Martens with them", and that it was during that visit that Russia and Great Britain concluded a secret deal regarding the outcome of the Arbitration.

26. So, a reasonable person asks themselves the question: what is the evidence in the memorandum in support of a pretty serious charge? The answer is: nothing. There is nothing. Well, not quite nothing. What is there? What there is, is Mr Mallet-Prevost's belief that following that break in the Arbitration there was what he called a "noticeable" change in the demeanour of one of the two British arbitrators, Lord Justice Collins.

27. Writing in 1944, Mr Mallet-Prevost claimed to recall that, prior to that recess, Lord Justice Collins had asked "numerous questions . . . which were critical of the British contentions and gave the impression that he was leaning toward the side of Venezuela". After the recess, however, Lord Justice Collins "asked very few questions and his whole attitude was entirely different from what it had been". This alone is what led Mr Mallet-Prevost to believe that "something must have happened in London to bring about the change". He surmised that the change in Lord Justice Collins' demeanour could only be explained on the basis that, "during Martens' visit to England[,] a deal had been concluded between Russia and Great Britain to decide the case along the lines

suggested by Martens and that pressure to that end had in some way been exerted on Collins to follow that course”¹⁴².

28. It is a bit like me watching you very closely over the course of a hearing, and noticing that one of you is sitting slightly differently, and that is all I have got. It is hopeless. There is no evidence before the Court to support that contention. Not a shred. Nothing at all. Mr Mallet-Prevost’s claim of a secret Anglo-Russian deal is a concocted fantasy. The suggestion that two of Great Britain’s most senior judges and one of the world’s foremost international jurists secretly colluded to force a political deal on two of the most senior judges from the United States is completely unsupported by evidence and (to put it mildly) inherently improbable. Indeed, Venezuela only belatedly invokes, in the Rejoinder, a passing line in one biographical entry claiming that Lord Collins “successfully defend[ed] the interests of the Foreign Office in [the] boundary dispute” with Venezuela¹⁴³. But even taken at its highest, this line says nothing about a sudden change in Lord Collin’s demeanour, or his conduct during the Arbitration, or a supposed “deal” with Russia.

29. There is no documentary or other evidence to support this extraordinary allegation. The absence of any documentary corroboration is confirmed by a painstakingly researched biography of Professor Martens produced by the eminent Russian international lawyer Vladimir Pustogarov.

Pustogarov explains that,

“in working with the archival materials of the Russian Ministry of Foreign Affairs connected with Martens’ activity, *not the slightest trace was discovered of a ‘deal’ between England and Russia* or that Martens, the President of the Tribunal, received instructions regarding the case from his own Government. On the contrary, the diary entries of Martens testify that he acted

¹⁴² Otto Schoenrich, “The Venezuela-British Guiana Boundary Dispute”, *The American Journal of International Law*, Vol. 43, No. 3 (July 1949), p. 530. MMG, Vol. III, Annex 1.

¹⁴³ RV, para. 6.65.

in the arbitral tribunal autonomously and independently.
They contain no indications at all of the ‘deal’ ascribed to him.”¹⁴⁴

30. It is a similar conclusion as that reached by Mr Child back in 1950, in his meticulously researched critique of the claims made in the Mallet-Prevost memorandum. Mr Child explained that his research had established that,

“in the fifteen bound volumes of British Foreign Office papers relating to the arbitration and in the almost equally voluminous dispatches and telegrams which passed between London and St. Petersburg during this period[,] *there is not one single document which by the widest stretch of the imagination could be considered to indicate a ‘deal’ between Great Britain and Russia* of the sort suspected by Mr Mallet-Prevost”¹⁴⁵.

31. Beyond that, the allegation is totally inconsistent with the contemporaneous records produced by some of the arbitrators during the proceedings. For instance, Professor Martens himself described in his private diary how the two British arbitrators:

“were apparently angry that 1) under my influence they had to waive something that . . . they considered already belonged to them and 2) that due to the unanimity which I persistently demanded they had to make concessions to the Americans”¹⁴⁶.

32. Professor Martens’ contemporaneous diary entries describe the extent to which he successfully persuaded the British arbitrators to make *concessions* which would result in Great Britain receiving substantially less territory than the British arbitrators

¹⁴⁴ Vladimir Vasilevich Pustogarov & William E. Butler, *Our Martens — F.F. Martens, International Lawyer and Architect of Peace* (Kluwer Law International, 2000), pp. 210-211 (emphasis added). Available at <https://peacepalace.on.worldcat.org/oclc/1062360873>.

¹⁴⁵ Clifton J. Child, “The Venezuela-British Guiana Boundary Arbitration of 1899”, *American Journal of International Law*, Vol. 44, No. 4 (1950), p. 687. MMG, Vol. III, Annex 3 (emphasis added).

¹⁴⁶ *Private Diary Entries* of Professor Fyodor Fyodorovich Martens (4 June 1899-3 Oct. 1899), p. 10. MMG, Vol. III, Annex 33.

considered it should receive. For example, Professor Martens described how, during the Tribunal's intensive deliberations, Lord Russell "waived his line, ceding a significant area to the Venezuelans. Further to the south, after my question, he again waived what he demanded"¹⁴⁷. These are not the words of a man intent on colluding with the British arbitrators to impose a preordained outcome on Venezuela, one that overwhelmingly favoured Great Britain at the expense of Venezuela.

33. The memorandum's claim that Professor Martens and the British arbitrators travelled to England during the August 1899 recess is also unsupported by any evidence. As Guyana explained in its Memorial¹⁴⁸, throughout the Arbitration proceedings the press reported on the movements of members of the Tribunal. Yet although there were reports that Lord Russell had travelled to England during the recess when the "deal" was said to have been made, there is no report or record of either Lord Justice Collins or Professor Martens having made a trip to England during that recess. It is therefore unlikely that they did so. In fact, none of the five August 1899 entries in Professor Martens' diaries mention any trip to London; the entry for 15 August 1899 confirms that he was in France and the 27 August 1899 entry records him as heading to The Hague to sign the acts of the first Peace Conference¹⁴⁹.

34. Nor is there any evidence to support a sudden change in the attitude of Lord Justice Collins after that recess. Venezuela acknowledges in its Rejoinder that the memorandum's claim about a change in the attitude of Lord Justice Collins is based exclusively on Mr MalletPrevost's recollection in 1944, that it is nothing more than "impressions"¹⁵⁰, supposedly formed 45 years earlier and never forgotten. Those "impressions" are not supported by any facts. As Mr Child explained, a detailed analysis of the record of the oral proceedings shows no appreciable change in either the frequency or the nature of Lord Justice Collins' interventions before

¹⁴⁷ *Ibid.*, p. 11.

¹⁴⁸ MMG, Vol. I, para. 8.88.

¹⁴⁹ Private Diary Entries of Prof. Fyodor Fyodorovich Martens (4 June 1899-3 October 1899), pp. 5-8. MMG, Vol. III, Annex 33.

¹⁵⁰ See RV, para. 6.65.

and after the recess¹⁵¹. Mr Mallet-Prevost's "impressions" about a change in Lord Justice Collins' demeanour are — we submit — a figment of a partisan imagination.

35. Apart from these points, the claim of a secret Anglo-Russian deal is very hard to square with the state of diplomatic relations between Russia and Great Britain in 1899. As a result of the Transvaal crisis, in southern Africa, which culminated in the outbreak of the Second Boer War in October 1899, tensions were running high and the relationship between Great Britain and Russia was under intense strain throughout that year¹⁵². Against this backdrop, the suggestion that these two countries might have entered a secret deal regarding the outcome of the 1899 Arbitration is — we say — fanciful. As Mr Child explained:

“Had Mr Mallet-Prevost reflected for a moment upon the state of relations between Great Britain and Russia in the summer of 1899 he must inevitably have realized how difficult, if not impossible, from a political point of view, a ‘deal’ between the two countries would have been.”¹⁵³

36. Finally, the claim of a secret Anglo-Russian deal cannot be reconciled with the outcome of the Arbitration. As you know, the Award determined that the mouth of the Orinoco River belonged to Venezuela. This was an outcome which, in the words of the Mallet-Prevost memorandum itself, “gave to Venezuela the most important strategic point at issue”¹⁵⁴. The day after the Award was delivered, Mr Mallet-Prevost and former US President Benjamin Harrison publicly emphasized that “[n]o portion of the entire territory

¹⁵¹ Clifton J. Child, “The Venezuela-British Guiana Boundary Arbitration of 1899”, *American Journal of International Law*, Vol. 44, No. 4 (1950), p. 685. MMG, Vol. III, Annex 3.

¹⁵² See MMG, Vol. I, para. 8.90.

¹⁵³ Clifton J. Child, “The Venezuela-British Guiana Boundary Arbitration of 1899”, *American Journal of International Law*, Vol. 44, No. 4 (1950), p. 688. MMG, Vol. III, Annex 3.

¹⁵⁴ Otto Schoenrich, “The Venezuela-British Guiana Boundary Dispute”, *American Journal of International Law*, Vol. 43, No. 3 (July 1949), p. 530. MMG, Vol. III, Annex 1.

possessed more strategic value . . . both from a commercial and a military standpoint” as the mouth of the Orinoco River¹⁵⁵. Professor Oral has already taken you through this text. A similar sentiment was expressed by none other than Venezuela’s Foreign Minister on 7 October 1899, when he declared: “Greatly indeed did justice shine forth when in the determination of the frontier we were given the exclusive dominion over the Orinoco which was the principal aim we sought to achieve through[out] the arbitration.”¹⁵⁶

37. The suggestion that Russia and Great Britain hatched a secret deal to illicitly benefit Great Britain, but which awarded the most prized strategic asset of all to Venezuela, is hardly persuasive.

38. While the allegation of a secret Anglo-Russian deal is outlandish, it is also instructive — for it starkly demonstrates the unreliability of the claims made in the memorandum, which contains much by way of speculation and nothing by way of substance. It is long on fantasy and short on facts. It lay dormant for 13 years after its publication. In the years since 1962, Venezuela has used it repeatedly to generate heat and smoke, but no light and no illumination.

IV. The alleged meeting between Mr Mallet-Prevost and the American arbitrators during the Tribunal’s deliberations

39. And that brings me to the claims in the memorandum regarding the meeting which is said to have taken place between Mr Mallet-Prevost and the two American arbitrators while the Tribunal was deliberating. According to the memorandum, Mr Mallet-Prevost was called to meet with the two American arbitrators, who told him that the British arbitrators were inclined to rule that the boundary followed the Schomburgk Line, but that Professor Martens was “anxious to have a unanimous decision; and if we agree to accept the line which he proposes he will secure the

¹⁵⁵ “Declarations from Mallet-Prevost and General Harrison, Venezuelan’s Agents before the 1899 Tribunal”, *The Times* (4 Oct. 1899), p. 6. Available at <https://tinyurl.com/y2nx9mj8>.

¹⁵⁶ Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 October 1899). MMG, Vol. II, Annex 3.

acquiescence of Lord Russell and Lord [Justice] Collins and so make the decision unanimous”. The memorandum alleges that the American arbitrators asked for Mr Mallet-Prevost’s “advice” on whether they should agree to Martens’ proposal. According to Mr Schoenrich’s account, Mr Mallet-Prevost then consulted with Venezuela’s lead counsel, former President Harrison, before advising the American arbitrators that Venezuela’s position was that they should concur in the proposal¹⁵⁷.

40. The account of these alleged discussions between Mr Mallet-Prevost, a counsel, and the two American arbitrators, is uncorroborated. It finds no support in the accounts of the Tribunal’s deliberations given by either of the American arbitrators, or in any other documents. The notion that someone of that age could recall, verbatim, sequences said to have been spoken half a century earlier is, to say the least, improbable.

41. It is also instructive to note that, in the aftermath of the Arbitration, Mr Mallet-Prevost apparently made statements on the Arbitration with which the American arbitrators did not agree. A letter from Secretary of State Olney dated 6 March 1901, for example, records that

“I see that Mr Mallet-Prevost has been talking with you and giving you his account of the way in which the Venezuelan boundary award was made. He told me, I suppose, practically the same tale. I found, however, *in talking with Chief Justice Fuller last Fall that he did not fully concur in Mr Mallet-Prevost’s views.*”¹⁵⁸

42. But there is even more: even if the claim about the discussions between Mr Mallet-Prevost and the American arbitrators was true, and even if the words were accurate, it would provide no support for Venezuela’s contention of nullity. Allow me to highlight two points.

¹⁵⁷ Otto Schoenrich, “The Venezuela-British Guiana Boundary Dispute”, *The American Journal of International Law*, Vol. 43, No. 3 (July 1949). MMG, Vol. III, Annex 1, pp. 529-530.

¹⁵⁸ Letter from Mr Olney to Mr Cleveland (6 March 1901). RG, Vol. III, Annex 28 (emphasis added).

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53. First, there is nothing irregular about the description of the Tribunal's discussions and deliberations. The fact the Tribunal's deliberations involved a series of mutual concessions and compromises facilitated by the President will hardly come as a surprise to anyone involved in international judicial or arbitral work, still less an irregularity. As any international judge or international arbitrator knows, discussion, negotiation, compromise, give-and-take are the hallmarks of judicial adjudication. That is especially so where the matter to be determined is not one that involves a binary yes/no outcome, but rather a matter — such as the drawing of an international boundary line — with innumerable possible permutations. There is nothing unusual about a panel of arbitrators initially holding diverging views on the correct outcome of a case, before ultimately coalescing around one outcome, following a process of discussion, negotiation, compromise, usually brokered by the tribunal's chair or president. That is, we would say, the very essence of a collegial approach.

44. Second, even if the alleged exchanges between Mr Mallet-Prevost and the American arbitrators did happen in the way described in the memorandum □ and there is no evidence before you that they did □ it does not lie in Venezuela's mouth to complain about them. The alleged exchanges took place between arbitrators appointed *on behalf of Venezuela* and counsel *instructed by Venezuela* to represent and argue *Venezuela's case* at the Arbitration. According to the memorandum, those two arbitrators wanted to know *Venezuela's preferred outcome*. Having obtained that information from Venezuela's lawyer, the arbitrators appointed on behalf of Venezuela then allegedly proceeded to act in accordance with *Venezuela's stated preference*. There is nothing in the memorandum, no suggestion, that the arbitrators appointed by Great Britain, or the British lawyers representing Great Britain, were party to any of these discussions.

45. In these circumstances, we submit it is simply not open to Venezuela to argue that the alleged but uncorroborated communications between Mr Mallet-Prevost, one of its own counsel, and the two American arbitrators, who they appointed, vitiate the validity of the 1899 Award. There is no suggestion by

Venezuela that Mr Mallet-Prevost acted contrary to Venezuela's interests or without its authority.

46. Nor is there any suggestion that the American arbitrators acted against Venezuela's interests. On the contrary, the memorandum claims that they acted consistently with Venezuela's wishes and endorsed an Award which gave Venezuela the most prized asset of all. It follows that even if the alleged conversations between those arbitrators and Mr Mallet-Prevost happened as described in the memorandum □ and there is no evidence before you that they did □ this could not affect the validity of the Award.

V. Conclusion

47. I turn to my conclusions. Ever since Venezuela first claimed nullity in 1962, it has placed great weight on the Mallet-Prevost memorandum. But even a cursory analysis of its claims makes clear that the document simply cannot bear the weight which Venezuela seeks to place upon it. As a source of credible evidence about what happened at the 1899 Arbitration, the value of the supposed document is zero. If you were to conclude otherwise, you would be opening the door to more mischief in the future.

48. I will not be around in 44 years, but hopefully my colleague Mr Craven - who you will hear from shortly - will still be around. Imagine him writing an analogous memorandum in 2070, alleging a conversation with one of you in this case, which is later found in his papers, after his death, and then causes one of his colleagues to write a law review article, a more junior colleague from his chambers, and more than a decade later, at some point in the 2080s, that memorandum is relied upon by Guyana to come back to this Court, to seek to reopen whatever judgment you will give in this case. I am sorry, but that is an absurd scenario. But that is what they are arguing. That is what Venezuela relies on today.

49. What will Venezuela say on Wednesday about a memorandum said to have been produced almost half a century after the conversation, meetings and impressions which it purports to describe? What on earth is Venezuela going to say about a supposed document that may — or may not — have been authored by an individual with a deep allegiance to Venezuela, who had spent years advocating for Venezuela's claims to the territory in dispute,

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and whose loyal commitment to Venezuela had just been recognized through a prestigious national decoration? What on earth is Venezuela going to say about the identity and motives of the supposed memorandum's supposed author, and the circumstances and timing of its supposed creation? And what is Venezuela going to say about 13 years of silence after the supposed memorandum was revealed in the American journal? Mr President, Venezuela has opened before us a world of theatre and fiction, not law, not fact.

50. The claim of a secret Anglo-Russian deal is wholly unsupported by any evidence. Claims about Mr Mallet-Prevost's conversations are demonstrably untrue or wholly uncorroborated. Even if they ever took place — and there is no reliable evidence that they did — they provide no support whatsoever for any contention of nullity.

51. In a nutshell, this document — this supposed document — is a giant red herring. It does not support Venezuela's attack on the validity of the 1899 Award. Its only real value, we say, is to confirm that that attack is entirely devoid of any substance whatsoever.

52. Mr President, distinguished Members of the Court, Guyana trusts that you will deliver the final word on Venezuela's embrace of a regional principle of magical realism. This is the stuff of a novel; it is not the stuff of a pleading before this Court. I thank you for your patient attention and now ask you to call the very youthful Mr Craven to the podium.

The PRESIDENT: I thank Professor Sands. I now give the floor to Mr Edward Craven. You

have the floor, Sir.

Mr CRAVEN:

**VENEZUELA’S VIOLATION OF THE COURT’S
PROVISIONAL MEASURES ORDERS AND
GUYANA’S SUBMISSIONS**

1. Mr President, Members of the Court, it is an honour to appear before you, and a privilege to address you on behalf of Guyana.

2. In this final speech of Guyana’s first round, I will address three issues: *first*, Venezuela’s repeated violations of the Court’s provisional measures Orders; *second*, the remedies required for those violations; and *third*, Guyana’s submissions in relation to the validity of the 1899 Award and the related question of the location of the Parties’ land boundary.

A. Venezuela’s violation of the Court’s provisional measures Orders

3. Mr President, one theme which emerges very clearly from both the written pleadings and the speeches you have heard today is Venezuela’s wilful *disregard* for the Court’s judgments. Venezuela makes no secret of the fact that it rejects the Court’s judgment on jurisdiction, and I need not repeat what Professor d’Argent said on this earlier today.

4. You will recall that, in addition to continuing to dispute the Court’s *jurisdiction* in its Counter-Memorial and Rejoinder, Venezuela’s Government held a nationwide referendum in December 2023 to seek and obtain support for “Venezuela’s historic position of not recognizing the Jurisdiction of the International Court of Justice to resolve the territorial dispute over Guayana Esequiba”¹⁵⁹.

5. In the two and a half years since that referendum, Venezuela has repeatedly declared that it does not recognize the Court’s

¹⁵⁹ Republic of Venezuela, National Electoral Council, Resolution on Referendum to be held on 3 December 2023 (20 October 2023). See the Court’s translation of this document in *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures, Order of 1 December 2023, I.C.J. Reports 2023 (II)*, p. 661, para. 15.

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jurisdiction in this case. Indeed, less than 48 hours before the start of this hearing, the Venezuelan Government issued a press release, which you will find behind tab 9.1 of your judges' folders. That press release states, as you see on the screen:

“Faithful to its historical position and the popular mandate expressed in the consultative referendum of December 3, 2023, Venezuela ratifies that it does not recognize the jurisdiction of the Court in the territorial dispute over Guayana Esequiba, nor the decision it may adopt on this matter. Therefore, its attendance at these oral hearings does not imply, in any way, its consent or recognition of said jurisdiction.”¹⁶⁰

6. Now, regrettably, as well as repudiating the Court's jurisdiction and declaring publicly that it will not accept the Court's final Judgment, Venezuela has also overtly and repeatedly rejected and violated the Court's provisional measures Orders. The Court has made two such Orders in these proceedings, following requests by Guyana which were prompted by Venezuela's explicit threats to Guyana's sovereignty and its territorial integrity. Venezuela has wilfully and flagrantly breached both Orders.

7. In October 2023, Venezuela announced plans to conduct the national referendum to which I just referred. In addition to the question inviting support for Venezuela's repudiation of the Court's jurisdiction, the proposed referendum also included a question concerning Venezuela's plans for “the creation of the Guayana Esequiba State”, and the development of

“an accelerated and comprehensive plan . . . for the present and future population of that territory, including, *inter alia*, the granting of Venezuelan citizenship and identity cards . . . consequently incorporating that State into the map of Venezuelan territory”¹⁶¹.

¹⁶⁰ Government of Venezuela, Press Release, 2 May 2026, available at <https://x.com/yvangil/status/2050658388175163840>, last accessed 3 May 2026) (Guyana's translation).

¹⁶¹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Provisional Measures, Order of 1 December 2023*, I.C.J. Reports 2023 (II), p. 662, para. 15.

8. Faced with that unambiguous threat to its sovereign territory, Guyana filed an urgent request for provisional measures. On 1 December 2023, the Court unanimously ordered provisional measures. The Court observed that Venezuela had made “official statements [which] suggest that

Venezuela is taking steps with a view towards acquiring control over and administering the territory in dispute”¹⁶², and that there was a real and immediate risk of irreparable prejudice to Guyana’s plausible right to sovereignty over that territory¹⁶³¹⁶³. Accordingly, the Court unanimously ordered that,

“[p]ending a final decision in the case, the Bolivarian Republic of Venezuela shall 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”¹⁶⁴¹⁶⁴.

9. The Court also unanimously ordered that “[b]oth Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve”¹⁶⁵.

10. How did Venezuela respond to that unanimous and unambiguous provisional measures Order? With immediate defiance and instant disobedience. Just two days after the Order was made, on 3 December 2023, Venezuela held the referendum which had prompted Guyana’s Request for provisional measures and the resulting Order. Just two days after that, on 5 December 2023, the Venezuelan Government announced that it would create a *Venezuelan state* of “Guayana Esequiba”¹⁶⁶.

¹⁶² *Ibid.*, p. 666, para. 36. ¹⁶³

¹⁶³ *Ibid.*, p. 666, para. 37.

¹⁶⁴ *Ibid.*, p. 668, para. 45.

¹⁶⁵ *Ibid.*

¹⁶⁶ Ministry of People’s Power for the Social Process of Labor, “Venezuela announces nine strategic actions for the protection and defense of the Essequibo”, available at <https://www.mpppst.gob.ve/mpppstweb/index.php/2023/12/05/venezuela-anuncia-nueve-acciones-estrategicas-para-la->

11. On 8 December 2023 □ just one week after the Court made its provisional measures Order — the Venezuelan President signed a series of presidential decrees which, in the words of the Court’s subsequent second provisional measures Order, were “aimed at acquiring and exercising control and administration over the territory in dispute”¹⁶⁷. In other words, aimed at doing exactly what the first provisional measures Order prohibited.

12. As the Court noted, the Venezuelan decrees (i) created a new “Comprehensive Defense Zone” in the territory; (ii) they designated a Venezuelan official as the “Sole Authority” in that territory; (iii) they authorized Venezuelan State-owned companies to grant concessions for the exploitation of oil and minerals in the territory; (iv) they ordered the territory to be incorporated in Venezuela’s official maps; (v) they declared the creation of Venezuelan national parks and environmental protection zones in the territory; and (vi) they established the so-called “High Commission for the Defense and Recovery of the Guayana Esequiba”¹⁶⁸.

13. A few weeks after those presidential decrees were promulgated, Venezuela unlawfully violated Guyanese territorial sovereignty. Its military entered Guyana’s airspace¹⁶⁹; it deployed naval forces in waters adjacent to the territory claimed by Venezuela¹⁷⁰; and it expanded military infrastructure on Ankoko Island¹⁷¹. As shown on your screens, Ankoko Island is an insular feature in the Cuyuni River, which the 1899 Award divides between the Parties. The eastern portion of the island falls within Guyana’s

proteccion-y-defensa-del-essequibo/, (Guyana’s translation, 5 December 2023, last accessed on 2 May 2026).

¹⁶⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Request for the Modification of the Order Indicating Provisional Measures of 1 December 2023, Order of 1 May 2025*, para. 27.

¹⁶⁸ *Ibid.*

¹⁶⁹ Headquarters Intelligence Corps Base Camp Ayanganna, Thomas Lands, Georgetown, *Venezuela Military Helicopter Flew Over Guayana’s Airspace* (22 December 2023). RG, Vol. III, Annex 47.

¹⁷⁰ See RG, Vol. I, para. 5.8.

¹⁷¹ *Ibid.*

territory, yet Venezuela has occupied it since 1966 and, following the Court's first provisional measures Order, it has further intensified its military presence there. That intensification was carried out in clear defiance of the Court's Order, and it constitutes an unlawful incursion of Guyana's sovereignty.

14. But Venezuela did not stop at that. On 21 March 2024, the Venezuelan National Assembly enacted a far-reaching law¹⁷² which purported to convert the territory claimed by Venezuela into a new state of Venezuela - the so-called "Guayana Esequiba" state¹⁷³. You will find a copy of that law - the Organic Law for the Defence of the Guayana Esequiba - behind tab 9.2 of your judges' folders. Amongst other things, the law purported to create executive and legislative branches for that new Venezuelan state¹⁷⁴; it purported to confer the Venezuelan courts with jurisdiction over the territory claimed by Venezuela¹⁷⁵; it required that every map of Venezuela depict the territory as an integral part of Venezuela¹⁷⁶. It also imposed a legal "duty" on all Venezuelans to "safeguard, protect and vindicate . . . Venezuela's sovereignty over the territory of the Guayana Esequiba"¹⁷⁷.

15. Mr President, short of a military intrusion into the territory, it is difficult to conceive of a more flagrant violation of the Court's first provisional measures Order. Venezuela's enactment of this law was, in substance and in intent, an attempted *de jure* annexation of the territory. By purporting to subject the territory to Venezuela's legislative, executive and judicial jurisdiction, Venezuela was quite plainly seeking, in the words of the Court's first provisional measures Order, to "modify the situation that currently prevails in the territory in dispute, whereby . . . Guyana administers and

¹⁷² Organic Law for the Defence of the Guayana Esequiba, *Official Gazette of the Bolivarian Republic of Venezuela*, Extraordinary No. 6.798 (3 April 2024). RG, Vol. III, Annex 1.

¹⁷³ *Ibid.*, Art. 9.

¹⁷⁴ *Ibid.*, Art. 11, 12, First and Second Transitory Articles.

¹⁷⁵ *Ibid.*, Art. 16.

¹⁷⁶ *Ibid.*, Art. 23.

¹⁷⁷ *Ibid.*, Art. 8.

exercises control over that area”¹⁷⁸. And Venezuela was self-evidently acting in a manner that “might aggravate or extend the dispute before the Court or make it more difficult to resolve”¹⁷⁹.

16. Venezuela’s actions prompted widespread condemnation by the international community, including a statement by the Security Council on the obligation to comply with the Court’s provisional measures Order¹⁸⁰. Venezuela ignored all this and it doubled down. In August 2024, Venezuela publicly declared that it was proceeding with “a process of affirmation of sovereignty over the disputed territory”¹⁸¹. In January 2025, the Venezuelan President announced that Venezuela would hold elections in “Guayana Esequiba” in which “the people of Guayana Esequiba” would elect a “Governor of Guayana Esequiba state”¹⁸². To be clear, Venezuela was planning to hold elections in *Guyana’s* territory - elections in which *Guyanese* citizens would be called upon to elect a *Venezuelan* governor to rule over them.

17. Venezuela’s announcements and its declarations of intent were yet further violations of the Court’s first provisional measures Order. In the face of Venezuela’s defiance of that Order and its escalating threats to Guyana’s sovereignty and territorial integrity, Guyana made a second request for provisional measures in March 2025.

¹⁷⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures, Order of 1 December 2023, I.C.J. Reports 2023 (II)*, p. 668, para. 45.

¹⁷⁹ *Ibid.*

¹⁸⁰ UNSC, *Security Council Press Statement on Guyana–Venezuela Situation*, SC/15665 (15 April 2024, last accessed on 2 May 2026) (available at <https://press.un.org/en/2024/sc15665.doc.htm>).

¹⁸¹ Presidential Elections 2024: Nicolás Maduro won, the defender of the historical rights over Guayana Esequiba (2 August 2024, last accessed on 2 May 2026) (available at <https://comisionesequibo.com.ve/?p=8023&lang=en>).

¹⁸² See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures, Order of 1 May 2025*, para. 29.

18. On 1 May 2025, the Court granted that request and made a second provisional measures Order. The Court explained, as you see on the screen, that

“by adopting legislative measures and decrees concerning the territory in dispute and by announcing the holding of elections therein, the Respondent has confirmed its intention of acquiring and exercising control and administration over the territory in dispute. The acts taken by Venezuela since 1 December 2023 further confirm that the Respondent intends to incorporate the territory in dispute into its own territory.”¹⁸³

19. The Court described Venezuela’s actions as “grave developments”¹⁸⁴. Accordingly, the Court unanimously “[r]eaffirm[ed] the provisional measures indicated in its Order of 1 December 2023, which should be immediately and effectively implemented”¹⁸⁵.

20. The Court also went on to indicate a further specific provisional measure, namely that

“[p]ending a final decision in the case, [Venezuela] shall refrain from conducting elections, or preparing to conduct elections, in the territory in dispute, which the [Guyana] currently administers and over which it exercises control.”¹⁸⁶

21. Venezuela once again flagrantly defied the Court’s Order. The day after that Order was issued, Venezuela put out a communiqué which “categorically reject[ed]” the Order¹⁸⁷. Venezuela pronounced that, “true to its historical position, *it does not and will never* recognize the jurisdiction of the International

¹⁸³ *Ibid.*, para. 38.

¹⁸⁴ *Ibid.*, para. 30.

¹⁸⁵ *Ibid.*, para. 46.

¹⁸⁶ *Ibid.*

¹⁸⁷ Press Release Government of the Bolivarian Republic of Venezuela, 2 May 2025. See Annex 1 to Guyana’s letter to the Court dated 9 June 2025. (Also available at <https://x.com/EmbaVenezUK/status/1918290458247348534> (last accessed 2 May 2026).)

Court of Justice *or abide by any decision emanating from it* to settle the territorial dispute around Guyana Esequiba, in a process that has been rigged from the beginning¹⁸⁸.

22. On 19 May 2025, the President of Venezuela declared that “Venezuela is going to elect governance of the State of Guayana Esequiba, a sovereign state of Venezuela. And it is going to elect deputies from Guayana Esequiba.”¹⁸⁹ Six days later, on 25 May 2025, the Venezuelan Foreign Minister announced that “we are electing, for the first time, the authorities who are going to represent the state of Guayana Esequiba”¹⁹⁰. The following day, the Venezuelan President proclaimed that the Venezuelan people *had* elected “a governor” of “the Essequibo”¹⁹¹.

23. Despite those statements, Venezuela did not, in fact, conduct elections in Guyana’s territory. Instead, it confined actual voting to parts of its own territory bordering Guyana. Nevertheless, by declaring that a new “governor” would be, and had been, elected for “the State [of] Guayana Esequiba, a sovereign state of Venezuela”, Venezuela had undoubtedly “prepar[ed] to conduct elections . . . in the territory in dispute” and it had clearly engaged in further conduct which “might aggravate or extend the dispute

¹⁸⁸ *Ibid.* (emphasis added).

¹⁸⁹ Declaration of Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 19 May 2025. See second document (including Guyana’s translation into English) enclosed with Guyana’s letter to the Court dated 9 June 2025. (Also available at <https://www.youtube.com/watch?v=WRFHxOtTvME> (last accessed 2 May 2026).)

¹⁹⁰ Declaration by Yván Eduardo Gil Pinto, Minister of Foreign Affairs of the Bolivarian Republic of Venezuela, 25 May 2025. See third document (including Guyana’s translation into English) enclosed with Guyana’s letter to the Court dated 9 June 2025. (Also available at <https://www.youtube.com/watch?v=Jzb6xPvEtFQ> (last accessed 2 May 2026).)

¹⁹¹ Speech of Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 26 May 2025. See fourth document (including Guyana’s translation into English) enclosed with Guyana’s letter to the Court dated 9 June 2025. (Also available at <https://www.youtube.com/shorts/ZqRbavq5MeE> (last accessed 2 May 2026).)

before the Court or make it more difficult to resolve”¹⁹². Indeed, it is difficult to escape the conclusion that this is precisely what Venezuela was seeking to achieve by making those statements.

24. Less than three months later, on 8 August 2025, three “resolutions” passed by Venezuela’s Superior Tribunal of Justice were published in Venezuela’s Official Gazette¹⁹³. Those “resolutions” purported to extend the jurisdiction of three different Venezuelan courts to Guyana’s Essequibo region. The resolutions were yet another example of Venezuela deliberately engaging in actions which sought to “modify the situation that currently prevails in the territory in dispute” and which undoubtedly “might aggravate or extend the dispute . . . or make it more difficult to resolve”.

25. In short, the factual record demonstrates that from the moment the Court made its first provisional measures Order on 1 December 2023, Venezuela deliberately, repeatedly and flagrantly violated the provisional measures indicated by the Court. Venezuela has not sought to deny those violations, or to pretend that its actions were not likely to aggravate or extend the dispute between the Parties. On the contrary, it has publicly proclaimed that “it does not and will never . . . abide by any decision emanating from” the Court¹⁹⁴.

26. Through both its words and its deeds, Venezuela has demonstrated its disregard, its disobedience and its contempt of the Court’s provisional measures Orders. Those Orders are, of course,

¹⁹² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures, Order of 1 December 2023, I.C.J. Reports 2023 (II)*, p. 668, para. 45.

¹⁹³ Superior Tribunal of Justice, Resolution No. 2025-0008 (4 June 2025); Resolution No. 2025-0009 (4 June 2025); and Resolution No. 2025-0016 (16 July 2025). See copies and certified translations of these resolutions enclosed with Guyana’s letter to the Court dated 24 September 2025. (Also available at <https://www.tsj.gob.ve/gaceta-oficial#> via search of 8 August 2025.)

¹⁹⁴ Press Release Government of the Bolivarian Republic of Venezuela, 2 May 2025. See Annex 1 to Guyana’s letter to the Court dated 9 June 2025. (Also available at <https://x.com/EmbaVenezUK/status/1918290458247348534> (last accessed 2 May 2026).)

binding and they create international legal obligations for Venezuela¹⁹⁵. The Orders plainly have been violated, and this calls for appropriate remedial measures.

B. Remedies for violations of the provisional measures

27. Mr President, I now turn to that issue. Guyana requests two remedial measures:

- *First*, the Court should declare that Venezuela has violated the two provisional measures Orders which the Court has made in these proceedings.

- *Second*, the Court should order Venezuela to revoke by means of its own choosing each and every law, decree and other domestic act which has been enacted or taken in violation of those provisional measures Orders, including the legislation which purports to incorporate Guyana's sovereign territory within Venezuela and the legislation which purports to extend Venezuela's legislative, executive and judicial jurisdiction to that territory; and the Court should also order that Venezuela must withdraw and destroy the official maps that purport to depict "Guayana Esequiba" as part of Venezuela.

28. These measures are requested because Venezuela is under the obligation, by way of reparation for its breaches of the provisional measures, to "reestablish the situation which would, in all probability, have existed if [those breaches] had not been committed"¹⁹⁶.

29. In the *Arrest Warrant* case, the Court held that "the situation which would, in all probability, have existed if [the illegal]

¹⁹⁵ See *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 506, para. 109; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I), p. 230, para. 84; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024 (I), p. 29, para. 83.

¹⁹⁶ *Factory at Chorzów, Merits*, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47.

act had not been committed” could not be re-established merely by a finding by the Court that the impugned arrest warrant was unlawful under international law. That was because the arrest warrant was “still extant, and remain[ed] unlawful”. Accordingly, the Court held that the State which had issued the unlawful warrant was required, by means of its own choosing, to revoke the warrant and to inform the authorities to whom it had been circulated of that revocation¹⁹⁷.

30. Similarly, in *Jurisdictional Immunities of the State*, the Court ruled that

“[t]he decisions and measures infringing Germany’s jurisdictional immunities which are still in force must cease to have effect, and the effects which have already been produced by those decisions and measures must be reversed, in such a way that the situation which existed before the wrongful acts were committed is re-established”¹⁹⁸.

31. Accordingly, the Court ordered that Italy “must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which the Federal Republic of Germany enjoys under international law shall cease to have effect”¹⁹⁹.

32. Mr President, an analogous order should be made in the present case in respect of Venezuela’s violations of the Court’s provisional measures Orders. Having enacted a series of laws and other domestic acts which flagrantly and deliberately violate those Orders, Venezuela should be required to comprehensively revoke all of those measures by effective means of its choosing. And having violated the provisional measures Orders by producing and circulating official maps which depict vast swathes of Guyana’s

¹⁹⁷ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 32, para. 76.

¹⁹⁸ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012 (I), pp. 153-154, para. 137.

¹⁹⁹ *Ibid.*, p. 155, para. 139 (4).

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territory as belonging to Venezuela, the Court should require Venezuela to revoke and destroy all of those unlawful maps.

33. An order in these terms is a logical, reasonable and legally inescapable consequence of Venezuela's breaches. There can be no possible suggestion that such an order would be impossible or disproportionately burdensome for Venezuela. On the contrary, it would be simple and entirely straightforward to comply with. Guyana is entitled to an order in these terms, and it is what the preservation of the Court requires in the face of Venezuela's extensive and persistent breaches.

C. Conclusion

34. Mr President, Members of the Court, I now turn to the final part of my presentation, which concerns Guyana's submissions regarding the subject-matter of this dispute over which the Court upheld its jurisdiction. Guyana will, in the conventional way, formally present its submissions at the end of the second round. However, Guyana wishes to conclude its first round by briefly addressing the declarations which it will invite the Court to make in its Judgment on the merits. As the Court will appreciate, in view of the sheer extent of Venezuela's claims over Guyana's sovereign territory, and the existential threat which they pose to Guyana, the Court's declarations in this case are of absolutely crucial importance to Guyana.

35. As Guyana has demonstrated in its written pleadings □ and as the speeches you have heard today make clear □ Venezuela's contention that the 1899 Award is void, and Venezuela's repudiation of the boundary established by that Award and by the 1905 Boundary Agreement, are entirely without merit. Venezuela's attack on the validity of the Award and the boundary which it established is devoid of factual or legal support. It is — to be clear — nothing less, and nothing more, than an attempt to provide a fig leaf for the annexation of Guyana's sovereign territory □ territory which has formed an integral part of Guyana since long before its emergence as a sovereign State some 60 years ago.

36. The Court's role is of singular importance in this case, in affirming the legal reality clearly, authoritatively and unambiguously. And, therefore, Guyana will respectfully ask the

Court to make the declarations set out in the submissions in Guyana's Reply²⁰⁰. These include adjudging and declaring that the 1899 Award is valid and binding upon Guyana and Venezuela and that the boundary established by the Award and the 1905 Boundary Agreement is the boundary between the Parties. They include adjudging and declaring that Guyana enjoys full sovereignty over all the territory between that boundary and the Essequibo River, and that Venezuela is required to fully respect Guyana's sovereignty and territorial integrity in accordance with that boundary. And they include declarations which logically and necessarily follow from this, which will be spelled out in our final submissions.

37. Mr President, we submit that those elements are required in order to vindicate the rule of law, the authority of the Court and the sovereign rights of Guyana, as well as to fulfil the mandate of the Secretary-General of the United Nations when he selected the Court as the means for resolving the dispute back in 2018. They are the logical and inescapable consequences of upholding Guyana's Application. They reflect, and they give effect to, the validity of the 1899 Award, which □ it must be recalled □ was explicitly intended by the 1897 Washington Treaty to constitute "a full, perfect, and final settlement" of the Parties' land boundary²⁰¹.

38. A judgment in the terms sought by Guyana will provide the key which finally unlocks the resolution of this decades-long dispute. The Court can, with its Judgment in this case, provide the foundation for enduring peace and security in the region on the basis of the rule of international law; and it can definitively and finally settle a long-standing source of tension and conflict between the Parties. Above all else, the Court's Judgment can and should affirm Guyana's territorial integrity in the clearest possible terms and place its sovereignty over the Essequibo beyond any possible question.

²⁰⁰ See RG, Vol. I, p. 175.

²⁰¹ Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between the Colony of British Guiana and the United States of America, 5 U.K.T.S. (2 Feb. 1897), Article XIII. Guyana's Application Instituting Proceedings, Annex 1.

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39. The declarations which Guyana seeks will allow a line to finally be drawn under a dispute which has endured for far too long. They will bring complete clarity and certainty to the legal status of the Parties' boundary □ something which will benefit not only the Parties themselves but all States in the region and beyond. Above all, it will allow the Parties to turn a page, and to begin a new chapter in their relationship - a relationship which, it is sincerely to be hoped, will be characterized by amity, stability, respect for the rule of international law and respect for the inviolability of Guyana's sovereign territory, and of Venezuela's sovereign territory, based on the boundary established more than 126 years ago.

40. Mr President, Members of the Court, I thank you very much indeed for your kind attention.

This concludes Guyana's first round of oral arguments.

The PRESIDENT: I thank Mr Craven, whose statement brings the first round of oral argument of Guyana to a close. The oral proceedings in the case will resume Wednesday 6 May 2026 at

10 a.m., when Venezuela will begin its first round of oral argument.

The sitting is closed.

The Court rose at 6 p.m.

**FIRST ROUND OF ORAL ARGUMENTS
(VENEZUELA)**

Wednesday 6 May 2026

10 am – 1 pm

Non corrigé Uncorrected

CR 2026/26

**International Court
of Justice**

**Cour Internationale
De Justice**

THE HAGUE

LA HAYA

YEAR 2026

Public sitting

*held on Wednesday 6 May 2026, at 10 a.m., at the Peace Palace,
President Iwasawa presiding,*

in the case concerning **Arbitral Award of 3 October 1899
(Guyana v. Venezuela)**

VERBATIM RECORD

ANNÉE 2026

Audience publique

*tenue le mercredi 6 mai 2026, à 10 heures, au Palais de la
Paix,*

sous la présidence de M. Iwasawa, président,

FIRST ROUND OF ORAL ARGUMENTS
(VENEZUELA)

en l'affaire de la Sentence arbitrale du 3 octobre 1899
(Guyana c. Venezuela)

COMPTE RENDU

Present: President Iwasawa

Vice-President Sebutinde

Judges Tomka

Abraham

Xue

Nolte

Brant

Gómez Robledo

Cleveland

Aurescu

Tladi

Hmoud

Okowa

Judges *ad hoc* Wolfrum

Couvreur

Registrar Gautier

□□□□□□

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

Présents :

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	président
M ^{me}	Sebutinde, vice-
	présidente
MM.	Tomka
	Abraham
M ^{me}	Xue
MM.	Nolte
	Brant
	Gómez Robledo
M ^{me}	Cleveland
MM.	Aurescu
	Tladi
	Hmoud
Mme	Okowa, juges
MM.	Wolfrum
	Couvreur, juges
	<i>ad hoc</i>
M.	Gautier, greffier

□ □ □ □ □ □

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S. Exc. M. Jorge Luis Fuguetta, membre de l'Assemblée nationale de la République bolivarienne du Venezuela,

Mr Jorge Arturo Reyes Hernández, Minister Counsellor, Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations,

M. Jorge Arturo Reyes Hernández, ministre conseiller, mission permanente de la République bolivarienne du Venezuela auprès de l'Organisation des Nations Unies,

M^{me} Haymara Correa Díaz, assistante du ministre des relations extérieures de la République bolivarienne du Venezuela,

comme membres de la délégation.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets today to hear the first round of oral argument of Venezuela on the merits in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

I now invite the Agent of Venezuela, His Excellency Mr Samuel Moncada, to address the Court. You have the floor, Sir.

Mr MONCADA:

OPENING REMARKS

1. Mr President, Members of the Court, for nearly a century Venezuela has consistently maintained that matters relating to its territorial integrity cannot be submitted to third-party dispute resolution mechanisms. This stance is not circumstantial or strategic, but structural. It is integral to its international conduct, domestic legal system and conception of how its most essential interests should be protected.

2. That position has not changed. Venezuela has never consented to submit this dispute to the jurisdiction of any court or arbitral tribunal.

3. This has been unequivocally reaffirmed domestically. In the consultative referendum held on 3 December 2023, the Venezuelan people clearly expressed their rejection of submitting this dispute to the Court's jurisdiction. This confirms it. It reflects a consistent course of action in terms of sovereign will.

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4. Venezuela is here today because it cannot remain silent in the face of a process that Guyana intends to use to unilaterally redefine the nature of the territorial dispute and the obligations binding Venezuela and Guyana under the Geneva Agreement.

5. Venezuela is here today to respond to Guyana's erroneous and misleading narrative, and to set straight the true legal framework of the territorial dispute and the limits imposed by international law and the Geneva Agreement on Guyana's attempt to transform the dispute and its obligations fraudulently.

6. Mr President, Members of the Court, Venezuela has a long tradition of historical rights over Guayana Esequiba, derived from the presence of the Spanish Empire and the Venezuelan Republic over the centuries. Indeed, the Esequibo River is named after the Spanish explorer Juan de Esquivel. The Netherlands arrived in the territory while it was still part of the Spanish Empire, gaining independence in 1648 through the Treaty of Münster – the same treaty in which Spain recognized the Netherlands' claim to the territory east of the Esequibo River.

7. The Spanish Empire was clear about its possessions in Guayana Esequiba and defended them against the Dutch in an ongoing effort to expel illegal intruders, thereby demonstrating its control over the territory.

8. Venezuela has presented an exhaustive list of maps demonstrating the existence of Dutch possessions to the east of the Esequibo River and Spanish ones to the west. Furthermore, the British themselves have confirmed this reality.

9. In 1835, only one man – Robert Schomburgk, a German paid by the British Empire to justify its territorial greed in the quest for gold – appeared to draw an arbitrary line on Venezuelan territory that they attempted to impose as a border. Venezuela never recognized this criminal act, which was not perpetrated by a naturalist explorer, but by an agent of the British Empire. In the years that followed, the British entered our territory, following Schomburgk's line, and then, in 1897 and 1899, they sought to legitimize the theft.

10. Venezuela's struggle for territorial integrity and independence has been continuous. Our territorial rights over Guayana Esequiba were systematically eroded during the nineteenth century by the British Empire, which sought to appropriate half of our territory.

11. There are many examples of provocations that occurred from the 1850s to the 1890s. During this period, British consuls sent communications to London, conspiring to seize the territory, incite civil conflict and purchase Venezuelan territory, ultimately resorting to military action.

12. Despite attempts at direct negotiations, peaceful negotiations, diplomatic negotiations, proposals for arbitration and international mediation, the voracious British Empire – the largest in the world in the nineteenth century – could not satisfy its greed. It was only the intervention of the United States of America, in 1895, that forced the British to accept arbitration.

13. Although Venezuela entrusted the fate of its territory to the supposed goodwill of the United States, unfortunately, that country was not acting as a mediator to help Venezuela, but rather to impose its will across the entire continent and force the British Empire to recognize the new Power.

14. This was essentially a revival of the Monroe Doctrine. Not the 1823 doctrine, which was originally a defensive measure, but the 1895 version, which aimed to impose US sovereignty over the entire hemisphere.

15. For experts on the subject, the Treaty of Washington of 1897 and the fraudulent Paris Award of 1899 became key milestones marking the moment when the United States began to replace the British Empire and the European Powers across the entire continent. President Cleveland himself acknowledged this in 1904 when he highlighted the benefits of the 1899 Award:

“I hope there are but few of my fellow citizens who, looking back, do not recognise the good that this episode in our history did for our nation. It established the Monroe Doctrine on a lasting foundation in the eyes of the world, improving our standing in terms of the respect

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and regard of the peoples of all nations, particularly Great Britain”.

16. The fraudulent award will be addressed by our experts and was imposed by the two most powerful nations in the world. This marked the high point of infamous “gunboat diplomacy” and the imposition of treaties by force in Asia, Africa and Latin America.

17. In 1902, Venezuela itself was blockaded and bombarded by the United Kingdom, Germany and Italy, right halfway between the 1899 Award and the 1905 delimitation. In 1904, the United States threatened to invade Venezuela in a classic example of the “big stick” policy. Only those ignorant of Venezuela’s history, or those who denigrate it, would claim that our country should have acted under the illusion of perfect equality among States at that time. The reality is far more bitter.

18. All of these experiences endured by our people have taught us to strive for peace without expecting favours from the great Powers or miraculous results from rigged international arbitrations. This has led to our tradition of not recognizing the jurisdiction of arbitral tribunals or courts of any kind in matters relating to our territorial integrity.

19. Venezuela does not accept the jurisdiction of the International Court of Justice, which was erroneously imposed in the 2020 Judgment, and respectfully rejects its jurisdiction to hear and decide this dispute.

20. Mr President, the decolonization process that took place after World War II created an appropriate international framework in which both independent republics that had been stripped of their territories by empires, and colonized nations, could initiate claims for compensation or restitution for damages suffered at the hands of the great Powers. The United Nations and its Decolonization Committee provided a platform through which many countries could negotiate with the colonial Powers within the framework of international law and without the threat of force, with the aim of restoring their historical territorial rights.

21. Venezuela has been at the forefront of the struggle for the decolonization of peoples and territories worldwide, including its

own. Therefore, it is impossible to deceive world public opinion by portraying Venezuela as a country that poses an existential threat to its neighbours.

22. Venezuela has supported all decolonization processes around the world, including that of Guyana.

23. In 1962, our Foreign Minister, Marcos Falcón Briceño, raised Venezuela's claim to the Esequibo region of Guyana for the first time, specifically before the United Nations Decolonization Committee. This led to negotiations resulting in the 1966 Geneva Agreement, which remained in effect between Venezuela and Guyana until energy interests prompted a change in the Guyanese Government's position in 2015.

24. The Geneva Agreement is therefore a quintessential instrument of decolonization. As Guyana gained independence, Venezuela began to lay the groundwork for the return of its territory that had been colonized by the British Empire.

25. The Geneva Agreement is a peace treaty that encourages the parties to find a practical and satisfactory solution to their differences through direct negotiation. This is the opposite of a court-imposed decision, where one party inevitably wins at the expense of the other's defeat.

26. By committing to the Geneva Agreement, the parties agreed to overcome the disastrous legacy of colonialism within a framework of friendly and mutually beneficial relations.

27. Mr President, Members of the Court, allow me to be precise. Despite Guyana's repeated assertions, the 1966 Geneva Agreement remains the legal framework governing the matter. The agreement expressly recognizes the existence of a territorial dispute concerning the Guayana Esequiba. The territory is the subject of a dispute between the Parties. Consequently, Guyana's characterization of an alleged threat to its territorial integrity or sovereign territory constitutes a flagrant misinterpretation and deliberately misleading presentation of the facts and law. Guyana has no established title under threat; rather, there is an unresolved territorial dispute which is expressly recognized as such in the

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Geneva Agreement and which must be resolved in a manner that is mutually acceptable to both Parties.

28. Last Monday, Guyana sought to reverse the clear terms of the Geneva Agreement, disregarding it along with more than six decades of bilateral practice, including sustained negotiations and the good offices process conducted under the auspices of the United Nations Secretary-General.

29. Are we to understand, then, that throughout those decades, the Secretary-General □ acting within the framework agreed upon by the parties □ was promoting the “effective destruction” of Guyana or the dismemberment of its territory when he stated that “the objective of his good offices, as provided for in Article IV of the Geneva Agreement, was to ensure a ‘mutually satisfactory solution to the dispute’, and that, in an effort to achieve this objective, ‘creative options’ should be explored”?

30. Or is Guyana suggesting that its own highest authorities, including Prime Minister Forbes Burnham, who actively participated in the processes established under the Geneva Agreement, were engaged in conduct intended to undermine the territorial integrity of their own country when he stated that “with goodwill on both sides, perhaps we can arrive at a mutually acceptable solution, in which honour is preserved”?

31. I hope this is not what they intended to convey last Monday; however, that is the inevitable implication of their statements. Such propositions are, of course, untenable. They are not only incompatible with the text and purpose of the Geneva Agreement, but also irreconcilable with the consistent practice of both Parties over decades. The legal reality is clear: the Agreement acknowledges the existence of a dispute and establishes a framework for its negotiated resolution. It has never supported the narrative now being advanced by Guyana. Professor Zimmermann will elaborate on this point this morning.

32. We reiterate: it is impossible for the Geneva Agreement, in its implementation, to pose an existential threat to either party. Claiming otherwise constitutes propaganda and deserves to be publicly denounced.

33. In fact, Venezuela's good faith and neighbourly spirit are evident in the joint development proposals that benefit Guyana greatly. For example, in 2009 Venezuela and Guyana entered into a rice-for-oil swap agreement, which was renewed until 2015. Under this agreement, Venezuela purchased rice from Guyana at a price above market value and sold its oil at a price below market value. Experts from the Inter-American Development Bank concluded that the cost of Guyana's oil imports was reduced, as was its total public debt, thanks to the generous long-term financing terms provided for in the Petrocaribe Agreement.

34. Contrary to claims made in this chamber, Venezuela has never been an obstacle to Guyana's development. On the contrary, Guyana has benefited from Venezuela's solidarity policies, which have also been offered to several other countries in the Caribbean region. Venezuela cannot be accused of not being a good neighbour.

35. In 1982, Guyana's Prime Minister, Forbes Burnham □ a great historical leader of that country and a signatory to the 1966 Geneva Agreement □ proposed a definitive solution to the territorial dispute: a mutually beneficial economic development plan involving the construction of a hydroelectric project financed by Venezuela, the output of which would be utilized by both countries.

Burnham stated:

“I would see an advantage in a long-term contract for the supply of power to Venezuela, coupled with a political arrangement which would remove from our relation the nagging problem of the border.

In other words, I would propose that simultaneously with the agreements for mutual cooperation with respect to the Upper Mazaruni Hydroelectric Project and the supply of power to Venezuela, there should be signed, an Accord which would lay at rest the border question.”

36. This evidence, ignored by those seeking to slander Venezuela, allows us to affirm two fundamental facts. Firstly, Venezuela is not the imperial, annexationist monster that they wish

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to portray before this tribunal. The Prime Minister of Guyana did not fear Venezuela. On the contrary, he had the vision to propose a project that would benefit both countries, in the spirit of the Geneva Agreement.

37. Secondly, Prime Minister Burnham's proposal demonstrates that it is false to claim that the sole purpose of the Agreement is to declare the 1899 Award null and void. In fact, the Geneva Agreement provides a range of peaceful, mutually beneficial options that could be pursued if both parties were willing to comply with the agreement in good faith.

38. Although Guyana presents itself as the legitimate heir to the Dutch and British territories, the reality is that it is the beneficiary of colonial dispossession formalized through fraudulent arbitration. The Geneva Agreement aims to correct this century-old injustice.

39. In conclusion, it is necessary to reaffirm the following points:

- (i) Our historical experience has taught us that delegating vital matters of the Republic to international judicial bodies has been detrimental to our sovereignty and territorial integrity. Consequently, Venezuela has never agreed to submit this dispute to the Court's jurisdiction.
- (ii) Venezuela's historical rights are inalienable, and the country is determined to defend them peacefully.
- (iii) The Geneva Agreement arose from the dispossession suffered by Venezuela in 1899 and aims to resolve the dispute through direct, peaceful and diplomatic means.
- (iv) Any decision by the Court that affects the operation of the Geneva Agreement would hinder progress towards a mutually acceptable solution for the parties to the Agreement. The only option is to allow the Agreement to fulfil its purpose and objective without impediments.
- (v) Venezuela is committed to continuing to act in good faith in direct negotiations with Guyana to reach a mutually beneficial agreement.

40. Mr President, Members of the Court, in closing, we wish to send a message to our people, who are listening attentively to Venezuela's voice: for generations, our people have made enormous sacrifices to defend their independence, sovereignty and territorial integrity.

41. We have come to fulfil the mandate of defending our historic rights with serenity, respect and firmness. We do so with the confidence that comes from our knowledge of our history and the justice of our cause. We have come to The Hague with the same attitude with which we negotiated and concluded the Geneva Agreement – the only instrument that will enable us to find a solution that satisfies everyone.

42. This is a task for the entire nation. Let us walk firmly in the same direction, united and mindful of our civic duties. We will then achieve our goals without the impositions that undermined our sovereignty in 1899. There is no alternative for us and our neighbours but a future of peace, diplomacy and prosperity. Together, we will achieve this goal.

43. Mr President, Members of the Court, during the morning session, Venezuela will present its arguments regarding the sole legal instrument that defines the rights and obligations of the Parties: the 1966 Geneva Agreement, which Guyana deliberately ignored during Monday's hearing.

44. Professor Makane Mbengue will demonstrate how Guyana is seeking to divert attention from the true subject of the dispute by focusing on the 1899 Arbitral Award. Next, Professor Andreas Zimmermann will examine the interpretation and legal effects of the Geneva Agreement. Professor Antonio Remiro Brotons will conclude the morning session by establishing the link between the object and purpose of the 1966 Geneva Agreement and the historical circumstances that led to its conclusion.

45. In the afternoon session, Venezuela will respond to Guyana's arguments regarding the alleged validity of the 1899 Award. Venezuela will reiterate that its participation does not imply recognition of the Court's jurisdiction; rather, it is the exercise of Venezuela's sovereign right to defence.

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46. Professor Danae Azaria will open the session, followed by Professors Paolo Palchetti, Christian Tams and Jean-Marc Thouvenin. They will address Venezuela's historical position regarding the invalidity of the Award and the absence of any tacit or explicit waiver of its right to claim its nullity.

Mr. President, Members of the Court, thank you for your attention. I request that Professor Mbengue be invited to the podium.

The PRESIDENT: I thank the Agent of Venezuela for his statement. I now give the floor to Professor Makane Moïse Mbengue. Sir, you have the floor.

Mr MBENGE:

**SUBJECT-MATTER, DECOLONIZATION AND
NOVATION**

1. Mr President, distinguished Members of the Court, it is an honour to appear before you once again on behalf of the Bolivarian Republic of Venezuela.

2. As stated by Professor Moncada, I will now offer some remarks that will be essential to situate the position of Venezuela and, in particular, to describe the object of the controversy addressed by the Geneva Agreement, on which your jurisdiction is claimed to be based. This is a matter that, deplorably, has been much blurred by Guyana earlier this week.

3. Once the fog is lifted, what remains is clear: Guyana's case is built around an issue, the validity of the 1899 Award; that is not □ to use the international law terminology or the Court's terminology

□ the “real issue”¹ or the “subject-matter”² of this controversy. It never has been. From the very first line of its Application, all Guyana asks is that you rubber stamp a discredited award □ a piece of paper that both States have long chosen to set aside in favour of a mutually satisfactory solution.

4. This flaw in Guyana’s case proceeds from one strategic choice: that of disregarding the Geneva Agreement and refusing to address its proper interpretation, an interpretation that is essential to understand that the Court has no role in the long-standing dispute over the territory of Guayana Esequiba.

5. Mr President, Members of the Court, the “real issue” we are concerned with today is clearly delineated by Guyana and Venezuela when they agreed to conclude the Geneva Agreement. That real issue is the pursuit of a mutually satisfactory solution to the controversy generated by the 1899 Award, a solution that consigns this artefact of British imperialism to the past, where it belongs, and that charts a way forward.

6. This is the *only* proper meaning of the Geneva Agreement. It is also, so far, the only interpretation on the record, for the simple reason that Guyana has offered none. Professor d’Argent’s remarks on Monday offered yet another illustration: there was no elucidation of how the Agreement governs the controversy between Guyana and Venezuela. Instead, Professor d’Argent claimed that everything on this subject has already been said at earlier, incidental, stages of these proceedings.

¹ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 262, para. 29. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 87, para. 42.

² *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (II), p. 575, para. 24.

7. This approach is in line with Guyana's consistent attempts, from the time of its Application, to divert the attention from the Geneva Agreement and the "real issue" it addresses.

8. My role is to bring the argument back to the legal framework that Guyana has tried to avoid. And to do this, I shall discuss three points.

9. *First*, I will highlight the fundamental importance of the "real issue" addressed by the Geneva Agreement, showing that it is the pursuit of a mutually satisfactory solution. *Second*, I shall turn to what Guyana has been most determined to ignore: the roots of the Geneva Agreement in the decolonization movement. *Third*, I will explain how the Geneva Agreement effected a novation, replacing an old and flawed framework with a new one.

The "real issue"

10. Let me turn to the fundamental importance of the "real issue". Mr President, distinguished Members of the Court, on Monday we were taken by Professor Pellet through the practices of nineteenth-century arbitration³. Professor Sands then took us into the worlds of Gabriel García Márquez, of Verdi, of theatre and magical realism⁴. We were offered narratives.

11. What was absent was any engagement with the instrument that actually governs this controversy: the 1966 Geneva Agreement. Not a word on its object and purpose. Not a sentence on the obligation it imposes to seek a mutually satisfactory solution. Barely a mention of the decolonization movement that produced it.

12. That silence is revealing. However vivid the storytelling, it cannot answer the question that lies at the heart of this case: what did Venezuela and Guyana agree to do in 1966?

13. That is the "real issue". So, let us discuss it.

14. I shall proceed in four steps. I will first establish that it is necessary to identify the "real issue" *in case* (I). I will then demonstrate that the Court *did not* identify the "real issue" in its

³ CR 2026/25, p. 12 *et seq.* (Pellet).

⁴ *Ibid.*, p. 45, para. 2 (Sands).

earlier Judgments (II), leaving that question unresolved. This will allow me to emphasize that the “real issue” is, and always was, the pursuit of a mutually satisfactory solution between Guyana and Venezuela (III). I shall conclude by addressing Guyana’s glaring failure to engage with this issue, not only in its written submissions, but also on Monday in its oral pleadings (IV).

I. The need to identify the “real issue”

15. Mr President, it is settled law that the Court must decide by itself the scope and profile of the case before it ☐ and that applies even when, as in this case, the Court was not supposed to affirm that it *does* have jurisdiction⁵⁵. The Court is indeed required, in the Court’s own words, “to isolate the real issue in [a] case”⁶ — to isolate the real issue in a case. As the Court itself acknowledged, the determination of the “real issue” is a “matter . . . of substance, not form”⁷.

16. Crucially, determining the “real issue” or subject-matter of a controversy should be done “on an objective basis”⁸. I quote once again the Court.

⁵ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015 (II), p. 602, para. 26; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 87, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (II), p. 575, para. 24. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 27, para. 51.

⁶ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 262, para. 29. See also para. 30, where the Court referred to “the true subject of the dispute”.

⁷ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), pp. 308-309, para. 48.

⁸ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015 (II), p. 602, para.

17. This is meant to defuse a known risk: that an applicant will present their case in the most favourable light and stretch the boundaries of what a given controversy is about⁹. Identifying the “real issue” objectively, and by contrast, lessens the risk that an applicant mislead the Court in asserting that jurisdiction exists where there is none and attempts to focus on issues that are not part of the “real issue” agreed to □ as, regrettably, happened here.

18. In other words, the “objective basis” standard can lead to the conclusion that the controversy is different from what an applicant strategically alleges.

19. Thus, and as a matter of law, the Court cannot and should not be constrained by the allegations that Guyana has chosen to make¹⁰. In particular, it must carefully ascertain whether Guyana’s requests remain within the bounds of what the parties to the Geneva Agreement have sought to resolve. Guyana’s claims cannot exceed, as they do, the framework established by the Geneva Agreement, nor can the Court decide those matters.

20. In summary, and as underlined in *Azerbaijan v. Armenia*, the Court must “determine on an objective basis the subject-matter of the dispute between the parties, by isolating the real issue in the case”¹¹.

26. *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1998, p. 448, para. 30.

⁹ *Legality of Use of Force (Yugoslavia v. Netherlands)*, *Provisional Measures, Order of 2 June 1999*, I.C.J. Reports 1999 (I), p. 556, para. 44. See also *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (II)*, PCA Case No. 2009-23, Second Partial Award on Track II, 30 August 2018, para. 7.87.

¹⁰ As exemplified by *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, *Judgment*, I.C.J. Reports 2008, p. 208, para. 75.

¹¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2024 (III), p. 1143, para. 71, quoting *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2021, p. 87, para. 42; *Application of the International Convention for the Suppression of the*

II. The Court did not identify the “real issue” of the controversy in this case

21. Mr President, Members of the Court, it is striking that the language I just quoted □ a fixture of every contentious case in the Court’s recent history □ is absent from the Court’s previous decisions in the present case. There is no *equivalent* language either. In other words, the Court has, so far, never attempted to identify the “real issue” in this case.

22. While the Court used the term “subject-matter” in the 2020 Judgment, it was in terms disconnected from the careful identification of the real subject-matter of the present proceedings; some Members of the Court have actually rightly taken note that the Court has missed that step¹².

23. Fortunately, the consequences of that lacuna are strictly limited. On Monday, Professor d’Argent tried to shift the focus to *res judicata*. But *res judicata* attaches only to a prior Judgment’s *dispositif*, and it extends only to what was actually decided expressly, or by necessary implication. That is, as the Court confirmed in its 2023 Judgment, the relevant standard for *res judicata*¹³.

24. In this respect, Venezuela has said before, and says again today, that the Court should not have upheld its jurisdiction over Guyana’s claims. But even taking the 2020 Judgment on its own terms, what the Court decided is jurisdiction, and jurisdiction alone.

Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II), p. 575, para. 24.

¹² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Preliminary Objection, Judgment, I.C.J. Reports 2023 (I)*, declaration of Judge *ad hoc* Wolfrum, p. 302, para. 8. See also *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, dissenting opinion of Judge Bennouna, p. 507, para. 13, opining that the Court “should have been all the more attentive in examining its jurisdiction and in interpreting the Geneva Agreement, as this is a dispute with a high political and emotional impact”.

¹³ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, pp. 282-283, para. 70.

It did not address the subject-matter of the controversy. It made no determination whatsoever, expressly or by necessary implication, on what this case is actually about. The Court never reached any conclusion on this point. This failure needs now to be remedied.

25. And to that end, the key distinction between the scope of the Court's jurisdiction and the subject-matter of the controversy needs to be stressed. The two are not the same thing — jurisdiction and subject-matter. So, even on the most generous reading of the 2020 Judgment, the question of what this Court may decide remains entirely open. A finding of jurisdiction is not a licence to entertain whatever Guyana places before the Court.

26. Take the Court's position that the validity of the 1899 Award falls within the *ratione materiae* scope of its jurisdiction¹⁴ □ a point Venezuela contests but accepts, here, only for the purpose of argument. Even on that basis, it certainly does not follow that the Court should resolve or even address, the validity of the Award. The 1899 Award and its many flaws and inequities might be relevant; it may offer context. It is, after all, the wound the Geneva Agreement was designed to heal. But it certainly does not follow that the Award should be permitted to stand in the way of a genuine resolution of the controversy between Guyana and Venezuela. Jurisdiction to entertain a question is not an obligation to answer it, and certainly not an obligation to answer it when doing so would actively defeat the very object and purpose of the underlying instrument governing the controversy over Guayana Esequiba.

27. The “real issue” before the Court is not, never was, and never will be the validity of the 1899 Award. And in fact, the Court anticipated this in 2020 when holding that a finding of invalidity alone would not settle the controversy¹⁵.

28. Yet, the opposite follows with equal force: affirming the validity of the Award would also leave the underlying controversy unresolved. Worse, it would leave the States' relationship irremediably poisoned and reduce the Geneva Agreement to

¹⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 2020, pp. 490-492, paras. 128-135.

¹⁵ *Ibid.*, p. 479, para. 86.

nothing □ a dead letter, its promise of a fresh start extinguished by a judicial endorsement of the colonial status quo.

29. To avoid such a situation, one which would go against the basic tenets of the law of treaties, the Court needs to be cognizant of the “real issue” in this case, a point to which I turn now.

III. The “real issue” in this case

30. What then, Mr President, is the “real issue” in this case?

31. The answer is plain: it is the pursuit of an amicable, practical, and mutually satisfactory resolution of the controversy born of the unjust 1899 Award. This is what the Geneva Agreement requires, what its parties have consented to, and what the Court risks setting aside if it follows the path Guyana has strategically charted.

32. Professor Zimmermann will explain later this morning why a proper interpretation of the Geneva Agreement leads to this conclusion, and this conclusion only. Text, context, and subsequent practice all point to the same direction.

33. For now, I shall address what the identification of the “real issue” necessarily entails.

34. First, while Venezuela has provided¹⁶, and it will further provide, ample grounds to impugn the Award, that question is, ultimately, beside the point. A judgment that merely reaffirms the Award’s outcome would repudiate everything that the Geneva Agreement is and stands for. It would reduce the Geneva Agreement to an empty shell and elevate a discredited colonial artefact above an international agreement concluded under the aegis □ – as I shall later recount □ of the decolonization movement.

35. For this is key: the Agreement was explicitly designed to move beyond a binary, adjudicative resolution and towards a negotiated, politically acceptable settlement. In practical terms, this means that a ruling from the Court that simply affirms the Award would revive a framework the two States mutually abandoned six decades ago¹⁷.

¹⁶ CMV, Chaps. 5-6; RV, Chaps. V-VI.

¹⁷ RV, para. 4.47.

36. Second, the “real issue” in this case, the fact that Guyana and Venezuela committed to pursuing a mutually satisfactory solution, casts Guyana’s claims in a new light. And what becomes patent is that Guyana’s proposed approach is not just legally deficient: it is also deeply unconscionable¹⁸, because it seeks to perpetrate and entrench a repugnant set of asymmetries — asymmetry of burdens, asymmetry of positions and asymmetry of outcomes:

- An asymmetry of burdens: the Geneva Agreement stems from its parties’ inability to agree as to the validity of the 1899 Award, which is why they opted to give a new impetus to their negotiations through a Mixed Commission. A Mixed Commission of a diplomatic kind, not of a legal kind, proving that Guyana and Venezuela sought, and are still seeking, a practical and amicable settlement of the controversy, not a legal winner-take-all outcome. Guyana’s strategy, by contrast, places the burden of proof fully on Venezuela.

- - An asymmetry of positions: as noted by the Court¹⁹ and individual judges²⁰, even if Venezuela demonstrates the Award’s invalidity, that would not settle the case: further, thornier issues would remain to be litigated, issues that Guyana would prefer to ignore, since it benefits from the status quo. This is precisely why, in 1966, Guyana and Venezuela understood □ with a clarity Guyana now seeks to obscure □ that a practical, and mutually satisfactory negotiated solution was the only way forward.

- Finally, an asymmetry of outcomes: under Guyana’s reading of the Geneva Agreement, the final settlement of the controversy can take one of two forms: either Guyana is fully victorious and gains 100 per cent of its claims as to Guayana Esequiba’s territory; or the parties will settle on a middle ground □ meaning that, on Guyana’s reading, no outcome under the

¹⁸ RV, para. 4.48.

¹⁹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 2020, p. 479, para. 86.

²⁰ *Ibid.*, declaration of Judge Tomka, p. 497, para. 7; *ibid.*, dissenting opinion of Judge Bennouna, p. 506, para. 10.

Geneva Agreement could ever vindicate Venezuela's full and rightful sovereignty over the controversial territory.

37. Preventing such outcomes was, and is, the *raison d'être* of the Geneva Agreement. Because, *if it is not*, why was it ever concluded? In its pleadings so far, Guyana never offered any rationale for that Agreement to even exist. Clearly, given the conflicting views held at the time, its object and purpose was not to uphold the status quo. And it was not either, as Professor Oral suggested on Monday, to create a new "right" to challenge the Award. That has never been Venezuela's position. Once the Geneva Agreement was concluded, there was nothing left to challenge.

38. The point of the Agreement was, and is, to find a way forward □ "satisfactory solutions" □ that both Guyana and Venezuela could accept. That is what the text says, the text of the Geneva Agreement, something Guyana might recall if it ever located its copy of the Geneva Agreement.

39. Guyana's position is understandable: it is, after all, the lucky heir to a deeply revolting award in which it played no part. But Guyana is also the heir to an agreement that left that Award behind in the hope of finding a just solution to a territorial controversy. It cannot claim the benefits of the Geneva Agreement while repudiating its obligations: *pacta sunt servanda*.

IV. Guyana's approach and its flaws

40. Mr President, distinguished Members of the Court, as I have shown, identifying the real issue, or subject-matter, of the controversy is critical. It should also be apparent that the Court has not yet done so. It follows that identifying the "real issue" in this case should lead to a clear and inevitable conclusion: that the objective is, and always has been, to reach a mutually satisfactory resolution of the controversy, one that leaves behind the injustices created by the corrupt 1899 Award.

41. And yet, if one looked solely at Guyana's pleadings, one would have no inkling that there is such a thing as the Geneva Agreement, and that it plays a role in the controversy. In its

Application, the Agreement is treated as a mere procedural conduit □ a vehicle for getting to this Court²¹.

42. It was only on Monday, during these hearings, that Guyana finally recalled the existence of the Geneva Agreement □ to a limited extent. Yet, the feeble arguments brought to the fore by Professor d'Argent on this point have failed to remedy Guyana's failure to engage with Venezuela's position. Professor d'Argent's submissions confirmed two things. First, Guyana treats the interpretation of the Geneva Agreement as a merely incidental issue, allegedly irrelevant at this stage of the proceedings. Second, and consequently, Guyana refuses to engage with the question of the true "subject-matter" or real issue of the controversy.

43. In fact, in its oral pleadings, Guyana fundamentally misread Venezuela's Rejoinder, and thus missed the mark. Guyana made it all about a challenge to this Court's jurisdiction or to the earlier judgments. To be sure, Venezuela holds, and will always hold, as Professor Moncada recalled, that the Court should never have upheld its jurisdiction over Guyana's claims.

44. But this is not the argument that required an answer from Guyana, in line with Article 60 (1) of the Rules of the Court and Practice Direction VI: the argument is that the Court omitted to identify the "real issue" in this case, in contrast with every other case, and that this omission should be remedied.

45. Professor d'Argent's comments were premised on a single idea: that once the Court upholds jurisdiction on an issue it binds itself, absolutely and irrevocably, to address and decide it. In his view, in the view of Professor d'Argent, jurisdiction is not a threshold but a command: once crossed, the Court must proceed to the merits exactly as the Applicant has framed them, irrespective of the real issue of the controversy and of the limits inherent to the judicial function.

46. That is not, however, how international adjudication works. Jurisdiction opens the door; it does not relieve a court of the duty to ask where it should go. Still less does it compel the Court to decide an issue that, once properly identified, falls outside the

²¹ Application of Guyana (AG), paras. 14-25.

controversy at stake. And even were one to accept, *arguendo*, the Court's 2020 finding that Article IV of the Geneva Agreement confers jurisdiction, then that same instrument would also define the limits of what the Court is authorized to do. The Court cannot derive its competence from the Geneva Agreement and then exercise that competence in a manner that defeats the Agreement and its very object and purpose.

47. In other words, regardless of Venezuela's steadfast position that the Court does not hold jurisdiction, the key argument - an argument that remains unanswered by Guyana - is that identifying the "real issue" in this case is, one, essential, two, still to be done, and three, once properly undertaken, decisive in showing that the Court has no role to play in this controversy.

48. All this is why Guyana's contentions about revision are irrelevant: there is no *fait nouveau* - only a *fait ancien*, the Geneva Agreement itself, despite Guyana's efforts to divert attention from it.

49. And this is also why Venezuela, in its Rejoinder, quoted from the *Northern Cameroons* case: to stress that there are limits inherent in the judicial character of the Court's function. Allow me to quote the relevant paragraph:

“[E]ven if the Court, when seised, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore.”²²

50. On Monday, Professor d'Argent sought to evade this point by focusing on another paragraph of *Northern Cameroons* and by distinguishing the case on its facts. But Venezuela does not rely on *Northern Cameroons* for a factual analogy. It relies on it for the broader and far more fundamental principle that there are circumstances in which the Court *must stay its hand* in order to preserve its judicial integrity.

²² *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963, p. 29.*

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51. Those circumstances are present here. In the Geneva Agreement, Guyana and Venezuela have agreed between themselves that what they seek is an amicable resolution of the controversy by way of negotiations. This is a goal that only they — they, Guyana and Venezuela, not the Court — can achieve, only then, through good faith engagement²³. A ruling on the validity of the 1899 Award would not be conducive to such a resolution. It would do the opposite and freeze the territorial controversy. This deadlock is precisely what the Geneva Agreement was designed to move beyond.

52. On Monday, Guyana tried to scare the Court into thinking that you might “ouvrir la porte à la remise en cause des sentences non motivées rendues tout au long du XIX^e siècle”²⁴ □ the classic, and tired, “open the floodgates” argument. But this is entirely beside the point: other nineteenthcentury awards were not superseded by a dedicated international instrument, such as the Geneva Agreement.

53. And so, apart from these short and misguided comments, the brunt of Guyana’s oral submissions pertained to what Venezuela, in the Counter-Memorial, had described as its “monomaniacal focus on the validity of the 1899 Award”²⁵.

54. This focus remains a mystery. Yet, the point remains: the Court could, or can, only give effect to — and not redraft — the Geneva Agreement, an instrument that aims at a mutually satisfactory resolution of the controversy. There is no scenario in which upholding the 1899 Award, as Guyana is asking you to do, achieves that goal.

²³ See e.g. *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 79: “these courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court’s judicial function to make such a choice.”

²⁴ CR 2026/25, p. 23, para. 23 (Pellet).

²⁵ CMV, p. 20.

The decolonization imperative

55. Mr President, Members of the Court, after having clarified what the real issue is, allow me now to turn to a different, but equally fundamental, dimension of this case, a dimension that Guyana has once again carefully preferred to ignore.

56. I refer, of course, to the Geneva Agreement's roots in the decolonization movement. On Monday, Professor d'Argent claimed not to understand why Venezuela had addressed this subject in its Rejoinder.

57. Well, let me repeat: this focus on decolonization is needed because the Geneva Agreement's roots in this framework are critical to properly assess what the parties to it had sought to accomplish through this instrument, and the direction the controversy should take in the future.

58. As recently put by a Member of this Court, "colonialism is a blemish on the history of humanity and indeed, on the reputation of international law"²⁶. And yet, "international law continues to respect, normatively, many of the legacies of colonialism"²⁷.

59. One could not find a better illustration of the unfortunate legacies of colonialism than this controversy between Guyana and Venezuela.

60. Yet, today Guyana asks this Court to do what 1966 forbade: to lend the *imprimatur* of international justice to a wrong an empire sought to impose, a wrong Venezuela never accepted, and a wrong that the Geneva Agreement was concluded to extinguish.

61. Decolonization, this felicitous period of human history that saw the liberation of countless peoples, is therefore a critical consideration in this case. In what follows, I shall recount the historical background (I), before demonstrating that the Geneva Agreement is a fruit of that period (II), and should be interpreted accordingly.

²⁶ *Land and Maritime Delimitation and Sovereignty Over Islands (Gabon/Equatorial Guinea)*, Judgment of 19 May 2025, separate opinion of Judge Tladi, para. 2.

²⁷ *Ibid.*

I. The historical background

62. Let me come back to the 1960s. As the decade starts, the United Nations adopts Resolution 1514, entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples”, which specifically condemns colonialism²⁸. This “defining moment”²⁹, to quote the Court, represented a culmination for the principle of self-determination of all peoples, which had been embodied in the United Nations Charter³⁰.

63. That principle of self-determination had always been embraced by Venezuela, including, and in fact particularly, with respect to Guyana: Venezuela has long called for its independence, based on its “long-standing anti-colonial position dating back to its own struggle for sovereignty and independence”³¹.

64. Venezuela’s stance was in step with that of its neighbours. For Latin America, the decolonization movement could not have come early enough. The few territories that remained in colonial hands were a blemish on a South American continent liberated from the Spanish and Portuguese empires a century prior.

65. But the decolonization imperative was not, and is not, merely a question of colonial Powers grabbing their luggage, their gunboats, and sailing away in the sunset. Instead, genuine decolonization also requires the rectification of historical injustices, including the restitution of territory or compensation for lost resources, and the dismantling of the structures of colonial domination³².

²⁸ UNGA Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples.

²⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 99, para. 86.

³⁰ Charter of the United Nations, Arts. 1 (2) and 55.

³¹ President Don Rómulo Betancourt and the Venezuelan Claim, VI, Presidential Message, 7 March 1964, in *Claim to Guyana Essequibo □ Documents 1962-1981*, Caracas 1981, p. 8 (available at Peace Palace Library).

³² RV, paras. 3.6 *et seq.*

66. Hence the statement from Venezuela's Minister of Foreign Affairs, when he presented the Geneva Agreement to Congress: "At the twilight of the colonialist era, hope was rekindled that one day the injustice we had been victims of would be redressed."³³

67. Venezuela has kept that hope - and keeps it to this day.

II. The Geneva Agreement as a means to resolve the imposed inequity of imperialism

68. Mr President, against that historical background, I want to restate how the negotiations of this instrument □ the Geneva Agreement □ were guided by the spirit of the age and the ideals of decolonization.

69. Indeed, the conclusion of the Geneva Agreement demonstrates a shared recognition among all parties that the 1899 Award embodies the perversion of the nascent international justice mechanisms for imperial goals. This shared recognition is apparent from the attitude of the United Kingdom, Venezuela, and Guyana in 1966, and when they executed the Port-of-Spain Protocol. If we look at the three main parties □ Guyana, Venezuela and the United Kingdom □ and at their motivations, what do we see?

- First, for the United Kingdom³⁴, in the face of increasing pressure to grant independence to its colonies, it was essential to establish a mechanism to address pre-existing disputes and ensure a smoother transition to independence. Not only was this consistent with the decolonization goals, but one should not lose track of the alternative scenario, namely, that the United Kingdom could have simply insisted on the colonial borders — and left it at that. That such a route was not taken with the Geneva Agreement means only that the colonial injustice was simply too stark.

- As for British Guiana³⁵, its participation in the Geneva Agreement as a party in its own right reflects the evolution of

³³ Presentation to the National Congress by Mr Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, Annex 2, p. 1.

³⁴ RV, para. 3.25 (a).

³⁵ RV, para. 3.25 (b).

the principle of self-determination, which mandated the involvement of the colonized people in decisions affecting their future. As a State about to secure its independence, Guyana had all the capacity necessary to assess the Award, and its participation in the Geneva Agreement suggests recognition that a new path for resolution was needed. It is a tragedy that Guyana has now forgotten this and changed its stance □ a genuine volte-face.

- Finally, looking at Venezuela³⁶, we see a country free at last from the colonial shackles in the first quarter of the nineteenth century and from the gun-boat diplomacy that defined the following decades. Under these new circumstances, Venezuela could finally challenge the 1899 Award, and it did so in keeping with the principles of the United Nations Charter: through peaceful means and negotiations.

70. This explains why Venezuela later described the Geneva Agreement, as “a formal agreement by which the three parties involved committed themselves to a political search for peaceful solutions to a dispute inherited from colonialism”³⁷. It was, and is, a crucial step in the process of Latin American decolonization³⁸.

71. No interpretation of the Geneva Agreement, I insist, no interpretation of the Geneva Agreement can *faire l’impasse* on this history. Insisting — as Guyana now does — that the Geneva Agreement endorsed the status quo and the behaviour of the British Empire is incompatible with the Agreement’s time and context. To quote Judge *ad hoc* Abi-Saab in the *Frontier Dispute* case, this

³⁶ RV, para. 3.25 (c).

³⁷ Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN doc. A/C.1/36/12, p. 6.

³⁸ See e.g. *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Preliminary Objection, Judgment, I.C.J. Reports 2023 (I)*, partly separate and partly dissenting opinion of Judge *ad hoc* Couvreur, para. 37: “[T]he only reasonable reading of the Geneva Agreement in this regard is that the United Kingdom, as a former colonial Power, sought to facilitate the settlement of the dispute relating to the territory that it had transferred to the newly independent Guyana.”

would “find . . . in contemporary international law [a] retroactive legitimation whatever of colonialism as an institution”³⁹.

72. This does not have to be: the Agreement offers a path to remedy the wrongs of the colonial past and achieve a mutually satisfactory solution - a path that remains open. It is Guyana that has stepped off it.

The Geneva Agreement as novation

73. Mr President, I have now demonstrated that the real issue in this case is the pursuit of a mutually satisfactory solution, and that the decolonization context explains why the parties to the Geneva Agreement sought to leave the 1899 Award behind. I turn now to my final point: how they did so.

74. Venezuela’s position is the following: the 1966 Geneva Agreement operates as a novation of the 1899 Award. It extinguished that Award as a source of binding legal entitlement and replaced it with a new framework built on negotiation, mutual satisfaction, and equal sovereignty. It is that framework $\square$ *and that framework alone* $\square$, the Geneva Agreement, that governs Venezuela’s and Guyana’s rights and obligations today.

75. To establish this, I shall first address the doctrinal foundations of novation in international law (I). I shall then demonstrate that the Geneva Agreement satisfies every criterion the doctrine requires (II). Finally, I shall address the legal consequences that flow from novation, and which the Court is bound to respect (III), before concluding.

I. Novation under international law

76. Mr President, novation is one of the most venerable institutions of law. It is rooted in Roman law, and it describes the extinction of a prior obligation by the substitution of a new one⁴⁰.

³⁹ *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, separate opinion of Judge *ad hoc* Abi-Saab, para. 4.

⁴⁰ In the Digest, “*Novatio est prioris debiti in aliam obligationem vel civilem vel naturalem transfusio atque translatio, hoc est cum ex praecedenti causa ita nova constituitur, ut prior perematur. novatio enim a novo nomen accepit et a nova obligation*” (Digest, 46.2.1.1).

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77. Its status under international law is established, as Venezuela documented in its Rejoinder. One example I want to emphasize is the one of the *Abyei Arbitration* of 2009, where a tribunal constituted under the auspices of the Permanent Court of Arbitration expressly recognized that, even after an earlier determination, the parties concerned could consent to a new dispute resolution process. The Tribunal held that such consent would have the effect of “reopening questions that had been accepted as ‘final and binding,’ thus novating the issues for decision”⁴¹. This is exactly what the Geneva Agreement purported to achieve, and what it did in fact achieve.

78. The practical consequences are plain: novation *extinguishes* the original framework entirely, leaving in its place only the new one; any pre-existing obligations become moot, and cannot be revived.

79. Now, as a matter of international law, novation may occur if three requirements are satisfied.

First, there must be a pre-existing legal obligation.

Second, there must be a new obligation having a substantively different content.

- *Third*, there must be a clear and unambiguous intention on the part of all relevant parties to substitute the new obligation for the old one.

II. The Geneva Agreement satisfies all criteria for a novation

80. Mr President, these three requirements are satisfied in this case. Let me start with the first one.

1. *The pre-existing obligation*

81. To begin with, the prior framework was the 1899 Arbitral Award. That Award purported, per the Treaty of Washington, to

⁴¹ *The Government of Sudan / The Sudan People's Liberation Movement/Army, Abyei Arbitration*, Award, 22 July 2009, para. 450.

constitute “a full, perfect, and final settlement”⁴² of the boundary between Venezuela and British Guiana.

82. In its written pleadings, and consistent with its long-standing position, Venezuela has demonstrated that the Award was procured by fraud. But even assuming, *arguendo*, that the Award were valid, Venezuela and Guyana subsequently agreed to replace it, and that agreement is what now governs their relationship in relation to that matter.

83. The Award therefore generated the pre-existing obligation that both States sought to replace. The first requirement is satisfied.

84. In challenging this evidence on Monday morning, however, Professor d’Argent offered the Court a syllogism. Major premise: novation requires an obligation to replace. Minor premise: a null award produces no obligation. Conclusion: Venezuela, which says the Award is null, cannot invoke novation. He said that Venezuela’s case, and I quote, “*est donc affecté d’une contradiction interne indépassable*”⁴³.

85. Mr President, the syllogism is elegant. But it is wrong.

86. First, novation only requires a pre-existing legal framework, whatever its validity, to be treated as the object of substitution. The parties to the Geneva Agreement plainly understood themselves to be replacing *something*: the framework that had governed, although with much protest from Venezuela, the boundary question since 1899. Whether that framework was valid, voidable or void in Venezuela’s eyes is, respectfully, beside the point.

87. Second, and most tellingly, Guyana’s entire case rests on the proposition that the Award produced obligations binding on the parties to this day. Indeed, Professor d’Argent himself, only minutes before mounting his novation objection, invoked the Permanent Court’s language to insist that the Award established “a situation at law once and for all and with binding force as between the parties”⁴⁴. But Guyana cannot have it both ways. It cannot rely

⁴² Treaty of Washington, Article XIII.

⁴³ 2026/24, p. 32, para. 27 (d’Argent).

⁴⁴ *Ibid.*, p. 28.

on the Award's binding force to defeat Venezuela's claim of nullity and then strip the Award of that very binding force to defeat Venezuela's argument of novation. One of those positions must yield.

88. In truth, Mr President, the doctrine of novation does not invite the syllogism Professor d'Argent has proposed. It asks a simpler, more pragmatic question, properly suited to relations between sovereign States: did the parties, by clear and unambiguous agreement, decide to replace one framework with another? In 1966, Venezuela, Guyana and the United Kingdom answered that question in the affirmative.

2. The new, substantively different obligation

89. Second, the Geneva Agreement created obligations that have no parallel in the 1899 Award or in any prior instrument. Let me identify five key elements of novelty to prove that there is a new, substantively different obligation.

- *First*, the governing standard was transformed with the Geneva Agreement. Under the 1899 Award, the boundary was fixed — there was nothing to negotiate, nothing to satisfy. Under Article I of the Geneva Agreement, both Venezuela and Guyana became bound to seek “satisfactory solutions for the practical settlement of the controversy”⁴⁵.

- Second element of novelty: at the procedural level, the Geneva Agreement created a new structured process for resolving the controversy. Article II established a Mixed Commission with a substantive mandate, while Article IV built upon that foundation to channel the negotiations through a progressive sequence of largely diplomatic means. These are the means in which Venezuela and Guyana placed their hopes in 1966, and the means in which Venezuela continues to place its hopes today.

⁴⁵ See also the Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN doc. A/C.1/36/12, p. 6, describing the Geneva Agreement as follows: “The Geneva Agreement therefore constitutes the legal statute for Venezuela's territorial claim and it is the product of the freely expressed will of Venezuela and Guyana.”

- *Third element of novelty*: Article V's provisions, whereby no acts or activities during the Agreement could create claims to sovereignty or prescription, confirm that the parties understood themselves to be operating in a new legal space, where rights remained open and had to be resolved through negotiation.

- *Fourth element of novelty*, and most significantly, the parties to the Geneva Agreement replaced finality with indeterminacy. They chose to subject the boundary to a fresh process of mutual determination.

- *Fifth element of novelty*, one should consider what *did not happen* with the Geneva Agreement, which would have been for the United Kingdom to just ignore Venezuela's allegations of fraud, wash its hands of the whole affair, and let the newly independent Guyana inherit the original framework. Instead, what we have is an international instrument that positively provides — in its Article VIII — that Guyana shall become a party to the new framework upon independence⁴⁶.

90. As such, the second criterion for novation, the creation of a substantively different obligation, is satisfied too.

3. Unambiguous intent to novate

91. Let me now come, Mr President, to the third criterion, an unambiguous intent to novate. The intention to novate emerges from every available source of evidence.

- It emerges from the *text* of the Agreement. Article I refers to the “controversy” as something unresolved. It creates an obligation to seek “satisfactory solutions”, not to implement an existing one. The entire architecture of the Geneva Agreement presupposes that the status of the boundary is open, not closed.

⁴⁶ See *Yearbook of the International Law Commission*, 1974, Vol. II, Part One, p. 195 (expressly citing the Geneva Agreement as a noteworthy example of a bilateral treaty concluded just before independence, and noting both the preamble's reference to consultation with British Guiana and the provision in Article VIII requiring the successor State to formally accept participation).

- The intention to novate emerges from Venezuela's *subsequent practice*.

- The intention to novate emerges from *Guyana's own practice*. For more than five decades, Guyana did not invoke the 1899 Award before any international forum. Instead, it engaged in negotiations, in good offices processes, and in other mechanisms established by the Geneva Agreement⁴⁷. That sustained practice from Guyana reflects precisely the understanding that the Award had been superseded.

- The intention to novate emerges, finally, from the *practice of the United Kingdom*, which consistently maintained in its diplomatic practice that former colonies could not simply inherit all obligations of colonial-era treaties by automatic succession, as illustrated by several examples reviewed in Venezuela's Rejoinder⁴⁸.

92. Therefore, even the final criterion for novation, unambiguous intent, is clearly satisfied.

III. The consequences of novation

93. Mr President, once novation is established, its consequences are unavoidable and absolute.

1. The Court's alleged jurisdiction — *quod non* — must be tested against the Geneva Agreement

94. To begin with, Venezuela has consistently argued — without fail — that the Court lacks jurisdiction over this controversy. The Court nevertheless upheld its jurisdiction in its 2020 Judgment. Venezuela respectfully maintains that it should not have done so and reserves its position on the matter.

⁴⁷ See, *inter alia*, Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, Annex 1 (recording that the parties exchanged ideas and proposals aimed at a practical settlement of the controversy and that, as neither side accepted the conclusions of the experts appointed by the other, the exchange of views on the experts' reports would not be discussed).

⁴⁸ RV, paras. 4.27-4.28.

95. But even leaving that aside, the novation effected through the Geneva Agreement precludes — precludes — the Court from adjudicating the territorial controversy — the real issue before it — on the basis Guyana has presented. To do so would be to give effect to the 1899 Award through the back door of jurisdiction, having abandoned it through the front door of the merits. International law does not permit that operation.

2. Acquiescence is legally irrelevant after novation

96. Second, Guyana has argued, and continues to argue, as it did on Monday during Professor Oral's pleadings, that Venezuela acquiesced in the 1899 Award and is estopped from challenging it. Venezuela contests both the facts and the law of that argument⁴⁹, and Professor Thouvenin will address the matter in detail.

97. But the fact is that a novation occurred. And that means that any acquiescence argument is moot: a novation creates a clean slate — a clean slate⁵⁰. Rights and defences that accrued under the old framework cannot survive the transition to the new one unless they are expressly preserved in the new instrument — and they were not.

98. Guyana's acquiescence argument, therefore, cannot succeed even on its own terms. It addresses the wrong legal framework.

3. The asymmetry of Guyana's approach betrays the Agreement

99. Mr President, there is a final point to address before I conclude. There is a final point to address because it goes to the fundamental character of the Geneva Agreement, which mandates its parties to seek a mutually satisfactory solution. That bilateral obligation is the cornerstone of the entire framework.

100. Yet Guyana's case is structurally incapable of honouring it: if the Court upholds the Award, Guyana obtains everything — everything. This is not a "satisfactory solution". If the Court does not uphold the Award, and Guyana refuses to come back to the

⁴⁹ See also CMV, Chap. 7.

⁵⁰ See RV, para. 4.44.

negotiating table, neither State advances and the controversy is left to fester. That would not be honouring the Geneva Agreement either.

Conclusion

101. Mr President, distinguished Members of the Court, I come to my conclusion.

102. The Court knows very well that the legacy of colonialism makes for hard cases. But it also knows that this legacy cannot and should not be ignored, in keeping with the goals and principles of the decolonization movement.

103. There is a direct precedent for this in the *Chagos Islands* Advisory Opinion. In the *Chagos* Advisory Opinion, the Court rightly found that the 1965 Lancaster House Agreement, which had detached the Chagos Archipelago from Mauritius, was incompatible with the principle of self-determination⁵¹. The Court reached that conclusion notwithstanding the fact that Mauritian representatives had participated in the negotiation of the Lancaster House Agreement, because the conditions of colonial coercion under which it had been concluded vitiated any pretence of genuine consent⁵².

104. It might be said that the 1899 Award is different — that it was the product of arbitration, a legal process, and that, in that process, Venezuela was a participant. But the *form* of the colonial wrong is irrelevant. Whether dispossession is achieved by direct governmental decree — as in *Chagos* — or through a tribunal corrupted by imperial influence, the result is the same: territory is wrested from a State through the exercise of colonial Power, dressed in legal clothing to lend it an air of legitimacy it does not deserve.

105. In truth, the 1899 Award is the more egregious case. What happened in Paris was the weaponization of the nascent machinery

⁵¹ See RV, para. 3.17.

⁵² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 137, para. 172.

of international arbitration, an institution built to deliver justice between equals, and its perversion into an instrument of imperial expropriation. The result, as generations of scholars have documented, and as Venezuela will demonstrate this afternoon, bore the hallmarks of colonial imposition rather than legal adjudication.

106. When Guyana’s Co-Agent told this Court in 2020 that “international law spoke” on 3 October 1899⁵³, he invited the Court to treat that moment as an early triumph of the rule of law, yet glossed over what kind of “international law” that was. It was the law of empire, administered by empire’s appointees, for empire’s benefit.

107. If the Court found the Lancaster House Agreement incompatible with self-determination despite the participation of Mauritian representatives, how much less can an 1897 Treaty — concluded entirely over the heads of the colonized peoples on both sides — how this Treaty — or a deeply revolting arbitral award, the poisoned fruit of a poisoned tree, claim enduring legitimacy? How? How?

108. The Geneva Agreement was the two States’ answer to this history. Where the 1899 Award imposed a boundary dictated by imperial compromise, the Agreement substituted a framework built on negotiation in line with the principles of the United Nations Charter. It charted a different path — one of negotiation, mutual satisfaction, genuine consent between sovereign equals. That path must not be foreclosed.

109. That, Mr President, is the “real issue” in this case.

110. This concludes my presentation. I thank you for your kind attention and patience and kindly ask you to invite Professor Zimmermann to the podium, but I guess it will happen shortly after the break. Thank you.

⁵³ CR 2020/5, p. 16, para. 5 (Ramphal).

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The PRESIDENT: I thank Professor Mbengue. Before I give the floor to the next speaker, the Court will indeed observe a break of 15 minutes. The hearing is suspended.

The Court adjourned from 11.25 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now give the floor to Professor Andreas Zimmermann to address the Court. You have the floor, Sir.

Mr ZIMMERMANN:

**IMPACT OF THE GEN EVA AGREEMENT AND ITS
ARTICLE IV**

A. Introduction

1. Merci M. le président, membres de la Cour, it is, as always, an honour to appear before the Court.

2. I will now address in detail the content and, notably, the impact of the Geneva Agreement in the current proceedings. I will show that it is the Geneva Agreement □ legally binding on both Guyana and Venezuela □ which provides the agreed, and indeed only, way forward to reach a mutually acceptable satisfactory solution for the controversy between Guyana and Venezuela for the Court.

3. Before doing so, I cannot but note, however, that, to my regret, counsel for Guyana had almost nothing of *substance* to say on the content of the Geneva Agreement. Neither *M. le professeur*

d'Argent, nor indeed Professor Oral, did therefore act in accordance with Article 60 of the Court's Rules and Practice Direction VI.

4. Rather, *M. le professeur* d'Argent merely claimed that Venezuela was trying to "rewrite the Geneva Agreement"⁵⁴ □ a striking accusation to make, given that he himself did not quote a single substantive provision of the Agreement in support of his own reading □ and claiming that its sole effect is to allow for a discussion on the validity of the 1899 Award⁵⁵.

5. Professor Oral in turn, either misunderstanding or misrepresenting Venezuela's line of argument, simply stated that the Geneva Agreement did not grant Venezuela a "new right to challenge the 1899 Award"⁵⁶.

6. This, I might say, blatant refusal, by Guyana, to engage meaningfully with the content of the Geneva Agreement is, to say the least, telling for two reasons.

7. For Guyana, the Geneva Agreement seems to consist of nothing but the alleged compromissory clause of Article IV, paragraph 2. Of the eight speakers Guyana fielded, only one addressed the Geneva Agreement and his treatment then glossed over its substantive content entirely. Accordingly, Guyana brought the case on the basis of the Geneva Agreement, but then simultaneously refuses to engage with the legal obligations that follow from it for Guyana.

8. Guyana has thus, consistently, and up to last Monday, completely disregarded the *substantive* parameters contained in the Geneva Agreement that ought to lead to a peaceful solution of the controversy which Guyana brought before the Court in the first place. But let me state at the outset: Guyana cannot have its cake and eat it too.

9. Or to use the words of *M. le professeur* d'Argent, it is Guyana's, not Venezuela's, it is Guyana's commitment to the

⁵⁴ CR 2026/24, p. 27, para. 14 (d'Argent).

⁵⁵ CR 2026/24, p. 27, para. 15 (d'Argent).

⁵⁶ CR 2026/25, p. 42, para. 57 (Oral).

Geneva Agreement, that is merely “fictitious and purely formal”⁵⁷. And that, Mr President, Members of the Court, is the fundamental difference between the two cases: Venezuela’s case rests on the *substance* of the Geneva Agreement; Guyana’s rests on a single procedural clause within it □ but without support, as I will show, by its substance.

10. What is more, Guyana, by not engaging in the substantive interpretation of the Geneva Agreement, implicitly acknowledged that it has nothing to say on the manifold arguments related to the impact of the Geneva Agreement on how to solve the boundary dispute □ arguments that Venezuela had already brought forward in its written pleadings, and which I will now further develop.

11. As I will demonstrate, a bona fide interpretation of the Geneva Agreement can only lead to one result: namely, that by concluding the Geneva Agreement, the parties wanted to set aside the issue of the invalidity of the 1899 Award. Instead, they wanted to establish a process leading to a mutually acceptable solution for the *substance* of their boundary dispute, where the boundary lies □ and to do so *not* on the basis of the 1899 Award, but irrespective of it. And it is this overarching goal that the parties wanted to reach by concluding the Agreement.

12. Professor Mbengue has already led you through the circumstances leading to the conclusion of the Geneva Agreement, and notably, its roots in the process of decolonization. What is more, he has also demonstrated that the parties, by concluding the Geneva Agreement, provided for a novation of the pre-existing legal framework, starting on a new path to a mutually acceptable solution to their overall boundary controversy.

13. My task now is to demonstrate that this goal of the Geneva Agreement, namely to bring about a resolution of the territorial controversy as a whole, is the only conclusion allowed by a thorough engagement with the Agreement’s drafting history, its wording, its object and purpose, as well as by the subsequent agreed practice of Guyana and Venezuela in relation to the Geneva

⁵⁷ Cf. CR 2026/24, p. 26, para. 10 (d’Argent).

Agreement □ an engagement with the content of the Geneva Agreement Guyana wanted to avoid at all costs, seems to me.

14. And to that end, let me start by addressing the drafting history of the Geneva Agreement.

B. Drafting history

15. Already prior to the conclusion of the Geneva Agreement, Venezuela and the United Kingdom had discussed practical solutions to the *overall* territorial dispute. At the outset of the negotiations in 1965, there had been a debate as to the scope and goal of these negotiations.

16. The United Kingdom's *initial* position had been that the talks ought to only encompass a documentary review of the process that had led to the 1899 Award. Venezuela, however, insisted that the agenda be changed⁵⁸. Accordingly, Venezuela proposed a new wording for the agenda of the forthcoming negotiations, as confirmed by agenda item 2: namely, that the negotiations ought to seek solutions for a practical settlement of the overall boundary controversy as such⁵⁹. It is important to note that the United Kingdom ultimately agreed, as you can see, to the inclusion of this item, as had been proposed by Venezuela.

17. In line with this agreed agenda, the parties then met in London in December 1965. Already during these meetings, the parties considered various *substantive* solutions to the dispute that extended far beyond the question of the validity of the Award. Such propositions included, *inter alia*, an agreement which, similar to the Antarctic Treaty of 1959, would have kept the legal status of the disputed territory *in limbo*, or a possible joint administration of the disputed area⁶⁰. Remarkably, the British record of the exchange

⁵⁸ Cf. Radiogram of the Ministry of Foreign Affairs [of Venezuela] to the Director General of the Embassy in London, 15 October 1965; cf. Rejoinder of the Bolivarian Republic of Venezuela, 11 August 2025, paras. 2.90–92.

⁵⁹ *Ibid.*

⁶⁰ Record of Conversations held at the foreign office in London on the border dispute between Venezuela and British Guiana in London on 10 December 1965, p. 3-4; cf. MG (2018), Vol. II, Annex 28, p. 4; cf. CMV, para. 3.38.

confirms that such joint administration had been proposed by the United Kingdom itself, rather than by Venezuela⁶¹.

18. Following these meetings, and in preparation for the negotiations that culminated in the conclusion of the Geneva Agreement, the British Ambassador confirmed that “neither Lord Walston nor any other Representative of Her Majesty’s Government has stated that the Geneva Conference ‘will *not* discuss the Venezuelan claim’ over the Guayana Esequiba”⁶².

19. The drafting history thus proves that the parties, by the end of the day, decided to leave the issue of the invalidity of the 1899 Award behind, turn the page and start a new chapter in the resolution of their boundary dispute. Accordingly, they explicitly decided to address the *overall* border controversy in their upcoming negotiations, and hence later also, as we will see, in the Geneva Agreement, the content of which I will now discuss in detail.

C. Interpretation of the Geneva Agreement

20. Members of the Court, let me start with the very wording, as usual, of the Geneva Agreement and, first, its very title⁶³.

I. Interpretation of the Geneva Agreement’s title

21. The Agreement is referred to as the “Agreement to Resolve the Controversy between Venezuela and the United Kingdom . . .

⁶¹ Cf. MG (2018), Annex 28, p. 4.

⁶² Ministry of Foreign Affairs, Office of Information, Press and Publications, BULLETIN N° 350-C, p. 1 (emphasis added); cf. RV, para. 2.111.; emphasis added.

⁶³ As to the relevance of the title of a treaty for its interpretation *cf.*, *inter alia*, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (I), p. 7 et seq. (28), para. 57; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 3, para. 70; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 118, para. 39; *Certain Norwegian Loans (France v. Norway)*, Judgment, I.C.J. Reports 1957, p. 24.

over the Frontier between Venezuela and British Guiana” (emphasis added): over the frontier between the parties.

22. In other words, the Geneva Agreement was intentionally *not* titled “Agreement to Resolve the Controversy . . . *over the Validity of the Arbitral Award of 1899*” (emphasis added): that is not what the parties chose.

23. Had the parties indeed wanted to focus, in the Agreement, on the issue of the invalidity of the 1899 Award, they would have certainly chosen a title reflecting such a limited understanding. Yet, the parties intentionally opted for a significantly broader title over the frontier.

24. This is confirmed, *e contrario*, by a contemporaneous agreement concluded in 1957 between Honduras and Nicaragua, relating to the Arbitral Award handed down by the King of Spain in 1906, of which the Court is obviously aware. At first glance, the similarities are striking □ and Guyana itself last Monday claimed once again that both cases raise very similar issues⁶⁴.

25. But - and this is an important “but” - this 1957 Agreement, concluded only a few years prior to the Geneva Agreement, specifically referred, as you can see, to “the disagreement existing . . . *with respect to the Arbitral Award* handed down by His Majesty the King of Spain on 23 December 1906”.

26. It is beyond doubt that Venezuela and the United Kingdom, when negotiating the Geneva Agreement, were obviously fully aware of this earlier Agreement, which this very Court had not only dealt with in a weeks-long sitting in 1960 but had also rendered a judgment in this very year □ just six years prior to the conclusion of the Geneva Agreement.

27. Had Venezuela and the United Kingdom, when concluding the Geneva Agreement, indeed wanted to settle the question of the (in-)validity of the 1899 Award, rather than settle or find a path for the settlement of their bilateral frontier controversy as such, they would have certainly chosen the same language Honduras and Nicaragua □ two other countries from the very same region □ had

⁶⁴ CR 2026/25, p. 42, para. 55 (Oral).

used just some years ago. They had — Guyana, or the United Kingdom and Venezuela — they had that example available to them, and yet, they deliberately opted for a much broader formula.

28. Put otherwise, by concluding the Geneva Agreement, the United Kingdom and Venezuela aimed at settling the overall boundary controversy, rather than to decide “the disagreement existing between them with respect to the Arbitral Award”, to use the different formula used by Honduras and Nicaragua.

II. Interpretation of the Geneva Agreement’s preamble

29. And the same holds true when it comes to the Geneva Agreement’s preamble⁶⁵.

30. The preamble of the Geneva Agreement provides, unequivocally, that the Agreement was specifically concluded to resolve “*any outstanding controversy* between the United Kingdom and British Guiana on the one hand and Venezuela on the other . . . ” (emphasis added).

31. Let me reiterate: the Geneva Agreement’s jointly approved aim was to resolve “*any outstanding controversy*”. Had the parties wanted to concern themselves instead with the specific issue of the Arbitral Award, they would have said so, choosing a wording that would have reflected in the preamble this limited understanding.

⁶⁵ As to the relevance of the preamble in treaty interpretation *cf.* *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment of 31 January 2024, I.C.J. Reports 2024 (I), p. 118, para. 50; *Jadhav (India v. Pakistan)*, Judgment, I.C.J. Reports 2019 (II), p. 439, para. 74; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 118, para. 39; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Reports 2002, p. 652 para. 51; *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, I.C.J. Reports 1952, pp. 176, 197.

32. What is more, this overall controversy was to be settled, again according to the Agreement's preamble, "*in a manner acceptable to both parties*".

33. Yet, to state the obvious, deciding the issue of the invalidity of the Award could never be acceptable to both parties as it would either unilaterally favour Guyana or Venezuela. Accordingly, the Geneva Agreement intends to reach a mutually acceptable negotiated agreement, since the parties, as has been shown by Professor Mbengue, and as was indeed confirmed by counsel for Guyana on Monday⁶⁶, were very much aware of the fact that no agreed conclusion could be reached as to the invalidity of the 1899 Award.

34. *And* this understanding has, in fact, also been shared by this Court, which stated that "the [Geneva] Agreement is entitled 'Agreement to Resolve the Controversy . . . over the Frontier between Venezuela and British Guiana' and [that] its preamble states that it was concluded 'to resolve' that controversy"⁶⁷.

35. *According* to the preamble, this attempt must be undertaken "[i]n conformity with the agenda that was agreed for the governmental conversations concerning the *controversy* between Venezuela and the United Kingdom *over the frontier* with British Guyana". This now brings me to Article I of the Geneva Agreement.

III. Interpretation of Article I of the Geneva Agreement

36. And there, multiple components stand out.

37. *First*, it is no coincidence that the parties refer to the "controversy" between Venezuela and the United Kingdom. As the Court is aware and has stated⁶⁸, it was already Article IV of the 1897 Washington Treaty, which had used the term "controversy" □ when referring to the *original* boundary dispute that was to be submitted to the arbitral tribunal established under the said 1897 Washington Treaty.

⁶⁶ Cf. CR 2026/24, p. 28, para. 15 (d'Argent).

⁶⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 2020, p. 476, para. 73.

⁶⁸ *Ibid.*, p. 473, para. 64.

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38. To state the obvious, the 1897 Washington Treaty had been concluded *prior to* the 1899 Award. The Washington Treaty had thus been concluded well before any dispute as to the invalidity of said Award could have even arisen. Accordingly, the parties of the 1897 Washington Treaty — the same parties as those of the Geneva Agreement — by using the term “controversy” in 1897 could have only referred to the boundary issue as such. And this by necessary implication confirms that the “controversy” meant to be settled by the Geneva Agreement — the same controversy — is *not* the dispute relating to the invalidity of the 1899 Award. Rather, the “controversy”, already addressed in 1897, to be settled is the overall bilateral boundary controversy *in toto*.

39. Had the parties, in concluding the Geneva Agreement, wanted to refer to the invalidity of the Arbitral Award in the Geneva Agreement it would have been expected, if not mandatory, to use the more common term of “dispute” or in Spanish “diferendo”. Yet, the parties did not. They used the term “controversy” of the 1897 Washington Treaty.

40. And this conclusion is further supported, *second*, by the fact that the parties understood the controversy to be settled, as you can see, as one that *has arisen* as the result of the Venezuelan contention that the Award of 1899 is null and void.

41. This wording underscores that the parties thus aimed to leave the arbitral deadlock behind. Instead, they wanted to focus on solving the overall boundary question as such, and to do so by way of negotiations.

42. Had that not been the case, the parties could have formulated Article I as follows: “A Mixed Commission shall be established with the task of resolving the controversy between Venezuela and the United Kingdom *as to the validity of the Arbitral Award of 1899* about the frontier between British Guiana and Venezuela.” They could have done so. But they did not formulate Article I in that manner.

43. *Third*, Article I of the Geneva Agreement entrusted the Mixed Commission “with the task of *seeking*” satisfactory solutions for the boundary controversy. Had the parties wanted the various settlement mechanisms established by the Geneva Agreement to

simply *decide* upon the nullity of the 1899 Award, it would have been possible, and indeed most natural, for the parties to spell this out.

44. Instead, the reference to “*seeking* satisfactory solutions” implies that the mandate for the various mechanisms established by the Agreement was *not* to determine the Award’s validity. After all, the very term of *seeking* a resolution to a controversy implies an open-ended, future-looking process, contrary to merely making a backward-looking finding on the current legal status of a, by then, 60-year-old Arbitral Award.

45. Fourth, the notion of “*satisfactory*” and mutually acceptable solutions used by the parties in Article I further implies that a negotiated result was to be reached that would align with the interests of *both* sides. This necessarily presupposes a compromise and excludes any possibility of a judicial finding on the validity of the Award, as such finding could *per definitionem* not provide for a mutually satisfactory result.

46. That the Geneva Agreement’s intention is *not* to reach a binary solution as to the validity versus the nullity of the Award is further confirmed by the fact that Article I refers to the goal to find “satisfactory solutions”/“soluciones satisfactorias” to the controversy.

47. The parties thus deliberately referred to satisfactory *solutions* in the plural. Had the parties wanted to focus on the (in)validity of the Award, it would have been logical, and indeed mandatory, to instead refer to the goal of reaching a “satisfactory solution”/“solucion satisfactoria” in the singular.

48. This issue is closely related, *fifth*, to the requirement to seek a *practical* settlement of the dispute. But what constitutes then a practical settlement? It is this Court’s own jurisprudence that provides guidance on the matter.

49. In the *Polish Postal Service in Danzig* Advisory Opinion, the PCIJ had to deal with a very similar case. It concerned the relationship between a 1922 decision of the High Commissioner of the League of Nations in Danzig and a subsequent agreement reached in 1923 between the Free City of Danzig and Poland.

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50. As in the case at hand, a dispute arose between Poland and Danzig concerning this 1922 decision of the High Commissioner. Accordingly, Poland and Danzig concluded an agreement which was □ just like the Geneva Agreement □ meant to supersede said previous decision.

51. The agreement set out the parameters on how to solve the dispute between Poland and Danzig - irrespective of the nature of the previous decision by the High Commissioner.

52. The only □ but fundamental! □ difference between the Polish-Danzig Agreement on the one hand, and the Geneva Agreement on the other, is that the Polish-Danzig Agreement made it clear in its clause 3 that “[t]his *practical* settlement of the question *in no way changes the legal position*”. (Emphasis added.)

53. Let me recall that the terminology “practical settlement” used then by Poland and Danzig is word by word identical with the terminology used in the Geneva Agreement. Yet, Poland and Danzig did think it necessary to include a savings clause □ by adding the words: “in no way changes the legal position” □ into the 1923 Agreement. They, Poland and Danzig, did so in order to safeguard any possible legal effect of the decision of the Danzig High Commissioner. Had the parties not done so, their practical settlement would have superseded the 1922 decision of the High Commissioner for Danzig. The Geneva Agreement, however, unlike the Danzig and Poland Agreement, does *not* contain such a savings clause □ and it lacks it on purpose.

54. Obviously, Venezuela and the United Kingdom could have also inserted a savings clause in the Geneva Agreement akin to clause 3 of the 1923 Agreement between Poland and Danzig. They could have thereby similarly provided that the practical settlement envisaged by the Geneva Agreement “in no way changes the legal position” as to the effects of the 1899 Award.

55. Put otherwise, by not including such a saving clause, Venezuela and the United Kingdom □ unlike Poland and Danzig □ decided to have the outcome of the 1899 arbitral proceedings on which they held irreconcilable views superseded by the search for a negotiated solution to be reached by the parties.

56. Thus, Venezuela and the United Kingdom opted for a practical settlement overriding *any* possible *res judicata* effect of the 1899 Award, assuming □ for the sake of the argument □ that there has ever been one in the first place given the nullity of the Award.

57. The parties of the Geneva Agreement thus deliberately opted for a new start, constituting, as Professor Mbengue has shown, a novation of their legal relationship.

58. The parties □ in stark contrast to Poland and Danzig □ were thus willing to replace the 1899 Award, on which they held fundamentally divergent and not compatible positions, with a new practical settlement, whatever legal status the 1899 Award might hold.

IV. Interpretation of Article II of the Geneva Agreement

59. Mr President, Members of the Court, let me now address Article II, paragraph 3 of the Geneva Agreement.

60. This provision foresees that “*any* individual matter under consideration” may be discussed by experts. This again implies that there exists a wide range of “matters” that form part of the overall controversy to be considered under the Geneva Agreement □ rather than the one that Guyana wants you to believe.

61. Moreover, the fact that Article II Geneva Agreement refers to “experts to assist the Mixed Commission” hints at work to be done by cartographers, geologists or experts of a similar kind, that can assist in delimiting and demarcating a boundary anew as such. Any determination concerning the validity of an arbitral award as being a purely legal issue in nature does not require any such experts.

62. The necessity of further experts thus presupposes discussions that extend beyond the competences and knowledge of the members of the dispute settlement mechanism itself. This thereby once again confirms that the overall aim of the Geneva Agreement was *not*, and is not, to decide upon the invalidity of the 1899 Award.

V. Interpretation of Article IV of the Geneva Agreement

63. Members of the Court, Article IV of the Geneva Agreement reconfirms the interpretation I just discussed. It outlines the further dispute settlement process should the Mixed Commission fail to complete its task.

64. For one, Article IV, paragraph 1, refers to a “*full agreement* for the solution of the controversy”. Should the Mixed Commission fail to do so, it shall refer “*any outstanding questions*” □ it is again the plural that is being used □ to the Governments of Guyana and Venezuela.

65. If, however, the controversy to be solved by the Geneva Agreement — as submitted by Guyana — had been meant to refer to the invalidity of the 1899 Award, there could have only been *one single* outstanding unresolved question by the end of the negotiations, namely the very issue of the Award’s nullity or validity.

66. The fact that the parties made reference to “any outstanding questions” in the plural presupposes a multiplicity of issues on which the Mixed Commission might not agree on □ and not the single issue of the invalidity of the Award.

67. The notion of “outstanding questions” accordingly obviously refers to the issue of resolving the overall boundary controversy as such, and how to delimit the boundary between the two countries in order to reach a mutually acceptable solution.

68. This result is then confirmed by Article IV, paragraph 2 of the Geneva Agreement on which your jurisdiction is allegedly based.

69. Article 33 of the United Nations Charter, mentioned in Article IV, paragraph 2, makes reference to negotiation, mediation and conciliation as possible means to solve a given dispute.

70. Negotiation, however, entails a process — as we were told in your jurisprudence — where either party may not insist upon their own respective position without contemplating any

modification of it⁶⁹. By making reference to negotiations, through the proxy of Article 33 of the United Nations Charter, the parties to the Geneva Agreement must have thus *necessarily* contemplated modifications to their respective positions — modifications to their positions.

71. The determination as to the invalidity of an arbitral award does, by its very nature, however, constitute a legal question *par excellence*. It can only be decided in a binary manner: either it is valid or it is not valid. The issue of the invalidity of the 1899 Award is therefore not, in and by itself, capable of settlement by negotiation. By indirectly referring to negotiation in Article IV, paragraph 2, the parties must have therefore necessarily envisaged a solution that sets aside the issue of the invalidity of the 1899 Award.

72. *Mutatis mutandis*, the same considerations apply to the implicit references to the concepts of mediation and good offices, which are also found in Article IV, paragraph 2 of the Agreement. The Geneva Agreement accordingly aims at a satisfactory and mutually acceptable solution to the overall territorial controversy.

73. Any determination on the invalidity of the 1899 Award would, however, necessarily — as I have shown — unilaterally favour one of the Parties. It, therefore, cannot thereby constitute a *mutually* acceptable solution, as prescribed by the Geneva Agreement. And any such determination either way would thus contravene the very object and purpose of the Geneva Agreement.

D. Subsequent practice

74. Mr President, Members of the Court, this understanding of the Geneva Agreement as a forward-looking, future-oriented

⁶⁹ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969, p. 3, para. 47; cf. also Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), p. 17, paras. 157–159; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I), p. 14, para. 146; Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Order of 5 February 1997, I.C.J. Reports 1997, p. 7, para. 77.*

practical instrument meant to solve the boundary issue at large, instead of as a backward-looking instrument freezing and perpetuating the bilateral conflict, is further supported by the subsequent practice of both Parties⁷⁰, starting with the work of the Mixed Commission.

I. Work of the Mixed Commission

75. It is particularly telling that within the framework of the Mixed Commission, Venezuela and Guyana substantively discussed how to reach a mutually acceptable overall solution to their boundary controversy.

76. Already in the Mixed Commission's first report, the then-Guyanese representative, Mr Shahabuddeen, stated that Guyana is "not insensible to *the real nature* of the claim being put forward by Venezuela"⁷¹ [emphasis added].

77. This understanding by the representative of Guyana of the Geneva Agreement was not incidental. Rather, it was consistently confirmed throughout the Commission's work. Notably, the Mixed Commission established a Subcommission whose mandate was to "study possible areas of co-operation between Venezuela and Guyana for the financing and carrying out by them of plans of economic development"⁷².

78. This confirms that, from the very outset, the Parties used the Geneva Agreement as a framework to address the border controversy as such. They took it simply for granted in their subsequent agreed practice that the mandate of the Mixed

Commission was meant to actively seek a substantive solution to their overall territorial controversy. Guyana and Venezuela thereby jointly confirmed their shared understanding that the Geneva Agreement generally, and its Article IV in particular, were meant to

⁷⁰ For a detailed analysis see RV, p. 69 *et seq.*

⁷¹ First Interim Report, Minutes of the 4th Meeting, 1st Session of the Mixed Commission, 4 July 1966; *cf.* RV, para. 2.128.

⁷² Third Interim Report, 7th Session of the Mixed Commission, 27 and 28 December of 1967, p. 5; *cf.* RV, para. 2.131.

bring about a solution to their overarching territorial controversy as to where the boundary lies.

79. This is further confirmed by a separate memorandum, which Guyana added to the Final Report adopted by the Mixed Commission in 1970.

80. In it, Guyana once more drew attention to its proposal to provide for a special development programme for Guyana and Venezuela. Notably, this development programme proposed by Guyana would have included the disputed territory, and was to be implemented through multinational co-operation with the aim that “such programme should be accepted as the *solution to the substantive problem*”⁷³ [emphasis added].

81. This, once again, confirms two things: *First*, Guyana itself was seeking a substantive, territorial solution within the framework of the Geneva Agreement, rather than solving the issue of the nullity of the Award.

82. *Second*, Guyana was open to the idea of a shared development of the disputed territory. Guyana thereby accepted Venezuela’s position that the scope of the Mixed Commission’s mandate, as established by Article IV of the Geneva Agreement on which the Court bases its jurisdiction, relates to *substantive* issues and the territorial dispute as such.

II. 1970 Port of Spain Protocol

83. Members of the Court, in 1970 independent Guyana and Venezuela concluded the Port of Spain Protocol □ an instrument which, I note in passing, Guyana did not even mention once during a full day of pleadings on Monday, 1970. With it □ with the Port of Spain Protocol □ the parties reconfirmed that, in line with the previous Geneva Agreement, they continued to seek a mutually acceptable negotiated solution to their boundary controversy, again using the very same terms as the Geneva Agreement to which I have already alluded to in detail. Guyana did not try to change the wording.

⁷³ Final Report of the Mixed Commission, Separate Memorandum by Guyana of 17 June 1970, p. 4; cf. CMV, Annex 101.

84. The parties did so in full conscience that the mandate of the Geneva Agreement had □ at times □ been contentious during the negotiations of the Mixed Commission. Still, the parties of the Port of Spain Protocol in 1970 deliberately decided to opt for the previous broad wording, which reflected Venezuela's position. Put otherwise, the parties, once again, did *not* refer to their controversy as being one related to the validity of the 1899 Award, but as one concerning their overall territorial controversy.

85. Besides, while Article III of the Port of Spain Protocol suspended the applicability of the Geneva Agreement, it also provided that, once the Port of Spain Protocol was to cease to be in force, the functioning of Article IV Geneva Agreement would resume “unless the Government of Guyana and the Government of Venezuela have first jointly declared in writing that they have reached *full agreement* for the solution of *the controversy referred to in the Geneva Agreement*” [emphasis added].

86. This reconfirms Guyana's acceptance of Venezuela's interpretation of the Geneva Agreement, namely that the parties' continued aim was to reach a *full*, *i.e.* overall agreement for the whole of the boundary controversy between them as such.

87. This understanding of what the Port of Spain Protocol and the underlying Geneva Agreement were all about, was explicitly supported by then-Guyanese Prime Minister Burnham. On the day of the signing of the Port of Spain Protocol, he construed that instrument as a means to resolve “*all* differences between us [meaning between Guyana and Venezuela]” ⁷⁴. All differences. In other words, it was Guyana's own position, when negotiating, drafting and adopting the Port of Spain Protocol, that the Protocol shall address the boundary dispute *in toto*.

88. And this understanding of the Port of Spain Protocol is also further confirmed by later subsequent practice.

89. *Inter alia*, it was Guyana, which in 1981, wrote to the United Nations Secretary-General confirming that: “the Protocol of

⁷⁴ Statement by the Prime Minister, Hon. L.F.S. Burnham, in the National Assembly, Georgetown, 18 June 1970, paras. 12, 14 (emphasis added); *cf.* RV, para. 2.144.

Port-of-Spain provided the climate for exploratory conversations *of substance* which took place in 1978 between the . . . President of Venezuela . . . and Guyana's . . . Prime Minister"⁷⁵ [emphasis added].

90. Guyana thereby confirmed, once again, that *substantive discussions* as to the overall boundary issue were the very object of the Port of Spain Protocol, as had already been the case of the Geneva Agreement.

III. Negotiations following the entry into force of the Port of Spain Protocol

91. Let me now bring the Court's attention to the most important substantive advances made by Guyana itself between 1970 and 1982.

92. In 1975, Venezuela President Pérez and the Guyanese Prime Minister Burnham not only discussed the border controversy at length, but also outlined possible pathways to a practical solution. This culminated in a proposal, in 1976, by Guyanese Prime Minister Burnham to solve the border issue through economic co-operation. More specifically, he was prepared to link economic assistance with a settlement of the border question. The Guyanese Prime Minister stated: "I would propose that . . . there should be signed, *an Accord which would lay at rest the border question*"⁷⁶ [emphasis added].

93. What is more is that during bilateral negotiations that took place in 1977 the Guyanese Foreign Minister was "proposing a correction to the last section of the border lines, specifically at Punta Playa. The rectification consisted of changing the north-west orientation of the current border line and drawing it north-east."⁷⁷

⁷⁵ Letter dated 2 November 1981 from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/9, 9 November 1981, p. 11; *cf.* RV, para. 2.145.

⁷⁶ Letter from Forbes Burnham to Carlos Andrés Pérez, 3 November 1976, *cf.* CMV, para. 3.74.

⁷⁷ Confidential Report by Morales Paúl, Delimitation Guyana-Venezuela, 1979; *cf.* CMV, para. 3.75.

94. This once again confirms that during the bilateral negotiations, undertaken within the framework of the Port of Spain Protocol and the Geneva Agreement, Guyana then was ready to find creative solutions and give up *de facto* control over territory, which the 1899 Award had purportedly allocated to British Guyana. Guyana thus, once again, perceived itself the Geneva Agreement as an instrument that was meant to solve the substantive boundary issue between itself and Venezuela □ rather than as an instrument that was meant to address the issue of the invalidity of the Award.

95. Members of the Court, what becomes obvious from the sum of all of these negotiations is that the Parties, both Parties, did not concern themselves anymore with the issue of the invalidity of the 1899 Award. Instead, they, the Parties, were aiming to find a practical solution to the overall border dispute, as had already been mandated by Article IV of the Geneva Agreement for all methods of dispute settlement provided therein □ all methods of dispute settlement provided for in Article IV.

IV. Subsequent practice post-1982

96. And even after the Port of Spain Protocol had expired in 1982 the Parties continued to try to reach an overall mutually acceptable satisfactory solution.

97. Notably, they continued to discuss possible boundary lines in exceptional detail⁷⁸. These discussions again prove, as if there was still any need, that the Parties had completely moved away from discussions about the invalidity of the Award.

98. This approach is also reflected in three joint communiqués released by the two Parties. It becomes apparent from these three joint communiqués of 2004, 2010 and 2013 respectively, that the Parties deliberately abstained to refer in those documents to the issue of the invalidity of the Award. Conversely, in line with the Geneva Agreement, they focused □ once again I might say □ on practical and satisfactory solutions to be found for the territorial controversy as such.

⁷⁸ Cf. RV, paras. 2.155-2.157.

99. Thus, when President of Venezuela Hugo Chávez visited Guyana in 2004 the two Parties once again referred to the “search for a peaceful and *practical settlement of the controversy*” undertaken within the framework of the United Nations Good Offices Process⁷⁹.

100. Similarly, in 2010, Guyana and Venezuela reaffirmed their confidence in the Good Offices Process of the Secretary-General, which allowed them to move forward towards finding a practical and satisfactory solution to the territorial controversy. Their joint communiqué provided that the two Parties “reaffirmed their confidence in the Good Offices Process as a mechanism that would assist the Parties to advance towards a *practical and satisfactory solution* for the *border controversy*”⁸⁰ [emphasis added].

101. And this joint perception was then again reiterated on the occasion of a visit of Venezuelan President Maduro in Georgetown in 2013⁸¹.

102. Considering all of the above, Guyana’s claim that the Geneva Agreement is concerned with the issue of the invalidity of the 1899 Award is ingenuine to say the least. As a matter of fact, the subsequent *agreed* practice by *both* Parties confirms their *joint* understanding that the Geneva Agreement was meant, ever since its inception, to provide for a practical, satisfactory and mutually acceptable solution for the substance of their boundary dispute.

⁷⁹ Joint communiqué issued at the end of the State visit to Guyana of his Excellency Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, 19 and 20 February 2004, para. 4 (emphasis added); *cf.* RV, para. 2.178.

⁸⁰ Joint statement by Presidents Hugo Chávez Frías and Bharrat Jagdeo on the Occasion of the Official Visit of the President of the Co-operative Republic of Guyana to the Bolivarian Republic of Venezuela, Caracas 21 July 2010, para. 11 (emphasis added); *cf.* RV, para. 2.179.

⁸¹ Joint Declaration issued on the conclusion of the State visit to Guyana by his Excellency Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 31 August 2013.

103. The Geneva Agreement therefore addresses, and aims at settling, the overall boundary dispute, leaving aside the question of the nullity of the 1899 Award.

V. Post-1982 good offices

104. This understanding of the mandate of the various dispute settlement mechanisms provided for in Article IV of the Geneva Agreement also aligns with the good offices process of the United Nations Secretary-General.

105. The focus of the good offices efforts by the Secretary-General, too, was *not* on the nullity of the Award, but rather on finding a solution to the larger boundary issue.

106. In 1993, the Secretary-General indicated that the aim of his good offices, as envisaged by Article IV, and on which this Court's jurisdiction is purportedly based, was to secure a "mutually satisfactory settlement of the controversy". In order to achieve this goal, he deemed it necessary that "creative options" must be explored⁸².

107. Some of those creative options were then discussed by the Parties in 1995. *Inter alia*, Venezuela and Guyana considered the possibility of returning control over parts of the disputed territory to Venezuela. In this context, the Parties notably also explored a possible then "lease-back", by Venezuela, in favour of Guyana of some portions of the territory⁸³.

108. In the same vein, in a letter dated 18 August 1998 the Guyanese President herself reiterated that the purpose of the good offices process based on Article IV of the Geneva Agreement is to

⁸² Secretary-General reaffirms offer of his good offices to help resolve controversy between Guyana and Venezuela, 24 September 1993, CMV, Annex 130; *cf.* CMV, para. 3.103.

⁸³ Report of the Meeting between Sir Alister McIntyre, Carlos Ayala and Harry Ramkarran in New York, 14-15 December 1995, p. 2; *cf.* CMV, para. 3.103.

“explore *all* avenues that would lead to a settlement of the *border controversy*”⁸⁴ (emphasis added).

109. In this letter, she similarly referred to the controversy as being one “over the border with Venezuela”, which aligns with a statement of Venezuelan Foreign Minister José Vicente Rangel, who soon thereafter confirmed the solution to be found in the good offices process, which must be “reasonable, fair and equitable”⁸⁵.

110. This broad interpretation of the mandate of the dispute settlement process provided for in Article IV of the Geneva Agreement was also shared by the Secretary-General himself. On several occasions, both the Secretary-General himself, as well as his Personal Representatives, stressed that the aim of his endeavours within the framework of the Geneva Agreement were to secure “a *mutually satisfactory* settlement of the *controversy*”⁸⁶ □ this controversy being “the *border controversy* between Guyana and Venezuela”⁸⁷.

111. Can it thus really be assumed, as Guyana wants you to believe, that by “bringing about a practical solution to the controversy”, the Secretary-General, in exercising his mandate under Article IV of the Geneva Agreement, meant to decide upon the validity, or rather the invalidity, of the 1899 Award?

112. Rather, it was the Secretary-General’s consistent position that a decision focusing on the issue of the invalidity of the 1899 Award would *not* align with the very object and purpose of the Geneva Agreement.

113. Mr President, Members of the Court, in accordance with the Geneva Agreement, Guyana and Venezuela are under an obligation, a legally binding obligation, to find new paths to solving the issue of the Guyanese-Venezuelan frontier, given that the Geneva Agreement has, as I have demonstrated by now time and

⁸⁴ Letter to Mr Rashleigh Jackson by President Janet Jagan dated 18 August 1998; *cf.* RV, para. 2.166.

⁸⁵ *Cf.* RV, para. 2.167.

⁸⁶ UN doc. SG/SM/5108, 24 September 1993.

⁸⁷ Letter by Norman Girvan to Nicolás Maduro Moros dated 6 October 2010 (emphasis added); *cf.* RV, para. 2.170.

again, moved beyond the issue of the (in)validity of the 1899 Award.

E. Conclusion

114. Members of the Court, let me conclude: as I have shown
□ on the basis of well-established methods of treaty interpretation
□ the Geneva Agreement contains a binding legal obligation for *all actors addressed by its Article IV*, including the Court, to strive for a practical and mutually satisfactory solution for the border controversy.

115. A solution that merely focuses on the invalidity of the 1899 Award does not constitute such a practical and mutually satisfactory solution. Indeed, any such decision would contravene this very obligation arising under Article IV of the Geneva Agreement, given that such a binary resolution will always be necessarily one-sided and thus not *mutually* satisfactory. In line with the Geneva Agreement, all actors addressed by its Article IV must therefore look beyond the issue of the invalidity of the 1899 Award.

116. As discussed, this is not however only a matter of literal interpretation. In fact, this was the understanding, which the Parties shared from the very outset of the Geneva Agreement. What is more is that, since 1966 and thus from the very beginning of the workings of the Mixed Commission, throughout the ensuing bilateral negotiations and the conclusion of the Port of Spain Protocol, up to the United Nation's good offices, the Parties □ both Parties □ have *consistently* tried to find substantive solutions to the dispute over the frontier.

117. The practice by Venezuela and Guyana, as well as that of the various peaceful settlement mechanisms, acting on the basis of, and in accordance with, Article IV of the Geneva Agreement, all prove that the Parties shared this understanding □ namely that the Geneva Agreement was meant to settle the controversy by negotiations.

118. Accordingly, the Court, too, can neither decide on the invalidity of the 1899 Award, since this would run counter to Article

IV of the Geneva Agreement. Otherwise, Guyana would indeed □ as I said at the outset □ have its cake and eat it, too.

119. I thank you for your kind attention. And I would now kindly ask you, Mr President, to call Professor Breton to the podium.

The PRESIDENT: I thank Professor Zimmermann. Je donne maintenant la parole au professeur Antonio Remiro Brotóns. Vous avez la parole, Monsieur.

M. REMIRO BROTONS :

AUJOURD'HUI, HIER ET DEMAIN

1. Monsieur le président, Mesdames et Messieurs les juges, il me revient de conclure cette séance du matin du premier tour de plaidoiries du Venezuela. Mon propos est d'établir le lien entre ce que les professeurs Mbengue et Zimmermann viennent de présenter au sujet de l'accord de Genève et les circonstances historiques qui y ont conduit, circonstances qui seront examinées en profondeur par d'autres collègues lors de la séance de l'après-midi.

A. Un nouveau cadre normatif pour résoudre le différend territorial

2. Monsieur le président, Mesdames et Messieurs les juges, l'accord de Genève du 17 février 1966 repose sur l'affirmation du Venezuela selon laquelle la sentence arbitrale du 3 octobre 1899 est nulle et non avenue. D'où le Guyana en tire l'argument que, si l'accord découle d'une assertion que le Guyana ne partage pas, il suffira à la Cour de se prononcer sur le bien-fondé d'une position ou de l'autre pour régler le différend⁸⁸.

3. L'inconvénient de cette démarche réside dans le fait que les parties à l'accord ont convenu d'une autre approche. Les parties

⁸⁸ 88 CR 2026/24, p. 28, par. 16 (D'Argent).

auraient-elles pu négocier la résolution du différend concernant la validité de la sentence arbitrale de 1899 en saisissant la Cour ? Évidemment, elles pourraient le faire. Cependant elles ne l'ont pas fait.

4. La négociation de l'accord a permis d'éviter de mettre de côté, d'écarter, cette question. Les parties n'ont pas souhaité se concentrer sur un différend où il y aurait des gagnants et des perdants. Il était crucial de préserver le voisinage, le bon voisinage, et il était tout aussi essentiel d'assurer l'indépendance rapide de la Guyane britannique ainsi que les intérêts commerciaux significatifs du Royaume-Uni au Venezuela, en convenant au préalable d'une méthode pour résoudre le différend frontalier, le différend territorial.

5. L'affirmation vénézuélienne concernant la nullité de la sentence arbitrale de 1899 a constitué, certes, le point de départ de l'accord de Genève, mais son objet n'était pas de déterminer si elle était fondée ou non ; l'objet et le but de l'accord consistent à résoudre le différend frontalier qui oppose la République, d'abord à l'Empire britannique, puis à son ancienne colonie de la Guyane, qui est devenue la République coopérative de Guyana le 17 mai 1966.

6. Mais comment résoudre ce différend, le différend frontalier? La réponse fournie par l'accord est très explicite : par une recherche obstinée, de bonne foi, d'un arrangement pratique, satisfaisant pour les deux parties, un accord équitable dans lequel chacun en sortirait gagnant.

7. La signature du premier ministre de la Guyane britannique, Forbes Burnham, se trouve en bas de l'accord de Genève, aux côtés de celles d'Ignacio Iribarren Borges, ministre des affaires étrangères du Venezuela, et de Michael Stewart, secrétaire d'État aux affaires étrangères du Royaume-Uni.

8. Trois mois plus tard, après avoir acquis son indépendance, le Guyana est devenu partie à l'accord et, en tant que tel, est obligé de le respecter et de l'honorer. Il l'a fait à plusieurs reprises, en proposant des arrangements territoriaux qui n'ont pas abouti. Cependant, dans l'ensemble, sa politique, loin de coopérer de bonne foi pour parvenir à l'arrangement pratique et satisfaisant que

prévoit l'accord de Genève, a consisté à gagner du temps, à s'implanter physiquement sur le territoire en litige, à transformer unilatéralement son administration en souveraineté, et à détourner l'objet et la finalité de l'accord.

9. Monsieur le président, Mesdames et Messieurs les juges, l'accord de Genève, un traité dont la nature juridique est incontestée, établit un nouveau cadre normatif pour la résolution du différend relatif à la Guayana Esequiba. L'accord, dont le Guyana s'enfuit désormais comme Nosferatu fuyait la lumière du soleil, représente un exemple typique, un archétype, de novation dans le cadre d'un processus de décolonisation.

10. Le titre de l'accord (« tendant à régler le différend... relatif à la frontière »), son préambule, ses articles, l'interprétation canonique de ses termes, ainsi que les travaux préparatoires et la pratique ultérieure, au cours de laquelle des propositions de fond ont été avancées par le Guyana, démontrent de manière irréfutable que les parties ont souhaité écarter le litige sur la validité de la sentence arbitrale de 1899 pour se concentrer uniquement sur la recherche d'un règlement pratique et satisfaisant du différend territorial.

**B. L'inhumation de la
sentence arbitrale de 1899 au
cimetière de la justice
historique**

11. Monsieur le président, Mesdames et Messieurs les juges, avec l'accord de Genève, la question de la validité de la sentence du 3 octobre 1899, qui a fait couler des rivières d'encre □ et non de sang, heureusement jamais versé □, a été transférée du domaine du droit positif à celui de la justice historique.

12. Depuis plus d'un siècle, le Venezuela s'efforce de démontrer la très grave injustice dont il a été la victime en raison de la collusion entre deux empires, celui de la Grande-Bretagne et celui, émergent, des États-Unis — l'Amérique, pour les États-Unis —, tout en préservant le *statu quo* du Royaume-Uni sur l'hémisphère.

13. Le Venezuela continuera à se battre tant que cette injustice ne sera pas réparée. La transition du soupçon, des indices plausibles d'invalidité, aux faits établis a été facilitée par la publication en 1949 du mémorandum Mallet-Prevost de 1944, l'ouverture partielle des archives britanniques et les livres de mémoires et journaux intimes, comme celui de Fiodor Martens, accessibles bien plus tard.

14. Maintenant, Mesdames et Messieurs les juges, l'arrêt de cette Cour du 18 décembre 2020 a ravivé la question, comme le prophète Élie a ressuscité le fils de la veuve de Sarepta⁸⁹. Un miracle ? Pas du tout. *Errare humanum est* (se tromper est humain).

15. Le Venezuela, afin de mieux défendre ses intérêts, a été contraint de présenter non seulement les solides raisons de nullité de la sentence arbitrale, mais également les défauts du traité de Washington de 1897, qui a conduit à la procédure d'arbitrage et dont les dispositions essentielles ont été négligées par les arbitres.

16. La narrative guyanaise ne manque pas d'histoires qui mériteraient, bien sûr, le *Booker Prize*, mais qui ne devraient pas être intégrées dans cette malheureuse procédure.

17. En réalité, le Venezuela, voyant ses espoirs anéantis, a été contraint d'accepter un traité rempli d'accords secrets entre le Royaume-Uni et les États-Unis ; l'erreur dans laquelle il a été induit de manière frauduleuse a radicalement vicié le traité de Washington de 1897 et, en conséquence inévitable, la sentence arbitrale de 1899.

18. Arbitrage n'est pas synonyme d'arbitraire. Même à la fin du XIX^e siècle, il y avait des règles. L'arbitrage prévu par le traité de Washington était un arbitrage de droit. Cet après-midi, mes collègues vous parleront des vices qui, par une sorte de métastase, ont conduit à une sentence pourrie. Maintenant, je voudrais souligner seulement un point : les arbitres, étant obligés à statuer conformément au droit, se sont prêtés à un marchandage politique, orchestré par le président du tribunal, au profit du Royaume-Uni.

⁸⁹ 89 Premier livre des Rois, 17: 18-24.

19. Si la doctrine distingue conceptuellement l'arbitrage de droit et l'arbitrage d'équité, la procédure relative à la Guayana Esequiba a constitué une contribution sociologique à l'arbitrage d'*iniquité*.

20. La sentence arbitrale de 1899 a consacré les intérêts fallacieux de l'Empire britannique, en connivence avec les États-Unis, dans le cadre de cette relation privilégiée et particulière dans laquelle ils aiment se complaire, et qui a trouvé dans ce fait l'un de ses jalons fondateurs. En d'autres termes, la sentence fut une expression supplémentaire du colonialisme, de l'imposition des intérêts des puissances dominantes sur les droits des pays qui avaient le malheur de se trouver sur leur chemin.

C. Il y a des circonstances où il est sage de garder le silence

21. Monsieur le président, Mesdames et Messieurs les juges, selon le Guyana, même en supposant que le traité et/ou la sentence arbitrale aient été nuls, le comportement ultérieur du Venezuela aurait constitué une acquiescence remédiant à tout défaut de ces instruments⁹⁰.

22. Rien n'est plus éloigné de la réalité. La présumée résignation du Venezuela durant les premières décennies du XX^e siècle, loin de cristalliser l'acquiescement, et encore moins une renonciation à ses droits, témoignait de la conscience de la dangereuse proximité d'un empire empreint de supériorité, prêt à recourir à la force pour intensifier la spoliation territoriale à laquelle il avait déjà soumis la République. Il était sage, dans ces circonstances, de garder le silence pour éviter de nouveaux excès territoriaux de la part du Royaume-Uni.

23. En effet, le Venezuela était tellement traumatisé par le bombardement et le blocus de ses ports en 1902 et 1903 pour exiger le paiement de dettes dérisoires que les propositions britanniques visant à modifier les lignes politiques de la sentence arbitrale en faveur d'autres plus naturelles furent rapidement rejetées par

⁹⁰ CR 2026/25, p. 29-41 (Oral).

crainte qu'elles ne constituent un cheval de Troie pour de nouvelles cessions territoriales.

24. Mais il ne s'agit plus de cela, un point qui, par ailleurs, n'a pas été invoqué par le Royaume-Uni lors de la négociation de l'accord de Genève. Il s'agit désormais du respect intégral de cet accord, du respect de son objet et de son but.

25. Même dans l'hypothèse □ que nous rejetons □ où le traité de 1897 et la sentence de 1899 seraient valides au regard des canons obsolètes du droit international d'une époque périmée, ou bien, à défaut, où leurs vices auraient été □ par hypothèse □ corrigés par le comportement ultérieur du Venezuela, ces faits seraient sans pertinence pour résoudre aujourd'hui le litige territorial régi exclusivement par l'accord du 17 février 1966.

D. La décolonisation, berceau de l'accord

26. Monsieur le président, Mesdames et Messieurs les juges, la création des Nations Unies en 1945, le processus de décolonisation et le déclin de l'Empire britannique ont provoqué un changement fondamental de circonstances.

27. Les États dépouillés par la cupidité de l'Empire britannique et d'autres puissances coloniales, qui avaient dû accepter leur situation désastreuse, pouvaient désormais, libérés de la contrainte structurelle à laquelle ils avaient été soumis, traduite dans ce qu'on appelait avec suffisance le « droit international des pays civilisés », faire entendre leur voix et revendiquer la restitution des territoires usurpés.

28. Au moment où le *statu quo* colonial a été profondément perturbé par l'impératif de la décolonisation, les revendications des pays spoliés, dont les droits avaient été réprimés pendant des décennies, ont été relancées.

29. La décolonisation ne se limite pas à l'autodétermination des peuples soumis au joug colonial; elle inclut également la restitution à leurs souverains légitimes des territoires usurpés par les puissances coloniales, même si ceux-ci ont été validés par des traités ou des sentences arbitrales. C'est ce que reconnaît la Grande Charte de la décolonisation, la résolution 1514-XV du 14 décembre 1960.

30. L'accord de Genève s'inscrit dans le cadre □ et est le résultat □ du processus de décolonisation. L'histoire de sa négociation est une histoire de succès. En signant l'accord, les parties ont remplacé le cadre juridique dans lequel s'inscrivait la sentence arbitrale de 1899 □ et son corollaire, l'accord de délimitation de 1905 □ par un autre dans lequel, assumant l'impératif de la décolonisation, elles s'engageaient à rechercher une solution pacifique à leur différend territorial par le biais d'un arrangement pratique et satisfaisant pour les deux parties, compte tenu de toutes les circonstances de l'espèce.

E. Le premier commandement : le respect de l'objet et le but de l'accord

31. Monsieur le président, Mesdames et Messieurs les juges, cette affaire aurait dû se conclure en 2020 par un arrêt dans lequel la Cour aurait déclaré son incompétence ; elle ne l'a pas fait et nous en sommes arrivés à cette situation. Que ferons-nous du fils ressuscité de la veuve de Sarepta ?

32. Si la Cour a établi de façon erronée sa compétence □ contestée par le Venezuela □ sur la base de l'article IV, paragraphe 2, de l'accord de Genève, on peut désormais attendre qu'elle respecte l'objet et le but de l'accord.

33. *Errare humanum est* (se tromper est humain), certes ; mais *in errore perseverare diabolicum* (persévérer dans l'erreur est diabolique), poursuit l'adage latin, si juste qu'on lui attribue plusieurs paternités, de Cicéron à Sénèque, d'Augustin d'Hippone à Jérôme de Stridon. Il ne s'agit pas ici de corriger, mais d'écrire droit sur des lignes tordues.

34. Si la Cour souhaite se débarrasser de cette affaire, en déclarant que la validité de la sentence arbitrale de 1899 entraîne la confirmation de la ligne frontalière qui y est reflétée, comme le souhaite le Guyana, elle réduira l'accord de Genève à une coquille vide, et constituera, 127 ans plus tard, le dernier maillon du blanchiment judiciaire d'une spoliation territoriale subie par le Venezuela aux mains de l'Empire britannique.

35. Et cela ne mettra pas fin à la controverse. Au contraire, cela peut l'aggraver en éloignant davantage les Parties. Ce ne sera

qu'une étape de plus dans une histoire sans fin, à laquelle seules les Parties peuvent mettre un terme d'un commun accord. Et personne ne devrait avoir intérêt à alimenter la confrontation.

F. Le bon voisinage

36. Monsieur le président, Mesdames et Messieurs les juges, le Guyana et le Venezuela ont tous deux souffert sous l'Empire britannique. Il est déplorable qu'aujourd'hui, depuis dix ans, au lieu d'honorer ses engagements selon l'accord de Genève, le Guyana, en mélangeant amnésie et avidité, cherche à prendre la place d'usurpateur du Royaume-Uni. Ou même qu'il ait l'audace de jouer la victime face au Venezuela.

37. La décolonisation ne peut être exploitée pour renforcer et prolonger les injustices coloniales. Une appropriation coloniale du Royaume-Uni ne peut se traduire, dans le cadre normatif de la décolonisation, par un titre juridique du Guyana vis-à-vis du Venezuela.

38. Le Venezuela a soutenu l'indépendance du Guyana, a été un ardent défenseur de son émancipation du joug colonial et l'a reconnu le jour même de son indépendance □ le 17 mai 1966 □, mais avec une réserve explicite : le Guyana ne pouvait se soustraire à ses obligations en vertu de l'accord de Genève. Le Venezuela a admis que l'indépendance du Guyana précède le règlement du différend territorial, confiant que le nouvel État respecterait ses engagements.

39. Monsieur le président, Mesdames et Messieurs les juges, cette présentation met un terme à la séance du matin du premier tour de plaidoiries du Venezuela. Je vous remercie pour votre attention.

Le PRÉSIDENT : Je remercie le professeur Remiro Brotóns. This concludes this morning's sitting. The oral proceedings will resume this afternoon, at 3 p.m.

The sitting is closed.

The Court rose at 12.50 p.m.

**FIRST ROUND OF ORAL ARGUMENTS
(VENEZUELA)**

**Wednesday 6 May 2026
3 pm – 6 pm**

Non corrigé Uncorrected

CR 2026/27

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYA

YEAR 2026

Public sitting

*held on Wednesday 6 May 2026, at 3 p.m., at the Peace
Palace,*

President Iwasawa presiding,

in the case concerning **Arbitral Award of 3 October
1899**

(Guyana v. Venezuela)

VERBATIM RECORD

ANNÉE 2026

Audience publique

*tenue le mercredi 6 mai 2026, à 15 heures, au Palais de la
Paix,*

sous la présidence de M. Iwasawa, président,

en l'affaire de la **Sentence arbitrale du 3 octobre 1899**

(Guyana c. Venezuela)

FIRST ROUND OF ORAL ARGUMENTS
(VENEZUELA)

COMPTE RENDU

Present: President Iwasawa

Vice-President Sebutinde

Judges Tomka

Abraham

Xue

Nolte

Brant

Gómez Robledo

Cleveland

Aurescu

Tladi

Hmoud

Okowa

Judges *ad hoc* Wolfrum

Couvreur

Registrar Gautier

□ □ □ □ □ □

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

Présents :

M.	Iwasawa,
	président
M ^{me}	Sebutinde, vice-
	présidente
MM.	Tomka
	Abraham
M ^{me}	Xue
MM.	Nolte
	Brant
	Gómez Robledo
M ^{me}	Cleveland
MM.	Aurescu
	Tladi
	Hmoud
Mme	Okowa, juges
MM.	Wolfrum
	Couvreur, juges
	<i>ad hoc</i>
M.	Gautier, greffier

□□□□□□

FIRST ROUND OF ORAL ARGUMENTS
(VENEZUELA)

The Government of the Co-operative Republic of Guyana is represented by: Hon. Hugh Hilton Todd,
Minister for Foreign Affairs and International
Cooperation,

as Head of Delegation;

Hon. Carl B. Greenidge, former Minister for Foreign Affairs
and International Cooperation,

as Agent;

Ms Sharon Roopchand-Edwards, Permanent Secretary of
the Ministry of Foreign Affairs and International Cooperation,

HE Mr Keith George, Ambassador, Adviser to the Minister
of Foreign Affairs and International Cooperation,

as Co-Agents;

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as Members of the Delegation.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon to resume hearing the first round of oral argument of Venezuela on the merits in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

I now invite Professor Danae Azaria to address the Court. You have the floor, Madam.

Ms AZARIA:

STRUCTURAL COERCION

1. Mr President, honourable judges, it is an honour and a privilege for me to appear before you on behalf of the Bolivarian Republic of Venezuela.

2. Guyana asks this Court to establish that the 1899 Arbitral Award is valid and binding. This request faces an obstacle. As Professor Mbengue demonstrated this morning, the 1966 Geneva Agreement has superseded whatever may have been the previous legal situation. Professor Zimmermann then showed that the Geneva Agreement requires the parties to it to reach a mutually satisfactory solution to settle the border controversy.

3. What the Court will hear this afternoon is *why* the parties to the Geneva Agreement agreed to change the legal framework for solving their territorial controversy.

4. In my presentation, I will refer to the circumstances that surrounded the conclusion of the 1897 Washington Treaty, the issuance of the 1899 Award, and Venezuela's conduct after the 1899 Award. I will be followed by Professors Palchetti and Tams, who will discuss why the Award was invalid. Then, Professor Thouvenin will show that Venezuela did not waive its right to invoke the Award's invalidity.

**I. Venezuela's conduct must be
interpreted in its contemporaneous
circumstances**

5. Mr President, honourable judges, the conduct of a State □ its action or silence □ must be interpreted against the factual circumstances in which that conduct occurs. This is the methodology of this Court¹, and the methodology of the International Law Commission².

¹ Indicatively, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 2006, p. 28, para. 49; *Nuclear Tests (Australia v. France)*, *Application for Permission to Intervene, Order of 20 December 1974*, I.C.J. Reports 1974, pp. 269-270, para. 51; *Nuclear Tests (New Zealand v. France)*, *Application for Permission to Intervene, Order of 20 December 1974*, I.C.J. Reports 1974, pp. 474-475, para. 53; *Fisheries (United Kingdom v. Norway)*, *Judgment*, I.C.J. Reports 1951, pp. 138-139; *Temple of Preah Vihear (Cambodia v. Thailand)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1961, p. 23. See also other tribunals, indicatively: *Case concerning a dispute between Argentina and Chile concerning the Beagle Channel*, 18 February 1977, United Nations, *RIAA*, Vol. XXI, Part II, p. 187, para. 169 (a).

² International Law Commission (ILC), Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries, Report of the ILC on the work of its Seventieth session (30 April-1 June and 2 July-10 August 2018), UN doc. A/73/10, p. 80, para. 18; ILC, Draft conclusions on the identification of customary international law, with commentaries, (2018), ILCYB (2018) Vol. II, Part Two, p. 94; ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, (2016), ILCYB (2006) Vol. II, Part Two, 161, p. 162, para. 3(2).

6. In the present situation, four distinct factors must be considered and must be given weight:

- *first*, the factual realities that existed, in Latin America, and in Venezuela in particular, at the end of the nineteenth century and the beginning of the twentieth century;
- *second*, the application in Latin America, during that period, of the Monroe Doctrine;
- *third*, the military activities of several colonial powers, and especially of Great Britain, in that region; and
- *fourth*, the fact that the two States whose conduct is relevant in the present situation, were, on the one hand, Great Britain, a major colonial Power and a military super-Power of the world at the time when the events took place, and on the other hand, Venezuela, a war-torn Latin American developing country³.

7. During the late nineteenth century and the early twentieth century, Venezuela had seen parts of her territory being annexed by Great Britain and was in fear of further annexation and military action by Great Britain □ a pattern of conduct on the part of the imperial Power that was regrettably common in Latin America and other parts of the world. Venezuela was also the victim of force by major European colonial Powers, including Great Britain. Guyana does not dispute these facts⁴. These events made Venezuela deeply apprehensive of her neighbour's relentless hunger for more land. Her fear was well founded.

8. The evidence supporting this state of affairs is overwhelming.

³ See similar reasoning in *Temple of Preah Vihear (Cambodia v. Thailand)*, *Merits, Judgment, I.C.J. Reports 1962*, dissenting opinion of Sir Percy Spender, p. 128.

⁴ RG, para. 2.96; Letter from Venezuelan Chargé d'Affaires in the United States of America, Fr. Antonio Silva, to Diplomatic Agent of Venezuela in New York, Col. George Gibbons (18 September 1888), available at <http://www.guyananeews.org/Western/1888-1891.pdf>, p. 910, quoted in Guyana's Reply, para. 2.21.

II. The facts that led to the 1897 Treaty and the 1899 Award

9. In particular, I will begin with the facts that led to the 1897 Treaty and the 1899 Award.

A. Circumstances prior to the start of negotiations

10. The voluminous evidence provided in the written submissions by Guyana and Venezuela shows that, in the years *prior* to the negotiations that led to the 1897 Washington Treaty, Great Britain was expanding over Venezuela's land and posed an *existential* threat to Venezuela.

11. But, let us focus on the circumstances immediately preceding the start of negotiations between Great Britain and the United States for the arbitration that would resolve the boundary dispute between Great Britain and Venezuela.

12. These negotiations began in January 1896. The evidence shows that Great Britain and the United States of America were both well aware that, immediately prior to negotiations, Great Britain's conduct put Venezuela in duress and vitiated its free will.

13. I will offer two examples.

14. *First*, in July 1895, less than six months from the beginning of negotiations, the US Secretary of State (Mr Olney) sent a letter to Mr Bayard intended for the British Prime Minister, Lord Salisbury. The letter is in tab 36 of your folders. In his letter, Olney asserted the Monroe Doctrine but also explained that the conduct of Great Britain towards Venezuela "in effect deprives Venezuela of her free [agency] and puts her under virtual duress."⁵

15. My learned friend, Mr Reichler, relied, on Monday, on this very letter. But he conveniently forgot to mention this part, or

⁵ RG, para. 2.29 ("in effect deprives Venezuela of her free will and puts her under virtual duress"); Letter from Richard Olney to Thomas Bayard, 20 July 1895, Manuscript Division, Library of Congress Washington, D.C. Richard Olney Papers MSS35139, Box 158/Reel 62 DNI 224, pp. 357-367, Annex 152, Venezuela's Counter-Memorial, pp. 455 at 473-474 ("in effect deprives Venezuela of her free agency and puts her under virtual duress").

perhaps deliberately avoided to point it out. *Perhaps* this is because Guyana's counsel prefers this Court to believe that, in the nineteenth century, Venezuela and Great Britain were two countries on equal footing "exchang[ing] various proposals for the delimitation of the boundary," as he put it⁶.

16. *Second*, only three months after Olney's letter to Lord Salisbury, Lord Salisbury sent an *ultimatum* to Venezuela's President, President Crespo. He demanded reparation for the brief arrest by Venezuela of British policemen at Yuruan, an area that both Venezuela and Britain claimed. This *ultimatum* threatening force had been publicly reported⁷. On 20 October, the *New York Herald* reported that Great Britain had already sent Maxim guns to the border with Venezuela⁸. This is *only one month* before the beginning of negotiations that led to the Washington Treaty.

17. Contrary to the misleading narrative that has been put forward by Guyana's counsel, Olney's letter to Lord Salisbury, and Great Britain's ultimatum to Venezuela prove that the United States of America and Great Britain knew that seeking help from the United States was the only way for Venezuela to stop Britain's expansion over her territory. And they also knew that Venezuela lacked free will.

18. Guyana's counsel has also suggested before you that the United States was Venezuela's greatest champion. But the widely known historical facts simply do not support this narrative. It is because of Britain's defiance of the Monroe Doctrine, in writing by Lord Salisbury himself, that US President Cleveland invoked, in the US Congress, in December 1895, the *Monroe Doctrine* against

⁶ CR 2026/24, p. 48, para. 6.

⁷ English Ultimatum: A Note Sent to the President of Venezuela by the Marquis of Salisbury — Force Threatened, *The Rocky Mountain News (Daily)*, Volume 36, Number 293, 20 October 1895, available at <https://www.coloradohistoricnewspapers.org/?a=d&d=RMD 18951020-01.2.4&e=----en-20--1--img-txIN%7ctxCO%7ctxTA-----0-----> (last accessed: 5 May 2026).

⁸ "Maxim Guns for Guyana □ Mr Chamberlain's Radical Measures for Obliging Venezuela to Come to Terms", *The New York Herald*, 19 October 1895: <https://gallica.bnf.fr/ark:/12148/bpt6k4787808x/f1.item.zoom> (last accessed: 5 May 2026).

the expansion of British Guiana, and proposed a boundary commission. Not because of some humanitarian benevolence and friendship towards Venezuela, as Guyana's counsel asks this Court to believe.

19. This reality also explains why the United States was not concerned about Venezuela's interests during the negotiations for the arbitration between Great Britain and Venezuela. Once Great Britain participated in the negotiations with the US and no longer mentioned . . .

The PRESIDENT: Counsel, could you slow down a bit? The interpreters are having some difficulty.

Ms AZARIA: Yes, of course. Once Great Britain participated in the negotiations with the United States and no longer mentioned or defied the Monroe Doctrine⁹, the relationship between Great Britain and the United States had been smoothed over.

B. Circumstances during the negotiations

20. I now turn to the period *during* the negotiations that led to the Washington Treaty of 2 February 1897.

21. The process of negotiations began in January 1896. It was the United States of America and Great Britain □ not Venezuela □ that negotiated this Treaty. To be clear, this was the Treaty that would establish the Arbitral Tribunal to settle the disputed territorial boundary of Great Britain and Venezuela. Venezuela was not included.

22. During these negotiations between Great Britain and the United States, Venezuela continued to be in great fear of Great

⁹ Venezuela Boundary Dispute, 1895-1899, Office of the Historian, USA Department of State, <https://history.state.gov/milestones/1866-1898/venezuela#:~:text=The%20Venezuelan%20Boundary%20Dispute%20officially,30%2C000%20square%20miles%20for%20Guiana> (last accessed 5 May 2026).

Britain and reported British aggression. There is ample evidence in the written submissions.

23. I will provide four examples from the period between August and December 1896: *the final months of the negotiations*. These (and other documents in the written submissions) show the *despair* of senior Venezuelan officials about British aggression.

24. *First*, on 18 August 1896, Venezuela's Ambassador to the United States, Mr Andrade, informed Mr Olney, the US Secretary of State, that during negotiations, there had been a "*new aggression* by Great Britain"¹⁰.

25. *Second*, a few months later, on 5 December 1896, Mr Andrade sent another letter to Mr Olney informing him about Venezuela's objectives vis-à-vis the negotiations. You can see the letter in tab 55 of your folders. Mr Andrade stated: "Venezuela expects by treaty or by diplomatic notes through your agreement to *prevent aggression* or unfriendly acts."¹¹

26. Counsel for Guyana relied on this very letter, including this extract, on Monday, to promote the narrative that Venezuela was "so determined" to sign the Washington Treaty. But he ignored to place emphasis on the critical detail in this letter: Venezuela's aim was "to prevent aggression" against her.

27. *Third*, a few days later, in December 1896, Venezuela's Minister of Foreign Affairs, Mr Rojas, informed the Venezuelan Ambassador in the United States, Mr Andrade, of Venezuela's decision to accept, in principle, the draft text submitted to her. You can see this letter in tab 37 of your folders. His words are haunting. He wrote:

¹⁰ Letter from José Andrade to Richard Olney, 18 August 1896, English Translation, Microcopy No. T 93. Roll 8. Volume 8. April 2, 1896, August 11, 1906, The United States National Archives and Records Administration, Annex 9, RV, p. 81 (emphasis added).

¹¹ Cable from José Andrade to Richard Olney, 5 December 1896, Record Group 84. Series: United States Diplomatic Records for Venezuela, 1835-1936, Vol. 23 (July 23, 1895 to January 7, 1897). The United States National Archives and Records Administration, Annex 12, RV, Vol. II, pp. 99-101 (emphasis added).

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“Although the project [of a treaty] raises serious difficulties, the Government, taking into consideration, on the one hand, *what it owes to the United States of America*, and on the other, *the dangerous consequences of the abandonment in which the refusal would place Venezuela*, has decided to accept, not simply and flatly, but with certain modifications, the proposed articles, *in whose preparation, unfortunately, it was not included.*”¹²

28. This letter confirms that Venezuela was fully aware that the only way to stop Great Britain’s expansionist ambitions and aggression was the support of the United States. If this support were to be withdrawn, “dangerous consequences” would inevitably follow.

29. *Fourth*, Venezuela requested that a change be made to the draft text so that Venezuelan arbitrators would sit on the tribunal. Olney replied that the matter was closed between Great Britain and the United States. You can see the text, including this sentence, in tab 56 of your folders. Indeed, Guyana’s Counsel referred to this very document on Monday, but again, he avoided to mention that in the end of this very document, Olney “reprimanded” Venezuela that her attitude □ namely her request that the treaty provided that Venezuelan nationals would sit as arbitrators □ was *offensive* and *tended to block all negotiations*¹³.

30. The necessary implication of this warning by the United States - an implication that Venezuela understood clearly - was that the United States would withdraw its support, should

¹² Letter from Ezequiel Rojas to José Andrade, 9 December 1896, Translation, Ministerio de Relaciones Exteriores, Estados Unidos de Venezuela, Gran Bretaña, Límites de Guayana, bases propuestas por los Estados Unidos, 1896-1897, folio 303, p. 37. CMV, Vol. II, Annex 59, p. 464 (emphasis added).

¹³ Telegram from Olney to Storow, 12 December 1896, Manuscript Division, Library of Congress, Washington, D.C.; Richard Olney Papers General Correspondence and Related Material, 1830-1925 (BOX 66-68, REEL 24), (1896: Nov. 11-Dec. 26), p. 458. CMV, Vol II, Annex 60; RV, Vol. II, Annex 15, p. 113 (emphasis added).

Venezuela insist on her proposed “offensive” amendments.

“Dangerous consequences”¹⁴ would follow: Great Britain would use force, and Venezuela would lose more land.

31. Guyana does not dispute the “threat of British military activity”¹⁵ against Venezuela. Instead, it claims brazenly, in its Reply, that these “dangerous consequences” were apparently “unspecified”¹⁶ and counsel for Guyana alluded to this on Monday.

32. Yet, the extensive factual record shows that these “dangerous consequences” were well known to Venezuela, and they were very specific.

33. *First, Britain’s further expansion over Venezuela’s land* was one of these “dangerous consequences”. Guyana itself relies on several communications by Venezuelan officials to US senior officials in the years immediately prior to the negotiations which prove Venezuela’s profound apprehension about British claims of “apparently indefinite” annexation¹⁷. Indeed, Guyana’s counsel again relied on one of these documents on Monday. But he did not place emphasis on the critical detail. In 1888, the Venezuelan Chargé d’Affaires in the United States sent a letter to the US President asking for help — and yes, they were asking for help — in order to prevent Great Britain’s “attempted acts of spoliation,

¹⁴ Letter from Ezequiel Rojas to José Andrade, 9 December 1896, Translation, Ministerio de Relaciones Exteriores, Estados Unidos de Venezuela, Gran Bretaña, Límites de Guayana, bases propuestas por los Estados Unidos, 1896-1897, folio 303, p. 37. CMV, Vol. II, Annex 59, p.464.

¹⁵ RG, para. 2.96. ¹⁶

¹⁶ RG, para. 2.95.

¹⁷ Letter from Mr. Olney to Mr. Bayard (20 July 1895), United States Department of State, Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895, Part 1 (1896), Document 527, available at <https://history.state.gov/historicaldocuments/frus1895p1/d527>. RG, para. 2.20.

encroachment, and appropriation to herself of very nearly one-third of our whole republic”¹⁸.

34. *Second, aggression by Great Britain* was the other “dangerous consequence”. An ultimatum threatening force had been sent by Great Britain to Venezuela only one month before the negotiations began; and British aggressions were being reported even during the negotiations.

35. Mr President, *this* is the nefarious historical background □ the *structural coercion* background □ of the 1897 Washington Treaty between Great Britain and Venezuela, which can hardly be called an “agreement”.

C. Circumstances during arbitration

36. Yet, the injustices that Venezuela suffered did not stop there, Mr President. They continued during the arbitration. The arbitral tribunal did not merely rely on the unjust and invalid Washington Treaty. It also opted to manifestly exceed its power. These issues will be addressed by Professors Palchetti and Tams.

37. I will focus on the circumstances surrounding Venezuela’s behaviour after the Arbitral Award was issued.

III. The circumstances of Venezuela’s post-Award conduct

38. Now, once the invalid Award was issued, the picture remained the same: “might makes right” - *but* with an additional “dystopian twist”. Venezuela was now expected to adhere to international justice - a justice that was really a farce, as Professors Palchetti and Tams will consider.

39. It is essential to point out that Venezuela did not have evidence to challenge the Award’s invalidity on the ground that the tribunal manifestly exceeded its power. Evidence came into her

¹⁸ Letter from Venezuelan Chargé d’Affaires in the United States of America, Fr. Antonio Silva, to Diplomatic Agent of Venezuela in New York, Col. George Gibbons (18 September 1888), available at <http://www.guyana.news.org/Western/1888-1891.pdf>, p. 910. RG, para. 2.21; CR 2026/24, p. 49, para. 10.

possession, as Professor Thouvenin will point out, only in the second half of the twentieth century.

40. But the record also shows that, in the meantime, Venezuela had no choice *but* to endure the Award.

41. For one thing, when the Award was issued, it was publicly reported that “the United States will force Venezuela to accept the verdict and that it will act appropriately if there are problems with the enforcement of the decision.”¹⁹

42. Further, between 1899, when the Award was issued, and 1903²⁰, Venezuela was embroiled in a civil war. During this period, Venezuela lacked a fully operational government and administration. These circumstances must be considered when assessing Venezuela’s conduct, as the Court has rightly noted, in *Somalia v. Kenya*²¹.

43. The British Foreign Office was indeed well aware of Venezuela’s vulnerable situation. For instance, on 19 March 1900, Mr Palacio, Venezuela’s Minister of Foreign Affairs, sent a letter to the British Foreign Office informing that the Venezuelan Government was facing difficulties “in connection with public order”²².

44. So, what was the response of Great Britain to this letter? Well, Britain informed Venezuela that it would *unilaterally* conduct the demarcation. And then, proceeding alone, it erected parts of the boundary in October that same year. The report of Venezuelan experts, that have been submitted by Guyana itself, describes

¹⁹ S. J. Hermann González Oropeza and Pablo Ojer, *Report submitted by the Venezuelan experts on the issue of the boundaries with British Guiana to the National Government on the Issue of the Boundaries with British Guiana* (18 March 1965). MMG, Vol. IV, Annex 74, p. 39, para. 25.

²⁰ RV, para. 6.97.

²¹ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, I.C.J. Reports 2021, p. 236, para. 79.

²² Letter from Mr. Andueza Palacio to British Foreign Office (29 March 1900), United Kingdom, National Archives, Kew, FO 80/424, Annex 31. RG, p. 343.

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vividly and clearly these facts²³. Faced with this clear pressure and the fear of losing more land, at a particularly vulnerable moment during the civil war, Venezuela had no choice *but* to send the Demarcation Commission²⁴.

45. Venezuela's fear was further proven by a report of Venezuela's former Minister of Foreign Affairs, Rafael Seijas, on 4 May 1900, who points out □ in the first page of his report □ that any challenge of the Award by Venezuela would highly likely lead to further annexation by Great Britain²⁵.

46. Venezuela's apprehension vis-à-vis Great Britain was confirmed, unfortunately, by subsequent events.

47. Between 1902 and 1903, Great Britain, along with Germany and Italy, blockaded and bombed Venezuela's ports. The blockade ended only when Venezuela was forcibly defeated. As a condition to raise the blockade, Great Britain imposed to Venezuela the payment of 5,500 pounds in cash, and the signature of the 1903 Protocol, according to which the rest of the British claims would be submitted to arbitration. In those arbitration proceedings, Counsel for Venezuela demonstrated the "vast inequality of strength between Great Britain and Venezuela"²⁶. You can find the pertinent extract of his speech in tab 38 of your folders. He stated:

²³ Hermann González Oropeza, S.J. & Pablo Ojer, *[Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al Gobierno Nacional]* Report submitted by the Venezuelan Experts to the National Government on the Issue of the Boundaries with British Guiana (18 Mar. 1965), MMG, Vol. IV, Annex 74, p. 39, para. 27.

²⁴ *Ibid.* (emphasis added).

²⁵ Report of Counsellor Dr Rafael Seijas (4 May 1900), MMG, Annex 66, p. 141 ("[A]s regards to Great Britain, its contempt for the weak being notorious and its persistence in laying hands on the mouth of our great river, a plan on which it has been working since the end of the 18th century, it is considered not only that it would not agree with Venezuela's opinion that the case should be reopened, but that it would take advantage of it with a view to retaining what it still holds, and *very probably extending its encroachment.*" (emphasis added)).

²⁶ *The Venezuelan Arbitration before The Hague Tribunal 1903, Proceedings of the Tribunal under the Protocols between Venezuela and Great Britain, Germany, Italy, United States, Belgium, France, Mexico, the Netherlands,*

“[Great Britain] is one of the most powerful nations of the earth, and she was confronting one of the weakest nations, then torn by internal commotion and needing every particle of strength she possessed and every dollar of revenue she could collect at her ports to maintain her own existence . . . This disparity in strength is clearly shown [he continued] in the Statesman’s Yearbook for 1903, an accepted authority in such matters, which details the great and efficient standing army of Great Britain, as well as her supreme control of the seas by her vast navy, while it reports that the army of Venezuela consists of 9,000 men, and her navy of 3 steamers, 2 sailing vessels, and some small gunboats”²⁷.

48. Such was the documented “vast inequality” between Venezuela and Great Britain. Against this background, the forcible defeat of Venezuela unequivocally communicated a powerful message to the war-torn young Republic, as it would to any reasonable observer. If Great Britain was capable and willing to use force to collect £5,500 in cash and to submit the rest of its claims to arbitration, then surely Great Britain was able and willing to go so far, if not further, had Venezuela challenged the 1899 Award, which concerned boundaries □ a matter of the greatest importance for the British Empire.

49. Guyana’s Counsel endeavoured to give the impression, on Monday, that Venezuela *enthusiastically* insisted on abiding by the 1905 demarcation. Yet, the facts show that, in the face of the indisputably tremendous military disparity between Great Britain and Venezuela, and against the background of repeated aggressions and threats of annexation that Venezuela had endured, she was left with no option *but* to endure the Award for years as a safeguard □ as a shield □ against the expansive ambitions of the British Empire.

Spain, Sweden and Norway, signed at Washington May 7, 1903 (1905), p. 1130, in RV, para. 6.88.

²⁷ *Ibid.*

Or, as the Venezuelan experts have put it, “in order to prevent further troubles”²⁸.

50. That Venezuela’s apprehension was substantiated is further borne out by Great Britain’s continued territorial ambitions following the boundary demarcation. In 1906, Great Britain requested alterations to the boundary line that had been *demarcated* in 1905, pursuant to the 1899 Award²⁹. Venezuela’s Minister of Foreign Affairs responded that the proposed modification by Great Britain “amounts to a veritable cession of territory”³⁰. And it is for this very reason that he also maintained in writing in his response, the need to not depart from the 1905 demarcation. Guyana’s counsel mentioned this response on Monday, but conveniently avoided to mention this significant detail³¹.

51. Thus, this uncontested and well-documented sequence of threats and aggressions prior to *the* Washington Treaty and after the 1899 Award instilled a well-founded fear in Venezuela, which remained a critical factor that determined Venezuela’s conduct for decades vis-à-vis this Award.

IV. Conclusion

52. Mr *President*, honourable judges, I turn to my conclusions
□ indeed the inescapable conclusions.

53. Any objective observer must consider these factual circumstances, in the late nineteenth century and the early twentieth century, prior and during the negotiations of the Washington Treaty, and after the issuance of the invalid 1899 Award, in order to understand Venezuela’s conduct. There is not only overwhelming

²⁸ Hermann González Oropeza, S.J. & Pablo Ojer, [*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al Gobierno Nacional*] Report submitted by the Venezuelan Experts to the National Government on the Issue of the Boundaries with British Guiana (18 Mar. 1965), MMG, Vol. IV, Annex 74, p. 39, para. 27.

²⁹ Letter from Señor Paúl to Mr. O’Reilly (4 Sept. 1907) (Inclosure in Letter from Mr. O’Reilly to Sir Edward Grey (5 Sept. 1907)). MMG, Vol. III, Annex 48, pp. 5-6.

³⁰ *Ibid.*

³¹ CR 2026/25, p. 35, para. 23.

evidence of Venezuela's fear as to Great Britain's attitude towards her during this period. Rather, there is also overwhelming evidence that Venezuela's fear was well founded, and that she only was able to obtain evidence that the Award was invalid in the second half of the twentieth century.

54. It is *these* overall factual circumstances of the case brought by Guyana, Mr President, that simply do not allow the interpretation that Venezuela ever renounced its right to invoke the invalidity of the 1899 Award.

55. *Venezuela* was in a position to challenge the Award, when she obtained evidence of its invalidity. That time coincided with the period of decolonization, which enabled Venezuela to challenge the Award through peaceful means and negotiations. These negotiations led to the Geneva Agreement, which has superseded an unjust and invalid Award, and has set the legal framework for the Parties to it to solve their border controversy by reaching a mutually satisfactory solution.

56. I thank you indeed for your kind attention and request you to call to the podium Professor Palchetti.

The PRESIDENT: I thank Professor Azaria for her statement. I now give the floor to

Professor Paolo Palchetti. Sir, you have the floor.

Mr PALCHETTI:

**THE INVALIDITY OF THE 1899 ARBITRAL AWARD
(I)**

I. Introduction

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Bolivarian Republic of Venezuela.

2. Guyana instituted these proceedings asking the Court to adjudge and declare that the 1899 Award is valid and binding. As Professor Mbengue established this morning, there is a problem with that request.

3. Whether the award is valid or not is irrelevant. And this has been so since the conclusion of the Geneva Agreement.

4. Despite this, Venezuela will deal with the question of the Award's invalidity to contribute to better understanding the reasons that led the parties to agree on a different legal framework for settling their territorial controversy. This will also allow Venezuela to rebut Guyana's false allegations concerning the Award.

5. Venezuela's historical position is that the Award is invalid because of the invalidity of the 1897 Arbitration Treaty, because of the lack of reasons in the award and because of excess of power. In the next 40 minutes, I will present Venezuela's historical position concerning the first two grounds of invalidity. After me, Professor Tams will present the reasons why Venezuela has historically maintained that the Award is invalid because of excess of power.

**II. Guyana's attempt to give new life to an unjust,
fraudulent, and invalid decision □ a decision that in
1966 Guyana and Venezuela agreed to leave behind**

6. Before addressing the grounds of invalidity of the Award, let me clarify what the 1899 Award represents for Venezuela, and for anyone looking at the facts objectively. The history of this Award is, above all, a history of great injustice. For Venezuela, it has long represented an offence to national dignity.

7. Through it, the United States and Great Britain conducted a political transaction behind Venezuela's back. They got exactly what they wanted. As Professor Moncada said this morning, the United States achieved the vindication of the Monroe Doctrine and the recognition of its hegemony in the Western hemisphere. Great Britain, in turn, through the Award obtained the territory of Guayana Esequiba. That doing so meant sacrificing Venezuela's legitimate rights mattered little. As Professor Azaria has just shown, Venezuela was in any event in no position to resist.

8. Exposing the political transactions carried out behind Venezuela's back is central to this case. Guyana has striven in these proceedings to distort the facts in order to erase any trace of the injustices suffered by Venezuela. In a complete contradiction to the facts, Guyana now casts Venezuela as the main beneficiary, rather than as the victim, of the Anglo-American confrontation.

- As you have heard on Monday³², Guyana insists that it was Venezuela that requested the intervention of the United States. This is correct, but also beside the point. What matters is that the United States did not protect Venezuela's interests, pursuing its own interests instead.

- Guyana repeatedly referred to the role of the US Secretary of State, the US lawyers who acted as Venezuelan advisers and counsel, and the two US justices sitting on the tribunal. In reality, this only highlights one thing: that Venezuela was absent from the entire process. It was absent from the negotiations, and it was absent from the arbitral proceedings in Paris.

- Guyana would have you believe that the Award was grounded in law. The only evidence it provides is the fact that the parties were offered ample opportunity to present their case to the tribunal: three rounds of written pleadings, more than 200 hours of oral proceedings. That proves nothing. Instead of insisting on the 200 hours of oral pleadings, Guyana should explain how it is possible that it took only six days for the tribunal to render its decision. Two hundred hours of oral

³² CR 2026/24, pp. 53-54, para. 25 (Reichler).

proceedings and six days for rendering a decision: if we apply the same ratio to the present proceedings, Members of the Court, you should render your judgment in less than a day. *Bonne chance!*

- Guyana even pretends that the Award was favourable to Venezuela. Let us be clear: Great Britain was awarded more than 90 per cent of the Venezuelan territory it had claimed. As put by one of the British arbitrators³³, the outcome for Venezuela was “disastrous”.

9. Mr President, I do not intend to revisit each and every fact showcasing the injustices perpetrated at Venezuela’s expense. These facts are exhaustively set out in Venezuela’s written pleadings. But on one point I must insist: whatever one thinks of the territorial rights claimed by Venezuela at the time, it is simply not credible to present the arbitration between Great Britain and Venezuela as an ordinary one. The circumstances in which the arbitration agreement was negotiated and under which the arbitral proceedings were conducted are unprecedented. They reveal the state of subjugation to which Venezuela was reduced. External observers agree on this. This is how Paul Reuter characterized this arbitration:

“Beaucoup de circonstances rendaient cet arbitrage des plus singuliers ; les conditions dans lesquelles le Venezuela avait consenti à se faire représenter, en dehors de tout protectorat ou de toute institution régulière, par un pays tiers semblent se rencontrer rarement dans une procédure arbitrale, et révèlent une situation quasi coloniale.”³⁴

10. And this is how a contemporary observer, Monsieur de la Chanonie, who attended the Paris proceedings, presented arbitration following the Anglo-Venezuelan experience: arbitration

³³ See Letter from Lord Russell to Lord Salisbury, 7 October 1899, in CMV, 8 Apr. 2024, vol. I, annex 67.

³⁴ P. Reuter, “La motivation et la révision des sentences arbitrales à la Conférence de la paix de La Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla”, in *Mélanges offerts à Juraj Andrassy* (Dordrecht, Springer, 1968), p. 238.

is “un moyen, économique et assez sûr, d’opérer sans vacarme ni scandale la spoliation des petits États”³⁵.

11. Mr President, the uncomfortable reality concerning the 1899 Award is precisely this: the United States and Great Britain used arbitration to dispossess Venezuela of its legitimate rights. And today Guyana asks the Court to breathe new life into that unjust decision.

12. Because this is what this case is about: whether to validate an unjust decision that was made possible only by the quasi-colonial imbalance imposed on Venezuela. An unjust decision □ let me reiterate this point □ that in 1966 Guyana and Venezuela agreed to leave behind, and replace with an obligation to negotiate, a mutually acceptable solution.

13. Guyana’s main argument is that the applicable law and the required standard of proof allow for no practical possibility of challenging the Award’s validity. The margins are too narrow, the standards too high. Guyana wants the Court to recognize that, whatever past injustice, the award is now protected by the law. *Dura lex sed lex*, or rather *summum jus, summa iniuria*.

14. Guyana’s argument rests on three formalistic pillars:

- Firstly, *pacta sunt servanda* and the binding character of international arbitral awards;
- Secondly, the principle of intertemporal law;
- Thirdly, burden of proof.

Not one of these justifies the conclusions that Guyana seeks to draw from them.

15. *Pacta sunt servanda* is sacrosanct. But it does not stand alone. The preamble of the Vienna Convention on the Law of Treaties is clear on this point: “the principle of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized”. There is no hierarchy among the three principles. Yet, free consent and good faith were systematically violated throughout the negotiations of the Arbitration Treaty.

³⁵ L. de la Chanonie, “Une application du principe de l’arbitrage”, in *Revue d’Europe*, March 1900, p. 222.

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16. Nor is there any presumption of validity of an arbitral award. Arbitral awards are final and binding if, and only if, they satisfy the conditions for their validity under international law. The 1899 Award never met these conditions.

17. On the principle of intertemporal law, I have one main observation. It concerns the general principles governing the invalidity of awards. In its attempts to foreclose any possibility of challenging the validity of the Award, Guyana has twisted the principle of intertemporal law to advance several untenable propositions. It has doubted the existence, in 1899, of rules providing for grounds of invalidity of awards³⁶. It has argued that, at that time, an arbitral award could be nullified only if this was envisaged in the *compromis*³⁷; it has claimed that, at the relevant time, there was no obligation to state reasons. None of these propositions withstands scrutiny. Guyana's emphasis on intertemporal law is only an attempt to mask the grave irregularities committed by the Arbitral Tribunal. It is primarily defensive and fails at that task.

18. Finally, I come to the burden of proof. It is a fact that, given the exceptional circumstances under which the Award was rendered, Venezuela and Guyana are manifestly not in the same position with regard to access to evidence. Unsurprisingly, Guyana places great emphasis on burden of proof. It insists that the burden of proof is exclusively on Venezuela³⁸; it also pretends that a heightened standard of proof applies to the nullity of awards³⁹.

19. Guyana's emphasis on the burden of proof is misconceived. This Court has already emphasized the need to account for the circumstances of each case. The rule that the party alleging a fact must submit the relevant evidence - as the Court put it - "is not an absolute rule applicable in all circumstances. There are situations where 'this general rule would have to be applied

³⁶ MMG, Vol. I, para. 6.47.

³⁷ MMG, Vol. I, paras. 6.48-49.

³⁸ MMG, Vol. I, paras. 6.35-37. ³⁹

³⁹ MMG, Vol. I, paras. 6.38-42.

flexibly”⁴⁰. Moreover, “[d]epending on the circumstances of the case, it may be that ‘neither party is alone in bearing the burden of proof’”⁴¹.

20. This Court has also recognized “that a State that is not in a position to provide direct proof of certain facts ‘should be allowed a more liberal recourse to inferences of fact and circumstantial evidence’”⁴².

21. The circumstances of the present case are well known.

- First, Venezuela did not directly participate in the negotiation of the Arbitration Treaty nor in the arbitral proceedings. It was “represented” □ so to say □ by US officials who fully controlled what happened during the negotiations and the proceedings. Consequently, Venezuela has no direct access to the relevant evidence.

- Second, it is the United Kingdom and the United States that held most of the documents and evidence relevant to this case. Venezuela was able to access it only to the extent that they have allowed Venezuela access.

- Third, to this day, and despite repeated requests by Venezuelan authorities⁴³, the United Kingdom has blocked access to the information it holds in its archives.

- Lastly, Guyana, the successor State to Great Britain, is in a better position to provide evidence. All the more so since

⁴⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgment, I.C.J. Reports 2022 (I), p. 54, para. 116; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, I.C.J. Reports 2012 (I), p. 332, para. 15; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010 (II), pp. 660-661, paras 54-56; *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 18.

⁴¹ *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgment, I.C.J. Reports 2022 (I), p. 54, para. 117.

⁴² *Ibid.*, para. 120 (citing *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 18).

⁴³ RV, Vol. I, Annex 41.

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Guyana did, in fact, receive documents related to the Arbitration from Great Britain.

22. In sum, there is a clear asymmetry between the Parties in the access to evidence. What is more, this asymmetry is the result of deliberate choices made by the States that control the evidentiary record.

23. Venezuela submits that, in these circumstances, it cannot “be alone in bearing the burden of proof”⁴⁴.

24. It falls upon Guyana to establish its contention that the Award complied with the requirements of the Washington Treaty and, in particular, that it was based on law.

25. So far, Guyana’s strongest argument on this relies on the absence of reasons in the Award. As you heard on Monday⁴⁵, Guyana pretends that, as the Award does not contain any reasons, it is not possible to prove that the Tribunal did not follow the instructions of the *compromis*. For Guyana, this is sufficient to conclude that the Award is valid. This argument is hopeless. I will come back to the absence of reasons in the Award later on.

**III. The Award is invalid because of the invalidity of the
Arbitration Treaty**

26. I turn now to the grounds of invalidity of the Award, starting with the invalidity of the 1897 Arbitration agreement.

27. Venezuela and Guyana agree that, at the relevant time, the invalidity of the *compromis* was a ground to hold an award null and void under international law. They also agree that, at the relevant time, error and fraud were causes of invalidity of a treaty. But they disagree on the facts. Or, to be more precise, Guyana has failed to engage with the facts and evidence presented by Venezuela. In its

⁴⁴ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 54, para. 117 (citing *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 660, para. 56).

⁴⁵ CR 2026/25, p. 20, para. 24 (Pellet).

written pleadings, Venezuela has repeatedly referred to the existence of confidential documents exchanged between the United States and Great Britain during the negotiation of the Arbitration Treaty and which were never transmitted to Venezuela. These confidential documents played a fundamental role in the arbitral proceedings. On Monday, Guyana did not address these confidential documents, persisting instead in distorting reality by portraying the United States as the generous, transparent and selfless ally that forcefully defended Venezuela's interests⁴⁶.

28. Mr President, let us examine these confidential documents and their use during the Paris proceedings. In your folder the core materials and evidence are included. These documents prove that Venezuela was a victim of fraud which led it to incur in an essential error. They also provide a window into the farce — a farce that was staged in Washington and in Paris during the negotiations of the Treaty and the arbitration proceedings.

(a) Confidential documents were exchanged during the negotiations

29. I start with the negotiation of the 1897 Treaty. The two main actors in these negotiations were the US Secretary of State, Olney, and the English Ambassador in Washington, Pauncefote. Both acknowledged that, during the negotiations, exchanges of confidential Notes and letters took place. At tab 13 of your folders, you will find a letter of Pauncefote referring to “strictly personal” diplomatic correspondence exchanged with Olney⁴⁷. And, at tab 14 □ now on the screen □ you can find a letter from Olney mentioning what he refers to as “informal and private notes, none of which were regarded by me as of an official character or were allowed to go on to the files of the State Department”⁴⁸.

⁴⁶ CR 2026/24, p. 61, para. 55 (Reichler).

⁴⁷ Letter of Former British Ambassador at Washington, Sir Julian Pauncefote, to the Former Secretary of State Olney, 12 May 1899, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), p. 24.

⁴⁸ Letter from Richard Olney to Sir Pauncefote, 24 May 1899, in RV, Annex 19 (also reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*) (Vol. III, New York, 1979), p. 25.

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30. We do not know the content of these informal and private Notes, nor do we know why Olney did not want them included in State Department files. Guyana provides no explanation for this secrecy. What we do know is that at least one of these confidential Notes concerned an essential part of the Treaty, namely the clause establishing that prescription during a period of 50 years makes good title.

31. At tab 15 of your folders you will find the text of Article IV of the Treaty. As you can see, Article IV4 (a) indicates that the period for prescription is 50 years. What it does not indicate is the critical date for calculating the 50 years. If you look instead at the clause in paragraph (c), you will immediately notice that, unlike in paragraph (a), paragraph (c) indicates the critical date. That date is “the date of the Treaty”. This discrepancy strongly suggests that the critical date under paragraph (a) is different from the critical date in paragraph (c). If the critical date for calculating the 50-year prescription period is not the date of the Treaty, 1897, what could it be? Well, it can be argued that the critical date is the one indicated in Article III of the Treaty, “the time of the acquisition by Great Britain of the Colony of British Guiana”, namely 1814. This would mean that the prescription period was the period between 1764 and 1814 - and it is clear that this interpretation is not only reasonable, but it would best protect Venezuela’s interests as it would preclude the Tribunal from taking into account Great Britain’s conduct for assessing prescription. Similarly, the critical date could be 1850, the date on which Venezuela and Great Britain committed by treaty to not occupy the disputed territory - and this would also be a reasonable interpretation and one protecting Venezuela’s interests.

32. Mr President, we do not need to answer this question. It only matters in so far as it shows that the confidential note exchanged between Olney and Pauncefote concerned an essential part of the Arbitration Treaty. Great Britain and Venezuela had opposite views regarding the title justifying sovereignty over the contested territory. Venezuela placed emphasis on historical title, Great Britain on occupation and *de facto* control. The calculation of a prescription period was one of the core issues. Guyana does not contest this.

33. Yet, was Venezuela informed of the contents of these confidential notes before ratifying the Treaty? It was not, and there is no evidence proving that it was. However, Guyana claims that it was unlikely that the contents of the notes were unknown to Mr Storrow. Who is Mr Storrow? He is the US lawyer who acted as Venezuela's legal adviser during the negotiations⁴⁹.

34. At tab 16 of your folders you will find the point of view of someone who was more familiar with Storrow, and his working methods, than Guyana's counsel are. It is a letter by Benjamin Harrison, the head of the US legal team representing Venezuela before the tribunal, sent in 1899, to another member of the US team, Mallet-Prevost. Harrison candidly admitted,

- firstly, that the Venezuelan Government had no knowledge of the confidential notes;
- secondly, that these notes most probably were known to Storrow, "for his relations to Mr Olney were very confidential";
- and thirdly, that "it is quite possible that Mr Storrow, knowing the impracticability of some of those he had to deal with, may have purposely left this matter a little vague"⁵⁰ — a little vague.

35. This letter provides clear illustration of the farce staged by the United States, a farce upon which Guyana has built its entire case. Olney is in strict contact with the Venezuelan representative, but behind the mask of the Venezuelan representative there is Storrow, Olney's close associate. Storrow would be expected to inform the Venezuelan Government but, knowing the "impracticability" of Venezuelan officials, he only communicates with Olney. For Guyana, there is nothing wrong with that. Venezuela was informed □ Guyana argues □ because it was unlikely that the Venezuelan representative, Storrow, did not know. Mr President, Members of the Court, what a farce, what a charade! And this is only the first act.

⁴⁹ RG, para. 2.76.

⁵⁰ Letter from Benjamin Harrison to Mallet-Prevost, 9 March 1899. RV, Annex 16.

(b) Great Britain's use of the confidential documents during the arbitral proceedings

36. For the second act, we must go to Paris. At tab 17 of your folders there is an excerpt of the memorial submitted by Venezuela to the arbitral tribunal⁵¹. As you can see, in its written pleadings, Venezuela argued that the critical date for calculating the prescription period was the date when Great Britain acquired the Colony of British Guiana. Following this argument, Article IV (a) did not apply to the period subsequent to 1814. Clearly, neither the US lawyers defending Venezuela, Harrison, nor the Venezuelan Government were aware of the content of the confidential notes.

37. This argument sparked serious concern in Great Britain. In 1899, British lead counsel Richard Webster wrote to the US lawyers representing Venezuela. He made it clear that the argument on the critical date for prescription was contrary to what Olney and Pauncefote had agreed in their confidential notes. He also demanded that the argument be withdrawn, announcing that it was Britain's intention to present the confidential documents to the Tribunal. At tab 18 you will find Webster's letter⁵².

38. On the same day, Pauncefote wrote to Olney to convey his surprise at the argument advanced by Venezuela, mentioning that Britain would make use of the confidential notes. This letter is at tab 13 of your folder.

39. So we have Great Britain demanding that the US lawyers representing Venezuela change their legal strategy. This alone goes against any principle of justice and decency. It must be recognized, however, that this time, the US lawyers informed the Government of Venezuela. At tab 19 of your folders you have a letter expressing Venezuela's surprise: "The Government of Venezuela is unable to comprehend upon what authority the British lawyers demand from those of Venezuela a relinquishment of our case."⁵³ In this and in

⁵¹ *Venezuela-British Guiana Boundary Arbitration, The Printed Argument on Behalf of the United States of Venezuela Before the Tribunal of Arbitration* (Vol. I, New York, Evening Post Job Printing House, 1898), pp. 18-22.

⁵² Letter from Richard Webster to Mallet-Prevost, 12 May 1899. RV, Annex 18.

⁵³ Letter from J. Calcaño to J. Andrade, 23 March 1899. RV, Annex 17.

other letters⁵⁴, the Government of Venezuela repeatedly instructed the US lawyers representing Venezuela not to withdraw the argument.

40. What did these lawyers do? At tab 20 of your folders you have a clear description of what happened⁵⁵. Mr President, Members of the Court, we are in Paris, it is 13 July 1899. Britain's lead counsel, Webster, and the US lead counsel representing Venezuela, Harrison, meet to discuss the interpretation of Article IV of the Treaty. The two men agree "the good faith of the United States . . . was involved in the matter" □ but what good faith was that? It was the good faith of the United States vis-à-vis Great Britain, not vis-à-vis Venezuela. Webster requests again the withdrawal of the argument that the critical date is 1814. Harrison offers no resistance. He only asks for one thing: to save appearances. He cannot formally withdraw the argument: "His client, Venezuela, would not let him make a public withdrawal."

41. In the end, the argument was, in fact, withdrawn. In an oral statement before the tribunal, Harrison candidly recognized that, in light of the confidential note, the prescriptive period applied to the years after 1814. You have this statement at tab 21 of your folder⁵⁶.

42. As this Court can see, the first act - the negotiation - and the second act - the arbitral proceedings □ are part of the same script. The only difference is that, in the second act, Venezuela was informed. But the instructions given by the Government of Venezuela were completely ignored.

43. Other examples of the fraud could be provided. Time does not allow me to address Great Britain's use of another piece of

⁵⁴ Letter from J. Calcaño to J. Andrade, 7 April 1899. CMV, Annex 62.

⁵⁵ Letter with Annexure of Great Britain's Leading Counsel, Sir Richard Webster, to Sir Thomas Sanderson, 13 June 1899, in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), p. 27.

⁵⁶ *British Guiana-Venezuela Boundary Arbitration, Arbitration between the Governments of Her Britannic Majesty and the United States of Venezuela. Proceedings* (Vol. 7, Paris, 1899), pp. 1753-1754. Also in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), pp. 28-30.

FIRST ROUND OF ORAL ARGUMENTS
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confidential correspondence, concerning this time the 1850 Agreement between itself and Venezuela. I refer you to Venezuela's written pleadings, where you will find the relevant facts and evidence.

36. 44. Before concluding on the invalidity of the Arbitration Treaty, let me make one point concerning evidence. The documents you have in your folder mainly consist of the correspondence exchanged between British and/or American officials involved in the negotiation of the Treaty or the Paris proceedings. Venezuela obtained these documents several decades after the Award was rendered. When it finally did, it immediately denounced the invalidity of the Treaty and of the Award. It is clear that, under these circumstances, no acquiescence or loss of right can be invoked against Venezuela. You will hear more on this from Professor Thouvenin later on.

45. I will now conclude on the invalidity of the Treaty. The evidence before you shows, first of all, the injustice — the injustice suffered by Venezuela. But it also proves that its consent to the arbitration agreement was vitiated by error and by fraud:

- Firstly, Venezuela was misled about the meaning of the clause on prescription set forth in Article IV of the Treaty;
- Secondly, the error concerns an essential part of the Treaty;
- Thirdly, Venezuela did not contribute to this error. The correspondence between the United States and Great Britain remained confidential and was not transmitted to Venezuela. Moreover, with their disloyal behaviour, US lawyers representing Venezuela contributed to keeping Venezuela in the dark;
- Finally, the recourse to confidential notes reveals that the United States and Great Britain intentionally left Venezuela in the dark to overcome any resistance to the ratification of the treaty. This amounts to fraud.

46. The Arbitration Treaty being invalid for error and fraud, only one conclusion follows: the Arbitral Award is itself invalid.

IV. Invalidity for lack of reasons

47. I turn to the second ground of invalidity: the Award's complete failure to state reasons.

(a) The obligation to state the reasons in the Award already existed in 1899

48. Writing in 1904 □ in his introduction to the *Recueil des arbitrages internationaux* □ Louis Renault observed: “*Il importe au plus haut point que non seulement la justice soit juste, mais encore qu'elle le paraisse.*”⁵⁷ Justice, in other words, must not only be done, it must also be seen to be done. Guyana clearly defends a different position. Guyana denies that any obligation to state reasons existed in 1899. This does not withstand scrutiny.

49. Renault's position was not merely an aspiration. It had already found expression in several general rules of procedural law. Amongst these, there was the rule establishing the obligation to state the reasons for the awards.

50. Almost a quarter of a century before the Award was rendered, the Institut de droit international had already recognized the existence of this obligation. A few months before the Award, the same rule was codified by the First Hague Conference.

51. The Court's case law points in the same direction. In the *Arbitral Award Made by the King of Spain* case, Honduras and Nicaragua accepted that lack of reasons was a ground of invalidity at the relevant time. The Court □ *jura novit curia* □ decided the issue of lack of reason on that very basis. On Monday, Guyana took a rather bizarre position on the Court's Judgment. It argued that your Judgment is not relevant since the Court rendered it more than 60 years after the Award⁵⁸. This is true. But the Court was assessing the validity of an Award rendered in 1906. Perhaps, Guyana is not so sure about the applicability of the principle of intertemporal law. Or perhaps it has no better arguments to dismiss this precedent.

52. Arbitral practice confirms the existence at the relevant time of an obligation to state reasons. The overwhelming majority

⁵⁷ A. de Lapradelle, *Recueil des arbitrages internationaux*, préface de Louis Renault (Paris, Pedone, 1905), p. XI.

⁵⁸ CR 2026/25, p. 19, para. 19 (Pellet).

of the awards rendered in this period were reasoned □ some briefly, but reasoned, nonetheless. On Monday, for lack of better arguments, Guyana resubmitted the list of unreasoned arbitral awards it had already presented in its Reply, simply adding a few more⁵⁹. In its Rejoinder, Venezuela has already demonstrated that all these awards can be easily distinguished⁶⁰.

53. I will not burden the Court by repeating what Venezuela has already demonstrated in its written pleadings. Rather, I will now move to a final observation.

(b) Lack of reasons as evidence of excess of power

54. Mr President, Members of the Court, lack of reasons is not only a self-standing ground of invalidity of the Award. It is also a fact that can be used to prove the Tribunal's excess of power.

55. You will hear more on excess of power from Professor Tams. What I wish to place before the Court now is the logical link between the two grounds. Excess of power arises when a tribunal departs from the mandate granted to it under the *compromis*. But, how does one verify whether that mandate was respected? The answer is simple: through the tribunal's reasoning. But what if the award does not state the reasons?

56. It is enough to raise this question to understand that the Tribunal's decision to not state the reasons was not innocent. It was not, as Guyana presents, a mere consequence of the absence of an obligation. It was a deliberate choice. This choice was even more striking when considering the context.

- Just a few weeks before, the Hague Peace Conference had recognized the existence of an obligation to state the reasons; The Treaty of Washington clearly required the Tribunal to render a decision based on the strict application of specified legal principles;

- And, finally, the absence of Venezuelan arbitrators rendered even more important that the authority of the decision should rest on a properly reasoned award.

⁵⁹ CR 2026/25, p. 16, para. 13 (Pellet).

⁶⁰ RV, paras. 5.98-5.99.

57. So, what inferences could then be drawn from the fact that the Award does not indicate, even briefly, the reasons upon which it rests? In 1899, at the Hague Peace Conference, the German delegate, Zorn, responding to Martens, the President of the Anglo-Venezuelan Tribunal, observed: “Arbitral awards must be legal decisions, and a legal decision without the reasons in which it is based is inconceivable”⁶¹. If the Tribunal did not take care to present the Award as a decision based on law, a reasonable explanation is, most simply, that it was not.

58. Indeed, the absence of reasons was the only way that the Tribunal could mask the fact that its decision did not result from the application of the rules outlined in the Arbitration Treaty.

59. This concludes my presentation. I thank the Members of the Court for their kind attention and would ask Mr President to give the floor to Professor Tams.

The PRESIDENT: I thank Professor Palchetti. I now call Professor Christian Tams to the podium. You have the floor, Sir.

Mr TAMS:

THE INVALIDITY OF THE 1899 ARBITRAL AWARD (II)

I. Introduction

1. Mr President, Members of the Court, it is an honour to appear before you and a privilege to do so on behalf of Venezuela.

2. My presentation pursues the argument set out by Professor Palchetti: he has shown that the 1899 Award was invalid because it was based on an invalid treaty and because it was unreasoned. I will

⁶¹ Division of International Law of the Carnegie Endowment for International Peace, *The Proceedings of The Hague Peace Conferences. Translation of the Official Texts*, The Conference of 1899 (New York, 1920), p. 616.

present to you a third ground of invalidity: in rendering the Award, the Tribunal exceeded its powers under the Washington Agreement. In fact, it committed multiple excesses of power, approaching its tasks with scant respect for its mandate. That is why the United Kingdom and Venezuela left the Award behind when concluding the Geneva Agreement - an agreement that, as my colleagues have shown this morning, tasked its parties to seek a mutually acceptable solution to their long-standing controversy.

3. On Monday, Guyana sought to defend the 1899 Award. But much of this defence was *rather* timid. At the time □ you heard □ arbitration was still in its infancy: “*un accident heureux*”⁶². An obligation to give reasons was emerging but had not yet fully crystallized. It was still fine at the time, says Guyana, for arbitrators to meet with counsel during deliberations. And in any event, as the Award was unreasoned, it was impossible to establish that the arbitrators had violated their mandate. And so on and so forth.

4. Mr President, in the face of such defensive moves, let me begin by stating clearly that the legal régime governing excess of power is not in doubt.

5. First, it is clear that awards □ including those rendered in 1899 □ can be challenged for excess of power. Excess of power is, as the ILC would later note, “the oldest and most universally recognized ground of nullity”^{62F63}.

6. Second, it is clear and it was clear, in 1899, that excess of power can take different forms⁶⁴. Obviously, a tribunal exceeds its power if it decides on matters not submitted to it. But excess of power also covers instances in which a tribunal failed to pronounce on issues it must address □ this is sometimes referred to as a “negative” excess of power. And finally, awards can be challenged where the tribunal disregards the applicable law or decides *extra legem*. None of this is in dispute.

⁶² CR 2026/25, p. 12 (Pellet).

⁶³ ILC, Draft Convention on Arbitral Procedure, Texts and Commentaries, UN doc. A/CN.4/92, p. 107.

⁶⁴ See references in CMV, paras. 6.91-6.92.

7. Third, it is clear how excess of power is to be assessed. It needs to be asked whether a tribunal respected the terms of its mandate. In your jurisprudence, you have formulated the central proposition in terms that you see on the slide: “in the performance of the task entrusted to it, the tribunal ‘must conform to the terms by which the Parties have defined this task’”^{64F}⁶⁵ - and these are exactly the words used by Guyana on Monday⁶⁶. So, “conforming to the terms” of the mandate - that is the test. It is a test that requires, as the ILC put it in its work on arbitral procedure □ and I quote again: it requires “a careful comparison of the award . . . with the relevant provision of the *compromis*”⁶⁷⁶⁷ - the *compromis* that is the sole basis of the tribunal’s power, in our case: the Washington Agreement.

8. Mr President, Members of the Court, what does such a careful comparison reveal in our case? Venezuela submits that, when rendering the 1899 Award, the tribunal committed multiple excesses of power. I will highlight three of these:

- (i) First, a negative excess of power: the tribunal failed to fulfil one of the tasks entrusted to it.
- (ii) Second, an excess of power in the obvious sense: the tribunal decided matters that were plainly outside its competence.
- (iii) And third, the tribunal failed to comply with its most solemn duty: the duty to render an award based on law.

II. The tribunal failed to respond to one of the two questions put to it

9. Mr President, I begin with the tribunal’s mandate. It was set out in Article III of the Washington Treaty. You see the language on the screen, and the language is clear. The parties gave the

⁶⁵ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment, I.C.J. Reports 1991*, p. 70, para. 49 (citing *Delimitation of the Maritime Boundary in the Gulf of Maine, Judgment, I.C.J. Reports 1984*, p. 266, para. 23).

⁶⁶ CR 2026/25, p. 20 (Pellet).

⁶⁷ ILC, Draft Convention on Arbitral Procedure, Texts and Commentaries, UN doc. A/CN.4/92, p. 108.

tribunal two tasks and formulated both of them in mandatory language using the verb “shall”. The tribunal had to . . .

- (i) first investigate and ascertain the extent of the territories belonging to the Netherlands and Spain in 1814 — I am paraphrasing and simplifying; and
- (ii) secondly, the tribunal had to determine the boundary line.

10. Now, there is no doubt that the tribunal determined the boundary line; it complied with the second task. But not the first. The Award is silent on titles: the tribunal does not tell the parties what it had investigated and ascertained. And on the face of it, this seems a fairly glaring negative excess of power.

11. On Monday, Guyana sought to explain away the tribunal’s failure. It suggested that ascertaining the titles was merely a prelude to the boundary decision. The tribunal really had only one task, says Guyana: it had to determine the boundary. But this does not withstand scrutiny.

12. It does not withstand scrutiny because it misconstrues the role of the arbitrator □ as it was well defined in the late nineteenth century. *Balasko*, on whose work Guyana relies, made the point very clearly: “le Tribunal doit juger tout point prévu au compromis, fût-il d’avis qu’il n’y a pas lieu de l’examiner” [the “tribunal must adjudicate every point referred to it in the *compromis*, even if in its opinion it does not arise to be considered”]⁶⁸. Every point must be adjudicated, even if the tribunal considers it irrelevant. In their opinion in the 1991 *Arbitral Award* case before this Court, Judges Aguilar Mawdsley and Ranjeva put matters very clearly: requests framed in a *compromis* “la[y] down the terms of the difficulty”. And further, “a judge seriously fails to perform his mission whenever he decides not to answer a question”⁶⁹. And looking at the 1899 Award, how can we escape the view that the Paris tribunal “seriously failed to perform its mission”?

⁶⁸ A. Balasko, *Causes de nullité de la sentence arbitrale en droit international public*, Paris, Pedone, 1938, p. 200.

⁶⁹ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, *Judgment*, I.C.J. Reports 1991, dissenting opinion of Judges Aguilar Mawdsley and Ranjeva, p. 126, para. 18.

13. Now, Mr President, there are exceptions. The parties to the compromise can of course give the tribunal discretion. The arbitration agreement between Guinea-Bissau and Senegal which was at issue in the 1991 *Arbitral Award* case illustrates this. You see it on the slide. And you see that the tribunal in that case (like the one in the case we are discussing) had two tasks □ it was to respond to two questions. But you see immediately from the highlighting that the tribunal in *Guinea-Bissau v. Senegal* had discretion: it only had to address the second question if it responded to the first in the negative. This was said so expressly in paragraph 2, “categorically”, as this Court observed, and it was material to the 1991 decision⁷⁰. This discretion is exceptional □ and it is instructive how this Court, in 1991, approached the exception. In the 1991 Judgment, this Court distinguished between arbitration agreements that gave tribunals discretion (like Article 2 you still see on the slide) and, on the other hand, arbitration agreements that raised, “successive questions which [are] not made conditional on each other”⁷¹. The clear implication is that normally, tribunals have no discretion; they must address all requests put to them.

14. Mr President, international practice points us to examples of special agreements that raise such “successive questions which [are] not made conditional on each other” — to use the terms again — and it makes clear that in the presence of such a mandate, tribunals have no discretion. Another arbitration involving Guinea-Bissau □ not the one with Senegal, but the one with its southern neighbour, Guinea □ is instructive. It was decided in 1985, on the basis of an arbitration agreement that (like in our case) tasked the tribunal to assess titles first, and then to determine the boundary⁷². And naturally the tribunal in the *Guinea/Guinea-Bissau* arbitration engaged with both □ it addressed titles first, and the boundary second. It conformed to the terms of its mandate.

⁷⁰ See *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, I.C.J. Reports 1991, p. 70, para. 50 (“categorical”).

⁷¹ See *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, I.C.J. Reports 1991, p. 70, para. 50.

⁷² See *Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau*, Decision of 14 February 1985, in RIAA XIX, 149, at 151.

15. Mr President, the arbitral tribunal in our case was required to do the same, and for a further reason. It could have no doubt how crucial the question of title was for the parties. Both parties made detailed submissions on the question, and stressed its relevance. *Pars pro toto*, let me take you to a passage from General Harrison's concluding argument, which is focused specifically on Article III defining the mandate and the tribunal's dual task under the provision. You see the text on the slide; I will read excerpts. Article III, said General Harrison,

“introduces the Netherlands and Spain. It does not declare simply that they [the arbitrators] shall find the boundary between the existing claimants, but they are to ascertain the extent of the territories belonging to or that might lawfully be claimed by the Netherlands or the Kingdom of Spain by the time of this acquisition [in 1814]”.

And further — Harrison still continues — this was a duty not laid upon the tribunal for nothing, and it was “a duty that the Tribunal cannot put off, manifestly”⁷³.

16. Mr President, Members of the Court, in light of all this, it is clear that the tribunal could not simply ignore the first of the two tasks entrusted to it. It could not, in Harrison's terms, “put off this duty”. But it did □ and it thereby manifestly violated its mandate. And in fact, Venezuela cannot but agree with one of the leading scholars on this dispute, Gilles Wetter, whose in-depth treatment of the dispute is instructive in many ways and whose assessment of the Award we have included at tab 50 of the judges' folder: by not fulfilling its first task, Wetter said, the tribunal had committed a “serious dereliction of its duties”, a dereliction that, Wetter continued, was “no doubt . . . a valid ground for a nullity claim”⁷⁴.

III. The tribunal decided matters outside its mandate

17. Mr President, I move on to my second point. While the tribunal ignored the first of its two tasks, it decided a further issue

⁷³ Verbatim Record, p. 3087.

⁷⁴ Wetter, *The International Arbitral Process: Public and Private*, Vol. III, Oceana 1979, p. 345.

□ which was never submitted to it. In the final section of the Award, the tribunal set out a régime for free navigation on two rivers, the rivers Amakuru and Barima. Its decision on the point is quite detailed □ and you see it on the slide. It occupies almost as much space as the tribunal’s description of the boundary. In essence, two of the Orinoco’s tributaries were to be open to shipping, subject to the payment of fees, but within complex parameters defined in the Award. The details need not concern us: Yet what must concern us is that, with the stroke of a pen, the tribunal turned the Amakuru and Barima rivers into internationalized watercourses. This, incidentally, was very much what Great Britain had wanted, as is clear from Lord Russell’s correspondence⁷⁵.

18. Mr President, Members of the Court, nothing in the Treaty of Washington had empowered the Tribunal to impose a navigation régime for the Amakuru and Barima rivers. Guyana accepts that the decision on navigation finds no textual basis in Article III⁷⁶, which defined the Tribunal’s mandate. So on the face of it, this is an obvious case of a Tribunal “adjudg[ing] on a matter not submitted to [it]”⁷⁷.

19. On Monday, Guyana tried to explain away the Tribunal’s excess of power by pointing you to Article IV (c) of the Washington Treaty. It tried to present the imposition of the navigation régime as an adjustment of the boundary, which it says was a proper exercise of the Tribunal’s discretion under that provision. But this plainly misconstrues the “terms by which the Parties . . . defined [the Tribunal’s] task”⁷⁸.

20. If you look at the opening words on the slide, you see that Article IV is about “Rules”. Those Rules, the Tribunal had to apply “[i]n deciding the matters submitted” to it under Article III, that is

⁷⁵ See CMV, para. 6.147 with references.

⁷⁶ CR 2026/25, p. 20 (Pellet).

⁷⁷ H. Lauterpacht, “The Legal Remedy in Case of Excess of Jurisdiction” in *The British Yearbook of International Law (BYIL)*, 1928, pp. 117-118.

⁷⁸ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, I.C.J. Reports 1991, p. 53, para. 49 (citing *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 266, para. 23).

the question of titles and boundaries. Article IV is an applicable law clause □ not a clause extending the Tribunal’s mandate. And litt. (c), on which Guyana relied, confirms this: it suggests that the Tribunal □ exceptionally, if Rules (a) and (b) have been exhausted □ might resort to other considerations, but only “[i]n determining the boundary-line”. And even beyond this, litt. (c) is very specific: it defines precisely under which circumstances the Tribunal could exercise discretion, namely where “territory of one Party [is] found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of the other Party”. Then, but only then, can “effect . . . be given to [the] occupation”. So we are looking at adjustments to “the boundary-line”- “territory” □ “occupation” . . . None of this remotely fits the navigation régime decision. To get from Rule IV (c) to the imposition of a detailed régime of free navigation requires a quantum leap.

21. And perhaps it is telling that Guyana made no effort to justify the decision by reference to the terms of the Washington Treaty. Instead, it relied on a statement by counsel for Venezuela that emphasized the Tribunal’s alleged discretion in applying Rule IV (c)⁷⁹. But that statement is taken completely out of context — it had nothing to do with navigation.

22. In fact, the parties did not address the issue of navigation on the Barima and Amakuru Rivers. The Tribunal acted entirely upon its own initiative when imposing a navigation régime. And Gillis Wetter’s assessment is, again, helpful, and Wetter did not mince words at the end of his enquiry. The decision on navigation, he said, was an “extraordinary action *ultra vires*” □ a “blind, unauthorized excursion into an area wholly outside the conception of the draftsmen of the Treaty, the parties and their counsel”⁸⁰.

23. Mr President, to conclude on this point, it is difficult to ignore the discrepancy: the issue that the parties had argued at length □ *titles* □ is ignored by the Tribunal. On an issue the parties did not discuss □ *navigation* □ the Tribunal renders a decision with important consequences. One dereliction of duty, one decision *ultra*

⁷⁹ CR 2026/25, pp. 27-28 (Pellet).

⁸⁰ J. Gillis Wetter, *The International Arbitral Process: Public and Private*, Vol. III, Oceana Publications, Inc. 1979, pp. 345-346.

vires. Two manifest excesses of power that shaped this Award, and that render it invalid.

IV. The Tribunal failed to comply with its duty to render an award based on law

Mr President, I would now move on to my third and final point, which would take me about 15 to 18 minutes to develop. I can go on, of course, but I wonder whether you would prefer to have a break now? I am in your hands.

The PRESIDENT: I think you should complete your pleading.

Mr TAMS: OK, thank you, Mr President.

24. So I come to my third point, the third excess of power: The Tribunal was mandated to render an award based on law ☐ but it failed in this, its most solemn, duty. Instead of deciding on the basis of legal considerations, it rendered a decision based on political expediency. As put by Paul Reuter in his assessment, “l’arbitrage avait été rendu sur la base d’un marchandage purement politique et sans tenir autrement compte des règles fort précises énoncées à l’article IV du compromis”⁸¹. “Un marchandage purement politique” ☐ this was horse-trading. Horse-trading explained the decision.

25. Mr President, Guyana on Monday sought to portray Venezuela’s claims on this point as the stuff of “theatre and fiction”, based on no more than one single document ☐ the Mallet-Prevost memorandum ☐ which, Guyana suggests, may not even have existed⁸². But for all the noise it made on Monday, Guyana did not

⁸¹ Reuter, “La motivation et la révision des sentences arbitrales à la Conférence de la paix de La Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla”, in *Mélanges offerts à Juraj Andrássy*, Springer, 1968, p. 238.

⁸² CR 2026/25, p. 58 (Sands).

engage with the evidence □ evidence that clearly shows that, in its deliberations, the Tribunal was not guided by legal considerations.

26. Mr President, in advancing this claim, Venezuela is not naive. Venezuela knows that arbitral tribunals are composed of individuals; that these individuals discuss and seek compromise. Of course they do. But equally of course, arbitrators operate within limits. As they strive for consensus, they must respect their mandate. Compromise must be reached within the parameters of the law. It is, as Hersch Lauterpacht put it, “circumscribed by the duty to apply the existing law”⁸³. This duty binds every tribunal. And it was absolutely essential for the Paris Tribunal. This was a tribunal - and the statement that you see on the slide bring this out clearly - that had been established to substitute right for might. The parties (and Venezuela in particular) “came to it as a great court”. In the final days of the hearings, General Harrison, from whom the words on the slide are, once more emphasized the point, insisting that the parties expected to be judged upon the principles of international law and the rules of the Treaty, and not to be “compounded or compromised upon suggestions of political expediency”.

27. Mr President, the Tribunal ignored General Harrison’s warning. The evidence shows that it did exactly what General Harrison had feared: it rendered a decision that sacrificed legal considerations on the altar of political expediency. I make three points.

28. The *first* concerns the outcome of the process, the Award. Professor Palchetti has spoken to this just now: this is an Award without a trace of legal reasoning. The boundary is identified. A navigation régime is decreed. But it is impossible to understand what guided the Tribunal in its decision. This lack of reasons is in itself, as we have shown, reason to render the Award invalid. But it is also indicative of the Tribunal’s decision-making process. The Tribunal was unable to put on paper any legal considerations that might have guided its decision. This is the first relevant factor.

⁸³ Lauterpacht, *The Development of International Law by the International Court of Justice*, Stevens and Sons, 1958, p. 399.

29. My *second* point, the setting: Under Article X, the Tribunal was to render its Award, if possible, within three months. In the event, the tribunal produced its Award, not in three months, but in six days. Six days. These six days included a weekend during which at least one of the arbitrators, Lord Russell, “was not in Paris”⁸⁴. Six days, Mr President, to assess arguments made in three rounds of written pleadings and 56 sessions of oral hearings. Six days to engage with information contained in 2,600 documents filed by the parties.

30. Mr President, allow me to pursue briefly the point made by Professor Palchetti and his comparison. In this case you have scheduled four days of hearings. The transcript and the written record are a fraction of what the Tribunal had before it. Now we can all do our maths: If the Paris Tribunal took six days to decide after 56 days of hearings - how long will you take, after four days? Will you convene for a quick morning session next Tuesday, and we meet again in the afternoon, for the reading of the judgment? Perhaps you will. But the thought that, by then — by next Tuesday — you could have weighed the arguments with the care required of an international court is absurd. Yet this is exactly how the Paris Tribunal approached its task, as it rushed out its Award. Given this haste, we ask, is it at all plausible to say that the Tribunal had weighed the detailed legal arguments advanced by the parties? It is not plausible; there was simply no time. And this is the second relevant factor.

31. Mr President, my *third* point: how, then, was the decision reached? We need not remain focused on the Award, its rushed nature, and its silences. We have multiple accounts that describe how the tribunal identified the boundary line. Accounts that come from key protagonists □ from the arbitrators and counsel □ their diaries, their letters. And these accounts, of which Venezuela became aware after the publication of the Mallet-Prevost memorandum, converge on the central point: the boundary line described in the Award was put forward by President Martens, without any legal basis. President Martens threatened the British and American arbitrators to accept his line, in separate meetings

⁸⁴ See references in CMV, para. 5.113.

outside the tribunal's formal deliberations. And I use "threatened" here on purpose, because President Martens made clear that unless the two groups he approached – the British and American arbitrators – came round to his view, he would endorse the respective other side's claims in full.

32. Venezuela has set out the evidence in detail in the written pleadings⁸⁵. Permit me to take you to three documents that present the views of the key protagonists and offer insights into the deliberative process of the tribunal.

33. I begin with the account given by Mr Mallet-Prevost, which Guyana dismissed on Monday as a work of magical realism⁸⁶. In the relevant passage, Mallet-Prevost recounts a meeting with one of the US arbitrators, Arbitrator Brewer, in the middle of the tribunal's six-day deliberations, in which Brewer briefs Mallet-Prevost of what has happened during the deliberations. And I will take you to Mallet-Prevost's account first, and then perhaps afterwards, we can see whether Guyana is right to dismiss this as "the stuff of fiction".

34. Now, this is how, according to Mallet-Prevost, Arbitrator Brewer recounts the decision-making process. The key excerpts are on the slide: "Martens has been to see us [Brewer/Fuller]. He informs us that Russell and Collins are ready to decide in favor of the Schomburgk Line"; they are ready to "give Great Britain the control of the main mouth of the Orinoco".

35. Now, Brewer and Fuller obviously considered that the line should be drawn differently. But they were faced with a threat, and you see it on the slide: "If we [Brewer/Fuller] insist on starting the line on the coast at the Moruca River [Martens] will side with the British and approve the Schomburgk Line as the true boundary." So this is the prospect facing the American arbitrators: a 3-2 split decision that gives Great Britain everything. But the President points a way out. If Fuller and Brewer accept his compromise line, "he will secure the acquiescence of Lord Russell and Lord Collins

⁸⁵ See also the references in CMV, paras. 5.111-5.131.

⁸⁶ Memorandum of Mr Severo Mallet-Prevost, reproduced in AJIL 43 1949, pp. 538-540. See CR 2026/25, p. 59 (Sands).

and so make the decision unanimous”. And so a deal is taking shape. A deal that gives 90 per cent of the disputed territory to Great Britain, and leaves Venezuela with the rest. A deal in which, if we believe Mallet-Prevost and Brewer, legal considerations play no role.

36. Now, Guyana says this is all a fantasy of a biased old man, written up decades later and “uncorroborated . . . in any other documents”⁸⁷. That is plainly incorrect. As for Mallet-Prevost’s position, the memorandum confirms points he made in a private letter written in late October 1899, around three weeks after the award was rendered □ in that letter, identified by Venezuelan researchers after the publication of the memorandum, Mallet-Prevost made the same core point, he said: “the decision was forced upon our Arbitrators”⁸⁸.

37. But let us look at how other key players described the deliberations. Lord Russell, the British arbitrator, is one of them. On the slide you see his account, drawn up on 7 October 1899, that is four days after the reading of the Award, in a letter to the British Prime Minister, Lord Salisbury. And again, Venezuelan researchers unearthed this after the publication of the Mallet-Prevost memorandum⁸⁹. In the letter, Lord Russell described the “grievous disappointment” felt by Justice Collins and himself at the attitude adopted by the President. The President, said Lord Russell, “cast about for lines of compromise”. So how did this compromise line become the boundary line imposed by the tribunal? This is Lord Russell’s account:

“[President Martens] intimated to L. J. Collins, in a private interview, while urging a reduction of the British claims, that if we did not reduce them he might be obliged in order to secure adhesion of the Venezuelan Arbitrators to agree to a line which might not be just to Great Britain.”

⁸⁷ CR 2026/25, p. 56 (Sands).

⁸⁸ See CMV, para. 5.129.

⁸⁹ Letter from Lord Russell to Lord Salisbury, 7 October 1899, CMV, Annex 67.

38. And Mr President, you will not miss the parallels. The same threat that featured in Mallet-Prevost's account, in this case made against the British arbitrators: unless they reduce their claim to fit President Martens' compromise line, Martens might be "obliged" to agree with the US arbitrators and render an unjust decision. So the British are facing the prospect of a 3-2 split decision for Venezuela unless they come round to Martens' compromise line. But it is not just that for what Russell's letter is helpful: Lord Russell was certain that threats were made in both directions: he had "no doubt [President Martens] spoke in an opposite sense to the Venezuelan arbitrators, and fear of possibly a much worse line was the inducement to them to assent to the Award in its present shape". Which, of course, is exactly what Mallet-Prevost would later recall in his memorandum. "Magical realism"?

39. So how was the deal reached? If the accounts by Russell and Mallet-Prevost left any doubt, such doubt is dispelled by none other than President Martens himself. President Martens recounted what happened in his diary □ under the date of 3 October 1899, the very date of the Award⁹⁰. And you have excerpts on the slide and more detail at tab 54 of the folder.

(i) And from the excerpts on the slide, it becomes clear how President Martens seemed to have spent the six days until the Award was rendered. Not, it seems, in tribunal deliberations, but in a series of meetings, private meetings, insisting that the other arbitrators accept his deal. And you see the references to that on the slide: he "persistently urged" Fuller, he "went" to Collins, he "went again" to Brewer, he "went again" see Lord Collins, and so on.

(ii) But that is not all. The excerpts on the slide confirm that President Martens did make the threats that Lord Russell and Mallet-Prevost had recounted. Martens says so expressly: As Lord Collins resists, "I explained to him that England was not interested in forcing me over to the American side. This made him think." And Martens' approach also gave Lord Russell pause, and it is the quote that I read to you now from the lower

⁹⁰ See Private Diary Entries of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899, CMV, Annex 149.

end of the slide: “the fear that . . . I would go over to the American side, simply pissed him off.” These are President Martens’ words, I would want to point out.

(iii) And from the excerpts, it is also clear how seriously Martens’ threats were taken. And I quote again from the bottom end of the slide: “It was clear”, said Martens, “that if the British had not agreed to my compromise, I would have joined the Americans rather than them”. And when the US arbitrators resist, they are told in no unclear terms, and you see it in the middle of the slide, “that if they did not make a concession, then I would be forced *à contrecœur* to side with the English”.

40. And I ask again, magical realism - all of this?

41. Mr President, Members of the Court, anyone who cares about international arbitration might wish this was “the stuff of fiction”. It is not. The accounts I have taken you to paint a clear picture. They are authoritative: they come from the key actors, including President Martens and Lord Russell who can barely be accused of bias towards Venezuela. They are contemporary: Russell, Martens and Mallet-Prevost all went on record in October 1899. Their accounts completely undermine Guyana’s attempt on Monday to dismiss Venezuela’s claims as the fantasy of an ageing man, written up decades later. And perhaps most importantly, on the essential question - how did the tribunal reach its decision? - these authoritative, contemporary accounts converge.

42. There is no trace of any legal consideration that could explain where and how President Martens’ compromise line was drawn. Arbitrators Collins, Russell, Brewer, Fuller - they did not yield to the force of a stronger or any legal argument, no one even pretended that. They yielded to threats: threats that are described with clarity and with specificity. Threats that forced the tribunal’s members into accepting a deal that had no basis in legal reasoning. Paul Reuter was right: this was horse-trading □ this was “un marchandage purement politique”⁹¹.

⁹¹ Reuter, “La motivation et la révision des sentences arbitrales à la Conférence de la paix de La Haye (1899) et le conflit frontalier entre le Royaume-Uni

FIRST ROUND OF ORAL ARGUMENTS
(VENEZUELA)

43. Mr President, Members of the Court, looking at the evidence before you, it is clear that, in rendering the Award of 1899, the tribunal plainly did not “conform to the terms by which the Parties have defined [its] task”⁹². It deviated from these terms in multiple, glaring ways. The tribunal ignored one of the questions put to it. It decided an important matter not submitted to it. It failed in its solemn duty to render a decision based on law. And of course, as Professor Palchetti has shown, its decision was based on an invalid treaty and failed to give reasons. Each of these grounds, looked at in its own right, would be a ground of invalidity. Taken together, they lead to one inescapable conclusion: this Award is invalid.

44. And yet, Mr President, Members of the Court, as I conclude, permit me to return to Venezuela’s central contention in this case. Ultimately, we submit, you need not decide between validity and invalidity. While Guyana asks you to declare valid an award that is plainly indefensible, it fails to accept the wisdom of the Geneva Agreement on which this case is based. As my colleagues have shown, with the Geneva Agreement, the parties left behind their debates about an award tainted by glaring defects. An award that was as painful for Venezuela, its victim, as it had become embarrassing for the United Kingdom, its supposed victor. In light of the arguments you heard about the question of invalidity, we ask, is it not plain that the parties wanted to move on? Venezuela’s written pleadings in this case, as well as Professor Palchetti’s pleading and mine today, show that the Award of 1899 is invalid. But more fundamentally, they help understand why the parties in the Geneva Agreement settled on a framework that would foster a negotiated and equitable settlement of their territorial controversy.

45. This, Mr President, Members of the Court concludes my presentation. I thank you for your kind attention and the extra time you have allocated to me, and I would ask you to give the floor to

et le Vénézuéla”, in *Mélanges offerts à Juraj Andrassy*, Springer 1968, p. 238.

⁹² *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, *Judgment*, I.C.J. Reports 1991, p. 70, para. 49 (citing *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *Judgment*, I.C.J. Reports 1984, p. 266, para. 23).

Professor Jean-Marc Thouvenin, but this will no doubt be after the coffee break. Thank you.

The PRESIDENT: I thank Professor Tams for his statement. Before I give the floor to the next speaker, the Court will observe a break of 15 minutes. The hearing is suspended.

The Court adjourned from 4.45 p.m. to 5.05 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. Je donne maintenant la parole au professeur Jean-Marc Thouvenin. Vous avez la parole, Monsieur.

M. THOUVENIN :

Merci, Monsieur le président.

**LA PRÉTENDUE RENONCIATION PAR LE
VENEZUELA À SON DROIT DE SE PRÉVALOIR
DE LA NULLITÉ DE LA SENTENCE ARBITRALE
DE 1899**

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur de paraître devant vous pour présenter certaines des vues du Venezuela.

2. Monsieur le président, le Guyana fait valoir en substance que le comportement du Venezuela postérieur à la sentence de 1899 signifierait qu'il aurait renoncé au droit de se prévaloir de sa nullité.

3. Ce faisant il s'obstine à faire comme si l'accord de Genève n'était jamais entré en vigueur. Ou bien comme si ses signataires avaient convenu, en concluant cet accord, que la solution

satisfaisante pour la résolution pratique de la controverse, d'une manière acceptable pour les Parties, était d'opposer au Venezuela une prétendue renonciation au droit de se prévaloir de la nullité de la sentence □ ce qui est évidemment absurde.

4. L'ennui pour le Guyana, et ce sera mon premier point, est que l'accord de Genève est en vigueur, et que la controverse qui en est la raison d'être n'a jamais porté sur le comportement du Venezuela depuis 1899 et ses éventuelles conséquences juridiques. Et j'ajoute que même si l'accord de Genève n'existait pas, *quod non*, la théorie guyanaise, dont il découlerait que les vices de la sentence arbitrale sont purgés par l'attitude du Venezuela, n'a aucune pertinence. Ce sera mon deuxième point. Enfin, et en tout état de cause, le Venezuela a fait valoir son droit à dénoncer la sentence comme nulle et non avenue lorsqu'il a disposé de preuves à cet égard, ce qui était le seul moment pertinent pour exercer un tel droit.

**I. L'accord de Genève ne fait aucune place à
l'argument tiré du comportement du Venezuela
postérieur à la sentence de 1899**

5. Monsieur le président, Mesdames et Messieurs les juges, comme l'a expliqué Michel Virally dans son cours à l'Académie □ proche d'ici □, la reconnaissance est un acte juridique spécifique dont les effets de droit se résument à l'idée d'opposabilité du fait juridique en cause⁹³. C'est dire que la thèse guyanaise de la reconnaissance revient à soutenir que la sentence de 1899 est opposable au Venezuela indépendamment de sa nullité.

**A. La thèse de l'opposabilité de la sentence
indépendamment de sa nullité n'a aucune place dans le cadre
de l'accord de Genève**

6. Or, il suffit de lire les différents comptes rendus des négociations qui ont mené à l'accord de Genève - ce que j'appellerai par facilité le « processus de Genève » —, tout comme l'accord de Genève lui-même, pour voir qu'il n'a jamais été dans la commune intention des Parties de s'inquiéter plus avant de la

⁹³ M. Virally, « Panorama du droit international contemporain. Cours général », *RCADI*, vol. 183, p. 53.

question de la validité de la sentence de 1899, et encore moins de son éventuelle opposabilité au Venezuela.

7. Car, comme mes collègues et amis vous l'ont amplement expliqué ce matin, l'accord de Genève tient pour acquis que, du point de vue du Venezuela, la sentence arbitrale est nulle et non avenue, tandis que pour le Royaume-Uni elle est parfaite. Ni l'une, ni l'autre Partie n'avait la moindre intention d'en débattre plus avant, et encore moins de faire trancher la question par un tiers. Sinon, pourquoi tant le Royaume-Uni que la Guyane britannique se seraient-ils félicités à l'issue de la négociation de l'accord que, « [l]egally, the Geneva Agreement has not prejudiced the position of either side: we and the Guyanese continue to regard the 1899 Award as valid, while in Venezuelan eyes it is null and void. Politically, it is an honourable compromise »⁹⁴ ?

8. Les Parties étaient d'accord sur leur désaccord et n'avaient aucune intention de chercher à le résoudre ; c'est cela qui fonde l'accord de Genève. De là, il engage les Parties à aller de l'avant et à chercher des solutions amiables pour régler le différend territorial qui les oppose, encore une fois d'une manière acceptable par les deux Parties, c'est-à-dire par des solutions satisfaisantes pour son règlement pratique. Ce sont les termes de l'accord de Genève. C'est dire que la question de la prétendue reconnaissance de la sentence malgré sa nullité n'a manifestement rien à faire dans cette entreprise.

9. Le Guyana peut feindre la stupéfaction, comme s'il était impensable que tel fût l'objet et le but de l'accord de Genève, en s'appuyant d'ailleurs sur une déclaration politique d'Iribarren Borges, clairement erronée et sans portée juridique, le fait est qu'il y a des précédents. Il suffit de songer à l'affaire du *Canal de Beagle*. Le différend avait été réglé par une sentence arbitrale de 1977. Mais cette dernière avait été unilatéralement déclarée nulle et non avenue au regard du droit international par l'Argentine, prétention

⁹⁴ Note verbale n° AV 1081/116 en date du 25 février 1966 adressée à l'ambassadeur du Royaume-Uni au Venezuela par le ministre britannique des affaires étrangères, par. 8 (mémoire du Guyana du 19 novembre 2018 (questions de compétence et/ou de recevabilité), ci-après « MG sur la compétence et la recevabilité (2018) », vol. II, annexe 32).

catégoriquement rejetée par le Chili⁹⁵. Les positions étaient irréconciliables. Un mois plus tard, les Parties signaient l'acte de Puerto Montt pour : « (A) ... la[y] the bases for setting in motion negotiations through which direct understandings could be reached on ... matters which in the view of one or the other Government remain pending in the southern region ». L'acte ajoutait : « (B) The above bases of understanding ... in no way modify the positions taken by the Parties with respect to the Arbitral Award »⁹⁶.

10. L'acte de Puerto Montt posait donc comme acquis le désaccord des Parties et, de là, les engageait à rechercher une résolution directe du différend, via un mécanisme de négociation, en l'occurrence structuré en trois phases, dont deux faisant appel à une commission mixte. Après l'échec du mécanisme, l'affaire s'était finalement réglée, comme chacun sait, grâce à la médiation du pape, lequel, en parfaite cohérence avec l'accord de Puerto Montt, ne s'est à aucun moment préoccupé de la nullité ou de l'opposabilité, ou non, de la sentence arbitrale de 1977. Il n'en était tout simplement pas question.

11. Les parallèles avec l'accord de Genève sautent aux yeux. De la même manière, son article V dispose que rien dans l'accord ne peut être interprété comme une renonciation par aucune des Parties à aucune de ses prétentions □ ce qui confirme leur accord sur leur désaccord, tandis que le reste de l'accord de Genève les engage à rechercher une solution mutuellement satisfaisante. Dans ce cadre juridique, tout comme dans celui posé par l'acte de Puerto Montt, ni la question de la validité, ni celle de l'opposabilité de la sentence arbitrale n'ont la moindre pertinence.

B. Le principe de l'estoppel interdit au Guyana d'opposer au Venezuela sa conduite postérieure à la sentence de 1899

12. J'ajoute, Monsieur le président, Mesdames et Messieurs les juges, que le principe de l'estoppel s'oppose à la prétention du

⁹⁵ *Affaire concernant un litige entre la République argentine et la République du Chili relatif au canal de Beagle*, RSA, vol. XXI, p. 53-261, p. 235.

⁹⁶ *Ibid.*, p. 237.

Guyana dans le cadre de la mise en œuvre de l'accord de Genève qui est le guide dans cette procédure.

13. La jurisprudence bien connue pose qu'il y a estoppel lorsque sont mis en lumière à la fois une position prise par une partie envers une autre partie et le fait que cette dernière s'appuie sur cette position à son détriment ou à l'avantage de la partie qui l'a prise⁹⁷.

14. La position prise par le Royaume-Uni envers le Venezuela, et sur laquelle le Guyana ne saurait revenir en raison d'un estoppel, ressort clairement des négociations de l'accord de Genève.

15. En 1962, face à l'expression ferme de la revendication territoriale vénézuélienne, appuyée sur le constat par le Venezuela □ non sur l'allégation □ de la nullité de la sentence arbitrale de 1899, le Royaume-Uni a certes mentionné qu'il considérerait cette revendication comme tardive, mais il proposa spontanément que des experts travaillent non pas sur le comportement post 1899 du Venezuela et sur ses conséquences éventuelles, mais sur les archives du XIX^e siècle, afin d'éclairer les circonstances de l'adoption de la sentence de 1899⁹⁸. Il espérait, en vain, que de tels travaux convaincraient le Venezuela que ladite sentence ne souffre d'aucun des vices qu'il lui reproche⁹⁹. À aucun moment dans cette discussion, comme dans toutes celles qui l'ont suivie et ont finalement conduit à l'accord de Genève, le comportement du Venezuela postérieur à la sentence ne lui a été opposé comme purgeant la sentence de tous ses vices. Ce sur quoi les parties divergeaient, à l'issue de l'examen du matériau documentaire

⁹⁷ *Obligation de négocier un accès à l'océan Pacifique (Bolivie c. Chili)*, arrêt, C.I.J. Recueil 2018 (II), p. 558, par. 158.

⁹⁸ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela)*, compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 466, par. 36-38, et p. 490-491, par. 131.

⁹⁹ Nations Unies, déclaration du représentant du Royaume-Uni à la 349^e séance de la Commission des questions politiques spéciales tenue le 13 novembre 1962, reproduite dans « Question of Boundaries between Venezuela and the Territory of British Guiana », Assemblée générale, dix-septième session, doc. A/SPC/72, p. 2 (MG sur la compétence et la recevabilité (2018), vol. II, annexe 24).

relatif à la sentence arbitrale, était uniquement l'existence, ou non, de preuves de nullité de la sentence en tant que telle.

16. C'est la divergence sur l'existence de preuves de nullité de la sentence issue du matériau historique, qui est restée centrale tout au long des négociations. Elles ont finalement conduit les signataires de l'accord de Genève à consacrer ce désaccord, tout en ouvrant la voie à la recherche de solutions pratiques mutuellement satisfaisantes acceptées par eux. L'accord de Genève fait d'ailleurs mention dans son préambule du processus que l'invitation britannique avait initié. Il souligne en effet que les négociations ont été menées « in accordance with the joint communiqué of 7 November, 1963 ». Ce communiqué se lit ainsi :

« After the relevant documents have been examined, the experts will meet to discuss their findings. They will then submit reports to their respective Governments. *These reports will form the basis of further discussion between the Governments.* »¹⁰⁰

17. Or, l'objet des négociations ouvertes par le Royaume-Uni a clairement conditionné le consentement final du Venezuela à l'accord de Genève. Jamais le Venezuela n'aurait accepté de s'y soumettre s'il avait été question d'évaluer les conséquences juridiques de son comportement postérieur à la sentence de 1899.

18. Le ministre britannique des affaires étrangères l'avait d'ailleurs confirmé. Il expliquait à l'ambassadeur britannique au Venezuela, dans une note verbale du 25 février 1966, soit huit jours après la signature de l'accord de Genève, qu'à propos du préambule qu'il avait âprement négocié, il avait : « persuaded the Venezuelan

¹⁰⁰ Joint Communiqué on the Ministerial Talks held in London on November 5, 6 and 7, 1963 between the minister for foreign affairs of Venezuela, Mr Marcos Falcon Briceño, and the Foreign Secretary of the United Kingdom, Hon. R. A. Butler, in *Claim to Guayana Esequiba — Documents 1962-1981*, Caracas 1981, p. 26 (les italiques sont de nous). Accessible à l'adresse suivante: <https://search.archives.un.org/uploads/r/united-nations-archives/d/d/c/ddc37896a5337f2fcfe18c2619ac9ce255b7952eda0b01b3d11e025f65b4419e/S-0884-0009-06-00001.PDF>, p. 94.

Foreign Minister to accept a compromise wording which reflected the known positions of both sides »¹⁰¹.

19. La référence, par celui-là même qui négociait avec le Venezuela, aux « known positions of both sides », pour convaincre le ministre vénézuélien, est sans équivoque : c'est bien sur la base de la « known position » du Royaume-Uni au moment de la conclusion de l'accord de Genève, qui ne portait en rien sur le comportement du Venezuela postérieur à la sentence, que le Venezuela en est devenu signataire.

20. Le Venezuela s'est appuyé sur cette position. Ce serait à son détriment si, dans le cadre de la mise en œuvre de l'accord Genève, lui était désormais opposé son comportement postérieur à la sentence. Ce serait à l'inverse à l'avantage du Royaume-Uni et de son successeur le Guyana. Dans la note verbale de février 1966 que je viens de citer, le ministre britannique des affaires étrangères explique lui-même que : « As for the United Kingdom, I trust that the Agreement will have averted the grave damage to which our large interests in Venezuela would have been exposed if the Geneva meeting had ended in deadlock. »¹⁰²

21. Selon la formule consacrée, le principe de l'estoppel interdit de souffler le chaud et le froid. Le Royaume-Uni a soufflé le chaud pour convaincre le Venezuela de conclure l'accord de Genève. Le Guyana, comme successeur du Royaume-Uni, ne peut pas maintenant souffler le froid en prétendant opposer au Venezuela qu'il ne saurait se prévaloir de la nullité de la sentence de 1899 du fait de son comportement postérieur à ladite sentence.

II. La théorie selon laquelle le comportement du Venezuela postérieur à la sentence de 1899 « purgerait » la sentence de ses vices est sans pertinence

¹⁰¹ Note verbale n° AV 1081/116 en date du 25 février 1966 adressée à l'ambassadeur du Royaume-Uni au Venezuela par le ministre britannique des affaires étrangères, par. 6 (MG sur la compétence et la recevabilité (2018), vol. II, annexe 32).

¹⁰² *Ibid.*, par. 8.

22. Mais, Monsieur le président, Mesdames et Messieurs de la Cour, qu'en serait-il si l'accord de Genève n'existait pas ? L'hypothèse est évidemment absurde, mais je vais maintenant l'explorer pour les besoins de la discussion.

A. La théorie invoquée par le Guyana est sans fondement

23. Voyons d'abord la théorie selon laquelle l'absence de contestation formelle d'une sentence arbitrale comme nulle et non avenue pendant des années la purgerait automatiquement de tous ses vices de nullité.

24. La jurisprudence ne lui accorde aucun crédit. C'est ce qu'illustre l'arbitrage dans l'affaire de la *frontière entre le Costa Rica et le Panama*¹⁰³. Cette frontière avait été fixée par une sentence arbitrale du 11 septembre 1900 du président de la République française - Loubet. Les parties en reconnurent la validité, tant dans leurs attitudes respectives que dans leurs prises de position. Si elles rencontraient des difficultés, c'était seulement pour en interpréter les termes. Dans un traité conclu 10 ans plus tard, le 17 mars 1910, les parties s'accordèrent

« to submit to the decision of the honorable the Chief Justice of the United States, who will determine, in the capacity of arbitrator, the question: What is the boundary between Costa Rica and Panama under and most in accordance with the correct interpretation and true intention of the award of the President of the French Republic »¹⁰⁴.

25. Dans sa sentence arbitrale de 1914, le *Chief Justice* des États-Unis n'a aucunement considéré que la sentence de 1900 était purgée de ses éventuels vices, à raison de l'absence de contestation formelle de sa validité pendant une décade, et pas davantage de sa reconnaissance expresse comme valide par les parties □ lesquelles, je le rappelle, se bornaient à lui demander une interprétation. Tout au contraire, il a déterminé qu'une partie de la ligne frontière

¹⁰³ *The Boundary Case between Costa Rica and Panama*, RSA, vol. XI, p. 519-547.

¹⁰⁴ Convention between Costa Rica and Panama for the settlement of the boundary controversy, signed at Washington, 17 March 1910, *ibid.*, art. I, p. 525.

précédemment arbitrée « was not within the matter in dispute or within the disputed territory » et que « it results that such award was beyond the submission and that the Arbitrator was without power to make it, and it must therefore be set aside and treated as non-existing »¹⁰⁵.

26 Si la théorie guyanaise avait un fondement en droit international, l'arbitre aurait dû considérer la sentence comme valide en tous ses aspects car purgée de tous ses vices par le temps. Mais il n'a même pas envisagé de prendre une telle décision.

27. Il reste bien sûr l'affaire de la *Sentence du roi d'Espagne* sur laquelle le Guyana s'appuie abondamment. Dans l'arrêt de 1960, la Cour internationale de Justice a jugé que le Nicaragua, qui avait soudainement refusé d'exécuter une sentence arbitrale qu'il avait jusque-là accueillie avec satisfaction comme réglant définitivement la question de la frontière, n'était pas en droit de contester cette sentence arbitrale, car son attitude à la suite de son prononcé ne pouvait que signifier qu'il avait renoncé à ce droit.

28. Comme indiqué dans ses écritures, le Venezuela considère que la doctrine de la renonciation tacite au droit de faire valoir la nullité d'une sentence arbitrale ne lui est pas opposable. Lorsque l'idée fut avancée d'en faire un principe coutumier dans le cadre de la codification du droit des traités¹⁰⁶, le Venezuela et d'autres, comme par exemple l'Argentine, s'y sont fermement opposés. Cette opposition n'a pas cessé.

29. Mais même si cette théorie était de nature coutumière et opposable au Venezuela, il resterait, d'une part, que ce dernier n'a aucunement renoncé à se prévaloir de la nullité de la sentence par son attitude, et, d'autre part, qu'il est indéniable qu'il a fait valoir son droit dès qu'il a été en mesure de le faire.

¹⁰⁵ *The Boundary Case between Costa Rica and Panama, ibid.*, p. 543.

¹⁰⁶ *Annuaire de la Commission du droit international*, 1963, vol. II, A/CN.4/SER.A/1963/Add.1, p. 41, par. 5.

B. Le Venezuela n'a pas renoncé à se prévaloir de la nullité de la sentence de 1899 dans le cadre du processus et de l'accord de Genève

30. Monsieur le président, il résulte d'une jurisprudence constante de la Cour que la renonciation à des prétentions ou à des droits ne se présume pas à la légère. Pour ne prendre qu'un exemple, dans *République démocratique du Congo c. Ouganda*, votre Cour a rappelé que « toute renonciation à des prétentions ou à des droits doit ou bien être expresse, ou bien pouvoir être déduite sans équivoque du comportement de l'État qui aurait renoncé à son droit »¹⁰⁷.

31. Ceci posé, je dois ici ouvrir une parenthèse pour revenir au monde réel, celui dans lequel l'accord de Genève existe car il pose un cadre dans lequel les parties recherchent des solutions à la controverse qui □ je cite l'accord □ « has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier ... is null and void » (article I). Sa raison d'être réside donc dans le fait même que le Venezuela se prévaut de la nullité de la sentence. On voit donc mal comment, sous l'empire de l'accord de Genève, le Venezuela pourrait être réputé y avoir renoncé.

32. Le Guyana essaie d'échapper à cette évidence en prétendant que dans l'affaire de la *Sentence du roi d'Espagne* la saisine de la Cour d'un différend portant sur une sentence arbitrale n'avait pas empêché la Cour de s'appuyer sur les comportements postérieurs à cette sentence imputables au Nicaragua pour juger que ce dernier avait renoncé à son droit d'en invoquer la nullité¹⁰⁸. Et le Guyana de prétendre qu'il devrait en aller de même ici.

33. Mais il y a des différences fondamentales entre les deux affaires. L'une d'entre elles est que, dans celle de la *Sentence du Roi d'Espagne*, le différend était né du refus tardif du Nicaragua d'exécuter la sentence, en excipant de sa nullité, sans aucunement expliquer son retard à le faire. Le Nicaragua n'a pas du tout fait valoir, contrairement à ce qu'a prétendu le Guyana de manière

¹⁰⁷ *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, arrêt, C.I.J. Recueil 2005, p. 266, par. 293.

¹⁰⁸ MGM, par. 6.27.

fallacieuse lundi, que « it had been “unaware” of the award’s defects at the time it was issued, *and for six years thereafter* »¹⁰⁹. Il n’a plaidé l’ignorance que pour la courte période immédiatement après le prononcé de la sentence. Puisque la Cour était saisie de cette volte-face aussi surprenante qu’injustifiée, il était normal qu’elle en évalue les conséquences¹¹⁰. Par contraste, la controverse au cœur de l’accord de Genève est née du fait que des preuves ont été découvertes tardivement qui démontrent le caractère fondamentalement vicié de la sentence de 1899. Écarter purement et simplement l’allégation de nullité, comme si le Venezuela y avait renoncé, reviendrait à écarter toute pertinence auxdites preuves, ce qui serait manifestement contraire à la raison d’être, l’objet, le but et la lettre de l’accord de Genève.

C. Le Venezuela n’a pas renoncé à se prévaloir de la nullité de la sentence arbitrale par son attitude

34. Mais je ferme la parenthèse et raisonne à nouveau comme si l’accord de Genève n’existait pas, cette fois pour constater qu’il n’y a rien dans l’attitude ou dans la situation du Venezuela qui soit comparable à celle du Nicaragua dans l’affaire de la *Sentence du roi d’Espagne*. Je ferai deux séries d’observations à cet égard.

35. Premièrement, dans cette affaire □ celle de la *Sentence du roi d’Espagne* □, la Cour avait forgé son opinion sur des messages clairs de pleine satisfaction adressés par les plus hautes autorités du Nicaragua à celles du Honduras. Le Nicaragua avait, insiste la Cour « exprimé à plusieurs reprises au Honduras sa satisfaction de ce que le différend relatif à la délimitation des frontières entre les deux pays eût été définitivement réglé par voie d’arbitrage »¹¹¹.

36. C’était en effet patent. En particulier du fait d’un télégramme explicite du président du Nicaragua à celui du Honduras¹¹². Le président du Nicaragua écrit :

¹⁰⁹ CR 2026/25, p. 42, par. 53 (Oral) (les italiques sont de moi).

¹¹⁰ VD, par. 6.39-6.40.

¹¹¹ *Sentence arbitrale rendue par le roi d’Espagne le 23 décembre 1906 (Honduras c. Nicaragua)*, arrêt, C.I.J. Recueil 1960, p. 212-213.

¹¹² *Ibid.*, p. 211 et 213.

« Par câble d'aujourd'hui j'ai pris connaissance de la sentence arbitrale du roi d'Espagne en matière de délimitation frontière et conformément à cette décision il paraît que vous avez gagné la partie, ce dont je vous félicite. Un bout de terre plus ou moins est sans importance lorsqu'il s'agit de la bonne entente entre deux nations sœurs. La question ennuyeuse de la délimitation des frontières s'étant terminée d'une manière si satisfaisante grâce à l'arbitrage amical, j'espère que dans l'avenir aucun obstacle ne s'opposera aux bonnes relations entre nos pays respectifs. »¹¹³

37. Comment la Cour aurait-elle pu juger autrement ? Mais il n'y a rien qui ressemble à cela ici. Rien.

38. Le Guyana a reproduit lundi les arguments □ faibles □ de son mémoire à cet égard. Fidèle au Règlement de la Cour, je n'y reviendrai pas car ils ont tous été réfutés, en détail, dans les écritures du Venezuela¹¹⁴ □ en particulier, j'invite la Cour à jeter un œil aux paragraphes 6.41 à 6.52 de la réplique.

39. Je note toutefois que le Guyana fait le plus grand cas de la lettre du 7 octobre 1899 adressée au ministre des affaires étrangères du Venezuela par l'ambassadeur du Venezuela au Royaume-Uni. Elle a été citée deux fois, sans compter les fois où elle a été citée dans les écritures. Mais, elle n'est en rien comparable à ce qui avait emporté la conviction de la Cour en 1960¹¹⁵. Car il ne s'agit pas « d'[']échanges diplomatiques entre les deux Gouvernements »¹¹⁶. La correspondance est purement interne à la diplomatie vénézuélienne, par définition confidentielle. On ne sait d'ailleurs pas quand ce document a pu tomber entre les mains du Royaume-Uni ou du

¹¹³ *Ibid.*, p. 210.

¹¹⁴ VCM, par. 7.6-7.16, et VD, par. 6.39.

¹¹⁵ Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 October 1899) (MG sur la compétence et la recevabilité (2018), vol. II, annexe 3).

¹¹⁶ *Minquiers et Écréhous (France/Royaume-Uni)*, arrêt, C.I.J. Recueil 1953, p. 71.

Guyana. Peut-être est-ce à l'occasion de la consultation tardive des archives vénézuéliennes après 1962.

40. On ne peut certainement pas déduire de cette correspondance interne au Venezuela une quelconque « attitude » ou renonciation. Elle éclaire en revanche l'état d'esprit dans lequel se trouvaient les autorités vénézuéliennes au lendemain de la sentence. L'ambassadeur écrivait :

« [T]he award does not appear to be based on reason and justice, as Mr. de Martens affirmed in his closing speech, and the Venezuelan arbiters only gave their adhesion in order to avoid an even greater flouting of the essential attributes of any faultless judgment »¹¹⁷.

41. La sentence est « unjust », écrit-il encore, insistant sur le fait que « for us the sentence is hardly satisfactory as regards that to which our right was clear »¹¹⁸.

42. L'agent du Venezuela, José Rojas, écrivait au même ministre des affaires étrangères trois jours plus tôt que la sentence « sets a completely biased demarcation line in favour of England »¹¹⁹. Il ajoutait :

« I find Mr. de Martens' conduct inexplicable surprise and, as I am not used to qualify other people's actions without evidence, in line with my belief, I refrain myself from qualifying that of him. Besides, what happened between said Mr. de Martens and the American Arbitrators did not happen in my presence, but I learned about it through truthful channels. »¹²⁰

43. L'arbitre britannique Lord Russell reconnaissait franchement dans une lettre à Lord Salisbury du 7 octobre 1899,

¹¹⁷ Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 October 1899) (MG sur la compétence et la recevabilité (2018), vol. II, annexe 3 ; VCM, vol. II, annexe 68).

¹¹⁸ *Ibid.*

¹¹⁹ Letter from Rojas to the Foreign Officer Minister of Venezuela, 4 October 1899 (VCM, vol. II, annexe 65).

¹²⁰ *Ibid.*

dont je rappelle qu'elle a été publiée □ donc rendue accessible □ en 1979, que « [i]f the Award is to be judged from the standpoint of Venezuelan claims the result would seem to be disastrous to Venezuelans »¹²¹.

44. Contrairement à ce que le Guyana prétend, contre toutes les évidences¹²², à savoir que le Venezuela nageait dans le bonheur de la victoire et aurait fait savoir qu'il était satisfait de la sentence¹²³ au monde entier, le Royaume-Uni ne s'y est pas trompé. Aucun message de satisfaction ne lui a été adressé.

45. Je sais bien que le Guyana a avancé dans ses écritures, si ce n'est à l'oral, sans doute par manque de temps, ce qu'il appelle une « lettre », qu'il datait initialement de 1944, puis qu'il date maintenant de 1941¹²⁴, dans laquelle le ministre des affaires étrangères du Venezuela aurait écrit que la sentence de 1899 est « chose jugée »¹²⁵. Mais cette « lettre » n'a jamais existé, ni en 1944, le ministre Gil Borges était décédé à cette date, ni en 1941. Les prétendues preuves apportées par le Guyana sur l'existence de cette *lettre* n'existent pas. Elles se résument à un bref rapport interne au Foreign Office dans lequel l'auteur, anonyme, évoque une sorte de discussion informelle qui serait intervenue entre quelqu'un et le ministre des affaires étrangères du Venezuela, durant laquelle ledit ministre aurait, écrit l'auteur anonyme, parlé de « chose jugée » à propos de la sentence de 1899¹²⁶.

46. Il suffit de regarder cette « preuve » pour voir, même de loin, qu'il ne s'agit pas d'une lettre du ministre des affaires étrangères du Venezuela, et pas davantage d'une déclaration officielle du Venezuela. Il n'y a, dans ce que produit le Guyana, que ce que disent des Britanniques à d'autres Britanniques. C'est évidemment sans portée.

¹²¹ Letter from Lord Russell to Lord Salisbury, 7 October 1899 (VCM, vol. II, annexe 67, p. 505).

¹²² VCM, par. 7.6-7.16 et VD, par. 6.41.

¹²³ CR 2026/25, p. 30-31, par. 5-9 (Oral).

¹²⁴ MGM, par. 4.47.

¹²⁵ MGM, par. 4.47.

¹²⁶ MGM, vol. III, annexe 56.

47. Ma deuxième observation à propos de ce qui diffère entre l'affaire de la *Sentence du roi d'Espagne* et ce qui est en discussion ici est que, comme la professeure Azaria l'a déjà montré, il est évident que l'attitude d'un État ne peut s'évaluer qu'au regard des circonstances propres à chaque situation.

48. Or, lorsque la *Sentence du roi d'Espagne* fut rendue, en 1960, le Nicaragua pouvait qualifier le Honduras □ c'est ce qu'en dit la Cour □ de République sœur¹²⁷. Il aurait pu d'emblée, sans risque, critiquer la sentence comme nulle et non avenue si tel avait été son sentiment. Sans risque. Son abstention à le faire, et au contraire ses marques expresses de contentement à la sentence comme portant un terme définitif au différend, a pu valoir renonciation. Par contraste, la situation du Venezuela par rapport à l'Empire britannique était et est demeurée radicalement différente, entre le moment où ce dernier a pris pied en Amérique du Sud jusqu'à ce que la seconde guerre mondiale commence à l'affaiblir.

III. Le Venezuela a fait valoir la nullité de la sentence de 1899 lorsqu'il a disposé de preuves suffisantes pour le faire

49. Monsieur le président, Mesdames et Messieurs les juges, suggérer que le Venezuela se serait réjoui du *vol qualifié* de son territoire par le jeu d'une sentence arbitrale truquée est absurde. Suggérer que son attitude aurait manifesté une renonciation à son droit de se prévaloir de la nullité de la sentence de 1899 ne l'est pas moins.

50. « *[Q]ui tacet consentire videtur si loqui potuisset ac debuisset* »¹²⁸. Autrement dit, « [l]'acquiescement rattache un effet juridique non pas au silence, mais au *silence qualifié*. En effet, il doit s'agir d'un silence de la part de celui qui pouvait et devait parler. »¹²⁹ Or, pour pouvoir dénoncer une sentence arbitrale

¹²⁷ *Sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906 (Honduras c. Nicaragua)*, arrêt, C.I.J. Recueil 1960, p. 211.

¹²⁸ R. Kolb, « Les maximes juridiques en droit international public : questions historiques et théoriques », *Revue belge de droit international*, 1992/2, p. 409, note 9.

¹²⁹ *Ibid.*, par. 19.

comme nulle et non avenue, encore faut-il disposer de preuves à cet égard.

51. Monsieur le président, Mesdames et Messieurs les juges, on peut sans doute reprocher à un État d'agir sans preuve. Dans l'affaire de *la Sentence du roi d'Espagne*, le Nicaragua alléguait que la procédure de désignation de l'arbitre fixée par le traité d'arbitrage n'avait pas été respectée. La Cour avait fermement rejeté cette thèse en disant qu'une telle allégation « devrait être établie par des preuves positives. Aucune preuve de ce genre n'a été présentée à la Cour. »¹³⁰

52. C'est dire qu'à l'inverse on ne peut pas reprocher à un État de n'avoir agi que preuves à l'appui. Or, le Venezuela n'a pendant longtemps pas disposé de telles preuves. Il ne pouvait alors que se référer à la sentence comme à un bouclier contre les appétits insatiables de l'Empire britannique ou, pour reprendre les termes des experts vénézuéliens, que l'on a déjà cités, « in order to prevent further troubles »¹³¹.

53. C'est évidemment le mémorandum Mallet-Prevost qui a tout changé. Pour le Venezuela, il a été la première □ pas la seule ! □ preuve positive, le premier témoignage écrit, public, rédigé par un témoin direct de ce que seules des rumeurs colportaient jusque-là, à savoir que la sentence de 1899 était le fruit d'une manœuvre, qui s'est révélée être d'extorsion, comme l'ont écrit avec raison les experts vénézuéliens¹³². Il s'agissait du chaînon manquant. De là, tout s'est emboîté.

54. Je ne m'étendrai pas sur la théorie du complot, longuement suggéré par le Guyana, à propos du mémorandum Mallet-Prevost. Le fait est que c'est à partir de ce mémorandum que le Venezuela a considéré qu'il disposait d'une première preuve directe de ce qui n'était jusque-là que rumeurs, à savoir que l'arbitrage de 1899 était

¹³⁰ *Sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906 (Honduras c. Nicaragua)*, arrêt, C.I.J. Recueil 1960, p. 206.

¹³¹ Hermann González Oropeza, S. J. & Pablo Ojer, *Report submitted by the Venezuelan experts on the issue of the boundaries with British Guiana to the National Government on the Issue of the Boundaries with British Guiana* (18 March 1965), MGM, vol. IV, annexe 74, p. 39, par. 29.

¹³² *Ibid.*, p. 36, par. 20.

une sordide farce. La question de la solidité de cette preuve est indifférente à cet égard mais, et j’y reviendrai, le témoignage de Mallet-Prevost est inattaquable quant aux faits qu’il décrit, comme le professeur Tams l’a déjà démontré.

55. Chacun sait qui était Severino Mallet-Prevost. Cet homme savait cette vérité qui gêne tant le Guyana. Mais, homme d’honneur, il n’avait pas voulu, de son vivant, rompre publiquement son engagement à maintenir la confidentialité de ce qui lui avait été confié. Il l’a fait à titre posthume, en 1949, cinquante ans après. Jusque-là, chacun pouvait penser que la sentence était le fruit d’un compromis. Mais ce dont Mallet-Prevost témoigne est la manière dont ce compromis a été atteint¹³³. Et il révèle que cela n’a rien à voir avec une délibération fondée sur le droit ; c’est le fruit d’un chantage. Mallet-Prevost témoigne - je le redis parce que c’est un élément clé dans l’histoire qui a conduit à l’accord de Genève :

« When I was shown into the apartment where the two American arbitrators were waiting for me Justice Brewer arose and said quite excitedly:

“Mallet-Prevost, it is useless any longer to keep up this farce pretending that we are judges and that you are counsel. The Chief and I have decided to disclose to you confidentially just what has passed. Martens has been to see us. He informs us that ... if we insist on starting the line on the coast at the Moruca River he will side with the British and approve the Schomburgk Line as the true boundary.”

“However,” he added that, “he, Martens, is anxious to have a unanimous decision; and if we will agree to accept the line which he proposes he will secure the

¹³³ W. Cullen Dennis, « The Venezuela-British Guiana Boundary Arbitration of 1899 », *The American Journal of International Law*, 1950, vol. 44, n° 4, p. 723.

acquiescence of Lord Russell and Lord Collins and so make the decision unanimous.” »¹³⁴

56. Ces faits sont décrits par Mallet-Prevost. Ils semblent contestés par le Guyana sur la base de l’âge de Mallet-Prevost au moment de la rédaction du mémorandum, et sur la base d’autres insinuations qui ne valent pas la peine que j’en parle. Car ils sont confirmés par Martens lui-même. Son agenda personnel¹³⁵ a été rendu partiellement public à la faveur de la Perestroïka¹³⁶. Or, comme l’a déjà mentionné le professeur Tams, Martens explique dans le détail, tout comme Mallet-Prevost dans son mémorandum, la manière dont il a manipulé les arbitres ; au moyen d’un véritable chantage auprès des deux « camps », les Anglais, d’une part, et les Américains, de l’autre □ qu’il voyait clairement comme deux camps homogènes, illustrant au passage le total manque d’indépendance de chacun des arbitres. Il a réclamé de chacun de ces « camps », lors d’entretiens privés, de faire les concessions qu’il leur proposait, faute de quoi il ferait pencher la balance dans le sens de l’autre camp.

57. La sentence était donc le fruit d’une extorsion faite par le président du Tribunal. On apprend aussi de l’agenda de Martens son motif pour agir de la sorte. Le Guyana affirme que c’est au nom d’un devoir moral. La belle affaire. Pas du tout. Son motif était la recherche d’une gloire personnelle. « I was terribly glad to have such a triumph of mine to obtain a unanimous arbitration award », écrit-il dans son carnet, notant au passage, confirmant la « farce » que fut cet arbitrage, que « the British ... should be extremely pleased with the decision by which they got all the gold mines »¹³⁷. Et en effet le vice-ministre des affaires étrangères russe reçut un

¹³⁴ O. Schoenrich, « The Venezuela-British Guiana Boundary Dispute », *The American Journal of International Law*, 1949, vol. 43, n° 3, p. 523-530, p. 529 (MGM, vol. III, annexe 1).

¹³⁵ *Private Diary Entries* of Prof Fyodor Fyodorovich Martens (4 June 1899-3 October 1899) (MGM, vol. III, annexe 33).

¹³⁶ L. Malksoo, « F.F. Martens and His Time: When Russia Was an Integral Part of the European Tradition of International Law », *EJIL*, 2014, vol. 25, n° 3, p. 811-829, p. 818.

¹³⁷ Excerpts of the *Private Diary Entries* of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899, p. 396 (MGM, vol. III, annexe 149).

aimable courrier de la reine d'Angleterre louant la « astute and assiduous manner in which [Martens] has presided over [the Tribunal's] deliberations », et lui demandant de transmettre à Martens « her gratitude »¹³⁸.

58. Mais, comme je l'ai dit à l'instant, l'agenda de Martens n'a été rendu public que sur le tard. Je reviens donc au mémorandum Mallet-Prevost. Le professeur William Cullen Dennis, juriste américain très impliqué dans les arbitrages internationaux au début du siècle dernier, notamment comme agent des États-Unis, au contraire de Child qui n'y connaissait rien, en retire les conclusions suivantes en 1950 :

« First, there is no doubt of the truthfulness and substantial accuracy of Mr. Mallet-Prevost's memorandum so far as it relates to matters of fact within his personal knowledge. Second, the Mallet-Prevost memorandum affords *definite and conclusive evidence* of what practically everyone who had studied the Guiana Boundary Case was already convinced and many had said, namely, that the decision was a diplomatic compromise and not a truly judicial decision. »¹³⁹

59. Le mémorandum a été publié en 1949. Il est, comme l'écrit William Cullen Dennis en 1950, la « definite and conclusive evidence »¹⁴⁰. Clifton Child, malgré son pamphlet à charge sur lequel se fonde le Guyana, reconnaissait également au mémorandum que « if it were the only evidence upon which the fairness of the arbitration of 1899 could be judged, [it] would bring justice of the award seriously into question ». C'est la survenance de cette « definite and conclusive evidence » qui a conduit le Venezuela à dénoncer la sentence comme nulle et non avenue, ce qu'il n'avait pas les moyens de faire jusque-là, faute de preuve.

¹³⁸ *Ibid.*, p. 398.

¹³⁹ W. Cullen Dennis, « The Venezuela-British Guiana Boundary Arbitration of 1899 », 1950, vol. 44, n° 4, p. 720-727, p. 727 (les italiques sont de nous).

¹⁴⁰ *Ibid.*, p. 727.

60. Comme l'ont expliqué les experts vénézuéliens en 1965, dès la découverte du mémorandum Mallet-Prevost :

« Venezuelan historians, under the direction of their Foreign Ministry, immediately rushed to search the British archives for new documents that would further clarify the details of that farce. Fifty years had passed and for the first time, it was possible to study those documents in the public archives of Great Britain. This research was carried out between 1950 and 1955.

... The publication of the Mallet-Prevost Memorandum coincides with the opening of the British archives and the private American archives. »¹⁴¹

61. Le ministre des affaires étrangères du Venezuela expliquait également dans un aide-mémoire adressé à son homologue britannique le 3 novembre 1963 que

« [t]he history of the border between Venezuela and British Guyana can only be fully known and understood by researching the papers of the men who intervened in it.

These papers have only been made available to scholars and expert researchers during the last decade: the papers of Benjamin Harrison, Richard Olney, Lord Salisbury, Joseph Chamberlain, David Brewer, Daniel Gilman, Severo Mallet-Prevost, and others.

In light of this recently discovered and compiled evidence, Venezuela has *conclusive proof* that it sustained a non-pecuniary and legal loss when it was deceived and deprived of its legitimate territory by the 1899 Award. »¹⁴²

¹⁴¹ H. González Oropeza, S.J. & P. Ojer, [*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al Gobierno Nacional*] Report submitted by the Venezuelan Experts to the National Government on the Issue of the Boundaries with British Guiana (18 Mar. 1965), MGM, vol. IV, annexe 74, p. 41, par. 36-37.

¹⁴² [*Aide-Memoire presentado por el Dr. Marcos Falcón Briceño al Hon. R. A. Butler*] Aide-Memoire presented by Marcos Falcón Briceño to the Hon.

62. Dès 1951 le Venezuela fit savoir qu'il contestait la sentence de 1899, durant une réunion de l'Organisation des États américains. Le représentant du Venezuela avertit alors solennellement que le Venezuela réclamait la réparation des dommages causés par l'arbitrage de 1899¹⁴³. En 1954, durant la conférence interaméricaine, le représentant de l'État déclara qu'à raison de « special circumstances prevailing at the time » de la sentence de 1899, le Venezuela réservait expressément ses droits auxquels il ne renonçait nullement, à obtenir que la frontière issue de la sentence soit rectifiée¹⁴⁴. En mars 1960, un membre du Congrès vénézuélien prenait la même position. Enfin, en 1962, le Venezuela portait sa revendication devant les Nations Unies, ce qui conduisit à l'accord de Genève.

63. Monsieur le président, il est incontestable que c'est bien lorsque le Venezuela a eu entre les mains une preuve positive, une preuve « definite and conclusive », pour reprendre les termes du professeur William Cullen Dennis, que la sentence de 1899 était nulle et non avenue, qu'il put envisager s'en prévaloir, et qu'il s'en est prévalu. C'est seulement à ce moment qu'il était en droit de le faire. Un droit auquel il n'avait jamais pu renoncer.

64. Ceci conclut ma plaidoirie à propos du comportement du Venezuela postérieur à la sentence de 1899. Le temps manquant pour développer davantage, je vais maintenant conclure cette journée.

CONCLUSION

65. Monsieur le président, Mesdames et Messieurs les juges, l'exposé fait par le Venezuela aujourd'hui porte sur l'accord de Genève, signé en février 1966. Cet accord prend acte du désaccord des signataires à propos de la sentence arbitrale et les engage, par la voie d'une obligation conventionnelle nouvelle, à chercher des solutions pratiques et acceptables par ses parties pour résoudre la controverse de manière amiable.

R.A. Butler (5 Nov. 1963) (les italiques sont de nous) (MGM, vol. IV, annexe 73).

¹⁴³ VCM, par. 7.27.

¹⁴⁴ VCM, par. 7.28.

66. Le Venezuela rejette fermement l'affirmation, aux effluves de paternalisme colonial, selon laquelle cet accord serait un « piège » que le Venezuela, soudain pris d'une schizophrénie « instinctive, émotionnelle et irréfléchie », se serait tendu à lui-même¹⁴⁵.

67. C'est pourtant ce qui a été suggéré avec complaisance lundi. Dès 1962, a-t-il encore été dit, le Venezuela savait pertinemment qu'il ne pouvait se prévaloir de la nullité de la sentence de 1899¹⁴⁶. Dès 1962. Mais alors, pourquoi a-t-il conclu l'accord de Genève quatre ans plus tard ? A en croire le Guyana, l'accord de 1966 n'est rien d'autre qu'une forme de compromis de saisine de la Cour, ce que le Venezuela a toujours dit et maintient fermement qu'il n'est pas. D'ailleurs, si tel était le cas, cela voudrait dire qu'en signant l'accord de Genève le Venezuela aurait eu pour seul objet de soumettre à la Cour une prétention qu'il savait d'emblée vaine et sans espoir. Il aurait, en signant l'accord de Genève, volontairement abandonné sa position quant à la nullité de la sentence, tout en faisant semblant de l'affirmer. C'est à la fois absurde et contraire à la réalité.

68. Et si ce n'est par souci de se piéger lui-même, ce que le Guyana suggère est finalement que si, en signant l'accord de Genève, le Venezuela a cru qu'il avait conclu un traité dont l'objet et le but étaient de réparer de manière acceptable l'injustice historique qui en avait motivé la conclusion, en réalité il s'est tout bonnement fait « rouler dans la farine » — c'est une expression française, je ne sais pas s'il y a une traduction anglaise mais j'espère qu'elle sera trouvée. Voilà la petite musique que l'on a entendue, lundi, avec, en voix « off », La Fontaine qui chantonnait : « la ruse la mieux ourdie peut nuire à son inventeur, et souvent la perfidie retourne sur son auteur ».

69. Mais je laisse là La Fontaine et ferai l'impasse sur les comptines enfantines et autres batailles navales, car la controverse dont l'accord de Genève s'est saisi n'a rien d'un gentil vaudeville.

70. Comme on le sait, cette controverse, qui a conduit à l'accord de Genève, puise ses racines dans l'histoire d'une vulgaire

¹⁴⁵ CR 2026/24, p. 23, par. 4 et 5 (d'Argent).

¹⁴⁶ CR 2026/25, p. 42, par. 56 (Oral).

escroquerie coloniale maquillée en un arbitrage prétendument fondé en droit.

71. L'histoire est connue, elle est incontestable. Tout au long du XIX^e siècle, les Britanniques ont procédé à une colonisation agressive du territoire vénézuélien, férocement convoité à cause de ses richesses aurifères. Schomburgk en a été un instrument docile.

72. Aucun des arguments prétendument juridiques qu'avancait la couronne britannique pour justifier ses annexions successives n'avait le moindre début de commencement de fondement. C'est d'ailleurs pourquoi les Britanniques résistèrent autant qu'ils le purent à l'idée d'un arbitrage fondé sur le droit de l'époque. À ce sujet, lorsqu'il fut appelé en 1886 à évaluer l'éventuel fondement juridique de la thèse britannique, Sir Hertslet, figure du Foreign Office de l'époque, jugea qu'il « is a poor one »¹⁴⁷.

73. Son avis, franc car il était donné à titre confidentiel, était que l'Empire britannique « could not submit the case to arbitration with the slightest hope of success given the contradictory claims which have been put forward in the English published maps »¹⁴⁸. Il ajoutait : « the argument [based] on the ground of strict right would be hopeless »¹⁴⁹.

74. Conscients de l'inanité juridique de leurs prétentions, les Britanniques n'acceptèrent dans un premier temps d'aller à l'arbitrage que sous condition. Le Secrétaire d'État Olney, dans un courrier à Bayard daté de juillet 1895, résume ainsi la position britannique telle qu'il la comprenait :

« You [Venezuela] can get none of the debatable land by force, because you are not strong enough; you [Venezuela] can get nothing by treaty, because I [Great Britain] will not agree; and you can take your chance of

¹⁴⁷ Letter from Sir Hertslet to Mr Jervoise, 14 June 1886, Public Record Office (London) F.O. 80/309, Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 35 (VCM, vol. III, annexe 150).

¹⁴⁸ Extract of the Memorandum by Sir E. Hertslet, Foreign Office, 5/VIII/1886 (VCM, vol. II, annexe 27).

¹⁴⁹ *Ibid.*

getting a portion by arbitration, only if you first agree to abandon to me such other portion as I may designate. »¹⁵⁰

Olney ajoutait :

« It seems therefore quite impossible that this position of Great Britain should be assented to by the United States, or that, if such position be adhered to with the result of enlarging the bounds of British Guiana, it should not be regarded as amounting, in substance, to an invasion and conquest of Venezuelan territory. »¹⁵¹

75. La « doctrine Olney » était posée : si l'invasion et la conquête britannique du territoire vénézuélien pouvaient être validées par un arbitrage, l'usurpation de territoire serait acceptable par les États-Unis.

76. Pour inciter les Anglais à accepter d'entrer dans ce processus, les Américains fondèrent la United States Venezuelan Boundary Commission, encore dite « President Cleveland Boundary Commission ». Ses travaux avançant, les Britanniques virent l'affaire tourner dans le sens prédit par Hertslet. Comme l'indique Markus Baker, qui avait été le géographe de la Commission, « [i]t came to be seen that a finding adverse to Great Britain would produce an awkward situation »¹⁵².

77. De là la confection d'un traité d'arbitrage négocié dans le dos du Venezuela, le même Olney que celui que je viens de citer à la manœuvre, inventant et consignant, ensemble avec les Britanniques, des règles inexistantes taillées sur mesure pour offrir sur un plateau un semblant de fondement juridique à la thèse anglaise. Y compris dans des notes confidentielles échangées avec le Royaume-Uni visant à réduire d'avance à néant les meilleurs arguments juridiques du Venezuela. Le caractère frauduleux de ce

¹⁵⁰ Letter from Richard Olney to Thomas Bayard, 20 July 1895 (VCM, vol. III, annexe 152).

¹⁵¹ *Ibid.*

¹⁵² M. Baker, *The Anglo-Venezuelan boundary dispute 1849-1903*, Washington, Judd & Detweiler, 1990 (available at: <https://archive.org/details/cu31924021109529>).

traité d'arbitrage est exemplaire. On ne saurait trouver plus beau spécimen. Il faudrait l'enseigner dans les facultés de droit.

78. L'arbitrage lui-même s'est avéré être une farce de très mauvais goût. À son propos, Olney, dans une lettre à Cleveland du 27 décembre 1899, ne s'alarme en rien, bien sûr, du « loss of territory to Venezuela », dont il avait été l'un des secrets artisans durant la négociation du traité d'arbitrage, mais il s'alarme seulement du « general discrediting of the cause of arbitration ». C'était là son seul souci. Les hommes de droit, eux, en étaient malades. Il écrit : « According to my informant, both the Chief Justice and Brewer are down on arbitration as a mode of settling international disputes ... Fuller and Brewer had come home pretty sick of arbitration. »¹⁵³

79. Quant à la sentence arbitrale que le traité d'arbitrage exigeait des arbitres, elle n'en a que le nom. Ce n'est rien moins, comme l'a écrit Harrison, que le vol d'un grand pan de territoire vénézuélien, celui que les Anglais voulaient pour ses mines d'or¹⁵⁴.

80. Face à la mystification qu'a été la sentence arbitrale de 1899, le Venezuela ne pouvait que constater la trahison et le désastre, faute de preuve de sa nullité, ne disposant dans un premier temps que d'un faisceau insuffisant d'indices, à savoir : la brièveté de la délibération, incompatible avec la complexité du dossier ; le texte de la sentence, impénétrable quant aux faits et au droit qu'elle tient pour établissant la frontière ; et des fuites révélées sous le sceau de la confidentialité, pas des preuves, concernant le processus qui mena les arbitres à adopter le texte à l'unanimité. Quant à l'Empire britannique, il demeurerait dangereux pour le Venezuela, tout comme il l'avait été tout au long du XIX^e siècle. Le blocus du début du siècle suivant ne manqua pas de le rappeler. Dans ce contexte, alors qu'il avait attendu de l'arbitrage justice et protection, il se résigna, à défaut de justice, à faire appliquer la

¹⁵³ Library of Congress, Richard Olney Papers, vol. 12. p. 455-457; quoted in Statement of His Excellency, Dr Marcos Falcon Briceno, Minister for External Relations of Venezuela, at the 348th Meeting of the Special Political Committee on 12 November 1962, p. 20 (VCM, vol. III, annexe 143).

¹⁵⁴ VCM, par. 5.126.

sentence comme un bouclier contre toute nouvelle velléité conquérante de son puissant voisin.

81. N'en déplaise au Guyana, le mémorandum Mallet-Prevost a changé le cours des choses en ouvrant la voie vers la mise à jour d'un ensemble de preuves des malversations dont le Venezuela avait été victime. C'est de là qu'apparut au grand jour la monstruosité de ce prétendu arbitrage. La première preuve, largement confirmée par la suite, était apportée, que le défaut de motivation ne cachait pas des motivations non dites, ce à quoi, dans le doute, l'on aurait pu croire ; non, il n'y avait aucune motivation, la sentence était le fruit d'une extorsion pure et simple d'un président de tribunal avide d'une gloire personnelle qu'il plaçait dans l'obtention, à tout prix, et surtout au détriment de tout fondement juridique, d'une décision unanime attribuant les mines d'or aux Anglais.

82. C'est tout cela qui a conduit à l'accord de Genève.

83. Cet accord de Genève, que le Guyana s'amuse à voir comme une manipulation de plus destinée à piéger inmanquablement un Venezuela décidément « candide », est au contraire un traité conclu de bonne foi durant une période clé du XX^e siècle, sans doute la plus importante, celle de la décolonisation. Et il fut conclu pour mettre un terme à une injustice historique, une monstruosité coloniale, celle qu'avait constituée la mise en place de ce prétendu arbitrage.

84. Par cet accord, les signataires se sont engagés à ce que « any outstanding controversy be amicably resolved in a manner acceptable to both parties », et ils se sont assignés « the task of seeking satisfactory solutions for the practical settlement of the controversy ». La position du Venezuela, faut-il le rappeler, a toujours été qu'à travers cet accord il n'a jamais été dans son intention, ni explicite, ni implicite, de reconnaître d'une quelconque manière la compétence de la Cour internationale de Justice. Ceci demeure sa position, ferme et invariable : la Cour, selon le Venezuela, n'a pas compétence pour traiter la requête du Guyana.

85. C'est pourquoi ce matin il n'a été question que de cet accord. Il est le cadre de droit international dans lequel le Venezuela

se place, comme il se doit, dans ses relations avec le Guyana, s'agissant de la controverse que cet accord longuement négocié décrit. C'est lui, l'accord de Genève, qui est proprement historique, en ce qu'il a ouvert un nouveau chapitre dans les relations entre les deux États à propos d'une controverse historique qui opposait le Venezuela au Royaume-Uni depuis le milieu du XIX^e siècle, puis que le Guyana a prise à son compte.

86. Je le répète, le Guyana y voit un piège □ voudrait que vous y voyiez un piège. Un de plus, dans la droite ligne des manipulations frauduleuses de la fin du XIX^e siècle. Le Venezuela y voit un accord historique, qu'il a conclu de bonne foi pour qu'une injustice flagrante, l'usurpation du territoire vénézuélien victime des insatiables convoitises britanniques, trouve des solutions acceptables par ses signataires, le Venezuela d'une part, le Guyana, libéré de la colonisation britannique, d'autre part. Il est entré en vigueur dès sa signature. Et il cessera de produire ses effets lorsque son objet et but sera atteint, c'est-à-dire lorsque la controverse sera « amicably resolved in a manner acceptable to both parties ».

87. Ceci conclut à temps la présentation du Venezuela de ce jour, et je vous remercie de votre attention.

The PRESIDENT: I thank Professor Thouvenin, whose statement brings the first round of oral argument of Venezuela to a close. The oral proceedings in the case will resume Friday 8 May 2026 at 3 p.m., with Guyana's second round of oral argument.

The sitting is closed.

The Court rose at 6 p.m.

**SECOND ROUND OF ORAL ARGUMENTS
(GUYANA)**

**Friday 8 May 2026
3 pm – 6 pm**

Non corrigé
Uncorrected

CR 2026/28

International Court
of Justice

Cour internationale
de Justice

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

*held on Friday 8 May 2026, at 3 p.m., at the Peace Palace,
President Iwasawa presiding,
in the case concerning Arbitral Award of 3 October 1899
(Guyana v. Venezuela)*

VERBATIM RECORD _

ANNÉE 2026

Audience publique

*tenue le vendredi 8 mai 2026, à 15 heures, au Palais de la
Paix,
sous la présidence de M. Iwasawa, président,
en l'affaire de la Sentence arbitrale du 3 octobre 1899
(Guyana c. Venezuela)*

SECOND ROUND OF ORAL ARGUMENTS
(GUYANA)

COMPTE RENDU

Present: President Iwasawa

Vice-President Sebutinde

Judges Tomka

Abraham

Xue

Nolte

Brant

Gómez Robledo

Cleveland

Aurescu

Tladi

Hmoud

Okowa

Judges *ad hoc* Wolfrum

Couvreur

Registrar Gautier

□□□□□

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

Présents :

M. Iwasawa,
président

M^{me} Sebutinde, vice-
présidente

MM. Tomka
Abraham

M^{me} Xue

MM. Nolte
Brant
Gómez Robledo

M^{me} Cleveland

MM. Aurescu
Tladi
Hmoud

Mme Okowa, juges

MM. Wolfrum
Couvreur, juges
ad hoc

M. Gautier, greffier

□□□□□□

SECOND ROUND OF ORAL ARGUMENTS
(GUYANA)

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HE Mr Keith George, Ambassador, Adviser to the Minister
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Venezuela,

HE Mr Jorge Luis Fuguetta, member of the National
Assembly of the Bolivarian Republic of Venezuela,

Mr Jorge Arturo Reyes Hernández, Minister Counsellor,
Permanent Mission of the Bolivarian Republic of Venezuela to
the United Nations,

Ms Haymara Correa Díaz, Assistant to the Minister for
Foreign Affairs of the Bolivarian Republic of Venezuela, *as
Members of the Delegation.*

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon to hear the second round of oral argument of Guyana on the merits in the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

I now invite Mr Paul Reichler to address the Court. You have the floor, Sir.

Mr REICHLER:

A TALE OF TWO TREATIES

1. Mr President, Members of the Court, good afternoon. I am pleased to begin Guyana's second round of oral pleadings. I will address you on two treaties that have been placed in issue: the 1897 Treaty of Washington and the 1966 Geneva Agreement.

2. There is a connection between these two treaties. They represent the beginning and the end of a mythological narrative that Venezuela has propagated to depict itself as the noble and virtuous victim of British colonialism and American hegemony, which purportedly came together at the end of the nineteenth century to rob it of its Holy Land — the “Guayana Esequiba” — by bullying, defrauding and coercing it into signing an abusive arbitration agreement, forcing it to accept a manifestly unjust Arbitral Award, and then keeping it in a state of fear and ignorance for 60 years to prevent it from protesting the injustice of that Award. But, in 1962, the myth takes a happier turn: when heroic Venezuela, inspired by the new era of decolonization, summons up its courage, shakes off the chains of imperialism, and champions the cause of Guyana's independence, for which it is rewarded with a new Agreement, in

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1966 at Geneva, whereby consent is given to end the historic injustice of the heinous Arbitral Award by setting it aside and casting it into the dustbin of history!¹

3. In this self-serving and fictitious narrative, the roles of victim and aggressor are reversed. Venezuela, which misconstrues both the 1897 Treaty and the 1966 Agreement, and belatedly and groundlessly rejects the 1899 Award, is, in historical reality, the aggressor, having obstructed and delayed Guyana's independence and threatened it ever since, and more recently, in defiance of the Court's Orders, having adopted legislation to annex over 70 per cent of Guyana's territory². Yet, it tries to portray *itself* as the victim of colonialism perpetrated by the British over a century ago and perpetuated by Guyana as the beneficiary of British imperial expansion into Venezuela's own territory³. This is nothing more than a cynical inversion of history, but it underlines and explains Venezuela's entire case. It is invoked to justify Venezuela's efforts to deprive Guyana of the vast majority of its sovereign territory while, at the same time, dressing itself up as a champion of decolonization. It is difficult to resist the temptation to call this out for what it so plainly is: a brazen case of pandering to the audience, in this case the Court, by falsely depicting the dispute between the Parties as one rooted in Venezuela's purported service to the cause of decolonization.

4. The dispute at the heart of this case is nothing of the sort. Not remotely. All the myths unravel when confronted by the evidence — the contemporaneous documentary evidence — which Venezuela so conspicuously and conveniently ignored on Wednesday. We presented that evidence, methodically,

¹ CR 2026/26, pp. 14-18, paras. 17, 20-26, 38 (Moncada); CR 2026/26, pp. 32, 39-41, paras. 69, 103-108 (Mbengue); CR 2026/26, pp. 63-67, paras. 12-13, 17, 20, 21-25, 30, 36-38 (Brotóns).

² Organic Law for the Defence of the Guayana Esequiba, Official Gazette of the Bolivarian Republic of Venezuela, Extraordinary No. 6.798 (3 April 2024), Art. 9. RG, Vol. III, Annex 1; CR 2026/25, p. 62, para. 14 (Craven).

³ CR 2026/26, p. 18, para. 38 (Moncada) ("Although Guyana presents itself as the legitimate heir to the Dutch and British territories, the reality is that it is the beneficiary of colonial dispossession formalized through fraudulent arbitration"); CR 2026/26, pp. 66-67, para. 36 (Brotóns).

comprehensively and visually — on your screens and in your folders — on Monday. Venezuela had a chance to respond. They did not. They had a chance to submit contemporaneous evidence of their own. They did not. The evidence we presented on Monday, not by mere assertion, or by footnote, but by physical documentation shown and made available to you, presently stands unchallenged, except by unsupported assertion. And it completely disembodies each of Venezuela's myths, one by one.

5. Let me begin with the mother of all their myths: that the territory between the Essequibo and Orinoco Rivers once belonged to Venezuela, as successor to Spain. Venezuela's representatives, including its counsel, repeatedly and vociferously referred to the territory as Venezuela's, expressing outrage that any of it might be awarded to Great Britain, and the fact that much of it was, as evidence of a corrupt arbitration agreement and a corrupt Award⁴. Leaving aside the fact that it was Venezuela that insisted on arbitration of the competing claims of title to precisely this territory (and got its wish), there is no evidence in the record of this case that Venezuela (or Spain before it) ever occupied any part of it. Venezuela has presented none in this case. Likewise, Venezuela presented no evidence in the 1899 Arbitration that it or Spain ever actually occupied any of the territory that was ultimately awarded to Great Britain. You can read the transcripts of those proceedings searching in vain for any such evidence. Whatever attempts Spain might have made to establish settlements or religious missions in the seventeenth and eighteenth centuries were short-lived. This is the map Venezuela submitted in its Counter-Memorial depicting the Spanish settlements, mainly religious missions, in the disputed territory. On top of it, we have superimposed the boundary fixed by the 1899 Award. As you can see, none of the settlements were in the territory awarded to Great Britain. Venezuela's pretensions to the territory to the east are, and have always been, unfounded.

⁴ CR 2026/26, pp. 12-14, 18, paras. 6-12, 39 (ii) (Moncada); CR 2026/26, p. 27, para. 40 (Mbengue); CR 2026/26, p. 66, para. 34 (Brotóns); CR 2026/27, p. 24, para. 7 (Palchetti); CR 2026/27, p. 65, para. 61 (Thouvenin).

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6. In contrast, the evidence shows continuous occupation of the territory by the Dutch and then the British. You will recall for example, that we showed you on Monday contemporaneous cartographic evidence of Dutch settlements extending all the way from the Essequibo to the Orinoco, especially along the coast, as well as up the Pomeroon River⁵; and we identified for you more than 30 locations in this region that still bear their original Dutch names⁶. Venezuela had no answer for this. They conspicuously avoided mention of it. It stands completely unchallenged.

7. Here is the map produced by President Cleveland's US-Venezuela Boundary Commission showing European settlements as of 1814, the year Britain supplanted the Netherlands⁷. Dutch settlements are depicted in red, Spanish settlements in green, on the original, which we now highlight to make clearer. With the boundary fixed by the 1899 Award now superimposed, you can see that it corresponds to who occupied which part of the territory as of 1814. According to the US-Venezuela Boundary Commission, there was no Spanish occupation east of this boundary line. The map was published by the Boundary Commission in February 1897 — that is the same month in which the 1897 Treaty was signed. This is the title page. As you can now see, this was produced under the auspices of, among others, Justice David Brewer, later an arbitrator, and Mr Severo Mallet-Prevost, then serving as Secretary to the Commission. They knew that it was no injustice for the arbitral tribunal, in 1899, to award the territory east of the agreed boundary line to the British.

8. Mr President, we know that the question before the Court concerns the legal validity of the 1899 Award, not whether the tribunal got the boundary right. That is only to be addressed by the Court, according to its 2020 Judgment, if it determines that the

⁵ Judges' folders, tab 4, slides CG 1-1, 1-3; CR 2026/24, pp. 40-41, paras. 2-5 (Greenidge).

⁶ Judges' folders, tab 4, slide CG 1-4; CR 2026/26, p. 41, para. 5 (Greenidge).

⁷ US-Venezuela Boundary Commission Map (1897) (available at: <https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~203939~3001734:Grand-View-of-European-Occupation%252C->).

Award is invalid. But we have called this evidence to your attention, on Monday and again today, because it exposes the myth that underlines all of Venezuela's contentions about the 1897 Treaty, the 1899 Award and the 1966 Agreement.

9. I turn to the 1897 Treaty, and our response to the arguments challenging its validity made by Professors Azaria and Palchetti, and repeated by Professor Thouvenin, which are fully based on Venezuelan mythology.

10. Each of these three counsel gave us a large overdose of passionate rhetoric, including invective against Britain and the United States, denouncing demonic British imperialism and hegemonic America⁸. Their speeches could have been delivered by La Pasionaria. To be sure, it's exhilarating to raise your fist and chant revolutionary slogans against perfidious Albion and rapacious Uncle Sam. I know the feeling well. I marched in every anti-war demonstration since Vietnam.

11. But loyally reciting a client's narrative is not evidence, and it is certainly not contemporaneous evidence. Where is the contemporaneous evidence from the late nineteenth century to support the argument that Great Britain and the United States defrauded or structurally coerced Venezuela to sign the 1897 Treaty, which is said to have been negotiated behind its back and contrary to its interests. Venezuela had the chance to present it in its written pleadings and did not. They had the chance again on Wednesday. And again, they did not.

12. In fact, the evidence is entirely to the contrary. On Monday, I took you through it. I did not indulge in mere assertion like Venezuela's counsel did, leaving you to review only the scant footnotes, when they were supplied, to check for accuracy. I showed the evidence to you, displaying 27 different contemporaneous documents on your screens and including them in your folders so that you could assess them for yourselves⁹.

⁸ CR 2026/27, pp. 13, 15, 16, 18-21, paras. 7, 18, 22, 33-48 (Azaria); CR 2026/27, pp. 24-25, paras. 7-11 (Palchetti); CR 2026/27, pp. 68-69, paras. 75-80 (Thouvenin).

⁹ Judges' folders, tab 5.3, slides PR 1-1-1.36.

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Neither the authenticity nor the accuracy of this evidence has been challenged by Venezuela — neither in its written pleadings nor on Wednesday. Not a word of contradiction. So here are some of the conclusions that can now be drawn from them □ conclusions that Venezuela has not contested with contrary evidence. I will footnote to the evidentiary sources here, because I already showed them to you on Monday:

- By Venezuela's own admission, it wanted to go to arbitration with the British to determine title to the disputed territory and it repeatedly urged the United States to use its influence to compel the British to agree to that arbitration¹⁰.

- The United States agreed to assist Venezuela, took up Venezuela's cause and ultimately forced the British to agree to Venezuela's demand for arbitration, even threatening to go to war if Britain refused¹¹.

- Venezuela, far from complaining about so-called US hegemony, appealed to the United States expressly to invoke the Monroe Doctrine against Great Britain, which it did, and Venezuela profusely expressed its gratitude to the United States for obtaining Britain's agreement to arbitrate. You will recall the words to that effect by senior Venezuelan officials, including the President of Venezuela, Joaquín Crespo¹².

¹⁰ CR 2026/24, p. 49, paras. 8-9 (Reichler); Letter from Venezuela's Foreign Minister, Mr Simón Camacho, to United States Secretary of State, Mr Frederic Frelinghuysen (15 Jan. 1883). RG, Vol. III, Annex 2.

¹¹ CR 2026/24, p. 49, para. 10 (Reichler); Letter from Mr Olney to Mr Bayard (20 July 1895), in United States Department of State, Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress on 2 December 1895, Part 1 (1896), Document 527, available at <https://history.state.gov/historicaldocuments/frus1895p1/d527>; Letter from Venezuelan Chargé d'affaires in the United States of America, Fr. Antonio Silva, to Diplomatic Agent of Venezuela in New York, Col. George Gibbons (18 Sept. 1888), available at <http://www.guyananeews.org/Western/1888-1891.pdf>, p. 910. See also CR 2026/24, pp. 51-52, paras. 15-19 (Reichler).

¹² *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, p. 99. RG, Vol. III, Annex 13; CR 2026/24, p. 52, para. 22 (Reichler).

- When it came to negotiating the arbitration agreement, the uncontested evidence showed that Venezuela preferred to have the United States negotiate on its behalf, because it believed that the United States had more influence with the British and would obtain a better deal for Venezuela than if Venezuela negotiated directly¹³.

- The US Secretary of State, Richard Olney, liaised closely and frequently with Venezuela's two representatives during the negotiations; received them at his home; consulted with them; shared drafts with them; welcomed their proposals; adopted and made them his own; and persuaded his British counterpart, Lord Pauncefote, to accept them, including those that Venezuela regarded as the most critical. The Venezuelan representatives expressed their full satisfaction with the draft agreement that Secretary Olney negotiated and they recommended that the Venezuelan Government accept it¹⁴.

- Venezuela then accepted the agreement freely and without compulsion, as serving its best interests. This is fully

¹³ Letter from Venezuela's Foreign Minister, Mr Simón Camacho, to United States Secretary of State, Mr Frederic Frelinghuysen (15 Jan. 1883). RG, Vol. III, Annex 2 ("To carry this controversy to a practical ground and possible termination, there is, in the opinion of the President of Venezuela, only one and at the same time very simple way — arbitration. And for arbitration, there is only one Government who could propose it with real effect and Decide the question of boundaries to the satisfaction of Venezuela — the United States of America."); CR 2026/24, p. 49, para. 9 (Reichler).

¹⁴ CR 2026/24, pp. 54-63, paras. 27-61 (Reichler); Letter from Mr Olney to Mr Storrow (12 Sept. 1896). RG, Vol. III, Annex 8; Letter from Mr Storrow to Mr Olney (17 Sept. 1896). RG, Vol. III, Annex 9; Letter from Mr Storrow to Mr Olney (26 Oct. 1896). RG, Vol. III, Annex 10; Letter from Mr Storrow to Mr Olney (26 Oct. 1896). RG, Vol. III, Annex 10; Letter from Mr Storrow to Mr Olney (28 Oct. 1896). RG, Vol. III, Annex 11; Letter from Mr Olney to Sir Julian Pauncefote (29 Oct. 1896). RG, Vol. III, Annex 12; Letter from Pauncefote to Salisbury (29 Oct. 1896), p. 2. CMV,

Vol. III, Annex 169; Letter from Mr Olney to Mr Brewer (10 Nov. 1896). RG, Vol. III, Annex 5; Letter from Mr Storrow to Mr Olney (29 Nov. 1896). RG, Vol. III, Annex 15; Telegram of Minister Andrade to Mr Olney (7 Dec. 1896). RG, Vol. III, Annex 19.

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documented and uncontested. Here again, you will recall the words of President Crespo affirming that Venezuela accepted the agreement, free of coercion: “The settlement plan was presented to Venezuela for its consideration, with no coercive intent and in full respect of the sovereignty and independence of the Republic” — and he again expressed his profound gratitude to the United States for helping Venezuela accomplish its objectives¹⁵.

13. How can Venezuela’s counsel, in 2026, complain that Venezuela was coerced, structurally or otherwise, in the face of this declaration by Venezuela’s President, in 1897, that Venezuela freely signed the Treaty in the absence of any coercion? No doubt they are following instructions from their client in advancing Venezuela’s current mythology, not the position Venezuela held contemporaneously in 1897. As you know, the myth of invalidity of the Treaty was spawned in 1962, some 65 years after the fact, at the time Venezuela first began to denounce the 1899 Arbitral Award. But this is not the reality that Venezuela recognized in 1897. It is directly opposite and *in tension with* the contemporaneous position of the Venezuelan Government, including its President.

14. The best that Professor Azaria could do to support her argument that the 1897 Treaty was imposed on Venezuela was to call your attention to a single contemporaneous document — just one — but one from which I had also read on Monday¹⁶. It was a December 1896 telegram from Secretary Olney to Mr Storrow — Venezuela’s representative — sent after Venezuela had informed the Secretary of its acceptance of the draft treaty in November. At the end of this telegram, Mr Olney referred to Venezuela as “offensive” for seeking, at that late date, to amend the clause on appointment of arbitrators, after, in his view, Venezuela had already agreed to sign the Treaty¹⁷.

¹⁵ CR 2026/24, pp. 64-65, para. 66 (Reichler); *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, p. 99. RG, Vol. III, Annex 13.

¹⁶ CR 2026/27, p. 17, para. 29 (Azaria); Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

¹⁷ Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

15. What Professor Azaria did not tell you is that Secretary Olney, at Venezuela's prior request, communicated the new Venezuelan proposal on appointment of arbitrators to Lord Pauncefote, who rejected it¹⁸, and he informed the Venezuelans that if they persisted in seeking this amendment, they would have to deal with Lord Pauncefote directly¹⁹. As I showed you on Monday, that is exactly what Venezuela's Minister in Washington, Mr Andrade, did, on 28 December, when he and Lord Pauncefote arrived at an agreement on the issue which Venezuela deemed acceptable²⁰. It then proceeded to sign the Treaty on that basis. This is not the smoking gun of America's betrayal of Venezuela that Professor Azaria pretends it to be. There is neither gun nor smoke here. Nor anything else to support Venezuela's case. Professor Azaria has no other evidence to show you, and nothing else to say about the evidence that we showed you on Monday.

16. Professor Palchetti, for his part, energetically embraced the Venezuelan myth that the 1897 Treaty was negotiated by Britain and the US "behind Venezuela's back"²¹. The evidence we showed you on Monday, which stands uncontradicted, exposes the complete falsity of this myth. Professor Palchetti's focus was on what he considered evidence of a malicious Anglo-American conspiracy to defeat Venezuela in the arbitration. The evidence, according to Professor Palchetti, consisted of an exchange of confidential notes between Secretary Olney and Lord Pauncefote that he falsely told you were kept hidden from Venezuela²². When I say falsely, I do not accuse my friend of prevarication, but of not being sufficiently familiar with the evidence.

¹⁸ Letter of Lord Pauncefote to Secretary Olney (12 Dec. 1896), pp. 2-3 (Library of Congress, Manuscript Division, Richard Olney Papers, Reel 24, Box 68, p. 12010).

¹⁹ Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

²⁰ CR 2026/24, p. 63, para. 61 (Reichler); Letter from Minister Andrade to Minister Ezequiel Rojas (9 Jan. 1897). RG, Vol. III, Annex 21.

²¹ CR 2026/27, p. 24, para. 7 (Palchetti); CR 2026/27, p. 68, para. 77 (Thouvenin); CMV, para. 2.15.

²² CR 2026/27, pp. 29-31, paras. 27-34 (Palchetti).

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17. Or of hiding it from you. It was very noticeable that Professor Palchetti did not show you the so-called confidential notes or even quote from them. He showed you only later correspondence referring to them. In contrast, I brought the notes to your attention on Monday. I displayed on our slides PR 1.17 and PR 1.20 at tab 3 of our folders the note from Secretary Olney to Lord Pauncefote²³, and referred you to Annex 169 of Venezuela's Counter-Memorial for Lord Pauncefote's report on his communication to Mr Olney²⁴. As I showed and explained, through this exchange an agreement was reached between the two negotiators on the length of the prescription period, which was 50 years, as Venezuela wished; and on the preservation of the 1850 Agreement, also as Venezuela wished.

18. Significantly, in view of Professor Palchetti's false charge that the notes were kept from Venezuela, I had also displayed for you, at slides 1.12 to 1.20, Secretary Olney's correspondence with Mr Storrow at the time these notes were written, showing that Mr Olney disclosed Lord Pauncefote's proposals, and his own, to Mr Storrow and Mr Andrade, that Mr Olney consulted with them (including in his own home) prior to writing to Lord Pauncefote, and that Mr Olney's proposals were consistent with those previously submitted to him by Mr Storrow. The correspondence leaves no doubt that both Mr Storrow and Mr Andrade were privy to the so-called confidential notes, and to the agreements on prescription and the 1850 Agreement that were reached therein.

19. Professor Palchetti referred you to the transcript of the arbitration hearings more than a year later, in which former President Harrison, Venezuela's lead counsel, seems to have been surprised by the existence of these notes²⁵. If he was unaware of them, it is Venezuela's fault. Its two representatives in Washington plainly knew of the notes and their contents at the time they were exchanged. Mr Harrison himself speculated that Mr Storrow would

²³ Letter from Mr Olney to Sir Julian Pauncefote (29 October 1896). RG, Vol. III, Annex 12.

²⁴ Letter from Pauncefote to Salisbury, 29 October 1896. CMV, Vol. III, Annex 169.

²⁵ CR 2026/27, p. 33, para. 41 (Palchetti).

have known of them. He further speculated that perhaps Mr Storrow decided not to share them with his client²⁶. But that is speculation, not evidence, and it is wrong, because Mr Andrade, Venezuela's Minister in Washington, was made aware of them at the same time as Mr Storrow.

20. Professor Palchetti seems to have contempt for Mr Storrow. Why so? What did Mr Storrow ever do to him? Obviously, nothing. But the animus toward him fits well with Professor Palchetti's imaginative conspiracy theory about US malevolence. According to Professor Palchetti, Mr Storrow was a double agent, the Kim Philby of his day, who secretly served US interests contrary to Venezuela's²⁷. There is no evidence of this. It is another Venezuelan myth, another concoction. Mr Storrow deserves better. He was one of the most renowned American lawyers of his day. He earned Venezuela's trust by serving as its counsel before President Cleveland's Boundary Commission, leading to their invitation to him to represent their interests in the negotiation of the arbitration agreement with Great Britain. Foreign Minister Rojas initially expressed some hesitation about hiring him²⁸, but there is no record of disappointment in his efforts or accomplishments on Venezuela's behalf, or any doubt about his loyalty. Upon Mr Storrow's sudden and untimely death, he was eulogized by the President of Venezuela²⁹.

²⁶ Letter from Benjamin Harrison to Mallet-Prevost, 9 March 1899, RV, Annex 16.

²⁷ CR 2026/27, p. 31, paras. 34-35 (Palchetti).

²⁸ Letter from Pedro Ezequiel Rojas to José Andrade, dated 18 May 1896, RV, Vol. II, Annex 6.

²⁹ El Libro Amarillo de los Estados Unidos de Venezuela, 1898, RG, Vol. III, Annex 16. (Venezuela praising Mr Storrow on the occasion of his sudden death in 1897: "In April [1897], Mr James J. Storrow, lead counsel for the Republic before the Investigative Commission in Washington, passed away suddenly and unexpectedly. We would have counted on him for the work required to present our titles and even to support our right before the Tribunal itself. His death caused, *in addition to the natural sentiment, a very great annoyance to the Executive Branch. The work written by him for the purpose of demonstrating the validity of our demand to the Commission appointed on 1 January 1896, by President Cleveland to ascertain the true dividing line of Guayana was an advanced guarantee*

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21. The fact that Mr Storrow enjoyed Secretary Olney's confidence and had regular access to him — having attended law school together — was a benefit to Venezuela, not a detriment. And this is reflected in the contemporaneous correspondence between them, which you have seen, which resulted in Mr Olney successfully negotiating for the outcomes proposed by Mr Storrow and Mr Andrade on the two issues Venezuela says it regarded as the most critical: the length of the prescription period and the preservation of the 1850 Agreement³⁰.

22. Mr President, what this unchallenged contemporaneous evidence shows about the events leading to the negotiation of the 1897 Agreement, and the actual negotiation of it, is that there is no truth in the “poor Venezuela” narrative — a fledgling republic unjustly robbed of its territory by the superpowers of the day, the nefarious British and treacherous Americans — the narrative that Venezuela and its counsel are trying so hard to sell to you. In Texas, they would simply say: “That dog don't hunt”.

23. Mr President, it is not often in my career that I have stood up and defended the lawfulness of US foreign policy. But we are talking about the 1890s. My country was not then claiming Greenland, or Canada as the 51st state.

24. I turn now to 1966 and the Geneva Agreement, in which the United States fortunately played no part. Venezuela claims that the Geneva Agreement set aside and replaced the 1899 Arbitral Award — so that the validity of the Award is not at issue in this case, and therefore is not for the Court to rule on. They refer to this as a “novation”³¹. In fact, it is a novelty. Venezuela made the argument for the first time in its Rejoinder, filed last August³². Apparently, it took them 59 years after signing the Agreement, and

of his skill and competence. [The Government was] [d]eprived in an unexpected and painful way of that skillful collaboration . . .” (emphasis added) (translation of Guyana).

³⁰ CR 2026/24, p. 53, para. 24 (Reichler).

³¹ CR 2026/26, p. 15, para. 26 (Moncada); CR 2026/26, p. 33, para. 73 (Mbengue); CR 2026/26, pp. 43, 50, paras. 12, 57 (Zimmermann); CR 2026/26, p. 62, para. 9 (Brotóns).

³² RV, Chapter IV.

seven years after the initiation of this case, to come up with this interpretation. But, as the saying goes, there is no one as zealous as a recent convert, and all of Venezuela's counsel, all eight of them who spoke on Wednesday, expressly made or endorsed this argument³³. It seemed to us, from their rote-like and repetitive incantation of fealty, that this was the price they had to pay for admission to the podium.

25. We say this argument is as off base as it is novel. We base our response to it on the text of the 1966 Agreement itself. My friend, my very good friend, Professor Zimmermann, gave you Venezuela's interpretation of the text. But he was not nearly as thorough, or as accurate, as he was in his indispensable treatise on the Statute of the Court. Astonishingly, *astonishingly*, in his article-by-article review of the Agreement, he completely skipped over Article V. Given his customary meticulousness, this was surely not an oversight. So why did he decide to avoid discussion, or even mention, of Article V? Let's look at the text.

26. Paragraph 1 states that

“nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty”³⁴.

27. Paragraph 2 states:

“No acts or activities taking place while this Agreement is in force shall constitute a basis for

³³ CR 2026/26, p. 33, para. 73 (Mbengue); CR 2026/26, pp. 43, 50, paras. 12, 57 (Zimmermann); CR 2026/26, p. 62, para. 9 (Brotóns); CR 2026/27, pp. 12, 22-23, paras. 2-3, 55 (Azaria); CR 2026/27, p. 23, para. 3 (Palchetti); CR 2026/27, pp. 36-37, 49, paras. 2, 44 (Tams); CR 2026/27, pp. 51-52, paras. 6-8 (Thouvenin).

³⁴ Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, *United Nations, Treaty Series (UNTS)*, Vol. 561 (17 Feb. 1966), Art. V (1); AG, Annex 4.

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asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela.”³⁵

28. Well, I think we have found the answers to our question. Professor Zimmermann told us that the Geneva Agreement has no savings clause. He contrasted it with the Polish-Danzig Agreement, where such a clause exists. On this basis, he argued that all rights and obligations claimed by the parties under prior legal instruments, including the 1899 Arbitral Award, were set aside and replaced by new rights and obligations under this 1966 Agreement³⁶. But that is directly contradicted by paragraph 1, which bears all the hallmarks of a savings clause. It is undeniable from the text that this preserves all assertions of rights and obligations under the 1899 Arbitral Award.

29. Professor Zimmermann also told us that the conduct of the parties after the signing of the Agreement — in particular, their participation in negotiations via the Mixed Commission — demonstrates their understanding that the rights and obligations under the 1899 Award had been set aside and replaced³⁷. But that is contradicted by paragraph 2, which expressly provides that no future conduct pursuant to the Agreement can be understood to constitute a waiver of pre-existing rights, unless the waiver is express and pursuant to an agreement between the parties. There is no evidence of any express waiver or any such agreement.

30. Beyond Professor Zimmermann’s remarkable excision of Article V from the 1966 Agreement, there is his tortuous reading of Article I. The reference in the text to “controversy” in that Article,

³⁵ Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, *UNTS*, Vol. 561 (17 Feb. 1966), Art. VI (2); AG, Annex 4.

³⁶ CR 2026/27, pp. 49-50, paras. 53-58 (Zimmermann).

³⁷ CR 2026/26, pp. 53-54, paras. 75-82 (Zimmermann).

he tells us, can only refer to the “controversy” over title to territory, rather than any “controversy” over the validity of the 1899 Arbitral Award, because, he tells us, the same word — “controversy” — was used in the 1897 Treaty, two years before the Award was issued³⁸. It sounds like a sophisticated analysis, but it is just a piece of sophistry, because it ignores the actual text of Article I — part of which, in my friend’s reading, suffers the same ignominious excision from the Agreement as the whole of Article V. It is on your screens now:

“[T]he controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void.”³⁹

31. The controversy identified in Article I is plainly not the same controversy as the one mentioned in the 1897 Treaty. It is the “controversy that has arisen as a result of Venezuela’s contention that the Arbitral Award of 1899 . . . is null and void”. This text, especially when read in light of the text of Article V, thoroughly defeats Venezuela’s novation argument. If there is a controversy over Venezuela’s contention that the Award is null and void, as Article I says, it can only mean that the other parties to the Agreement — namely Great Britain and British Guiana, ultimately Guyana — disagree with Venezuela’s contention; that is, they do not agree that the Award is null and void. To the contrary, they maintain, as they always have, that it is valid. So, if they maintain that the Award is valid and they claim rights under it — as they do — and Article V expressly preserves all rights and obligations claimed under instruments that predate the 1966 Agreement, how can it possibly be maintained that Great Britain and British Guiana, later Guyana, agreed, by signing this Agreement, to abandon their rights and claims under the 1899 Award? The answer is obvious —

³⁸ CR 2026/26, pp. 47-48, paras. 37-38 (Zimmermann).

³⁹ Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, 561 UNT.S. 323 (17 Feb. 1966), Art. I. AG, Annex 4.

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their claim is frivolous. Venezuela's argument that the 1966 Agreement somehow set aside and replaced the 1899 Award cannot be reconciled with the text of that Agreement, especially if one reads the text that Professor Zimmermann would have you ignore.

32. I can cite unimpeachable authority for this — Guyana's reading of the Geneva Agreement — and a rejection of Venezuela's: the Court itself. I refer specifically to paragraph 64 of its December 2020 Judgment on Jurisdiction:

“The Court further notes that, in the conclusion and implementation of the Geneva Agreement [I apologize for reading the entire quote, but I do not think it would be appropriate for me to skip over any of the Court's language], the parties have expressed divergent views as to the validity of the 1899 Award rendered by the tribunal and the implications of this question for their frontier. Thus, Article I of the Geneva Agreement defines the mandate of the Mixed Commission as seeking satisfactory solutions for the practical settlement of ‘the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void’. That contention by Venezuela was consistently opposed by the United Kingdom in the period from 1962 until the adoption of the Geneva Agreement on 17 February 1966, and subsequently by Guyana after it became a party to the Geneva Agreement upon its independence, in accordance with Article VIII thereof.”⁴⁰

33. In regard to Article V, the Court determined, in paragraph 65:

“By referring to the preservation of their respective rights and claims to such territorial sovereignty, the parties appear to have placed particular emphasis on the fact that the ‘controversy’ referred to in the Geneva

⁴⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020, p. 473, para. 64.*

Agreement primarily relates to the dispute which has arisen as a result of Venezuela's contention that the 1899 Award is null and void and its implications for the boundary line between Guyana and Venezuela.”⁴¹

34. In sum, the text of the Geneva Agreement, as understood and explained by the Court, cannot be reconciled with Venezuela's novel reinterpretation of the Agreement as a novation dispensing with the 1899 Arbitral Award. Professor d'Argent will have more to say about this subject, and the effects of the 2020 Judgment.

35. Before concluding, Mr President, I want to respond to Venezuela's presentation of itself as the South American continent's foremost crusader against colonialism and promoter of Guyana's decolonization⁴². This is another Venezuelan myth that cannot be reconciled with the facts. The historical record shows that Venezuela was an obstacle to Guyana's independence, not a facilitator. It strains to link its belated assertion of the invalidity of the 1899 Arbitral Award to the iconic resolution on decolonization adopted by the General Assembly in 1960. There is no such link. Venezuela has presented no evidence of one.

36. A more historically accurate explanation of the timing of Venezuela's denunciation of the Arbitral Award, in 1962, is that British Guiana was then entering the final stage of its own decolonization process, and Venezuela sensed an opportunity to exploit the new republic's weakness, after the lowering of the Union Jack and the departure of British troops, by resurrecting its bogus claim to the vast majority of Guyana's sovereign territory. Here is what Venezuela itself told the Court in its Memorandum on Jurisdiction submitted on 28 November 2019. Well, I had hoped to show it to you, but I will read it to you:

“The beginning of the process of decolonization of British Guiana within the framework of the United Nations prompted the Venezuelan Government to formalize a claim in this regard, to prevent the

⁴¹ *Ibid.*, p. 474, para. 65.

⁴² CR 2026/26, pp. 15-18, paras. 21-22, 33-38 (Moncada); CR 2026/26, p. 67, para. 38 (Brotóns).

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independence of the British colony, supported by Venezuela, from becoming an . . . obstacle for its claim, based on a historical justice backed by the many causes of nullity of the aforementioned award.”⁴³

37. Venezuela’s interests were not benign; they were self-serving and predatory. They were to acquire the Essequibo at a time when newly born Guyana would be powerless to maintain it. Venezuela’s counsel speak of “asymmetry”⁴⁴. The only asymmetry is between Venezuela and Guyana. There was none in the 1890s — when Venezuela enjoyed the full support of the United States in its contest with Great Britain, as the contemporaneous documents demonstrate — I should say, the uncontested contemporaneous documents demonstrate — balancing the power equation. This historical reality contrasts completely with Venezuela’s mythical account of international relations during that period.

38. Mr President, I have presented Guyana’s rebuttal on the 1897 Treaty and the 1966 Agreement. There is, of course, a third binding agreement that is of great importance in this case: the 1905 Boundary Treaty between Venezuela and Great Britain. My esteemed colleagues, Professor Sands and Professor Oral, will have more to say on the significance of that treaty.

39. Mr President, Members of the Court, I thank you again for your kind courtesy and patient attention - this afternoon and during these proceedings - □ and I ask that you call Professor d’Argent to the podium.

The PRESIDENT: I thank Mr Reichler for his statement. Je donne maintenant la parole au professeur Pierre d’Argent. Monsieur, vous avez la parole.

⁴³ Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Co-operative Republic of Guyana (29 Mar. 2019) (MV 2019), Annex, p. 5, available at <https://www.icjciij.org/sites/default/files/case-related/171/171-20191128-WRI-01-01-EN.pdf>.

⁴⁴ CR 2026/26, p. 26, para. 36 (Mbengue).

M. D'ARGENT :

Merci, Monsieur le président.

**NOVATION, OBJET DU DIFFÉREND ET
COMPÉTENCE**

1. Monsieur le président, Mesdames et Messieurs les juges, dans la foulée de la présentation de M^e Reichler qui vient de rappeler le véritable sens de l'accord de Genève, je répondrai brièvement aux arguments du Venezuela selon lesquels cet accord aurait opéré une novation juridique entre Parties et que, apparemment en conséquence de celle-ci, « the real issue in this case », pour reprendre les mots martelés par mon collègue et ami le professeur Mbengue, n'aurait pas été identifié par la Cour dans son arrêt de 2020, de telle manière que la compétence qu'elle a déclaré posséder et pouvoir exercer serait sans objet.

2. Monsieur le président, comme l'a déjà souligné M^e Reichler, l'argument de la novation présenté par le Venezuela dans sa duplique est nouveau. On peut même dire que cet argument emporte une véritable novation des arguments du Venezuela. Alors le jeu de mots est certes facile, mais il n'en est pas moins exact.

3. Lorsqu'il s'est pour la première fois expliqué au sujet de l'accord de Genève, le Venezuela a en effet notamment soutenu, comme la Cour l'a relevé dans l'arrêt de 2020, que « dans la mesure où l'accord de Genève vise en son article I la “recherche de solutions satisfaisantes pour le règlement pratique du différend”, cela exclut [selon le Venezuela] le recours au règlement judiciaire *à moins que les Parties ne consentent à y recourir par voie de compromis* »⁴⁵. Et on s'en doute, en écrivant cela, la Cour ne s'est pas trompée. Voici en effet ce que le Venezuela écrivait dans son « mémorandum » du 28 novembre 2019 : « Venezuela does not

⁴⁵ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 478, par. 81 (les italiques sont de moi).*

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exclude arbitral and judicial means as ultima ratio, once the failure of all political means available have been established by both Parties along with the UN Secretary-General and his Personal Representative. » Le Venezuela ajoutait certes que « due to its very nature, the juridical means are not the most adequate ... to satisfy the object and purpose of the Agreement » mais il soutenait toutefois que

« arbitration or judicial settlement can only ensure that the dispute is “amicably resolved in a manner acceptable to both parties” (preamble to the Geneva Agreement), if both Parties accept those means and negotiate a special agreement spelling out its purpose and the body or institution entrusted with the mission »⁴⁶.

4. Alors on sait que la Cour a au contraire jugé que la décision du Secrétaire général de désigner la Cour ne devait pas faire l’objet d’un consentement supplémentaire de la part des Parties. Mais la position alors défendue par le Venezuela n’était pas de considérer que l’accord de Genève excluait par novation que le différend tel qu’identifié par son article premier puisse être soumis à un règlement juridictionnel pour le motif qu’il en appelait à trouver une solution négociée mutuellement acceptable par les Parties ; selon le Venezuela, cet élément qu’il rattachait au préambule aurait plutôt limité le pouvoir du Secrétaire général en exigeant que les Parties confirment d’un commun accord sa décision quant au choix de la Cour.

5. De plus, Mesdames et Messieurs les juges, en 2022, lors de la phase incidente ayant porté sur l’exception déduite par le Venezuela du principe de l’Or monétaire, la possibilité pour la Cour de statuer sur la validité de la sentence en était la prémisse indispensable et les conseils du Venezuela l’ont très fortement et très justement souligné. Ainsi, selon le professeur Zimmermann □ plaidant en 2022 □, l’arrêt de 2020 « revealed that, in the case at hand, the Court has to necessarily decide upon the validity or

⁴⁶ Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29th, 2018, par. 84-86.

invalidity of the 1899 Award »⁴⁷. Toujours lors des audiences de 2022, le professeur Tams souligna le même jour :

« [T]hree matters *are* clear, and they all point to the central role of the United

Kingdom...

- First, this case is primarily about the validity of a disputed arbitral award ... because ... the United Kingdom ... acted fraudulently.

- Second, the Award whose validity is primarily at stake was rendered on the basis of a disputed arbitration agreement »⁴⁸.

6. Et le troisième point relevé par mon collègue le professeur Tams était le fait que le différend relatif à la validité de la sentence avait été porté devant la Cour sur la base de l'accord de Genève. Or, comme il le releva très justement, cet accord était « [a] treaty to which the United Kingdom remains a party until today »⁴⁹. Et ce fut précisément pour cette raison, comme l'avait soutenu le Guyana, que la Cour considéra que le principe de l'Or monétaire « n'entr[ait] pas en jeu en l'espèce »⁵⁰.

7. Lors du second tour de plaidoiries en 2022, mon ami le professeur Tams insista encore sur le fait que « [t]he Parties' claims, to reiterate, go to the validity of the Award »⁵¹, confirmant ainsi que la question de la nullité de la sentence est au cœur des prétentions des *deux* Parties. Les paragraphes 76 et 77 de votre arrêt de 2023 ont dûment reflété et résumé la position du Venezuela à cet égard.

8. Cette position en 2022 confirmait donc pleinement ce que la Cour avait déjà relevé dans l'arrêt de 2020, à savoir — je l'ai déjà rappelé lundi —, que

⁴⁷ CR 2022/21, p. 28, par. 41 (Zimmermann).

⁴⁸ CR 2022/21, p. 45, par. 10-12 (Tams).

⁴⁹ CR 2022/21, p. 45, par. 13 (Tams).

⁵⁰ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela)*, exception préliminaire, arrêt, C.I.J. Recueil 2023 (I), p. 292, par. 107.

⁵¹ CR 2022/23, p. 14, par. 23 (Tams).

« la question de la validité de la sentence de 1899 se trouvait au cœur du différend à résoudre conformément au paragraphe 2 de l'article IV de cet instrument, en vue de parvenir à un règlement définitif de la question de la frontière terrestre ».

9. Monsieur le président, le Venezuela est non seulement amnésique de ses propres positions juridiques dans la présente instance et les contredit, mais il voudrait également que la Cour considère les propos tenus par son ministre des affaires étrangères devant le Congrès national en 1966 comme une « déclaration politique ... clairement erronée et sans portée juridique ». Ce sont les mots du professeur Thouvenin⁵². Alors je salue le culot de mon collègue au soutien de son client, mais mesurons un instant l'énormité de ce propos : le Venezuela dit que son négociateur et signataire de l'accord de Genève ne l'avait pas compris. Il est proprement sidérant de traiter comme cela, d'un revers de la main, des documents contemporains contextuels et essentiels — décidément, comme M^e Reichler l'a déjà souligné, la critique historique n'est pas le fort du Venezuela, lequel excelle plutôt dans le mythe et la légende.

10. Les propos, très clairs, du ministre Iribarren Borges rendent évidemment la thèse du Venezuela intenable, ainsi que la Cour l'a relevé en 2020 au paragraphe 134 de votre arrêt dont j'ai déjà donné lecture lundi. Il n'y a aucun fondement à l'assertion du Venezuela selon laquelle l'accord de Genève ne couvrirait pas la question de la validité de la sentence et que cette question ne ferait pas partie du différend visé par cet accord et donc, en vertu de celui-ci soumis à la Cour. Le Venezuela a déjà présenté cet argument — soumis cette prétention — à la Cour⁵³ en 2020 et la Cour l'a expressément rejetée⁵⁴. Cela est chose jugée.

11. S'agissant de l'argument de novation longuement développé par le professeur Mbengue, ce que M^e Reichler vient de rappeler au sujet de l'interprétation de l'accord de Genève, en

⁵² CR 2026/27, p. 52, par. 9 (Thouvenin).

⁵³ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour; arrêt, C.I.J. Recueil 2020, p. 489, par. 126.*

⁵⁴ *Ibid.*, p. 491-492, par. 134.

particulier au sujet de son article premier et de son article V, ce que je viens d'indiquer et ce que j'ai également dit lundi en m'appuyant sur votre arrêt de 2020, tout cela devrait suffire, me semble-t-il. Tout dans cet argument de novation est bancal, et pas seulement le fait qu'il est affecté d'une contradiction interne comme je l'avais souligné. Le professeur Mbengue essaie de s'en tirer par une pirouette : selon lui, « novation only requires a pre-existing legal framework, whatever its validity », pourvu que le nouvel instrument « [is] replacing something ... [w]hether ... valid, voidable or void »⁵⁵.

12. Mais quel est ce « pre-existing legal framework », ce « something » qui aurait été remplacé ? La sentence ? Le traité de Washington de 1897 lui donnant force obligatoire ? Le traité de 1905 ayant traduit la sentence dans un accord bilatéral ? La frontière résultant de ce traité, laquelle bénéficie d'une permanence distincte et qui constitue « l'assiette et les limites territoriales qui ... sont laissées par l'État colonisateur »⁵⁶ ? Mon collègue le professeur Mbengue n'a rien dit à ce sujet. Il y a assurément un régime frontalier — « a legal framework » — fait de tous ces actes juridiques. Il y a aussi un différend frontalier né de la prétention de nullité de la sentence ; et comme la Cour l'a souligné fort justement et fort logiquement, ce n'est « pas possible de régler définitivement le différend frontalier qui oppose les Parties sans statuer d'abord sur la validité de la sentence »⁵⁷. Quoi qu'en dise le Venezuela, la question de la validité de la sentence fait donc partie du différend à résoudre. Bien entendu, le Guyana accepte qu'au moment de son indépendance, et par l'effet de l'accord de Genève, il a hérité d'un différend territorial créé par son voisin, mais cet accord n'a en rien changé les termes de ce différend ni mis de côté les actes juridiques qui le sous-tendent.

13. En effet, où est-il dit dans l'accord de Genève qu'il remplace les actes juridiques constituant le régime juridique

⁵⁵ CR 2026/26, p. 35, par. 86 (Mbengue).

⁵⁶ *Délimitation terrestre et maritime et souveraineté sur des îles (Gabon/Guinée équatoriale)*, arrêt du 19 mai 2025, par. 128.

⁵⁷ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela)*, compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 490, par. 130.

frontalier ? Comment ce traité remplace-t-il non seulement la sentence arbitrale, ce qu'il ne fait pas, mais aussi deux traités et une frontière ? Le Venezuela va-t-il nous sortir un argument fondé sur les articles 30 et 59 de la convention de Vienne sur le droit des traités tout en ignorant l'article V, paragraphe 1, de l'accord de Genève que M^e Reichler vient de rappeler et qui en est une pierre angulaire ? M^e Reichler a également montré combien l'assertion du professeur Mbengue selon laquelle « [f]or more than five decades, Guyana did not invoke the 1899 Award »⁵⁸, combien cette affirmation manquait totalement en fait. Il n'y a pas, il n'y a pas eu de « clean slate »⁵⁹ entre les Parties.

14. Mon contradicteur et ami a soutenu encore que l'accord de Genève « is what now governs [the Parties'] relationship in relation to that matter »⁶⁰. Je ne sais pas très bien ce que « that matter » signifie dans son esprit, mais le Guyana accepte bien entendu que l'accord de Genève régit la relation des Parties au sujet de son objet, lequel à nouveau est le différend né de la prétention vénézuélienne de nullité de la sentence et les implications juridiques de cette question de validité pour le tracé de la frontière, ainsi que le paragraphe 66 de votre arrêt de 2020, que je ne vais pas relire, a dit pour droit⁶¹. C'est bien parce que l'accord de Genève régit la relation entre les Parties au sujet de ce différend que nous sommes, Mesdames et Messieurs les juges, devant la Cour. Cela aussi a été jugé avec force de chose jugée.

15. Par ailleurs, la Cour a considéré « que le droit du Guyana à la souveraineté sur le territoire en question est plausible »⁶². Certes, cette détermination contenue dans une ordonnance en indication de mesure conservatoire, fût-elle confirmée sur ce

⁵⁸ CR 2026/26, p. 37, par. 91 (Mbengue).

⁵⁹ CR 2026/26, p. 39, par. 97 (Mbengue).

⁶⁰ CR 2026/26, p. 35, par. 82 (Mbengue).

⁶¹ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour; arrêt, C.I.J. Recueil 2020*, p. 474, par. 66.

⁶² *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), mesures conservatoires, ordonnance du 1^{er} décembre 2023, C.I.J. Recueil 2023 (II)*, p. 663, par. 23.

point⁶³, n'a pas force de chose jugée. Mais comment aurait-elle pu être faite par la Cour si l'accord de Genève avait l'effet novatoire vanté par le Venezuela ?

16. M^e Reichler vous a également donné lecture il y a un instant du deuxième paragraphe de l'article V de l'accord de Genève. Il est vrai qu'en l'absence d'une telle disposition, le temps écoulé depuis 1966 pourrait avoir une tout autre signification juridique. Contrairement à ce qu'a soutenu le professeur Mbengue⁶⁴, cette disposition n'emporte en rien une novation de la situation juridique qui existait au jour de l'accord de Genève, laquelle, au contraire, a totalement été préservée par le paragraphe 1 de l'article V. Le professeur Mbengue a dit que « [r]ights and defences that accrued under the old framework cannot survive the transition to the new one unless they are expressly preserved in the new instrument □ and they were not »⁶⁵. Ah bon, « they were not » ? J'invite mon ami et ses collègues à relire l'article V, paragraphe 1, de l'accord de Genève. Cette disposition rend le comportement du Venezuela survenu entre 1899 et 1966 directement pertinent pour le règlement définitif du différend frontalier. Et ma collègue, la professeure Oral y reviendra.

17. Selon les conseils du Venezuela, l'obligation « de rechercher des solutions satisfaisantes pour le règlement pratique du différend » visée à l'article I de l'accord de Genève signifierait qu'une novation □ vous le savez, c'est cet argument □ a été opérée et que la question de la validité de la sentence a été conjointement abandonnée. Il n'en est évidemment absolument rien. Il n'en est rien selon le texte de l'accord et l'on sait, faut-il le répéter, que votre arrêt de 2020 a dit pour droit que la question de la validité de la sentence fait partie du différend dont la solution est régie par l'accord. Il était en effet parfaitement imaginable en 1966 qu'après un nouvel examen du dossier, les Parties conviennent par accord de remplacer la sentence et son régime juridique par une nouvelle

⁶³ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), demande tendant à la modification de l'ordonnance du 1^{er} décembre 2023 indiquant des mesures conservatoires, ordonnance du 1^{er} mai 2025*, par. 34.

⁶⁴ CR 2026/26, p. 36, par. 89 (Mbengue).

⁶⁵ CR 2026/26, p. 39, par. 97 (Mbengue).

délimitation territoriale. En cela, l'accord de Genève offrait la possibilité de convenir d'un nouveau régime frontalier, mais cet accord n'opère ni ne constitue aucune novation juridique de lui-même.

18. Et dire cela, Mesdames et Messieurs les juges, dire cela, ce n'est en rien accepter l'assertion erronée selon laquelle l'accord de Genève aurait « replaced finality with indeterminacy »⁶⁶. En effet, comme la Cour l'a relevé, puisque le préambule de l'accord de Genève indique qu'il a été conclu « pour résoudre » le différend né de la prétention de nullité de la sentence, son objet et son but « consistent à garantir le règlement définitif du différend entre les Parties »⁶⁷. Voilà l'objet et le but de l'accord de Genève dont on nous a reproché de n'avoir rien dit⁶⁸ mais que le Venezuela feint d'ignorer, et voilà encore une fois la raison pour laquelle nous sommes devant vous aujourd'hui. La prétendue novation ouvrant la porte vers une éternelle négociation est une construction clairement incompatible avec l'objet et le but de l'accord de Genève. Et c'est bien parce que l'objet et but de l'accord est de « garantir le règlement définitif du différend » que, après soixante ans de discussions sans résultat et compte tenu des termes de l'article IV, le Secrétaire général était en droit de décider que la Cour serait la prochaine étape pour régler ce différend.

19. Le Venezuela a beau désormais affirmer que le ministre Iribarren Borges ne savait pas ce dont il parlait lorsqu'il présenta l'accord de Genève au Congrès national, je rappelle que ce ministre, en 1966, indiqua : « Finally, according to the terms of Article 4 [of the Geneva Agreement], in the event that no satisfactory solution for Venezuela is reached, the so-called 1899 Award shall be revised through arbitration or judicial recourse. »⁶⁹ Et c'est exactement ce que la Cour a décidé, non seulement en disant qu'elle avait compétence pour statuer sur la validité de la sentence, mais aussi, en cas de nullité □ M^e Reichler l'a rappelé □,

⁶⁶ CR 2026/26, p. 37, par. 89 (Mbengue).

⁶⁷ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 476, par. 73.

⁶⁸ CR 2026/26, p. 21, par. 11 (Mbengue).

⁶⁹ RV, vol. II, annexe 2, p. 35.

qu'elle pouvait connaître de la « question connexe du règlement définitif du différend concernant la frontière terrestre entre [les Parties] »⁷⁰. Il est donc totalement erroné de soutenir que « [i]f the Court does not uphold the Award, and Guyana refuses to come back to the negotiations table, neither State advances and the controversy is left to fester »⁷¹. Mes chers collègues, ce n'est pas seulement l'accord de Genève qu'il faut relire, mais aussi l'arrêt de 2020, tant honni par le Venezuela.

20. Enfin, cet arrêt aurait-il omis d'identifier « the real issue in this case » ? Absolument pas. Et, ainsi qu'il ressort notamment de l'arrêt de 2024 dans l'affaire *Azerbaïdjan c. Arménie* dont le Venezuela se prévaut⁷², la détermination objective par la Cour de « ce sur quoi porte le différend entre les parties en circonscrivant le véritable problème en cause et en précisant l'objet des griefs du demandeur »⁷³ concerne la compétence *ratione materiae* de la Cour. Et la Cour a statué en 2020, avec effet de force jugée, non seulement sur l'objet du différend⁷⁴, mais aussi sur l'étendue de sa compétence, tant matérielle⁷⁵ que temporelle⁷⁶.

21. Mais vous savez tout cela, Mesdames et Messieurs les juges, vous savez tout cela et je pense avoir abusé de votre patience. Je vous remercie d'autant plus pour votre bienveillante attention.
22. Puis-je vous demander, Monsieur le président, d'appeler à la barre mon cher collègue, le professeur Pellet ?

⁷⁰ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 493, par. 138.

⁷¹ CR 2026/26, p. 39, par. 100 (Mbengue).

⁷² CR 2026/26, p. 23, par. 20 (Mbengue).

⁷³ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), exceptions préliminaires, arrêt, C.I.J. Recueil 2024 (III)*, p. 1143, par. 71.

⁷⁴ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 474, par. 66, et p. 492, par. 135.

⁷⁵ *Ibid.*, p. 492, par. 135.

⁷⁶ *Ibid.*, p. 492, par. 136.

Le PRÉSIDENT : Je remercie le professeur d'Argent.
J'invite maintenant le professeur Alain Pellet à s'adresser à la
Cour. Monsieur, vous avez la parole.

M. PELLET :

LES SIX PÉCHÉS CAPITAUX DE LA SENTENCE MARTENS

1. Monsieur le président, Mesdames et Messieurs les juges, comme le professeur Pierre d'Argent vient de le rappeler excellemment en citant vos propres décisions, l'objet de cette instance est d'apprécier la validité ou non de la sentence de 1899:

« [L]e différend que les parties sont convenues de régler au moyen du mécanisme établi en vertu de l'accord de Genève concerne la question de la validité de la sentence de 1899 ainsi que ses implications juridiques pour le tracé de la frontière entre le Guyana et le Venezuela. »⁷⁷

2. Voilà, Monsieur le président, qui me paraît largement suffisant pour revenir au sujet, le vrai sujet de notre audience, sans qu'il soit besoin de s'attarder davantage sur la cinquième tentative du Venezuela visant à vous en dissuader.

3. La liste des infamies, constitutives d'autant d'excès de pouvoir, que le Venezuela impute à la sentence, est longue :

- elle serait injuste ;
- elle n'est pas motivée ;
- les juges se seraient prononcés *infra petita* (« excès de pouvoir négatif »⁷⁸) ; et,
- en même temps *ultra petita* ;
- les modalités d'adoption de la sentence seraient constitutives de dol ;

⁷⁷ *Ibid.*, p. 474, par. 66.

⁷⁸ CR 2026/27, p. 37, par. 6 (Tams).

- et elle serait fondée sur une ou des erreurs...

Six péchés capitaux, donc !

4. Au vu de cette liste impressionnante, la sentence de 1899 était-elle valide ? Réponse laconique : oui, sans aucun doute ! Mais je donnerai tout de même une réponse un peu plus détaillée, même si elle peut être relativement brève, en distinguant :

- les griefs intrinsèques que le Venezuela adresse au contenu de la sentence (I.) ;
- de ceux, extrinsèques, qui tiennent à la manière dont elle a été adoptée (II.).

I. Les moyens portant sur le contenu de la sentence

5. Monsieur le président, parmi les griefs que je viens d'énumérer, trois concernent directement le contenu même de la sentence : le Venezuela la considère comme injuste ; elle n'est pas motivée (c'est décidément un point central) ; et le tribunal s'est écarté de son mandat, à la fois « en trop » et « en moins ».

A. Une sentence injuste ?

6. Bien qu'il paraisse au centre des griefs du Venezuela, je ne vais pas m'attarder pas sur le caractère injuste ou inéquitable qu'il impute à la sentence : « [T]his is what this case is about: whether to validate an unjust decision »⁷⁹, a dit le professeur Palchetti. D'une certaine manière ce reproche éclipse en partie tous les autres : cette sentence aurait amputé le Venezuela d'une grande partie de « son » territoire. Mais c'est mettre la charrue avant les bœufs ; c'est postuler que ce qui devait être prouvé est un fait acquis. En 1897, la Grande-Bretagne et le Venezuela avaient un différend frontalier ; les deux pays ont demandé à un tribunal arbitral de le régler ; en l'absence de règlement, aucun des deux ne pouvait affirmer juridiquement quelle était l'étendue de « son » territoire : il était □ ou ils étaient □ en litige. La sentence a levé l'incertitude et ce n'est qu'après son intervention que chaque partie a pu se prévaloir de son titre territorial et/ou frontalier □ j'en redirai un mot. La sentence n'a amputé le territoire de personne, elle a déterminé les limites de chacun d'eux, rétablissant les bonnes

⁷⁹ CR 2026/27, p. 26, par. 12 (Palchetti).

relations entre les parties et écartant les menaces de conflit armé qui pesaient sur la région et qui inquiétaient fort le Venezuela.

7. Monsieur le président, on a, dit-on, 24 heures pour maudire ses juges⁸⁰. Le Venezuela a pris son temps : non seulement il n'a pas maudit Martens et ses collègues dans la période qui a suivi la lecture de la sentence, mais encore, il s'en est largement félicité, comme la professeure Oral l'a amplement montré lundi après-midi⁸¹. Les soixante et quelques années qu'il lui a fallu pour réaliser que la sentence, en l'absence de tout fait nouveau — comme le professeur Sands l'établira dans quelques instants —, serait grossièrement injuste font justice de cette allégation.

8. Il n'est peut-être pas inutile d'ajouter que l'on peut tout à fait (et sans doute, à mon avis, que l'on *doit*) partager les sentiments anticolonialistes qui semblent animer les vertueuses indignations de nos contradicteurs⁸² sans pour autant tomber dans des travers révisionnistes, déstabilisateurs de l'ordre juridique international. Mais il est bon, en la matière, de toujours garder à l'esprit les propos pleins de clairvoyance de la chambre de la Cour dans *Burkina Faso/République du Mali* :

« [E]n réalité le maintien du *statu quo* territorial en Afrique apparaît souvent comme une solution de sagesse visant à préserver les acquis des peuples qui ont lutté pour leur indépendance et à éviter la rupture d'un équilibre qui ferait perdre au continent africain le bénéfice de tant de sacrifices. C'est le besoin vital de stabilité pour survivre, se développer et consolider progressivement leur indépendance dans tous les domaines qui a amené les États africains à consentir au respect des frontières coloniales, et à en tenir compte dans l'interprétation du principe de

⁸⁰ P.-A Caron de Beaumarchais, *Le barbier de Séville ou la précaution inutile*, Paris, Ruault, p. 28 (https://theatreclassique.fr/pages/pdf/BEAUMARCHAIS_BARBIERDESEVILLE.pdf).

⁸¹ CR 2026/25, p. 30-33, par. 5-15 (Oral).

⁸² Voir, par exemple, CR 2026/26, p. 18, par. 38 (Moncada) ; p. 39, par. 102 (Mbengue) ; p. 67, par. 37-38 (Remiro Brotóns).

l'autodétermination des peuples. »⁸³ Ce qui vaut pour l'Afrique me semble s'appliquer également et *a fortiori* à l'Amérique latine, qui avait montré la voie à cet égard.

9. De toute manière, même si j'avoue n'être pas toujours tout à fait au clair en ce qui concerne les conclusions du Venezuela, il faut noter que, s'il demande que la sentence soit déclarée invalide car elle serait injuste, il s'agit d'un appel en équité sur lequel vous ne sauriez vous prononcer, faute pour les Parties de s'être accordées pour demander à la Cour de statuer *ex aequo et bono*, ce qui n'est pas le cas.

B. L'absence de motivation et ses conséquences

10. En ce qui concerne l'absence de motivation, rien de bien nouveau □ et pour cause : les avocats du Venezuela se sont bornés mercredi pour l'essentiel à renvoyer à leurs écritures antérieures⁸⁴. Et ils répugnent à admettre le principe selon lequel □ pour la motivation comme pour tous les autres chefs d'invalidité allégués par eux □ le droit qu'il faut prendre en considération est celui en vigueur à la date critique pertinente : c'est-à-dire en 1897 ou en 1899 pour ce qui est des règles applicables à l'adoption de la sentence.

11. C'est l'effet du droit intertemporel. Un principe qui n'inspire guère nos contradicteurs. Un seul, le professeur Palchetti, l'évoque du bout des lèvres et tout ce qu'il trouve à en dire se réduit à peu près à ceci : « Guyana's emphasis on intertemporal law is only an attempt to mask the grave irregularities committed by the Arbitral Tribunal. It is primarily defensive and fails at that task. »⁸⁵ Il ajoute tout de même que la Cour, dans l'affaire de la *Sentence du roi d'Espagne de 1906*, aurait « accepté que l'absence de motivation constituait un motif de nullité à l'époque en question »⁸⁶. Et le professeur Palchetti de répéter : « In the *Arbitral Award Made by the King of Spain* case, Honduras and Nicaragua accepted

⁸³ *Différend frontalier (Burkina Faso/République du Mali)*, arrêt, C.I.J. Recueil 1986, p. 567, par. 25.

⁸⁴ Voir notamment CR 2026/27, p. 35, par. 52 (Palchetti).

⁸⁵ *Ibid.*, p. 27, par. 17 (Palchetti).

⁸⁶ *Ibid.*, p. 34, par. 51 (Palchetti).

that lack of reasons was a ground of invalidity at the relevant time. The Court - *jura novit curia*- □ decided the issue of lack of reason on that very basis. »⁸⁷ En réalité, la Cour n'accepte rien de tel dans son arrêt de 1960 : elle n'examine pas la question sous cet angle et elle se borne à relever que le grief concernant l'absence de motivation « est sans fondement »⁸⁸. La professeure Oral y reviendra brièvement tout à l'heure.

12. Pour le reste, la manière dont le professeur Tams a traité l'absence de motivation est extrêmement révélatrice : il l'a fait par prétérition ; il la mentionne comme un exemple d'excès de pouvoir pour aussitôt l'oublier⁸⁹.

13. Cela étant, Monsieur le président, je tiens à préciser que nous ne méconnaissons nullement les mérites de l'obligation de motiver. Assurément, comme l'a écrit le Venezuela au paragraphe 6.68 de son contre-mémoire, « [l]e fait qu'une sentence soit dûment motivée est la meilleure garantie qu'elle a été rendue conformément aux instructions données par les parties dans le compromis ». Toutefois, force est de constater que ces avantages ont peiné à s'imposer comme un principe général de droit positif à l'encontre de la non-motivation. En 1899, ce principe émergeait ; il a fallu attendre la conclusion des conventions de La Haye et leur application en pratique pour qu'il devienne une pratique générale acceptée comme étant le droit.

14. Pour reprendre les termes de la CDI, « [p]our déterminer une telle règle [coutumière], il faut examiner avec attention les éléments de preuves disponibles et établir que ces deux éléments (pratique et *opinio juris*) sont présents en toutes circonstances »⁹⁰.

⁸⁷ CR 2026/27, p. 34, par. 51 (Palchetti).

⁸⁸ *Sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906 (Honduras c. Nicaragua)*, arrêt, C.I.J. Recueil 1960, p. 216.

⁸⁹ CR 2026/27, p. 44, par. 28 (Tams).

⁹⁰ Draft conclusions on identification of customary international law and commentaries thereto, Yearbook of the International Law Commission, YILC, 2018, Vol. II, Part 2, p. 95, Conclusion 3, Commentary, par. 2.

C. Le tribunal s'est prononcé hors des limites de ses compétences

15. Monsieur le président, j'ai au moins un point d'accord avec le professeur Tams : « [I]t is clear how excess of power is to be assessed. It needs to be asked whether a tribunal respected the terms of its mandate. »⁹¹ Et, comme la Cour l'a elle-même souligné, le tribunal « doit s'en tenir aux termes par lesquels les Parties ont défini [cette tâche] »⁹². Encore faut-il « confronter soigneusement la sentence, ou tout autre acte contesté du tribunal, et les dispositions pertinentes du compromis. Pour qu'il puisse être retenu, l'excès de pouvoir doit être manifeste et grave et non pas douteux et peu important. »⁹³

16. Cela est vrai, que le tribunal soit accusé de s'être prononcé en deçà ou au-delà de sa compétence. Deux accusations que le Venezuela n'hésite pas à formuler cumulativement dans notre affaire.

1. Infra petita

17. Se référant au texte de l'article III du compromis, le professeur Tams affirme que

« there is no doubt that the tribunal determined the boundary line; it complied with the second task. But not the first. The Award is silent on titles: the tribunal does not tell the parties what it had investigated and ascertained. And on the face of it, this seems a fairly glaring negative excess of power. »⁹⁴

Comme pour la plupart des griefs articulés par le Venezuela, on retombe ici sur la question de la motivation et, s'ils ne disent pas

⁹¹ CR 2026/27, p. 37, par. 7 (Tams)

⁹² *Sentence arbitrale du 31 juillet 1989 (Guinée-Bissau c. Sénégal)*, arrêt, C.I.J. Recueil 1991, p. 70, par. 49.

⁹³ CDI, Commentaire sur le projet de convention sur la procédure arbitrale adopté par la Commission du droit international à sa cinquième session : document préparé par le Secrétariat, A/CN.4/92, p.109. Note de bas de page omise.

⁹⁴ CR 2026/27, p. 38, par. 10 (Tams).

expressément quels sont les titres qu'ils ont pris en considération, les arbitres précisent qu'ils

« ont recherché et établi jusqu'où s'étendaient les territoires qui appartenaient respectivement aux Pays-Bas Unis et au Royaume d'Espagne, ou étaient susceptibles d'être licitement revendiqués par ceux-ci, au moment de l'acquisition par la Grande-Bretagne de la colonie de la Guyane britannique ».

18. C'est d'ailleurs très clairement ce qu'ils ont fait, ainsi que cela ressort des pièces de procédure⁹⁵ et des débats lors des audiences⁹⁶, et tout particulièrement des questions posées aux parties par les arbitres⁹⁷ en 1898 et 1899.

19. Mais surtout, en l'espèce, comme je l'ai dit lundi, ce moyen est pour le moins artificiel⁹⁸ : le Venezuela reconnaît que le tribunal a fixé la frontière entre la Guyane britannique et lui-même⁹⁹. Ce faisant, il a dès lors déterminé, implicitement, l'extension des deux territoires : « [L]'effet d'une décision judiciaire, qu'elle soit rendue dans un conflit d'attribution territoriale ou dans un conflit de délimitation, est nécessairement d'établir une frontière »¹⁰⁰. Je reconnais que l'inverse ne serait pas une réponse convaincante : si au lieu de se prononcer sur les

⁹⁵ British Guiana Boundary, Case presented on behalf of Her Majesty's Government, 1898, p. 141-164 ; The Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris, 1898, vol. I, p. 35-200 ; British Guiana Boundary, The Counter-case presented on behalf of Her Majesty's Government, p. 28-127 ; The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris, 1898, vol. I.

⁹⁶ Thirty-Sixth Day's Proceedings, August 30th 1899, pp. 2243-2256 ; Forty-Second Day's Proceedings September 7th 1899, pp. 2513-2519 ; Forty-Sixth Day's Proceedings, September 14th 1899, p. 2790.

⁹⁷ Voir CR 2026/25, p. 22-23, par. 32, notes 43-48 (Pellet).

⁹⁸ CR 2026/25, p. 21, par. 27 (Pellet).

⁹⁹ Voir CDI, Commentaire sur le projet de convention sur la procédure arbitrale adopté par la Commission du droit international à sa cinquième session : document préparé par le Secrétariat, A/CN.4/92, p.109.

¹⁰⁰ *Différend frontalier (Burkina Faso/République du Mali)*, arrêt, C.I.J. Recueil 1986, p. 563, par. 17.

frontières, le tribunal s'était borné à indiquer sur quels titres il se fondait, il aurait statué *infra petita* ; mais ce n'est pas le cas, ayant décidé sur les limites respectives des deux territoires, il s'est, du même coup, par implication mais nécessairement, prononcé sur les titres appartenant à chacune des parties.

2. Ultra petita

20. Monsieur le président, le grief de prononcé *ultra petita* a, pour sa part, fondu de moitié entre la duplique et l'audience de mercredi □ c'est dire le sérieux avec lequel il avait été formulé... Disparue, la critique de la sentence pour s'être prononcée sur les droits du Brésil. Dont acte.

21. Demeure cependant l'affirmation selon laquelle « [w]hile the tribunal ignored the first of its two tasks, it decided a further issue □ which was never submitted to it. In the final section of the Award, the tribunal set out a régime for free navigation on two rivers, the rivers Amakuru and Barima. »¹⁰¹

22. Le professeur Tams, qui a porté vaillamment cette affirmation avant-hier, propose une analyse de l'article IV du traité de Washington qu'il veut limiter à une pure disposition concernant le droit applicable □ ce qu'il est en partie mais pas exclusivement. Le texte de l'article IV est projeté intégralement sur vos écrans. Le paragraphe introductif prolonge l'article III en précisant la tâche du tribunal qui consiste à la fois à établir les faits et à appliquer les règles convenues. Celles-ci sont énoncées ensuite en trois alinéas dont le premier est « mixte », si je peux dire : il énonce une règle □ portant sur la prescription □ puis précise la fonction du tribunal. L'alinéa *b*) est essentiellement centré sur le droit applicable tout en laissant une certaine marge d'appréciation aux arbitres. Quant à l'alinéa *c*), j'avais montré longuement lundi qu'il est une règle de fond (« primaire » si l'on veut) et expliqué que je rejoignais entièrement l'interprétation que les représentants du Venezuela lui-même en avaient donné lors de leurs plaidoiries... de 1898¹⁰².

23. Bien que les Parties ne semblent pas avoir expressément mentionné l'aménagement du régime des deux rivières,

¹⁰¹ CR 2026/27, p. 41, par. 17 (Tams).

¹⁰² 102 CR 2026/25, p. 27, par. 47 (Pellet).

l'interprétation fortement argumentée de Benjamin Harrison, ancien président des États-Unis et principal conseil du Venezuela, conduit de façon convaincante à considérer qu'un tel aménagement entre bien dans les prévisions de l'article IV c). Par conséquent, les arbitres n'ont, assurément, commis aucun excès de pouvoir en estimant que « la raison, la justice, les principes de droit international et les considérations d'équité propres à l'affaire » exigeaient de permettre aux « sujets et citoyens » des deux parties de naviguer librement sur ces deux cours d'eau, principales voies d'accès direct à la mer *via* le fleuve Orénoque. A ce que je crois comprendre, ce régime continue à fonctionner de façon satisfaisante jusqu'à ce jour, sans susciter de réclamations de l'une ou l'autre des Parties.

II. Les moyens portant sur l'adoption de la sentence

24. et Messieurs les juges, la sentence de 1899 n'est certes pas motivée, à tout de même une nuance près : les arbitres, unanimes, ont signé un texte indiquant qu'ils ont respecté à la lettre le texte du compromis, qui est repris *verbatim* dans la sentence. De ce fait, ils ont tous les cinq reconnu qu'ils avaient « de façon impartiale et attentive examiné les questions qui leur ont été soumises » et qu'ils

« ont recherché et établi jusqu'où s'étendaient les territoires qui appartenaient respectivement aux Pays-Bas Unis et au Royaume d'Espagne, ou étaient susceptibles d'être licitement revendiqués par ceux-ci au moment de l'acquisition par la Grande-Bretagne de la colonie de la Guyane britannique » (citation de la sentence elle-même).

Cinq signatures □ de juristes parmi les plus célèbres de leur temps, parfaitement conscients de ce qu'ils faisaient □, cinq parjures ? La question est ouverte.

25. Et tous ces juristes éminents, qualifiés et respectés, ont prêté la main à une sentence « discréditée », « invalide », « injuste », « frauduleuse », « profondément révoltante », qualifiée aussi de « farce » (« de farce de mauvais goût »), de « mystification », de « chiffon de papier », de « monstruosité », de « vestige » □ « colonial » et de « l'impérialisme britannique » □ et de « fruit d'une extorsion », consacrant « les intérêts fallacieux de l'Empire

britannique, en connivence avec les États-Unis »... Par elle-même, l'invraisemblance de cette collusion entre les membres du tribunal discrédite quelque peu les indignations complotistes de nos contradicteurs et leurs allégations de dol et d'erreur qu'ils ont d'ailleurs un peu de mal à distinguer des tares dont ils accablent, en amont, le traité de Washington et dont M^e Reichler a fait justice.

26. Il reste que c'est contre Martens lui-même que les conseils du Venezuela décochent leurs flèches les plus acérées. Ainsi, le professeur Tams a dit mercredi s'être appuyé sur des

« [a]ccounts that come from key protagonists □ from the arbitrators and counsel □ their diaries, their letters. And these accounts, of which Venezuela became aware after the publication of the Mallet-Prevost memorandum, converge on the central point: the boundary line described in the Award was put forward by President Martens, without any legal basis. »¹⁰³

27. Ceci appelle au moins deux séries de remarques :

1) Il est totalement faux □ comme Paul Reichler l'a montré en introduisant nos plaidoiries □ que le Venezuela n'a pris conscience de la machination prêtée à Martens qu'une fois publié le mémorandum Mallet-Prevost : les circonstances de l'adoption de la sentence ont été parfaitement connues dès son adoption. Et je remarque en passant que l'article de La Chanonie, présenté comme « un observateur contemporain ... qui avait participé aux débats à Paris », donne de ces circonstances un compte rendu assez proche, malgré des nuances, de celui de Mallet-Prevost. Mais je comprends pourquoi le Venezuela a décidé de conserver la plus grande discrétion à son sujet après l'avoir pourtant introduit au dossier la semaine dernière¹⁰⁴ : par son existence même, il met en danger la fable (ou le conte...) qu'il tente de vous vendre. Seul le professeur Palchetti s'aventure à y faire allusion □ et seulement pour indiquer que

¹⁰³ 103 CR 2026/27, p. 45, par. 31 (Tams).

¹⁰⁴ Voir le courriel n° 166194 de la Cour en date du 1^{er} mai 2026 et ses annexes.

La Chanonie vilipende l'arbitrage de 1899 pour sa contribution à « la spoliation des petits États »¹⁰⁵.

2) S'il est exact que Martens a joué un grand rôle dans l'adoption finale de la sentence, ce faisant, il n'a fait qu'exercer pleinement et en conscience sa fonction de président du tribunal.

28. Dans le détail, on peut avoir des divergences sur la manière dont les choses se sont passées □ peut-être parce que le grand âge brouille les idées (ce qui m'attristerait un peu) mais sans doute également parce que la mémoire des témoins, en particulier lorsqu'ils sont aussi des acteurs des faits de la cause, est sélective. Mais c'est surtout l'interprétation de ces faits, raisonnablement établis en l'espèce, qui divise les Parties.

29. Selon le Venezuela,

« President Martens threatened the British and American arbitrators to accept his line, in separate meetings outside the tribunal's formal deliberations ... because [he] made clear that unless the two groups he approached □ the British and American arbitrators □ came round to his view, he would endorse the respective other side's claims in full »¹⁰⁶.

C'est une façon d'écrire l'histoire □ si l'on accepte l'idée qu'en cherchant à sauver une sentence arbitrale (devant être adoptée à la majorité) au sujet de laquelle deux groupes d'arbitres ont des vues opposées et irréconciliables, le président du tribunal sort de son rôle et « menace » ses collègues...

30. Pour comprendre comment □ et dans quel esprit □ les choses se sont passées, il me semble légitime de lire ce qu'en écrit le principal protagoniste, Martens lui-même. Lors de ma première intervention lundi après-midi, je m'étais permis de vous inviter, Mesdames et Messieurs de la Cour, à lire le passage de son journal que nous avons inclus dans le dossier des juges¹⁰⁷. Visiblement,

¹⁰⁵ CR 2026/27, p. 25, par. 10 (Palchetti).

¹⁰⁶ CR 2026/27, p. 45, par. 31 (Tams).

¹⁰⁷ CR 2026/25, p. 23-24, par. 35. Voir aussi dossier des juges, onglets n^{os} 6.2-6.3.

nos collègues □ et néanmoins amis □ de l'autre côté de la barre, n'ont pas pris cette peine. Le bref extrait projeté à l'écran ne pallie pas cette lacune mais il est tout de même riche d'enseignement :

« When the disputes between the four arbitrators on the general basis of the forthcoming award ended last Friday, I had to deliver my speech. I explained my point of view on all the main issues, denied the horrible right of the discovery and occupation of the Spanish and the Americans, proved that there was no definition of those borders in the Treaty of Versailles and said that the territory between Essequibo and Orinoco can most likely be recognized as a condominium of the Spanish and the Dutch. While presenting my main point of view, I frankly said that I could not acknowledge that the British have the right in respect of Barima Point (B.P.) at the mouth of the Orinoco River. This is what Lord Russell and Collins took note of. »¹⁰⁸

31. Ce n'est, Monsieur le président, qu'une toute petite partie de la relation que fait Martens des conditions d'adoption de la sentence. Elle n'en est pas moins fort parlante :

- d'abord, elle ne laisse aucun doute sur le fait que le président du tribunal s'était, dans un premier temps, fait sa propre opinion sur les questions qui divisaient ses coarbitres;
- elle montre ensuite que cette opinion était fondée sur des éléments exclusivement juridiques concernant le titre originaire et celui résultant de la pratique, avec l'idée □ que l'on peut trouver un peu singulière □ d'un possible « condominium hispano-néerlandais » ainsi que l'absence de droit britannique sur l'embouchure de l'Orénoque ;
- au plan procédural (ou méthodologique), la relation de Martens témoigne du souci de transparence de Martens à l'égard de ses collègues : il expose ses convictions et, comme le montrent ses notes, il le fait après s'être enquis des leurs.

¹⁰⁸ Private Diary Entries of Prof Fyodor Fyodorovich Martens (4 June 1899-3 Oct. 1899). MG, vol. III (annexe 33).

32. Le début de l'extrait de son journal, qui est toujours à l'écran, fait justice aussi de l'affirmation selon laquelle Martens aurait orchestré le résultat de l'arbitrage non pas « in tribunal deliberations, but in a series of meetings, private meetings, insisting that the other arbitrators accept his deal »¹⁰⁹. Il s'agit bien là d'une réunion plénière et qui fait suite à plusieurs autres réunions plénières durant lesquelles les quatre arbitres avaient exprimé des vues inconciliables comme on peut le déduire d'ailleurs très exactement du début de l'extrait projeté : « When the disputes between the four arbitrators on the general basis of the forthcoming award ended last Friday, I had to deliver my speech. »

33. Dans le paragraphe suivant de son journal, qui n'est pas projeté mais que vous pouvez lire dans vos dossiers, Martens écrit :

« That was the end of the Friday session. There was another session on Saturday, but to no avail, and the relationship between the British and American arbitrators became increasingly strained. On Sunday morning there was another session and again in vain. Then I decided to get down to this issue in a diplomatic manner. »

Ceci ne reflète pas l'attitude menaçante d'un président de tribunal soucieux de faire triompher son point de vue préconçu (comme cela arrive pourtant quelquefois) mais bien celle d'un esprit ouvert, soucieux d'arriver à une solution □ de préférence consensuelle. Il en est résulté une série de rencontres entre Martens et les autres membres de son tribunal en tête-à-tête ou avec l'un des deux « groupes » d'arbitres.

34. L'existence du blocage que décrit Martens est confirmée par le juge Brewer, nommé arbitre par le Venezuela. Comme il l'explique dans l'interview qu'il a donnée au *New York Times* deux jours après le prononcé de la sentence □ qui est reproduite à l'onglet n° 6.2 de vos dossiers du premier tour □, les discussions entre les arbitres les avaient conduits à camper sur leurs désaccords, de sorte que s'ils avaient chacun eu à tracer la frontière, toutes

¹⁰⁹ *Ibid.*

auraient été différentes¹¹⁰. La nouvelle « méthode » Brewer a permis de sortir de l'impasse au prix sans doute d'une grande discrétion sur la motivation □ mais les juristes avisés qui constituaient le tribunal savaient que, pour souhaitable qu'elle pût être, la motivation n'était pas - pas encore... - obligatoire.

35. Que le consensus ait pu être atteint par ailleurs grâce à des réunions privées entre les arbitres en vue de discuter de l'affaire n'est pas davantage répréhensible, et ne sert nullement la démonstration d'un grand complot dont Martens aurait été l'instigateur. Me référant à la savoureuse description que donne le président Bedjaoui de « [l]a “fabrication” des arrêts de la Cour internationale de Justice »¹¹¹, je suppose, Mesdames et Messieurs les juges, que cette pratique ne vous est pas complètement étrangère - bien que les circonstances dans lesquelles vous délibérez soient fort différentes de celles d'un tribunal arbitral de cinq membres, constitué il y a près de 130 ans.

36. Une chose, que nos contradicteurs semblent parfois oublier et qui cependant est commune à votre Cour, en vertu de l'article 55 du Statut, et au tribunal constitué en 1897 (en vertu de l'article V du traité de Washington) : la règle de la majorité. Elle impose parfois des sacrifices et des compromis aux juges ou aux arbitres responsables, seuls de nature à permettre l'adoption d'une décision.

37. C'est grâce à l'obstination, toute diplomatique et pédagogique, de Martens (n'était-il pas à la fois professeur et diplomate ?) et à la bonne volonté de ses collègues que la sentence a finalement pu être adoptée, à la satisfaction immédiate (plus ou moins enthousiaste, d'un côté comme de l'autre), satisfaction longtemps maintenue, des deux parties. Elle a, conformément à l'article XIII du traité de Washington, l'autorité de la chose jugée.

38. Nos contradicteurs reprochent à Martens d'avoir tenté avec succès d'imposer un accord à l'ensemble des arbitres. Mais que se serait-il passé s'il n'avait pas agi ainsi ? Les autres arbitres

¹¹⁰ « Judge Brewer's Opinion, Venezuela's Arbitrator Tells How the Verdict Was Reached », *The New York Times*, 5 octobre 1899.

¹¹¹ M. Bedjaoui, « La “fabrication” des arrêts de la Cour internationale de Justice », in *Le droit international au service de la paix, de la justice et du développement – Mélanges Michel Virally*, Pedone, Paris, 1991, not. p. 97.

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étaient irrémédiablement divisés à raison de deux contre deux. Martens aurait pu conserver son opinion indépendante avec laquelle il a très probablement transigé pour obtenir l'unanimité à laquelle il aspirait, sans se rallier à l'un ou l'autre camp. Résultat ? Aucune sentence n'aurait été rendue faute de majorité. Ou bien, il aurait pu se rallier à l'un des deux camps ce qui, comme le concèdent nos adversaires, aurait été pire pour le Venezuela que la sentence rendue. Le fait qu'il ait plutôt choisi de rechercher un compromis acceptable pour les cinq arbitres et de parvenir à une sentence unanime n'est nullement une honte : il est tout à son honneur.

39. Ce satisfecit des parties n'a malheureusement pas duré indéfiniment : le Venezuela a rompu le consensus. Mon collègue et ami Philippe Sands va revenir sur les conditions de cette rupture si vous voulez bien, Monsieur le président, l'appeler à cette barre.

40. Mesdames et Messieurs les juges, je vous remercie très vivement une nouvelle fois pour votre attention patiente et renouvelée.

Le PRÉSIDENT : Je remercie le professeur Pellet. Before I give the floor to the next speaker, the Court will observe a break of 10 minutes. The hearing is suspended.

The Court adjourned from 4.40 p.m. to 4.55 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite Professor Philippe

Sands to the podium. You have the floor, Sir.

Mr SANDS:

**THE MALLET-PREVOST MEMORANDUM,
ARBITRATION AND COLONIALISM**

1. Thank you, Mr President, Members of the Court, I will respond to the arguments made by Venezuela on three related

issues: first, the significance of the Mallet-Prevost memorandum, second, the propriety of the arbitral process and the 1899 Award, and third, the claim that the Award, the 1905 Boundary Agreement and subsequent practice reflect a legacy of colonial wrongdoing.

2. I begin with the significance of the Mallet-Prevost memorandum. On Wednesday counsel for Venezuela made various arguments about that document. Professor Remiro Brotóns said its publication “facilit[ait]” the claim that 1899 Award was invalid, from plausibility to fact, he said¹¹². For Professor Tams, only “after the publication of the Mallet-Prevost memorandum” did Venezuela become aware that “the boundary line described in the Award was put forward by President Martens, without any legal basis”¹¹³. For Professor Thouvenin, the memorandum quite simply “changed everything”¹¹⁴, offering proof that the Award was produced by “extorsion”. It is the “missing link”, he said, which shows the compromise had nothing to do with a legal decision and was “the result of blackmail”¹¹⁵.

3. Fighting words! For these counsel, the Mallet-Prevost memorandum has a clear purpose: it offers a rationale — the rationale — to explain why Venezuela accepted the Award for 63 years, never challenges its validity and then, suddenly and abruptly, changes its position in 1962. The argument is tosh — it is a fiction — and it suffers from fatal problems.

4. First, it does not and cannot explain the silence from 1949 to 1962 when Venezuela first repudiated the Award. Thirteen years of silence and nothingness. That is, by any reasonable standard, a very significant period.

5. Second, counsel’s plea is factually inaccurate: Venezuela already had all the information it now says was newly available in 1949, with the publication of the Award and the press reports and interviews that followed. Professor Oral will add to what I have to say.

¹¹² CR 2026/26, p. 63, para. 13 (Brotóns).

¹¹³ CR 2026/27, p. 45, para. 31 (Tams).

¹¹⁴ CR 2026/27, p. 62, para. 53 (Thouvenin).

¹¹⁵ CR 2026/27, p. 63, para. 55 (Thouvenin).

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6. The Award was handed down six days after the hearings ended (incidentally, in the early phase of the world of arbitration this is not an unusually short period: I refer you to the *Pious Fund of the Californias* case (*United States v. Mexico*): 13 days¹¹⁶; the *River Saint Croix* case (*United*

Kingdom v. United States): 10 days¹¹⁷; and the *Halifax Fisheries Commission* case (*United States v. United Kingdom*): 2 days¹¹⁸. With the Award of 3 October 1899, Venezuela knew then that it did not contain any reasoning, that it instituted a navigational régime on two rivers and that it delimited the Parties' respective territories without stating their titles, two more Tamsian sins. Mallet-Prevost's memorandum offered nothing new in this regard.

7. Within two days of the Award being handed down, it was the subject of active discussion in the press. On 5 October 1899 the *New York Times* ran an article entitled "Judge Brewer's Opinion . . . Final Award a Compromise". He is quoted as follows:

¹¹⁶ Hearings concluded on 1 October 1902: see Foreign Relations of the United States, 1902, Appendix II, United States vs. Mexico, *In the matter of the case of the Pious Fund of the Californias*, Document 104. Available at <https://history.state.gov/historicaldocuments/frus1902app2/d104>. Award issued on 14 October 1902: see Foreign Relations of the United States, 1902, Appendix II, United States vs. Mexico, *In the matter of the case of the Pious Fund of the Californias*, Document 116. Available at <https://history.state.gov/historicaldocuments/frus1902app2/d116>.

¹¹⁷ "[T]he three commissioners heard final arguments of the two agents until September 22, 1798, when they adjourned until October 15, 1798, at which time they received copies of the complete general map of the survey. From that date they met daily until the 25th of the month, when they completed their task and signed a unanimous award.": see Richard B. Lillich, "The Jay Treaty Commissions" (1963), *St. John's Law Review*, Vol. 37 (2), p. 267, available at <https://scholarship.law.stjohns.edu/lawreview/vol37/iss2/2/>.

¹¹⁸ Submissions in these proceedings ended on 21 November 1877 and the award was dated 23 November 1877: see Record of the proceedings of the Halifax Fisheries Commission, p. 440, available at <https://babel.hathitrust.org/cgi/pt?id=aeu.ark:/13960/t5cc1c30n&seq=447>.

“Until the last moment I believed a decision would be quite impossible, and it was by the greatest conciliation and mutual concessions that a compromise was arrived at. If any of us had been asked to give an award, each would have given one differing in extent and character. The consequence of this was that we had to adjust our differing views, and finally to draw a line running between what each thought [was] right.”¹¹⁹ Please read the article in full, it is in your judges’ folder at tab 6.3. Judge Brewer was explicitly asked whether political considerations influenced the Award, and he appeared to accept that they did. He made it clear that “each judge conceded something in turn”.

8. Similarly, a day earlier, on 4 October 1899, *The Times* of London ran an even lengthier article, and that included an interview with General Harrison and Mr Mallet-Prevost. In their interview, they emphasized the positive aspects of the Award: that it gave Venezuela “the entire control of the Orinoco river” and “another long tract to the east of the Schomburgk line, some 3,000 square miles in extent”; and that various other British claims were rejected. Venezuela’s two counsel noted President Martens’ closing address, in the interview they gave to the paper, in which he commented on “the unanimity of the present judgment” as “proof of the success of the arbitration”. The article summarized the views of the two counsel, Harrison and Mallet-Prevost: “It did not, however, require much intelligence to penetrate behind [Martens’] superficial statement and see that the line drawn was a line of compromise and not a line of right”. And they go on: “There was nothing in the history of the controversy nor, in fact, in the legal principle involved which could adequately explain why the line should be drawn as it was now found.” In other words, the arbitration did not “result in an admission of legal rights”; it was based on “compromises really diplomatic in their character”. They also understood — and publicly expressed the day after the Award — the pressures on the

¹¹⁹ “Brewer’s Opinion”, *The New York Times* (5 Oct. 1899). VCM, Vol. III, Annex 171.

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arbitrators: “if the arbitrators were unanimous[,] it must be because their failure to agree would have confirmed Great Britain in the possession of even more territory”¹²⁰.

9. These two newspaper articles were published within two days of the Award. It was public. It was available. It was plainly known to Venezuela¹²¹. No doubt Mr Mallet-Prevost and President Harrison will have said even more privately to their client. Did this information cause Venezuela to object to the Award? It did not. It negotiated and signed a treaty in 1905, to implement the Award. For the next 57 years, it faithfully gave effect to that Treaty (and the Award it implemented). Not a squeak of opposition, no claim of invalidity or taint for 62 years in the face of all that information.

10. In short, Venezuela’s actions were taken in the full knowledge of the following: (i) the Award was handed down six days after the hearings closed; (ii) it contained no statement of reasoning; (iii) it was based on “diplomatic” “compromises”; (iv) it was not based on the application as such of “legal principles” or “legal rights”; and (v) that the arbitrators were pressured into

¹²⁰ “Declarations from Mallet-Prevost and General Harrison, Venezuelan’s Agents before the 1899 Tribunal”, *The Times* (4 Oct. 1899), p. 6. Available at <https://www.thetimes.com/tto/archive/page/1899-10-04/6.html#start%3D189910-03%26end%3D1899-10-04%26terms%3Dmallet%26back%3D/tto/archive/find/mallet/w:1899-10-03~1899-1004/1%26prev%3D/tto/archive/frame/goto/mallet/w:1899-10-03~1899-10-04/1>.

¹²¹ See Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts (1967), p. 21, para. 28: “In the ‘Confidential Instructions’ issued to the leader of the Venezuelan Boundary Commission, Sr. Felipe Aguerrevere on October 22, 1900, the Chancellery, after analysing the nature of the Award which it qualified as ‘more the result of a compromise than of an essentially juridical examination’, and with respect to the frontier imposed by the Arbitrators said: ‘It is a line de facto, determined without any support or reason neither historical, geographical or political.’ Consequently, and because the ‘Award’ had been overtly unjust towards Venezuela, the Venezuelan Commissioners were instructed to refer everything ‘to the most severe procedure’.” CMV, Vol. III, Annex 150.

compromises: they had the opportunity to express different views, but they elected not to do so on the basis that unanimity would avoid a worse situation.

11. Is there evidence here of “*extorsion*”, or “blackmail”, as Professor Thouvenin would have you believe? No, there is not. He uses very strong words. The Oxford English Dictionary defines extortion as “the action or practice of extorting or wresting anything, *esp.* money, from a person by force or by undue exercise of authority or power; an act of illegal exaction”. Is there evidence that Dr Martens threatened force or engaged in any undue exercise of authority? There is none — not a shred of evidence. Even assuming the Mallet-Prevost memorandum to be accurate — and we have no idea whether it is — it does no more than describe a tribunal president’s efforts to gain consensus, by warning that a majority award is likely to be less attractive, in one way or another. This is a constant feature of arbitral deliberation, still today. I have experienced it, and many of you in this room will have experienced it. The striving for consensus is an act of decency and wisdom. That Mr Martens achieved it is to his credit, not to his detriment. As *The Times* reported in October 1899: “if the arbitrators were unanimous[,] it must be because their failure to agree would have confirmed Great Britain in the possession of even more territory”¹²². And that was what Mr Martens wished to avoid.

12. Now, in a very short period after the Award, everyone knew what had passed. I would invite you to imagine that you are attending the meeting of the American Society of International Law in Washington D.C. to hear the address by John W. Foster, former President Harrison’s Secretary of State. His address was on the subject of British and American arbitral practice. This is 1911. He explicitly addresses the 1899 Award and this is what he has to say about it:

¹²² “Declarations from Mallet-Prevost and General Harrison, Venezuelan’s Agents before the 1899 Tribunal”, *The Times* (4 Oct. 1899), p. 6, available at <https://www.thetimes.com/tto/archive/page/1899-10-04/6.html#start%3D189910-03%26end%3D1899-10-04%26terms%3Dmallet%26back%3D/tto/archive/find/mallet/w:1899-10-03~1899-1004/1%26prev%3D/tto/archive/frame/goto/mallet/w:1899-10-03~1899-10-04/1>.

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“The British and American members of the Court held to the positions taken by their respective governments, and the Russian umpire sought to find a middle ground which would be the least distasteful to his colleagues. He was not a lawyer by profession, but had received his training in the Russian foreign office . . . and his decision was one of expediency and compromise. While it was largely in favor of the British contention, it was quietly understood at the time that it would have been even more in that direction but for the firm attitude of the American members.”¹²³

13. Mr Foster talked in that address about other arbitral awards. What was his conclusion about the totality of international practice at that period in time? “I would not have it understood that I condemn the general results of these arbitrations . . . they have been beneficial . . . But the defects of the system are so serious that they call for the reform to be found in a permanent international tribunal”¹²⁴. That is one of the reasons we are here today, in this Great Hall of Justice at the International Court of Justice.

14. That was 1911. Twenty years later, Professor Hersch Lauterpacht wrote of the 1899 Award in his seminal 1933 book, “The Function of Law in the International Community”. You will find extracts of it in the folder at tab 4.1. Did Professor Lauterpacht criticize the Award, as counsel have done? He did not. To the contrary, he described the proceedings as “a lengthy legal contest on such questions as acquisition of title by occupation, discovery, and prescription, and on such procedural technicalities as the function of estoppel in relations between States”¹²⁵. He understood

¹²³ Proceedings of the American Society of International Law at Its Annual Meeting (1907-1917), April 23 and 24, 1909, Vol. 3, pp. 25-60, Address of Mr John W. Foster, of Washington, D.C., p. 28. Available at: https://www.jstor.org/stable/pdf/25656371.pdf?refreqid=fastly-default%3Aa41b0b1f3cb6fa66e7f244ebb079518d&ab_segments=&initiator=&acceptTC=1.

¹²⁴ *Ibid.* p. 34.

¹²⁵ H. Lauterpacht, “The Function of Law in the International Community”, *British Contributions to International Law* (1933), p. 149, available at

the Arbitral Award to be exactly what it was: a creature of its early times, one that sought to resolve a “political dispute”¹²⁶, those are his words, based on an 1897 Treaty that conferred on the tribunal what Hersch Lauterpacht characterized as “large discretionary powers”¹²⁷.

15. Everybody knew what had passed with the Award and the outcome, in 1899, 1911, 1933. And Venezuela itself confirmed this in 1962, at the very moment that it adopted its change of position. When Venezuela’s Foreign Minister addressed the United Nations General Assembly on 1 October of that year, he invoked the Mallet-Prevost memorandum, and said that it “coincides with the view widely held from the very moment of the court’s award, namely that the award was the outcome of a political compromise rather than the application of the rules of law to which the parties had agreed”¹²⁸.

16. Did Venezuela object in 1899? No, it did not. Did it object in 1905? No. Or in 1949, when the memorandum became available? No. So, with great respect, it is simply not open to Venezuela to argue today, or as it did in 1962, that Mallet-Prevost somehow gave them something new. It did not. The only thing that was new in that document — magical realism — was the claim of an Anglo-Russian deal prompting the outcome. And, of course there is no support whatsoever for that. And, no doubt, as you will have heard, while you were listening carefully on Wednesday, Venezuela now places no reliance at all on that outlandish claim. It passed in complete silence on the point, which must be taken to be abandoned. I refer you to our written pleadings, our Memorial on the merits and in our Reply for the reasons that it could not be true.

<https://ia801500.us.archive.org/30/items/in.ernet.dli.2015.459090/2015.459090.TheFunction-Of-Law-In-The-International-Community.pdf>.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.* p. 329.

¹²⁸ *Speech* by Dr Marcos Falcón Briceño, *reprinted* in United Nations General Assembly, 17th Session, *Agenda item 9*, UN doc. A/PV.1138 (1 Oct. 1962), p. 245, para. 68, available at <https://digitallibrary.un.org/record/732913?ln=en&v=pdf#filesn>.

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17. So what is really going on here? What are we actually addressing in this courtroom? We submit that the real clue is to be found in the Foreign Minister's speech to the United Nations General Assembly on 1 October 1962. Mr Briceño invoked Venezuela's supposed "inflexible anti-colonialist position" and he segued from that directly via a fig leaf to the "Question of boundaries between Venezuela and the territory of British Guiana"¹²⁹.

18. In other words, as Mr Reichler hinted, British Guiana's desire for independence offered a wonderful opportunity to re-open, for the first time, after 63 years, the path to resolve a lingering unhappiness about the substantive outcome of the Award and the 1905 Treaty. Thirteen years after it is published, the Mallet-Prevost memorandum is instrumentalized, it is weaponized, it is used for another purpose: to re-open an issue that has long been settled. And that is why counsel for Venezuela have to argue that the memorandum gave them something new, even though it did nothing of the sort: the Mallet-Prevost memorandum is used in the service of an "anti-colonialist" claim, to attack what counsel called the "revolting" 1899 Award, on the grounds that it set in stone a colonial legacy¹³⁰.

19. Now this became clear to me, a sort of dropping of the penny, as I listened to my good friend, my brother, Professor Mbengue, on Wednesday morning, as he waxed lyrically, and passionately, about the evils of colonialism. To be fair, the seeds for his argument were sown in Venezuela's Counter-Memorial, and in its Rejoinder.

20. This case, he told you, is an "illustration of the unfortunate legacies of colonialism"¹³¹. And he invited you to draw inspiration from the approach taken by this Court in the *Chagos* Advisory Opinion, which he initially described as "a direct precedent"¹³², but then there was a modest retreat, as he recognized, as he is bound to

¹²⁹ *Ibid.*, pp. 243 to 244, paras. 62 to 63.

¹³⁰ CR 2026/26, p. 40, para. 107 (Mbengue).

¹³¹ *Ibid.* p. 30. para. 59.

¹³² *Ibid.* p. 39. para. 103.

do, that “it might be said that the 1899 Award is different”¹³³. It might indeed be said that it is different, and I am going to tell you that it is different: *Chagos* offers no assistance whatsoever to Venezuela. It is totally different: Mauritius was not the recipient of an arbitral award, Mauritius did not negotiate a treaty with the United Kingdom recognizing Chagos as part of the United Kingdom, and Mauritius did not wait 63 years to assert a claimed right.

21. Now, Professor Mbengue knows that I am not the kind of person who is going to stand before this Court and defend acts of great colonial wrongdoing. He also knows that he and I are both very familiar with the *Chagos* matter - we both argued it - and he knows, as I know, that it is a totally different story. The *Chagos* Advisory Opinion is premised on the Court’s recognition of a fundamental principle: when a colony achieves independence, its territorial boundaries as an independent State will be the same as those of the former colony, unless the population of that territory has freely given its consent for those boundaries to be changed. And in *Chagos*, the Court, and two distinguished dissenters in another arbitral proceeding, found that the population of Mauritius had not freely consented to the excision of the Chagos Archipelago.

22. That principle, relied on by the Court in *Chagos*, is based on United Nations General Assembly resolution 1514 of 1960, which you know well. Paragraph 6 of that resolution prohibits “the partial or total disruption of the national unity and the territorial integrity of a country”¹³⁴. The resolution was adopted in December 1960. Venezuela voted in support of it. Did Venezuela, in exercising that vote, articulate a reservation in relation to the territory of British Guiana, or its own territory, at that session of the General Assembly in 1960? No, it did not¹³⁵. That is because that was two

¹³³ *Ibid.* p. 40. para. 104.

¹³⁴ Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>.

¹³⁵ See General Assembly Fifteenth Session, 947th Plenary Meeting, Agenda item 81: “Declaration on the granting of independence to colonial countries and peoples” (14 Dec. 1960). Available at: https://legal.un.org/avl/pdf/ha/dicc/A_PV_947.pdf.

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years before it concocted the idea of opening the door to an argument that the 1899 Award was invalid. At the moment it voted for resolution 1514, it still accepted its boundaries as they had existed for more than 60 years, as established by the Arbitral Award, and the 1905 Treaty.

23. It only changed its position two years later after that resolution was adopted. Coincidentally, or maybe not, at the very moment that the independence of Guyana suddenly hove into view. And, as Mr Reichler made clear, in the face of a real fear that Venezuela might act to interfere with the national unity or territorial integrity of a newly independent Guyana, the United Kingdom insisted on what became the 1966 Geneva Agreement being negotiated and adopted. It committed Venezuela to a process to resolve the controversy by peaceful means on the validity of the 1899 Award, in a manner that in no way undermined the totality of Guyana's territorial integrity. 24. Now, Professor Mbengue better than anyone will understand the challenges his argument on Wednesday will pose for this Court. He knows far better than I all about the Organization of African Unity's famous 1964 Cairo Declaration, when the Heads of State and government came together — of African countries — to declare that all Member States had pledged “to respect the borders existing on their achievement of national independence”¹³⁶. And he will be aware too of the powerful statement made by the Permanent Representative of Kenya to the United Nations, in February 2022, on the cusp of Russia's invasion of Ukraine: “Kenya, and almost every African country, was birthed by the ending of empire”. Dr Kimani told the Security Council, “Our borders were not of our own drawing. They were drawn in the distant colonial metropolises of London, Paris, and Lisbon with no regard for the ancient nations that they cleaved apart”. But, he continued, “we agreed that we would settle for the borders that we inherited”, not because these borders were satisfactory “but because we wanted something greater forged in peace”. “We must complete our recovery from the

¹³⁶ Available at: <https://www.peaceau.org/uploads/ahg-res-16-i-en.pdf>.

embers of dead empires in a way that does not plunge us back into new forms of domination and oppression.”¹³⁷

25. We say, those words are especially pertinent now and to these proceedings because if this Court is to accede to Professor Mbengue’s invitation, and find invalid the 1899 Arbitral Award, and presumably also the 1905 Treaty, you would rekindle the “embers of dead empires”. You would plunge Guyana into a “new form of domination and oppression” in relations with its much larger neighbour. And you would send a signal to the world that the passage of six decades is no bar to setting aside an arbitral award or a boundary treaty; you would rekindle an age of instability and uncertainty, one that would run directly contrary to the wisdom of Africa, one that would threaten to open the gates of challenge to any and every colonial era arbitration award or boundary settlement. Is that really what Professor Mbengue is asking you to do? Is that really what this Court is being asked to do, by Venezuela?

26. Mr President, it was, indeed, uncomfortable — understatement — for Guyana to hear it suggested that, as a State, it is an inheritor of an act of British colonial wrongdoing, that it seeks to defend a “revolting” colonial legacy. These are really unfortunate suggestions. Guyana emerged into independence with a strong sense of identity, and that was formed in large part by a sense of its territorial identity. Ever since it came into independence, it has existed under an existential threat of dismemberment. In this way, it is no different from so many African countries, or central and eastern European countries, or other countries of Latin America, which have emerged, in their modern form, out of the legacies of colonialism. That legacy may indeed be a scourge, but the greater scourge will be to open the gates to the setting aside of an Award and a Treaty that are more than a century old, and that is what Venezuela is asking you to do. That is what we feel sure you must resist.

¹³⁷ Statement by Amb. Martin Kimani, UN Security Council Urgent Meeting on the Situation in Ukraine (21 Feb. 2022), available at [kenya_statement_during_urgent_meeting_on_on_ukraine_21_february_2022_at_2100.pdf](#).

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27. Mr President, Members of the Court, that concludes my submissions. I end, as I always do, with an expression of thanks to my colleagues, Mr Edward Craven and Ms Lucy Jones, for their assistance in preparing my words over this week. But if I may, I would also like to just momentarily express my respect to Sir Shridath Ramphal and Ms Liz Harper, who guided us over the years of this case. For many of us, Sir Shridath was truly a mentor, and not long before he left us, he sent me a postcard of a painting that he told me he loved, by the renowned Guyanese and British artist, Sir Frank Bowling. It is today at the Tate Gallery, in London. *Who's Afraid of Barney Newman* was painted in 1968, just two years after Guyana achieved independence.

28. If you look carefully, you will see in this painting the outlines of two continents — South America and Africa — slipped into the vertical blocks of green, yellow and red, references to Guyana and various African flags and adornments worn by Jamaican Rastafarians. When Bowling was born in Barima, in 1934, Venezuela accepted that this small town was in Guyana and that he was Guyanese. But today it does not. So, in this way, it could be said this painting is emblematic of many of the issues that have been heard in this Great Hall of Justice — matters of history, of connections, of the need for things to be whole, and of the power and the finality of law. And that is why Sonny sent me the postcard — the painting is a whole and a whole, we trust, it must remain.

29. I thank you, Mr President, for your attention, and I invite you to call Professor Nilufer Oral to the podium.

The PRESIDENT: I thank Professor Sands. I now give the floor to Professor Nilufer Oral.

You have the floor, Madam.

Ms ORAL:

**BACK TO REALITY, BACK TO THE FACTS:
VENEZUELA'S POST-AWARD CONDUCT**

1. Mr President, distinguished Members of the Court, it is my great pleasure to appear before you again. Venezuela's counsel have relied extensively on vituperative statements and a touch of demagoguery — making every effort to avoid the facts. Today, I will bring us back to the reality of the facts.

2. Now my distinguished colleagues today have just clearly demonstrated, based on facts and law, that the 1899 Award was and is a valid award. However, *arguendo* — or, in plain English, for the sake of argument — let us say Venezuela did have grounds to challenge the validity of the Award. Venezuela would still face a formidable obstacle — its own conduct for more than half a century. In an attempt to overcome this major obstacle, as Professor Sands has just presented, Venezuela relies heavily on the improbable excuse that it was *not aware* of any of the alleged defects of the 1899 Award until the publication of the 1949 Mallet-Prevost memorandum, 50 years after the Award was issued. For 50 years, they said they had no inkling that any grounds existed to challenge the validity of the Award. Really?

3. In 1899, within days after receiving the Award — and at all times thereafter — Venezuela was well aware of all the circumstances underlying the Award and its purported defects. Every one of the defects alleged by Venezuela in these proceedings — every single one — was known to Venezuela soon after the Award was issued, if not immediately upon its issuance.

4. Now, Mr President, I know we are running out of time, so with your permission, and if the interpreters could please turn to paragraph 8.

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5. Now, from what my learned colleagues have presented today, the following conclusions are inevitable. One: Venezuela was fully aware in 1899, or at latest by 1900, of each and every ground it now asserts for invalidating the Award. Two: there is no evidence that Venezuela faced any pressure whatsoever, let alone coercion, to refrain from asserting a challenge, between 1899 and 1962. Three: under the applicable law, Venezuela acquiesced in the Award and lost the right to challenge it long before it first did so in 1962. Venezuela has simply not been able to refute this factual reality. The real “farce” □ to use Venezuela’s counsel’s word □ is that evidence of supposed defects in the Award came into Venezuela’s possession, “only in the second half of the twentieth century.”¹³⁸

6. On Monday, we presented an abundance of facts and supporting law, demonstrating the consistent, express and complicit conduct of Venezuela accepting and strictly implementing the boundary as decided by the 1899 Award and demarcated by the 1905 Boundary Agreement.

7. We showed some 16 maps dating from 1905 until 1962 consistently reflecting the 1899 Award and the 1905 Agreement *to the letter*! No indications of any protest to the boundary even after the publication of the 1949 Mallet-Prevost memorandum. There is nothing from Venezuela to refute any of this. This is why the only explanation that Venezuela can offer to counter, what they know to be unassailable evidence against them, is their lack of “awareness” until the publication of the 1949 Mallet-Prevost memorandum¹³⁹. The reality simply does not support Venezuela’s claims of ignorance. Professor Sands has just skilfully deconstructed this argument based on the Mallet-Prevost memo.

8. However, there is one legal point related to Venezuela’s reliance on the Mallet-Prevost memorandum. If we accept that the events that took place in the Mallet-Prevost memorandum are true, this means Mallet-Prevost himself, after his meeting with Justice Brewer, had first-hand knowledge of the compromise taking place, and together with Venezuela’s lead counsel, Mr Harrison, agreed to

¹³⁸ CR 2026/27, p. 19, para. 39, and p. 22, para. 53 (Azaria).

¹³⁹ CR 2026/27, p. 45, para. 31 (Tams).

the deal offered. In other words, Venezuelan counsel were instrumental to the political compromise □ as according to the memo, Justice Brewer had asked for their approval. How can Venezuela now claim error when its very own counsel participated in the so-called compromise that resulted in the boundary line □ which they allegedly told Justice Brewer they would accept!

9. This Court said in the *Temple of Preah Vihear* case:

“It is an established rule of law that the plea of error cannot be allowed as an element vitiating consent if the party advancing it *contributed by its own conduct* to the error, or could have avoided it, *or if the circumstances were such as to put that party on notice* of a possible error.”¹⁴⁰

10. The most telling proof that Venezuela was well aware of *any possible defects* in the Award and contemplating challenging the Award is found in the 4 May 1900 report by Venezuelan jurist and former foreign minister, Dr Rafael Seijas. The reality is that there were no grounds to challenge the Award. In this report, he advised Venezuela on the following key issues:

11. First, on the lack of reason by the tribunal in the Award, he wrote that the 1897 Treaty “did not stipulate any requirement to give reasons for its [the tribunal’s] decision”, and therefore “does not permit any complaint on this score”¹⁴¹. Plainly, Venezuela knew in 1899, at the moment of issue, that the Award did not include a statement of reasons and, as of 1900, it did not consider this a valid ground for challenging the Award. No one defrauded, no one coerced it.

12. On the question of the arbitrators, Dr Seijas also negated this as a reason to challenge the Award highlighting that Venezuela had participated in the selection of the arbitrators and could be challenged to have “*uttered no word in opposition*”¹⁴².

¹⁴⁰ *Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 26 (emphasis added).

¹⁴¹ *Report of Counsellor Dr Rafael Seijas (4 May 1900)*, p. 1. MMG, Vol IV, Annex 66.

¹⁴² *Ibid.*, p. 1. MMG, Vol IV, Annex 66 (emphasis added).

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13. According to the Seijas report, when Justice Brewer was asked “if, in his judgment, Venezuela had a title to more than adjudged to it”:

“[H]e hesitated, shrugged his shoulders and said it was better to say nothing on this point and ended by observing that whoever (sic? ‘whatever’) the two parties thought of the award, Venezuela would receive Punta Barima which gives her full control of the hinterland, while England is confirmed in the possession of a territory in the development of which it has disbursed such money and effort; but the main advantage is that the two nations can at last cultivate peacefully, side by side, the extensive territories which, because of previous antagonisms, have remained unproductive.”¹⁴³

14. After a detailed discussion on the issue of the freedom of navigation □ Seijas concludes his report with the following words: “Despite the foregoing exposition, I consider that it would not be expedient to reopen the case and appoint other arbitrators, or to extend the jurisdiction of those who have served as such, since their mandate ended with the pronouncement of the award.”¹⁴⁴

15. What more compelling evidence can we show than the legal advice provided by Venezuela’s own expert on international law, Dr Seijas, a respected jurist and former foreign minister, who in 1900 provided his legal views on all the possible reasons, now claimed by Venezuela to challenge the Award, but Venezuela took no action before 1962. In its own words, Venezuela “cannot have its cake and eat it too”¹⁴⁵. It cannot selectively use the Seijas report as evidence of so-called “structural coercion”¹⁴⁶ □ which frankly is a stretched interpretation of his words □ and also conveniently omit the parts of his report that show Venezuela was looking at grounds to challenge the legality of the Award and found none.

¹⁴³ *Ibid.*, pp. 3-4 (emphasis added), MMG, Vol IV, Annex 66.

¹⁴⁴ *Ibid.*, p. 5. MMG, Vol IV, Annex 66.

¹⁴⁵ CR 2026/26, p. 42, para. 8, and p. 60, para. 118 (Zimmermann).

¹⁴⁶ CR 2026/27, p. 12 (Azaria).

16. This brings me to my second point concerning the so-called “structural coercion” that Venezuela now claims for the first time, after some 120+ years, that it was because of fear from the powerful naval forces of Great Britain that Venezuela, for five years, engaged in the demarcation of the 825 km boundary¹⁴⁷.

17. There is absolutely no evidence before the Court that Great Britain in 1900 (before the blockade Venezuela relies on to claim it was “structurally coerced”) threatened any military action against Venezuela after the 1899 Award to force it to engage in the demarcation process.

18. *Au contraire*, the evidence shows that Great Britain remained loyal to the 1899 boundary and never once attempted to cross it or expand it. And never once threatened to do so. The Award accomplished Venezuela’s objective in seeking arbitration. It halted □ permanently □ the westward advance of British settlement.

19. The evidence we showed on Monday, from the vigilant and dedicated work of Chief Commissioner Dr Tirado, and the pride he expressed in his work¹⁴⁸, and the insistence of Venezuela to abide strictly to the 1899 Award *to the letter*¹⁴⁹ □ completely refute any claim that Venezuela now makes some 120+ years later of being “forced against its will” to demarcate the boundary. Words by overzealous counsel alone cannot compensate for objective and established facts □ for credible and contemporaneous evidence.

20. I will now proceed to the legal issues.

21. Venezuela’s post-Award conduct goes beyond mere silence, but as we have shown with ample evidence it includes express words amounting to acceptance, recognition and satisfaction with having received what at the time in 1899 was what Venezuela most desired - the mouth of the Orinoco River. These are not my sentiments but the very words from Venezuela’s counsel and its officials. The Foreign Minister and the President expressed “satisfaction”. This is in black and white. And it is contemporaneous. To be sure, Venezuela was disappointed that it

¹⁴⁷ CR 2026/27, p. 21, para. 49 (Azaria).

¹⁴⁸ CR 2026/25, p. 34, paras. 18-19 (Oral).

¹⁴⁹ CR 2026/25, p. 35, paras. 22-25 (Oral).

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did not get more territory, as you were told on Wednesday, but also by colleagues on Monday. But it cannot be the case that a party's disappointment with the substance of an award or a judgment of the Court constitutes grounds for its invalidation.

22. Venezuela's attempt to distinguish the *King of Spain* case also fails on this point. Like the President of Nicaragua, the President of Venezuela Mr Ignacio Andrade also publicly expressed "satisfaction" with the 1899 Award just one week later: and I repeat, "the award was a source of satisfaction for the country, as international justice had returned a part of its territory that had been usurped and vindicated its right"¹⁵⁰.

23. There is a reason for this satisfaction: in the words of Venezuela's counsel on the importance of the mouth of the Orinoco River, "[n]o portion of the entire territory possessed more strategic value than this, both from a commercial and a military standpoint"¹⁵¹.

24. But the *King of Spain* case was not the only judgment of this Court we referred to where the conduct of the State was decisive¹⁵². We discussed the *Temple of Preah Vihear* case¹⁵³, to which Venezuela did not respond. In that case, the absolute key factor was the conduct of Siam and later Thailand on the use of maps. We presented 16 official maps between the dates of 1905 and 1962 all showing the very same boundary - the one determined by the Arbitral Award in 1899 and demarcated by Great Britain and Venezuela in 1905. There is no response from Venezuela on this - not one.

25. I take the opportunity and with the Court's indulgence to quote another very important part of the *Temple of Preah Vihear*

¹⁵⁰ « Nouvelles de l'Étranger : Venezuela », *Le Temps* (11 Oct. 1899) quoting Venezuelan President Ignacio Andrade. See MMG, para. 4.7.

¹⁵¹ "Declarations from Mallet-Prevost and General Harrison, Venezuelan's Agents before the 1899 Tribunal", *The Times* (4 Oct. 1899). MMG, para. 4.8.

¹⁵² CR 2026/25, pp. 41-43, paras. 50-57 (Oral); *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, *Judgment*, *I.C.J. Reports* 1960, p. 192.

¹⁵³ CR 2026/25, pp. 40-41, paras. 47-48 (Oral).

case with significance for our case at least during the 60-plus years between 1899 and 1962 before Venezuela engaged in aggressive conduct against Guyana threatening the stability of the boundary it had respected beforehand:

“Even if there were any doubt as to Siam’s acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand’s acceptance of the map . . . It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party.”¹⁵⁴

26. The Court’s words have much bearing today on the current case.

27. Venezuela also relies on the *Costa Rica and Panama* case in an attempt to counter 60-plus years of post-Award conduct during which Venezuela not simply recognized but actively implemented the boundary until 1962¹⁵⁵. The arbitrator, in that case, did not take into account post-Award conduct - it was not at issue! The case is irrelevant - whereas the two cases we have cited: the *King of Spain* case and the *Temple of Preah Vihear* case turned expressly on the conduct of the parties.

28. As for the *DRC v. Uganda* case. Frankly, counsel for Venezuela omitted an important part of the Court’s decision. The Court observed: “that waivers or renunciations of claims or rights must either be *express or unequivocally implied* from the conduct of the State”¹⁵⁶. Uganda was simply unable to present evidence of

¹⁵⁴ *Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 32.

¹⁵⁵ CR 2026/27, pp. 55-56, paras. 24-26 (Thouvenin).

¹⁵⁶ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 266, para. 293 (emphasis added).

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the conduct as expressed in the Court's views. I am going to continue.

29. By contrast, Guyana has presented a mountain of evidence: 60-plus years of unequivocal conduct by Venezuela accepting and implementing the Award and the 1905 Agreement while fully aware of any possible challenges it could have raised at the time □ as is made clear in the detailed report dated 4 May 1900 by Dr Seijas.

30. Professor Thouvenin also attempted to distinguish the *King of Spain* case from the present case on rather weak reasons¹⁵⁷. One being that Nicaragua did not assert lack of awareness! But this is not true. The President of Nicaragua, in dispatching his telegram of 25 December 1906, specifically gave the reason that “*he was not aware of the actual terms of the Award*”¹⁵⁸.

31. Mr President, I come now to my conclusion. We have presented the facts and the law as they are, no more and no less. The reality, as we have highlighted Monday and reinforced today, is that Venezuela had all the information in plain sight 127 years ago and chose not to challenge the Award. It is a complete fiction that Venezuela was not able to challenge the award until after the 1949 Mallet-Prevost memorandum was published. Venezuela's post-Award conduct was not simply passive silence but one that proactively implemented and complied with the Award and the Agreement. The narrative of “structural coercion” to excuse their conduct, which appeared for the first time in their Counter-Memorial dated 8 April 2025¹⁵⁹, is simply not tenable, and certainly cannot be the basis for depriving Guyana of more than 70 per cent of territory over which it has lawfully exercised sovereignty as an independent State since 1966. I thank the Court for its kind attention and ask that Guyana's Attorney General and Minister of Legal

¹⁵⁷ CR 2026/27, pp. 58-61, paras. 35-48 (Thouvenin).

¹⁵⁸ *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Judgment, I.C.J. Reports 1960, p. 213 (emphasis added).

¹⁵⁹ CMV, para. 7.2.

Affairs the Honourable Mohabir Anil Nandlall be called to the podium.

The PRESIDENT: I thank Professor Oral. I now invite the Attorney General of Guyana, the Honourable Mohabir Anil Nandlall, to address the Court. Sir, you have the floor.

Mr NANDLALL:

CONCLUDING REMARKS

1. Mr President, Members of the Court, it is an honour to appear before you and a privilege to deliver this final presentation on behalf of my country, the Co-operative Republic of Guyana.

2. It is difficult to express in words how important this case is to Guyana and its people. As the Court knows, this hearing is the culmination of a process which has been decades in the making. For more than 60 years Venezuela has laid claim to more than 70 per cent of Guyana's sovereign territory. Generations of Guyanese, mine being one of them, have grown up under the long and threatening shadow cast by Venezuela's claim to nearly three quarters of our country. Venezuela's claim has blighted, bedevilled and burdened Guyana for the entirety of its life as a sovereign State. It is hard to overstate the impact that this has had on Guyana's development and on the security, prosperity and wellbeing of its people.

3. As our representatives vividly described on Monday, the loss of the territory claimed by Venezuela would eviscerate Guyana. Indeed, the country as we know it would cease to exist. Guyana's Foreign Minister was not exaggerating when he described this case as having an existential quality for Guyana. For Guyana and its people, the stakes could scarcely be higher.

4. But while the stakes of this dispute could not be higher, nor could Guyana's faith in international law, as the means for fairly and finally resolving it. As Attorney-General of Guyana, I can personally attest to Guyana's profound commitment to the rule of

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international law. It is a commitment which runs deep in Guyana's institutions and national culture. It is both an article of faith and a source of national pride. It is founded on a firm conviction that international law is the bedrock of the international order and the indispensable foundation for peaceful relations between all States. From Guyana's perspective, there is no higher value or greater imperative than respect for international law.

5. Mr President, when Guyana brought its Application to the Court in 2018, it was confident of three things. First, Guyana had unwavering confidence in the correctness of its decision regarding the validity of the 1899 Award and the boundary which it determined. Second, Guyana was equally confident in the wisdom of the decision of the Secretary-General of the United Nations that the Court should be entrusted with resolving this intractable controversy. Third, Guyana had complete confidence in the independence and impartiality of the Court, and its ability to deliver a just outcome based on the fair-minded and even-handed application of international law.

6. Since Guyana filed its Application eight years ago, these proceedings have vindicated and reinforced Guyana's confidence in each of those things. At every stage, the Court has conducted the proceedings with conspicuous care, attentiveness and fairness. The Court has carefully considered and confirmed its jurisdiction to entertain Guyana's Application, and it has carefully considered and confirmed the admissibility of that Application. We have no doubt that the Court will now proceed to carefully consider the merits of Guyana's case regarding the validity of the 1899 Award and the location of the Parties' land boundary.

7. Since the start of these proceedings, Venezuela has strained every sinew to avoid the Court delivering a judgment on the merits of Guyana's Application. These strenuous efforts have even continued throughout this hearing on the merits. Notwithstanding this Court's Judgments in 2020 and 2023, Venezuela has sought to argue that the terms of the Geneva Agreement mean that the Court cannot or should not rule upon the validity of the 1899 Award. Guyana's counsel have demonstrated the lack of merit in those arguments, which find no support in the text or the history of the Geneva Agreement, and which are contradicted by Venezuela's

previous statements to the Court and, so clearly, by the pellucid terms of the Court's previous Judgments on jurisdiction and admissibility.

8. It is not hard to see why Venezuela is so reluctant for the Court to determine the merits of Guyana's Application. Venezuela knows that it has no good answer to Guyana's case, and it knows that a judgment on the merits should bring to an end Venezuela's claims to almost 160,000 sq km of Guyana's territory.

9. In its written and oral pleadings, Guyana has convincingly demonstrated that Venezuela's attempt to impugn the validity of the 1897 Treaty of Washington has no merit whatsoever. Venezuela was neither deceived nor coerced into signing the Treaty. On the contrary, the Treaty achieved, what for years Venezuela had desired and demanded: the submission of its boundary dispute with Great Britain to international arbitration.

10. Guyana has similarly and axiomatically demonstrated that Venezuela's attack on the validity of the 1899 Award itself is misconceived. Neither the absence of written reasons nor the timing of the Award's delivery calls into question its validity. The arbitral tribunal faithfully fulfilled the mandate conferred by the 1897 Treaty. Neither the terms of the Award, nor the way it was reached, involved any excess of power or impropriety by the eminent members of the tribunal.

11. What is more, Guyana has shown that when the Award was delivered in 1899, Venezuela was aware of all the matters which it now alleges vitiated the Award; yet, for more than 60 years after 1899, Venezuela respected, asserted and affirmed the validity of the Award. As Guyana has shown at this hearing, Venezuela has no credible answer to any of this. In short, the Award was, and remains, valid and binding on the Parties. In the words of the 1897 Treaty, the Award constitutes the "full, perfect and final settlement" of the boundary between Venezuela and Guyana¹⁶⁰¹⁶⁰.

¹⁶⁰ Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between the Colony of British Guiana and the United States of America, 5 U.K.T.S. (2 Feb. 1897), Article XIII. Guyana's Application Instituting Proceedings, Annex 1.

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12. At this juncture, I feel impelled to say a brief word about one of Venezuela's arguments, which struck a particularly discordant note in Guyanese ears. As Professor Sands explained earlier, Venezuela's attempt to invoke the law of decolonization to support its case is legally unfounded. But it is also ironic □ because Venezuela's sudden repudiation of the 1899 Award in the 1960s, just as the process of Guyana's decolonization was underway, impeded and delayed Guyana's progress towards independence by several years. And in the years since Guyana attained independence in 1966, Venezuela has acted in a way that has striking echoes of the imperial colonialists whom it rightly denounces.

13. As Guyana has explained in both its written and oral pleadings, since 1966 Venezuela has repeatedly denied and violated Guyana's sovereignty over its Essequibo region. Venezuela has invaded and illegally occupied Guyana's territory on Ankoko Island for six decades. It has conducted numerous other military incursions into Guyana's land and maritime territory □ incursions which are intended to menace and intimidate Guyana and its people.

14. During the pendency these proceedings □ and in contumacious defiance of this Court's provisional measures Orders □ Venezuela has enacted legislation which purports to incorporate our Essequibo region as a new Venezuelan state; to subject it to the jurisdiction of Venezuela's legislative, executive and judicial organs; and to depict it in official maps as an integral part of Venezuela.

15. Venezuela has also sought to rename the territory as "Guayana Esequiba". It has even falsely claimed at this hearing that the Essequibo River was named after a Spanish explorer. The name of the Essequibo River is, in fact, derived from an indigenous word, *dishikibo*, meaning "fireside", which was later adopted by the Dutch and British.

16. Venezuela's attempts to annex its smaller neighbour's territory; its attempts to erase and rewrite the history of Guyana's Essequibo region; and its innumerable bellicose threats to Guyana's sovereignty and territorial integrity, are all redolent of colonialism.

17. Mr President and Members of the Court, the judgment that you deliver in this case will be of exceptional importance to Guyana. It is not simply the outcome of the judgment that will be important; the terms of the judgment will be equally crucial. If the Court accepts Guyana's arguments □ as we are confident that it will □ then it is essential that the Court's judgment directly, explicitly and unambiguously affirms the validity of the 1899 Award in its integrity, and the boundary which it established, and elucidates the ineluctable legal consequences which flow therefrom. Any ambiguity or qualification in the Court's judgment will inevitably be seized upon by Venezuela as a basis for continuing to lay claim to vast swathes of Guyana's sovereign territory.

18. The clarity and specificity of your judgment are vital to the effective resolution of this longstanding dispute. You will have heard, as we did, the suggestion that a judgment in favour of Guyana would not end the dispute. That suggestion underscores the need for a clear and complete judgment.

19. Mr President and Members of the Court, thank you very much indeed for your patient attention. I request, respectfully, that you invite our Agent, Mr Carl Greenidge, to the podium to read Guyana's submissions. I thank you once again.

The PRESIDENT: I thank the Attorney General of Guyana. I now give the floor to Agent of Guyana, the Honourable Carl Greenidge, to make Guyana's final submissions. You have the floor, Sir.

Mr GREENIDGE:

GUYANA'S SUBMISSIONS

1. Mr President, Members of the Court, it is an honour to appear before you once again.

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2. With your permission, Mr President, I will now close Guyana's oral pleadings by reading Guyana's submissions:

"In accordance with Article 49 (4) and Article 60 (2) of the Rules of Court, for the reasons explained in our Written Pleadings and during these hearings, the Co-operative Republic of Guyana respectfully requests the International Court of Justice:

To adjudge and declare:

- 1) That the 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is the boundary between Guyana and Venezuela;
- 2) That Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela is under an obligation to fully respect Guyana's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;
- 3) That Venezuela has failed to comply with the obligations set out in the Orders of 1 December 2023 and of 1 May 2025.
- 4) That as a consequence of all the foregoing, Venezuela must:
 - a) withdraw from any part of Guyana's territory as defined under the Award, including the part of Ankoko Island that the Award attributed to Guyana;
 - b) refrain from asserting or purporting to exercise sovereignty over any part of Guyana's territory and from taking any actions that violate Guyana's sovereignty or territorial integrity as defined in the Award;
 - c) revoke by means of its own choosing all measures, including laws, decrees and any other act that purport to annex, administer or control any part of Guyana's territory, or that was otherwise enacted or taken in

violation of the provisional measures ordered by the Court, and in particular:

- i. repeal the legislation which purports to incorporate Guyana's sovereign territory within Venezuela and the legislation which purports to extend Venezuela's legislative, executive and judicial jurisdiction to that territory;
- ii. dissolve any entity to which Venezuela has attributed powers over Guyana's territory, such as the High Commission for the Defense of Guayana Esequiba, as well as all other executive, legislative and administrative agencies created to exercise such powers;
- iii. terminate the "Social Care Plan for the population of Guayana Esequiba", and any ongoing census of the population of Guyana's territory, as well as all military activities conducted in furtherance of Venezuela's attempt to exercise sovereignty over, annex, administer or control any part of Guyana's territory; and
- iv. refrain from publicly claiming or teaching its people that the Award is a nullity or the outcome of a fraudulent process, or that Venezuela was wrongly deprived of the Essequibo region, and withdraw from all public institutions and facilities, revoke and destroy, any map depicting any part of Guyana's territory as defined by the Award as part of Venezuela."

3. Mr President, allow me in closing to express — on behalf of Guyana's President, Dr Mohamed Irfaan Ali, Guyana's Government, its delegation, and its people □ our profound gratitude to the Members of the Court for the care, patience and attention you have devoted to these proceedings.

4. We also wish to convey our sincere appreciation to the Registrar and wish him well as the end of his time at the Court is approaching. We express, too, our sincere gratitude to the staff of

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(GUYANA)

the Court and the interpreters for their unfailing professionalism, courtesy and dedication, which have greatly contributed to the orderly and efficient conduct of this hearing.

5. Finally, I would like to extend our respect and warm regards to all the distinguished members of the Venezuelan delegation. We have greatly appreciated their presence throughout these proceedings in the Great Hall of Justice.

6. Mr President, Members of the Court, this concludes Guyana's second round. I thank you very much indeed.

The PRESIDENT: I thank the Agent of Guyana for the final submissions presented on behalf of his Government. This brings to an end the second round of oral argument of Guyana, as well as this afternoon's sitting. The Court will meet again Monday 11 May 2026 at 3 p.m., to hear the second round of oral argument of Venezuela.

The sitting is closed.

The Court rose at 6.05 p.m.

**SECOND ROUND OF ORAL ARGUMENTS
(VENEZUELA)**

**Monday 11 May 2026
3 pm – 6 pm**

Non corrigé Uncorrected

CR 2026/29

**International Court
of Justice**

**Cour Internationale de
Justice**

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

*held on Monday 11 May 2026, at 3 p.m., at the Peace
Palace,*

President Iwasawa presiding,

*in the case concerning Arbitral Award of 3 October 1899
(Guyana v. Venezuela)*

VERBATIM RECORD

ANNÉE 2026

Audience publique

*tenue le lundi 11 mai 2026, à 15 heures, au Palais de la
Paix, sous la présidence de M. Iwasawa, président,*

*en l'affaire de la Sentence arbitrale du 3 octobre 1899
(Guyana c. Venezuela)*

COMPTE RENDU

SECOND ROUND OF ORAL ARGUMENTS
(VENEZUELA)

Present: President Iwasawa
Vice-President Sebutinde
Judges Tomka
Abraham
Xue
Nolte
Brant
Gómez Robledo
Cleveland
Aurescu
Tladi
Hmoud
Okowa
Judges *ad hoc* Wolfrum
Couvreur

Registrar Gautier

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

Présents M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
M^{me} Xue
MM. Nolte
Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi
Hmoud
Mme Okowa, juges
MM. Wolfrum
Couvreur, juges *ad hoc*

M. Gautier, greffier

SECOND ROUND OF ORAL ARGUMENTS
(VENEZUELA)

***The Government of the Co-operative Republic of Guyana
is represented by:***

Hon. Hugh Hilton Todd, Minister for Foreign Affairs and
International Cooperation,

as Head of Delegation;

Hon. Carl B. Greenidge, former Minister for Foreign Affairs
and International Cooperation,

as Agent;

Ms Sharon Roopchand-Edwards, Permanent Secretary of the
Ministry of Foreign Affairs and International Cooperation,

HE Mr Keith George, Ambassador, Adviser to the Minister
of Foreign Affairs and International Cooperation,

as Co-Agents;

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk,
London, member of the Bars of the Supreme Court of the United
States of America and of the District of Columbia,

Mr Philippe Sands, KC, Professor of International Law,
University College London, 11 King's Bench Walk, London,

Mr Alain Pellet, Emeritus Professor of the University of Paris
Nanterre, former Chairman of the

International Law Commission, member and former
President of the Institut de droit international,

Mr Pierre d'Argent, *Professeur ordinaire*, Université
catholique de Louvain, member of the Institut de droit
international, member of the Bar of Brussels,

Ms Nilüfer Oral, Director, Centre for International Law,
National University of Singapore, member of the International Law
Commission,

Mr Edward Craven, KC, Matrix Chambers, London,

Ms Donnette Streete, Director of the Frontiers Department,
Ministry of Foreign Affairs and International Cooperation,

as Counsel and Advocates;

Hon. Mohabir Anil Nandlall, Attorney General and Minister
of Legal Affairs,

HE Ms Trishala Persaud, Ambassador, Deputy Permanent
Representative at the Permanent Mission of Guyana to the United
Nations,

Ms Christina L. Beharry, Foley Hoag LLP, Washington,

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Ms Héloïse Bajer-Pellet, FAR Avocats, Paris,

Mr Romain Piéri, FAR Avocats, Paris,

***Le Gouvernement de la République coopérative du Guyana
est représenté par :***

L'honorable Hugh Hilton Todd, ministre des affaires
étrangères et de la coopération internationale,

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L'honorable Carl B. Greenidge, ancien ministre des affaires
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M^{me} Nilüfer Oral, directrice du centre de droit international de l'Université nationale de Singapour, membre de la Commission du droit international,

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comme membres de la délégation.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon to hear the second round of oral argument of Venezuela on the merits in the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*. I note the presence of Her Excellency Ms Delcy Rodríguez, Acting President of the Bolivarian Republic of Venezuela, in the Great Hall of Justice.

I now invite Professor Paolo Palchetti to address the Court. You have the floor.

Mr PALCHETTI:

**THE INVALIDITY OF THE 1897 ARBITRATION
TREATY AND THE ABSENCE OF REASONS IN THE
AWARD**

1. Mr President, Members of the Court, last Wednesday, Venezuela demonstrated what the real issue in these proceedings is: not the validity or invalidity of the 1899 Arbitral Award, but the pursuit of a mutually satisfactory solution by Guyana and Venezuela. Venezuela addressed, in detail, the interpretation and legal effects of the Geneva Agreement, as well as the historical circumstances that led to its conclusion.

2. Venezuela had hoped that, during the second round of oral pleadings, Guyana would finally engage with Venezuela's arguments concerning the Geneva Agreement. Guyana has not done so.

3. On Friday, Guyana has, again, largely ignored the Geneva Agreement. What we have is a fragmented response on few selected points.

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4. This is unfortunate, as Friday was Guyana's last opportunity to finally reply to Venezuela's extensive arguments on the Geneva Agreement. Unfortunate but not surprising. From the start, Guyana has sought to divert attention from the only legal instrument that defines the rights and obligations of Guyana and Venezuela by focusing exclusively on the 1899 Arbitral Award.

5. As you heard on Wednesday from Venezuela's Agent, Professor Moncada, Venezuela is here to respond to Guyana's erroneous and misleading narrative. As in the first round of oral hearings, in this second round Venezuela's main focus will be on the interpretation and the effects of the Geneva Agreement. Albeit irrelevant, the issue of the Award's invalidity will nevertheless be addressed in order to respond to Guyana's unfounded allegations.

6. Today, I will begin Venezuela's second round of oral pleadings by addressing the issue of the invalidity of the 1897 Arbitration Treaty and that of the invalidity of 1899 Award for lack of reasons. I will be followed by Professor Christian Tams, who will rebut Guyana's arguments on excess of power. Professor Jean-Marc Thouvenin will then address the alleged waiver by conduct of Venezuela's right to raise the nullity of the Arbitral Award.

7. This will bring us to the Geneva Agreement. Professor Andreas Zimmermann will rebut the few arguments made by Guyana on its interpretation. Next, Professor Makane Mbengue will address novation, decolonization, and the importance of identifying the real issue before you.

8. Her Excellency Ms Arianny Seijo Noguera will give an overview of the arguments advanced by Venezuela before the Court.

9. The second round of Venezuela's oral pleadings will close with the intervention of the acting President of the Bolivarian Republic of Venezuela, Her Excellency Ms Delcy Rodríguez Gómez.

10. Mr President, I will now address the invalidity of the 1899 Award.

I. The absence of reasons in the Award

11. On absence of reasons as a self-standing ground of invalidity, I will make one point only.

12. On Friday, Guyana insisted that the Court's Judgment in the *King of Spain* case is irrelevant for establishing whether, at the end of the nineteenth century, arbitral tribunals already had an obligation to state reasons in their awards. Let me explain why Guyana is wrong on this.

13. Nicaragua had asked the Court to determine the invalidity of the Award rendered by the King of Spain for "lack or inadequacy of reasons". The Court addressed the merits of this contention. And in assessing it, the Court did not dismiss Nicaragua's claim on the ground that in 1906 arbitral tribunals had no obligation to state reasons. Rather, for the Court, the Award was valid because "it deals in logical order and in some detail with all relevant considerations and . . . it contains ample reasoning and explanations in support of the conclusions arrived at by the arbitrator"¹. Of this very standard, the Award of 1899 falls short.

14. Significantly, both Honduras and Nicaragua admitted the existence at the relevant time of an obligation to state the reasons in the Award. This is Professor Rolin, on behalf of Nicaragua: "ce n'est que dans la fin du XIX^e siècle que la pratique s'est définitivement ancrée sur la nécessité de motiver les sentences"².

15. The arbitral tribunal between Great Britain and Venezuela was rendered at the end of the nineteenth century, at a time when, as remarked by Professor Rolin, the general practice confirmed the existence of an obligation to state the reasons. The tribunal did not comply with this obligation. And for this reason, the Award is null and void.

II. The invalidity of the 1897 Arbitration Treaty

16. I move now on to the invalidity of the Arbitration Treaty.

¹ *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Judgment, I.C.J. Reports 1960, p. 216

² *I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Vol. II, p. 346.

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17. Mr President, Members of the Court, Venezuela and Guyana hold opposing views regarding the role played by Venezuela in the negotiation of the Arbitration Treaty.

18. Guyana pretends that Venezuela was closely involved in the Treaty's negotiation³. This, according to Guyana, is fully documented and uncontested. The fact that Venezuela played no role in the negotiation is □ Guyana adds □ simply part of Venezuelan current mythology⁴, the product of the imagination of counsel who would say *n'importe quoi* just to be allowed on the podium⁵.

19. In short, Guyana attributes to Venezuela the very practice of distortion of facts that permeates Guyana's narrative. Venezuela rejects this baseless accusation. Venezuela's historical position is based on a great amount of concordant, contemporaneous evidence. This evidence is the result of careful and in-depth research conducted by historians, beginning with the seminal work carried out in the 1960s by the Venezuelan experts Hermann Gonzalez-Oropeza and Pablo Ojer-Celigueta.

20. The products of this historical research have been confirmed by non-Venezuelan historians who have worked on the Venezuelan crisis. For instance, this is the position of a great British historian, Robert Arthur Humphreys:

“[T]he United States, with British concurrence, acted on Venezuela's behalf, but Venezuela herself was not consulted, or, rather . . . she was not consulted till the very end of the negotiations, and then only perfunctorily. Venezuela, said Olney on one occasion, ‘has got to do exactly what we tell her’; he revealed not the slightest wish that she should be represented by one of her own citizens on the Tribunal of Arbitration which he proposed should be set up; and when a final agreement was reached in Washington her President [Crespo] was simply given to understand that it was ‘very just

³ CR 2026/28, p. 17, para. 12 (Reichler).

⁴ CR 2026/28, p. 12, para. 2 (Reichler).

⁵ CR 2026/28, p. 21, para. 24 (Reichler).

and fair’ and that he ‘had better expedite its completion’ or it would be ‘bad for his country’.”⁶

21. Humphreys’ position cannot be dismissed as biased. He was the first professor of Latin American studies in the United Kingdom. This passage comes from a speech delivered at the Royal Historical Society in 1967, when Humphreys served as its president. His position coincides with that presented by the Venezuelan experts contemporaneously.

22. Humphreys’ factual account is the same that you find in Venezuela’s written pleading and that you have heard on Wednesday. The fraudulent attitude: Venezuela’s “President [Crespo] was simply given to understand that [the agreement] was ‘very just and fair’”. The coercion: Venezuela “has got to do exactly what we tell her” and President Crespo “‘had better expedite its completion’ or it would be ‘bad for his country’”.

23. The historians’ work confirms that the injustices suffered by Venezuela were not a fabricated myth, as Guyana would have you believe, but a fact.

24. Nevertheless, the 1897 Treaty was not simply unjust. It was invalid.

25. The text of the agreement submitted to Venezuela was not the text agreed upon by Great Britain and the United States. Venezuela was not informed of the confidential Notes exchanged between Olney and Pauncefoot.

26. On the confidential Notes, last Friday, Guyana has made three points:

- First, Venezuela is hiding their text from the Court⁷;
- Second, Venezuela’s two representatives in Washington — and Andrade — were privy to the confidential Notes⁸;

⁶ R. A. Humphreys, *Anglo-American Rivalries and the Venezuela Crisis*, Transactions of the Royal Historical Society, Vol. 17, 1967, p. 158. CMV, p. 196, para. 5.2.24.

⁷ CR 2026/28, p. 19, para. 17 (Reichler).

⁸ CR 2026/28, p. 19, para. 18 (Reichler).

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- Third, if Harrison, the United States' lead counsel for Venezuela, was not aware of the existence of these Notes, it is Venezuela's fault⁹.

27. On the first point, Mr President, there is nothing to hide. The document has long been part of the documentary record of the present case¹⁰. For the sake of clarity, you can find it again at tab 58-A of the judges' folders. It is clear from this Note that Olney and Pauncefote had agreed that the critical date for calculating the prescription period was the date of the conclusion of the Arbitration Treaty and could not be 1814, as first argued by Venezuela based on a reasonable interpretation of the Treaty.

28. On the second point, there is nothing in the documents presented by Guyana that proves that the Venezuelan Minister in Washington, Andrade, had been informed of this confidential Note, except the fact that, one day, Olney received Andrade and Storrow at his home¹¹. This proves nothing.

29. It would be hard to understand why Olney expressly characterized this document as "strictly personal"¹², if in the end all parties concerned were informed about its content.

30. But there is more. Let me come back to the letter I presented to you last Wednesday □ the letter of Olney to Pauncefote dated 24 May 1899. As you will recall, this letter is a reply to a letter in which Pauncefote informed Olney of Great Britain's intention to present the confidential Note to the Arbitral Tribunal. In his reply, Olney, after emphasizing that the negotiation was conducted "mostly by informal personal talks or, so far as the negotiations were in writing, by equally informal and private

⁹ CR 2026/28, p. 19, para. 19 (Reichler).

¹⁰ Strictly personal letter from Richard Olney, Secretary of State, to Sir Julian Pauncefote, British Ambassador in Washington, 29 October 1896, Ministerio de Relaciones Exteriores Republica de Venezuela in *Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts*, 1967, p. 40, in CMV Annex 150.

¹¹ CR 2026/28, p. 19, para 18 (Reichler).

¹² Letter from Richard Olney to Sir Pauncefote, 24 May 1899, in RV, Annex 19 (also reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), p. 25).

notes”, asks Pauncefote: “Do you not think that it would be unfair that one out of the many notes so exchanged should be selected for publication while the remainder are suppressed?”¹³

31. Where would be the unfairness if all the parties - the United States, Great Britain and Venezuela - were aware of the content of these confidential Notes, as Guyana claims? Unfair to whom? Certainly, not to Great Britain or to the United States. They knew about the existence of these documents. If there is a question of unfairness, the reason is clear: Venezuela was never informed of the existence, let alone of the content, of these confidential Notes.

32. Concerning Mr Storrow, I think that I do not have much to add to what I already said on Wednesday and what you find in Venezuela’s written pleadings¹⁴. Storrow is central to Guyana’s strategy. Let us take a look at footnote 14 in Guyana’s second round of oral pleadings: everything revolves around the correspondence between Storrow and Olney¹⁵. Without Storrow, Guyana’s attempt to prove Venezuela’s participation to the negotiation collapses. There is no evidence that Venezuela was involved in the negotiation, because it was not.

33. In fact, the correspondence between Olney and Storrow confirms that Venezuela was absent from the negotiation. Reading this correspondence carefully, one can see that there is not a single reference to the position of the Venezuelan Government. One would expect to find sentences like “I have instructions from Caracas”, or “I need to consult the Venezuelan Government”. Nothing of the sort can be found in the correspondence. Olney and his close associate, Storrow, exchange views and impressions as if Venezuela did not exist.

34. Finally, let me come to Harrison and his lack of knowledge of the existence of the confidential documents. Guyana’s argument is always the same. If Storrow knew of the Notes, Venezuela knew, too. If Harrison did not know of the Notes,

¹³ *Ibid.*

¹⁴ CR 2026/27, pp. 30-31, paras. 33-35 (Palchetti); RV, pp. 140-143, paras. 5.24-29; CMV, pp. 196-197, para. 5.24.

¹⁵ CR 2026/28, p. 17, footnote 14 (Reichler).

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it is Venezuela's fault. Guyana wants you to believe that whatever Storrow or Harrison said or did, this reflected the position of the Venezuelan Government. This is baseless.

35. Last Wednesday, Venezuela presented multiple pieces of evidence showing that neither Storrow nor Harrison was loyal to Venezuela. On Friday, Guyana offered a half-hearted defence of Storrow. It did not even try to defend Harrison.

36. In fact, the evidence shows, most simply, that Venezuela was never informed of the confidential Notes. But if further proof were needed, let us look again at the letter that Olney sent to Pauncefote on 24 May 1899.

37. Olney candidly recognized that Venezuela could not have been aware of this confidential correspondence because he himself had expressly denied its existence:

“Further - *entre nous* entirely - being inquired of last Summer, on behalf of Venezuela, respecting diplomatic correspondence preceding the Treaty, I replied that my letter to you of 13th July, 1896, was the last thing of record . . . The Counsel for Venezuela . . . would be both surprised and irritated, and perhaps justly so, if now confronted with a writing they had been led to believe did not exist.”¹⁶

38. Mr President, Venezuela has been victim of fraud and the evidence before you amply justifies the conclusion that the Arbitration Treaty is invalid and, as a consequence, the Award is invalid.

39. The evidence before you, as well as the work of the historians - both Venezuelan and non-Venezuelan - also show the injustices suffered by Venezuela. It is not a myth; it is a fact.

40. I thank the Court for its kind attention and ask, Mr President, to give the floor to Professor Tams.

¹⁶ Letter from Richard Olney to Sir Pauncefote, 24 May 1899, in RV, Annex 19 (also reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), p. 25).

The PRESIDENT: I thank Professor Palchetti for his statement. I now give the floor to Professor Christian Tams. Sir, you have the floor.

Mr TAMS:

THE INVALIDITY OF THE AWARD [2]

1. Mr President, Members of the Court, it is an honour to address you with brief comments on the invalidity of the 1899 Arbitral Award.

2. Mr President, on this Award, Guyana has tried to build its case. At the start, it placed it on a pedestal. On 3 October 1899, it said at the opening: “international law spoke”¹⁷: it spoke, Guyana said further, through the voice of “eminent jurists whose legal ability, fairness and integrity were widely recognised”¹⁸, making 3 October a “special day [for] the rule of law internationally”¹⁹.

3. We have come a long way. As these hearings end, the Award appears in a very different light. Guyana no longer makes a positive case, it has become defensive, relying on intertemporality, formalism and acquiescence. A reasoning was not yet required, it says²⁰. Pushing through a deal that is fine, it says²¹. Venezuela accepted it, after all²² □ never mind the fact that it faced civil war and military threats. And of course: challenging this Award, you have heard, would open floodgates²³.

¹⁷ See CR 2020/5, p. 16, para. 5 (Ramphal).

¹⁸ See MMG, para. 7.44.

¹⁹ See “Statement on the Commemoration of the Arbitral Award of October 3, 1899”, available at <https://guyanahctrinidad.mission.gov.gy/statement-on-the-commemoration-of-the-arbitral-award-of-october-3-1899/>.

²⁰ See CR 2026/25, pp. 14-15, paras. 6, 9 (Pellet), and p. 32, para. 13 (Oral).

²¹ See CR 2026/28, pp. 44-45, paras. 34-36 (Pellet).

²² See CR 2026/28, pp. 47-48, paras. 8-9 (Sands).

²³ See CR 2026/28, p. 54, paras. 25-26 (Sands).

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4. Mr President, Members of the Court, if the 1899 Award were a PhD — a doctorate — and Guyana its examiner, it seems we have moved from *summa cum laude* to *rite* □ from highest honours to barely enough to pass.

5. Now, of course, Venezuela does not accept that this Award “passes” any test. But we believe that Guyana’s new approach reflects clarifications that these proceedings have brought about. I will highlight three of them.

I. The question of titles

6. I begin □ briefly □ with the question of titles to territory. These titles, under Article III, the Tribunal had to “investigate and ascertain”, separately from any boundary determination □ and it failed to do so. Guyana on Friday argued that the Tribunal had decided on titles by implication when it drew its boundary line²⁴.

7. But this construction □ a decision by implication □ undermines Article III and the Parties’ position. The Parties addressed titles as an autonomous matter. As one example, you see on the slide excerpts from Venezuela’s counter-case. It is the final section entitled “Judgment Invoked”. In this final section, Venezuela asked the Tribunal to render judgment on, amongst other things, “Spain’s discovery of America” and its legal relevance. On “its original title to the entire region”. And it insisted that “the present occupation by Great Britain . . . cannot be made the basis of title”. Explicit submissions on title.

8. Mr President, the Tribunal could not — failed to respond to these explicit submissions. To do so was for it a dereliction of its duty.

II. The régime of navigation

9. My second point, equally brief: the navigation régime for the rivers Amakuru and Barima.

10. The Parties agree now that the Tribunal had no explicit mandate to impose such a navigation régime. Guyana’s reference

²⁴ CR 2026/28, p. 39, para. 19 (Pellet).

to Article IV (c) of the Treaty²⁵ ignores the clear and strict narrow wording of the provision (which is, as I suggested on Wednesday, about the “determin[ation] [of] the boundary-line” — not about anything else)²⁶. On Friday, Guyana referred you to a passage of the pleadings, where Venezuela □ according to Guyana □ had accepted that Article IV (c) gave the Tribunal a right to decide on aspects relating to the legal relations between the parties²⁷.

11. But Mr President, this passage does not help Guyana. In it, Venezuela did not discuss navigation □ the parties never did □ but it discussed the impact of the eventual boundary decision on existing land grants and concessions²⁸ — land grants and concessions. This is the context for which Article IV (c) may have been intended. Navigation is not, not by any stretch (whether of imagination, or of legal reasoning). By pronouncing on navigation, the Tribunal showed the same cavalier approach that marked its failure to not decide on legal titles. It plainly acted *ultra vires*.

III. The Tribunal’s decision-making

12. Mr President, my third point: the process by which the decision was reached. Was the Award the result of a deal, as Mr Mallet-Prevost had pointed out in his memorandum?

13. On Monday last, Guyana accused Venezuela of having “opened before us a world of theatre and fiction, not law, not fact”²⁹. It explicitly claimed that “[c]laims about Mr Mallet-Prevost’s conversations are demonstrably untrue or wholly uncorroborated”³⁰. Firm words. No slip of the tongue.

14. But what a difference a week makes. On Friday, Guyana sounded very different:

²⁵ CR 2026/25, pp. 27-28, paras. 48-49 (Pellet).

²⁶ CR 2026/27, p. 42, para. 20 (Tams).

²⁷ CR 2026/28, p. 40, para. 23 (Pellet).

²⁸ Venezuela-British Guiana boundary arbitration. The printed argument on behalf of the United States of Venezuela (1898), Vol. I, pp. 57-65.

²⁹ CR 2026/25, p. 58, para. 49 (Sands).

³⁰ CR 2026/25, p. 58, para. 50 (Sands).

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(i) The private conversations recounted by Mallet-Prevost but also by Lords Russell and Martens (to which I had taken you), were not the only ones, Guyana now seems to say. The Tribunal also held regular sessions, and initially — Guyana now seems to say — the arbitrators did advance legal views³¹.

(ii) As for President Martens's insistence on pushing through a deal, Guyana now says that the President was moved by a perfectly decent quest for unanimity³².

15. Mr President, I will respond to these points shortly. But before I do so, let me state one thing very clearly. On the core issue, Guyana now has *nothing* to say. Are Mallet-Prevost's claims on how the deal was struck "uncorroborated"? Are they, as Guyana said exactly one week ago in this room, "demonstrably untrue"? Of course not. Quite the opposite. These oral hearings have corroborated that conversations described by Mr Mallet-Prevost - confirmed by Lord Russell and President Martens - did take place. They have demonstrated that, during these "conversations", the Tribunal determined the boundary line. This *was* a political deal. Guyana no longer disputes it, and we welcome its change of position on this — the core issue.

16. What about Guyana's attempts to explain away this □ now undisputed □ fact? Well, Guyana cannot ignore what happened in the six days of deliberations. What Guyana asserted on Friday was that the arbitrators initially formulated legal arguments. But when the decision was reached, when the deal was struck, the law was silent.

17. Mr President, Members of the Court, the Paris Tribunal was not tasked to try out a bit of law, and when that fails, strike a political deal. Its mandate was clear: It had to decide based on principles of international law. Yet after Guyana's pleadings on Friday, it is clear that this was a political deal³³ — a political deal

³¹ CR 2026/28, para. 32 (Pellet).

³² CR 2026/28, paras. 37-38 (Pellet).

³³ Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Venezuela", in *Mélanges offerts à Juraj Andrássy*, Springer 1968, p. 238.

pushed through by President Martens, whose line, as Professor Thouvenin will show shortly, was neither based on titles nor on occupation. A line of convenience based on a mish-mash of British lines without any basis in law.

18. Now, Guyana says that this “deal” was all part of a laudable quest for unanimity, for which President Martens cannot be faulted. The response to this can be brief:

19. It can be brief because the mandate addresses the issue. The Tribunal had to render a legal decision³⁴ and, as Article V made clear, it had to do so “by a majority”. The quest for unanimity did not justify the deal. If anything, it shows that the Tribunal operated in its own universe. A universe in which the personal predilections of a president trumped the terms of the mandate.

20. Mr President, discussing the Tribunal’s “deal” on Friday, Guyana referred you to former President Bedjaoui’s writing on the “manufacture” or “*fabrication*” of ICJ Judgments, suggesting that it could help assess us the 1899 Award. We agree. We agree that, as Guyana suggested, this “manufacture” will involve a “give and take” □ though I cannot help but add that President Bedjaoui reflected on the give and take that was inevitably involved in the drafting of a judgment’s reasons³⁵. For our purposes, another passage of President Bedjaoui’s piece is more apposite, it seems to us. In this other passage, President Bedjaoui formulated a clear red line, and we suggest this is key to appreciating the 1899 Award. This is what he said: “[I]t must never be forgotten . . . that it is the absolute duty of a Judge to reject any compromise incompatible with his innermost sense of justice and of the limits of the reasoning that may lead to it”³⁶.

21. This absolute duty, the Tribunal members ignored in reaching their deal, as these oral hearings have shown. It is as simple as that.

³⁴ *Ibid.*

³⁵ M. Bedjaoui, “The ‘Manufacture’ of Judgments at the International Court of Justice” (1991), *Pace Yearbook of International Law*, Vol. 3, p. 49.

³⁶ *Ibid.*, p. 54.

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22. Mr President, Members of the Court, let me conclude with one final remark. It concerns the point of connection between the three excesses of power I have now discussed. These point to one inescapable conclusion. This tribunal showed no respect for the terms by which the parties had defined its task. It operated according to its own logic □ deciding what was not asked of it; ignoring what it had to decide; and violating its “absolute duty” to decide on the basis of law. We might say, as we have in the written pleadings, that in rendering this Award, this tribunal “went rogue”.

23. Despite Guyana’s strained claims to the contrary, the result of this “rogue” Award was a disaster for Venezuela. President Martens’ compromise line gave Britain over 90 per cent of the disputed territory. And what Venezuela retained (control of the mouth of Orinoco) was not seriously in contention: as Lord Russell had noted, during the proceedings “Britain had explicitly admitted that the Orinoco was Venezuelan”³⁷.

24. *Punch* magazine, as often, knew what to make of the Award. It understood the central message that Guyana tries to obscure. The *Punch* cartoon of 11 October 1899 is on the slide. It is entitled *Peace and Plenty*. It shows Prime Minister Lord Salisbury, chuckling, as it is said in the caption, barely capable of holding on to everything that this arbitration delivered for Britain □ territory, gold mines, wrapped up nicely in the Union Jack. The caption says “I like arbitration. In the proper place”.

25. Mr President, Members of the Court, this arbitration may have brought “plenty” for Britain, but it did not bring “peace”. Amidst the civil war, faced with regular threats of military invasion □ from the British ultimatum of 1895 to the crushing blockade European Powers imposed on it soon thereafter □ Venezuela was not in a position to react meaningfully³⁸. As many other nations in colonial or quasi-colonial situations, Venezuela had to put on a brave face. It had to accept the 1899 Award which enacted

³⁷ See Letter from Lord Russell to Lord Salisbury, 7 October 1899 (CMV, Annex 67). See references in CMV, para. 5.95.

³⁸ See on these aspects CR 2026/27, paras. 16, 42-43 and 47-48 (Azaria) (with references).

“coercion . . . through [the] civility” of the legal form³⁹. If I can return to the language of PhD exams □ this Award deserves neither a *summa cum laude* nor even a *rite* - it is a “fail”.

26. This concludes, Mr President, my remarks today. I thank you for your attention and would ask you to please call to the podium Professor Jean-Marc Thouvenin.

The PRESIDENT: I thank Professor Tams. J’invite maintenant le professeur Jean-Marc Thouvenin à prendre la parole. Vous avez la parole, Monsieur.

M. THOUVENIN :

Merci beaucoup, Monsieur le président.

**ALLEGED WAIVER BY CONDUCT OF
VENEZUELA’S RIGHT TO CLAIM THE NULLITY OF
THE ARBITRAL AWARD OF 1899**

I. Cartes

1. Monsieur le président, Mesdames et Messieurs les juges, avant de traiter le thème qui m’est alloué, deux séries d’observations pourraient aider votre délibération. D’abord, à propos des croquis, cartes et lignes. Voyons le croquis que M^e Reichler vous a montré avec autorité vendredi, pour justifier, chacun s’en souvient, que l’occupation espagnole entre les fleuves Orénoque et Essequibo jusque 1799 n’avait existé que dans la moitié ouest de la zone, et que « none of the settlements were in the

³⁹ See observations by Georgios Giannakopoulos, “A ‘Corpus Vile’ of International Order: Protection, Coercion, and the British Blockade of Greece, 1850” (2026) *The International History Review*, p. 1 (concerning the interplay of coercion and law during the British blockade of Greece, 1850).

territory awarded to Great Britain »⁴⁰. Bref, la sentence aurait attribué au Venezuela toute la partie que la mission espagnole avait historiquement occupée⁴¹.

2. Mais en regardant de plus près, on voit que, dans le quart sud-est de la zone, en bas à droite, très près du fleuve Essequibo, se trouve une fortification espagnole du nom de « Castillo El Burgo ».

3. Un peu plus au nord, en haut à droite, sur la côte immédiatement à l'ouest de l'embouchure du fleuve Essequibo, entre Ciudadello de Pomorón et les Ciudadellos de Moroco, se trouve la « misión de Santa Rosa de Moroco ». Il s'agit d'une mission de capucins d'exacte même nature que celles, sur l'ouest de la zone, que le Guyana a apparemment reconnues comme des occupations espagnoles.

Et elles sont en plein dans le territoire offert à la Couronne britannique par l'arbitrage de 1899.

4. Mais regardons d'autres cartes.

5. Voici comment les Espagnols voyaient la frontière avec la Guyane néerlandaise en 1778, au fleuve Moroco, légèrement à l'ouest de l'Essequibo.

6. Voici maintenant comment les Anglais voyaient la frontière de la Guyane néerlandaise en 1806 : sur l'Essequibo.

7. Même chose, vue de Londres, en 1822.

8. Voici maintenant comme les Anglais « de terrain » voyaient la limite. Plus particulièrement Hadfield, qui était cartographe officiel de l'Empire britannique, spécifiquement chargé par le gouverneur de la colonie britannique de Guyane britannique d'en montrer les limites sur une carte. C'est la carte officielle Hadfield de 1838. On voit la limite ouest de la colonie britannique sur le fleuve Pomorón, très proche du fleuve Moroco. On voit aussi, dans les terres, la mention suivante:

« The Cuyuni and a considerable portion of the Masseroony are yet unexplored ». Bref, si l'on vous a assuré vendredi que

⁴⁰ CR 2026/28, p. 14, par. 5 (Reichler).

⁴¹ CR 2026/28, p. 13-14, par. 5 (Reichler).

« evidence shows continuous occupation of the territory by the Dutch and then the British »⁴², les Anglais, eux, sur le terrain, disaient le contraire.

9. Mais Londres avait d'autres appétits, et avait mandaté Schomburgk pour établir une ligne proprement imaginaire. C'est la ligne officielle de revendication britannique de 1840, comme l'explique Sir Edward Hertslet dans le mémorandum de septembre 1886 que j'ai cité mercredi, et que vous trouverez dans vos dossiers à l'onglet n° 61. Comment justifier juridiquement une telle différence avec la ligne de la carte Hadfield ? On ne peut pas.

10. En 1844, n'accordant visiblement aucun crédit à la ligne Schomburgk, qui avait été vivement rejetée par le Venezuela⁴³, voici la ligne Aberdeen. C'est la ligne verte, qui part - vous le voyez □ du cap Nassau à l'embouchure du Moroco. Si le point de départ sur la côte peut faire sens, et, on s'en rappelle, avait convaincu les arbitres américains, on voit mal pourquoi elle s'enfonce dans des territoires dont les Anglais reconnaissaient qu'ils ne les avaient même pas explorés. Il n'y a évidemment aucune raison juridique.

11. Excusez-moi, Monsieur le président — je reprends. Schomburgk meurt en 1865 ; pourtant une nouvelle ligne Schomburgk apparaît soudain en 1875 ; c'est le trait jaune que vous pouvez voir ici. Fondement juridique ? Aucun.

12. Puis vient la ligne Granville, en 1881. Le trait bleu. Je rappelle que toute occupation de territoire avait été gelée depuis 1850. Pourtant la voici qui mange encore un peu plus de territoire à l'ouest. Pourquoi ? Parce que, probablement, tel était le bon plaisir de l'Empire.

13. 1886, voici la ligne Rosebery, en rose, simplifiant par des lignes droites la ligne Schomburgk de 1875. Tout aussi fantaisiste que les précédentes, elle reflue toutefois un peu vers l'est par rapport à la ligne Granville. Sacrilège !

14. Mais, 1887, voici une nouvelle « ligne Schomburgk », en rouge. Schomburgk était mort depuis 22 ans, mais, ô miracle, « sa

⁴² CR 2026/28, p. 14, par. 6 (Reichler).

⁴³ CMV, par. 4.80 et 4.89.

» nouvelle ligne reprend largement la ligne Granville de 1881 qui, c'était décidément ennuyeux, ne trouvait pas de support dans la ligne Schomburgk de 1875 malencontreusement reprise par Rosebery.

15. Puis c'est la deuxième ligne Rosebery, de 1893, en noir — il avait enfin compris le jeu des lignes —, suivie de l'« extreme British Claim » de 1896, une autre « red herring » comme dirait un Anglais.

16. La sentence de 1899 reprend l'essentiel de la ligne Schomburgk de 1887, qui correspond largement à la ligne Granville de 1881, mais ajustée, au nord, d'un petit bout de la ligne Rosebery de 1886, comme pour ne vexer aucun lord. C'est un patchwork, on dit un compromis, un « deal », mais pas entre les revendications vénézuéliennes et britanniques mais entre les différentes revendications britanniques de 1881, 1886 et 1887. Quel fondement juridique en droit international ? Aucun.

II. La déclaration Iribarren Borges de 1966

17. J'en viens à une deuxième série d'observations, qui concerne la déclaration Iribarren Borges. Elle a été faite un mois environ *après* la signature de l'accord de Genève. Elle est la fausse clé ou la clé faussée utilisée par le Guyana tout au long de cette procédure⁴⁴.

18. J'ai indiqué mercredi dernier qu'il s'agit d'une déclaration « politique, ... erronée et sans portée juridique »⁴⁵. À défaut de me dire Pinocchio, ce que l'on a peut-être pensé *in petto*, on m'a dit culotté de tenir un propos aussi « énorme » et « sidérant »⁴⁶. Cyrano de Bergerac répondrait à son contempteur : « c'est un peu court jeune homme ! On pouvait dire... Oh ! Dieu !... bien des choses en somme... En variant le ton, □ par exemple, tenez :

⁴⁴ MG sur la compétence et/ou la recevabilité, par. 2.13, 2.23, 2.33, 2.38, 3.19, 3.24, 3.50, 3.65, 3.76 ; mémoire du Guyana sur le fond (ci-après, « MG sur le fond »), par. 7.21 ; CR 2026/24, p. 23, par. 5, et p. 28, par. 16 (d'Argent).

⁴⁵ CR 2026/27, p. 52, par. 9 (Thouvenin).

⁴⁶ CR 2026/28, p. 28, par. 9 (d'Argent).

[Juriste...] »⁴⁷. Oui, « Juriste ». Ce n'est pas dans la tirade de Cyrano, mais c'est bien le ton de juriste qu'il faut adopter pour évaluer, en droit, la déclaration Iribarren Borges.

19. S'agit-il d'une déclaration interprétative ? Certainement pas, et cela n'a jamais été soutenu. S'agit-il d'une réserve ? Sans doute pas. S'agit-il alors d'un acte qui entre dans les prévisions du droit coutumier codifié dans les articles 31 et 32 de la convention de Vienne sur le droit des traités ? Pas davantage. Alors, quel effet juridique pourrait-elle avoir sur l'interprétation de l'accord de Genève ? Aucun. C'est une déclaration interne à visée de politique interne, postérieure à l'entrée en vigueur du traité.

20. S'agit-il d'une déclaration fiable ? Iribarren Borges dit ceci de l'article VII : « With regard to Article 7, it is clear that when the law approving the Agreement is submitted to this Sovereign Congress, the Agreement will enter into force upon ratification of said law. »⁴⁸ Faux. L'article VII stipule que l'accord était entré en vigueur depuis sa signature.

21. Pourquoi Iribarren Borges a-t-il présenté de manière approximative l'accord de Genève ? Peu importe. S'y fier est en tout cas plus qu'aventureux. Voici d'ailleurs ce qu'il dit de l'article IV : « [A]ccording to the terms of Article 4, in the event that no satisfactory solution for Venezuela is reached, the so-called 1899 Award shall be revised through arbitration or judicial recourse. »⁴⁹

22. Donc, dans l'hypothèse où les travaux de la commission mixte ne permettraient pas de parvenir à une solution satisfaisante *pour le Venezuela*, la sentence devrait être *révisée* par arbitrage ou règlement judiciaire, c'est-à-dire réécrite *de novo*. Si on ne réécrit pas son texte⁵⁰, il n'était donc pas question, selon Iribarren Borges, de s'interroger par voie judiciaire sur la validité de la sentence.

⁴⁷ Edmond Rostand, *Cyrano de Bergerac*, acte I, scène 4, 1897.

⁴⁸ Presentation to the National Congress by Mr Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement, 17 March 1966, DV, annexe 2, p. 37.

⁴⁹ *Ibid.*, p. 35.

⁵⁰ CR 2026/28, p. 32, par. 19 (d'Argent).

23. Monsieur le président, le Guyana ne peut pas prendre de la déclaration Iribarren Borges ce qui l'arrange, l'interprétation proprement incompréhensible de l'article V de l'accord dont il a fait son miel, et ignorer ou travestir ce qui ne l'arrange pas. Le Venezuela s'en tient pour sa part à l'accord de Genève, et rien qu'à l'accord de Genève.

III. La prétendue renonciation du Venezuela à se prévaloir de la nullité de la sentence de 1899

24. J'en viens à mon thème principal : quid de la prétendue renonciation du Venezuela à son droit de se prévaloir de la nullité de la sentence ? L'argument est à la fois inadmissible (A) et non fondé (B).

A. L'argument du Guyana est inadmissible dans le cadre de l'application de l'accord de Genève

25. Le Venezuela affirme et maintient que cet argument guyanais ne trouve aucune place dans le cadre de l'application de l'accord de Genève. Durant ce que j'ai appelé le « processus de Genève », la position du Royaume-Uni quant à la controverse au cœur de l'accord de Genève n'a jamais porté sur le comportement du Venezuela postérieur à la sentence de 1899⁵¹.

26. Ce sur quoi les parties divergeaient était uniquement l'existence, ou non, de preuves de nullité de la sentence en tant que telle. La Cour l'a d'ailleurs constaté en 2020, en relevant que les discussions entre les parties au sujet de la nullité de la sentence de 1899 n'avaient porté que sur « la documentation relative à celle-ci en vue d'apprécier le bien-fondé de la position vénézuélienne quant à sa nullité », que cet examen « a été entrepris par le Gouvernement du Royaume-Uni »⁵², et que c'est « *sur cette base* que se sont déroulées les réunions ultérieures tenues à Genève en février 1966, à l'issue desquelles a été adopté l'accord »⁵³.

⁵¹ CR 2026/27, p. 51-52, par. 6-8 (Thouvenin).

⁵² *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 490-491, par. 132.

⁵³ *Ibid.*, p. 491, par. 133 (les italiques sont de nous).

27. Durant ce processus, les Britanniques n'ont *pas* exhibé les cartes publiées par le Venezuela depuis 1905. Ni les coupures de presse exhumées la semaine dernière⁵⁴ par un Guyana affairé à ressasser ses écritures⁵⁵. Et lors des réunions de la commission mixte mise en place par l'accord de Genève, le Guyana n'a pas dit un mot de la conduite du Venezuela post 1899, se bornant, selon ses propres mots, à inviter le Venezuela « to produce evidence and arguments in support of her basic contention that the 1899 Arbitral Award was null and void ». ⁵⁶

28. C'est à partir de 1981 que l'argument a été formulé par le Guyana⁵⁷. C'est à ce moment que le Guyana a commencé à « souffler le froid ». Il n'est pas en droit de le faire à raison d'un estoppel.

29. Je l'ai expliqué mercredi dernier⁵⁸. Réponse du Guyana ? Néant.

B. L'argument du Guyana n'est pas fondé

30. Mais voyons tout de même l'argument fondé sur l'inaction du Venezuela.

31. Dans son cours donné à l'Académie sur « La prescription en droit international », Roger Pinto professe que l'inaction du titulaire d'un droit ne lui est opposable que lorsqu'elle est injustifiée⁵⁹. C'est ce *ratio decidendi* qui est au cœur de l'arrêt de la Cour dans l'affaire de la *Sentence du roi d'Espagne*. Le Nicaragua n'avait aucune justification à son retard à affirmer la prétendue nullité de la sentence.

⁵⁴ CR 2026/25, p. 30, par. 5, p. 31, par. 9 (Oral) ; CR 2026/28, p. 60, par. 22 (Oral).

⁵⁵ MG sur le fond, par. 4.7-4.8 ; RG, par. 4.10.

⁵⁶ Lettre du représentant permanent du Guyana auprès des Nations Unies au Secrétaire général de l'Organisation, en date du 9 novembre 1981, CMV, vol. III, annexe 148, p. 374.

⁵⁷ RG, p. 151, par. 4.94-4.96.

⁵⁸ CR 2026/27, p. 55, par. 21 (Thouvenin).

⁵⁹ Roger Pinto, « La prescription en droit international », *RCADI*, 1955, vol. 87, p. 393, par. 4.

32. De là, deux questions se posent.

33. Premièrement, est-il injustifié de ne réclamer la nullité d'une sentence arbitrale lorsque l'on craint des représailles si on le fait ? Certainement pas.

34. Nos contradicteurs ne semblent pas contester le principe, mais contestent la coercition dans le cas d'espèce, et mettent le Venezuela au défi : « [w]here is the contemporaneous evidence »⁶⁰ ? Défi relevé : chacun peut voir les preuves documentaires sur lesquelles le Venezuela se fonde, par exemple en relisant soigneusement la plaidoirie de ma collègue la professeure Azaria⁶¹, ainsi que la duplique du Venezuela⁶².

35. Et il suffit d'ailleurs de se référer au rapport du ministre des affaires étrangères du Venezuela Rafael Seijas du 4 mai 1900,

⁶⁰ CR 2026/28, p. 15, par. 11 (Reichler).

⁶¹ CR 2026/27, p. 15-16, par. 18-19, note 9 (Azaria), citant le site Internet du US State Department: « Venezuela Boundary Dispute, 1895-1899 », Office of the Historian, USA Department of State, accessible à l'adresse suivante: [https://history.state.gov/milestones/1866-1898/venezuela#:~:text=The%20Venezuelan%20Boundary%20Dispute%20%20officially,30%2C000%20square%20miles%20for%20Guiana.Letter%20from%20Lord%20Salisbury%20to%20Sir%20Julian%20Pauncefoot%20\(26%20November%201895\),in%20U.S.%20Department%20of%20State,%20Papers%20Relating%20to%20the%20Foreign%20Relations%20of%20the%20United%20States,%20with%20the%20Annual%20Address%20of%20the%20President,%20Part%20I%20\(Transmitted%20to%20Congress%202%20Dec%201895\)%20\(1896\),doc%20529,accessible%20to%20the%20address%20https://history.state.gov/historicaldocuments/frus1895p1/d529](https://history.state.gov/milestones/1866-1898/venezuela#:~:text=The%20Venezuelan%20Boundary%20Dispute%20%20officially,30%2C000%20square%20miles%20for%20Guiana.Letter%20from%20Lord%20Salisbury%20to%20Sir%20Julian%20Pauncefoot%20(26%20November%201895),in%20U.S.%20Department%20of%20State,%20Papers%20Relating%20to%20the%20Foreign%20Relations%20of%20the%20United%20States,%20with%20the%20Annual%20Address%20of%20the%20President,%20Part%20I%20(Transmitted%20to%20Congress%202%20Dec%201895)%20(1896),doc%20529,accessible%20to%20the%20address%20https://history.state.gov/historicaldocuments/frus1895p1/d529) (dernier accès le 10 mai 2026). CR 2026/27, p. 15, par. 16, note 7 (Azaria), citant « English Ultimatum: A Note Sent to the President of Venezuela by the Marquis of Salisbury — Force Threatened », *The Rocky Mountain News* (daily), vol. 36, n° 293 (20 octobre 1895), accessible à l'adresse suivante : <https://www.coloradohistoricnewspapers.org/?a=d&d=RMD18951020-01.2.4&e=-----en-20--1--imgtxIN%7ctxCO%7ctxTA-----0-----> (dernier accès le 5 mai 2026). CR 2026/27, p. 15, par. 16, note 8 (Azaria) citant « Maxim Guns for Guyana. Mr Chamberlain's Radical Measures for Obliging Venezuela to Come to Terms », *The New York Herald* (19 octobre 1895) disponible à l'adresse suivante: <https://gallica.bnf.fr/ark:/12148/bpt6k4787808x/f1.item.zoom> (dernier accès le 5 mai 2026).

⁶² DV, par. 6.77-110.

utilisé de manière sélective par le Guyana⁶³ □ c'est de bonne guerre. Mais en voici les extraits pertinents à propos de l'impossibilité de dénoncer la sentence dès 1900 :

« It is not to be assumed that disavowal of the award by Venezuela would be successful. ... [The shift in the political stance of the US] does not permit the hope that rejection of the judgment will find favour in Washington, still less when one considers that the two American arbitrators concurred in it.

.....
.....
We must not rely on this (protection) in this case.
.....
.....

[A]s regards Great Britain, its contempt for the weak being notorious and its persistence in laying hands on the mouth of our great river, a plan on which it has been working since the end of the 18th century, it is considered not only that it would not agree to Venezuela's opinion that the case should be reopened, but that it would take advantage of it with a view to retaining what it still holds, and very probably extent its encroachment.

.....
.....
It would require very substantial reasons for this »⁶⁴.

Et là, il faisait référence à la contestation de la sentence.

36. Quoi qu'en disent nos contradicteurs fâchés avec l'histoire, le Venezuela était confronté à une parfaite injustice dont il ne se réjouissait nullement, et sans moyen de la dénoncer sans « substantial reasons », c'est-à-dire sans preuve, faisant face à une situation durable de coercition, qui n'était pas seulement structurelle, mais bien réelle, comme le Venezuela l'a appris à ses

⁶³ MG sur le fond, par. 8.30, 9.8 ; MG sur le fond, vol. IV, annexe 66 ; CR 2026/28, p. 58, par. 15 (Oral).

⁶⁴ MG sur le fond, vol. IV, annexe 66.

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dépens peu après la décision de Paris, lorsque ses protestations contre l'impérialisme européen ont été brutalement réprimées lors du blocus de 1902.

37. Deuxième question : l'inaction à raison de manque de preuve est-elle justifiée ? C'est la position du Venezuela depuis toujours.

38. Dans la note du 22 février 1962 par laquelle le Venezuela a formellement fait valoir que la sentence de 1899 est nulle et non avenue⁶⁵, le représentant du Venezuela expose très clairement que « [t]he strange circumstances in which the Paris decision had been arrived at began to unfold from the very day of the decision; but it was not until several decades later that the truth of what had occurred could be confirmed »⁶⁶.

39. Quelques jours auparavant, le 14 février 1962, dans une lettre adressée au Secrétaire général des Nations Unies, le représentant du Venezuela avait également écrit que c'est : « When it obtained clear evidence of the defects which invalidate [the 1899 award], the Government of Venezuela explicitly reserved its rights. »⁶⁷

40. Le Guyana adopte la stratégie de l'autruche, n'écoute pas, confond volontairement deux choses bien différentes : avoir des doutes, sur la base de confidences, d'impressions, ou d'analyses journalistiques⁶⁸, ce qu'il appelle « awareness »⁶⁹, et disposer de preuves. Le Venezuela dit qu'il n'avait pas de preuve jusqu'à la publication du mémorandum Mallet-Prevost.

41. La surdité du Guyana sur ce point est d'autant moins compréhensible que c'est exclusivement □ on l'a déjà dit □ autour de la question des preuves issues du matériau documentaire concernant la sentence de 1899, question qui ne s'est posée qu'à partir de la première des preuves, le mémorandum Mallet-Prevost,

⁶⁵ MG sur la compétence et/ou la recevabilité, vol. II, annexe 19.

⁶⁶ *Ibid.*, par. 34.

⁶⁷ MG sur la compétence et/ou la recevabilité, annexe 17.

⁶⁸ CR 2026/28, p. 46, par. 5 (Sands).

⁶⁹ CR 2026/28, p. 55, par. 2, p. 56, par. 7 (Oral).

que le processus de Genève s'est noué. L'arrêt de 2020 s'en fait l'écho⁷⁰ □ je l'ai déjà indiqué.

42. Mais revenons aux preuves. On se souviendra qu'à cette même barre, lundi après-midi, a été mise en doute l'intégrité de M. Mallet-Prevost ainsi que celle de M. Schoenrich⁷¹. L'exercice amusant a été aussi gratuit que vain puisque vendredi le Guyana en est venu à reconnaître que les faits dont Mallet-Prevost a été témoin direct et qu'il décrit dans son mémorandum sont « raisonnablement établis »⁷².

43. Enfin ! Il aura fallu 64 ans au Guyana pour reconnaître la valeur probante du mémorandum Mallet-Prevost. C'était donc bien la preuve, la première, qui manquait au Venezuela pour pouvoir contester la sentence.

44. De là, je l'ai dit mercredi, le Venezuela a fouillé les archives qui venaient d'être rendues publiques - accessibles en tout cas - en particulier celles du Foreign Office et certaines archives américaines, dans la mesure où elle a pu y avoir accès⁷³. Cela prend un petit peu de temps – qui pourrait prétendre que, en 1950, cela ne prenait pas un petit peu de temps de mettre à jour ces archives ?

45. Le Guyana reproche au Venezuela d'avoir maintenu un silence coupable de 1949 à 1962⁷⁴. À tort. Alors qu'il recherchait des preuves additionnelles après lecture du mémorandum Mallet-Prevost, le Venezuela a immédiatement tenu à préserver son droit.

46. En mars 1951, le représentant du Venezuela déclarait durant la 4^e réunion de consultation des ministres des affaires étrangères du continent américain :

« In the opinion of the Government of Venezuela, no change of status which may occur in British Guiana as a consequence of the international situation, of any measures

⁷⁰ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020, p. 466, par. 37-38.*

⁷¹ CR 2026/28, p. 45-49 (Sands).

⁷² CR 2026/28, p. 42, par. 28 (Pellet).

⁷³ CR 2026/28, p. 65, par. 60-61 (Thouvenin).

⁷⁴ CR 2026/28, p. 46, par. 4 (Sands).

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which may be adopted in the future or of the advance of the territory's inhabitants towards self-determination will prevent Venezuela, in view of the special circumstances prevailing when the frontier line with the British Guiana was defined, from pressing its just demand that the injury suffered by the Nation on that occasion should be redressed by an equitable rectification of the frontier. »⁷⁵

47. En mars 1954, dans une déclaration faite à la 10^e conférence interaméricaine, le représentant vénézuélien répétait solennellement qu'il n'était pas question que le Venezuela renonce à son droit⁷⁶. Et en 1962 le processus de Genève débutait, à l'invitation des Britanniques.

48. Monsieur le président, Mesdames et Messieurs les juges, sans preuve l'inaction n'est pas opposable. Sinon, le mécanisme de révision des arrêts, qui n'est pas en cause ici mais à propos duquel on peut faire une comparaison ou un parallèle, n'aurait aucun sens. Le Venezuela a agi lorsque les faits ont été « raisonnablement établis ». De là, la chronologie de la mise en cause de la sentence de 1899 montre qu'il a fait valoir son droit en temps voulu.

IV. La démarcation de 1905

49. Monsieur le président, avant de terminer, je dirai quelques mots de l'accord de 1905 dont le Guyana fait grand cas⁷⁷. J'invite les interprètes à passer directement au paragraphe 54.

50. L'accord de 1905 est, et est uniquement, un accord d'interprétation, sur le terrain, de la sentence de 1899, c'est-à-dire, en bon français, un accord de « démarcation ».

51. Le Guyana s'appuie sur la sentence de l'affaire de la *Lagune du Désert*⁷⁸ pour assurer qu'il s'agit d'un accord distinct de la sentence arbitrale et qu'il survivrait à la nullité de cette dernière. Il est distinct, personne n'en doute, mais il ne peut survivre à la

⁷⁵ MG sur la compétence et/ou la recevabilité, vol. II, annexe 17.

⁷⁶ Declaration made at the Tenth Inter-American Conference, held in March 1954 (MG sur la compétence et/ou la recevabilité, vol. II, annexe 17).

⁷⁷ CR 2026/25, p. 43, par. 60 (Oral) ; CR 2026/28, p. 29, par. 12 (d'Argent).

⁷⁸ CR 2026/25, p. 43, par. 58 (Oral).

nullité de la sentence puisqu'il se borne à l'interpréter. Si cette dernière est écartée comme invalide, l'accord qui l'interprète perd son objet même. Dès lors que la circonstance qui constituait la base essentielle de cet accord était la sentence arbitrale de 1899, la nullité de cette dernière constitue sans nul doute un cas typique de changement fondamental de circonstance qui met inévitablement fin à l'accord de démarcation.

52. Monsieur le président, Mesdames et Messieurs de la Cour, ayant épuisé, si ce n'est votre patience, le temps qui m'est alloué, je conclus en vous remerciant de votre attention, tout en vous priant d'appeler à la barre le professeur Zimmermann.

Le PRÉSIDENT : Je remercie le professeur Thouvenin. I now call Professor Andreas Zimmermann to the podium. Sir, you have the floor.

Mr ZIMMERMANN:

INTERPRETATION OF THE GENEVA AGREEMENT

A. Introduction

1. Mr President, Members of the Court, I will now address the arguments finally made by counsel for Guyana concerning the Geneva Agreement, few as they were, but limiting myself to legal considerations.

2. At the outset, I note the many arguments counsel for Guyana deliberately chose *not* to address in that regard — and I believe that this was not a mere coincidence but rather an implicit acknowledgment that they had nothing to say on them.

3. This included

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- the drafting history of the Geneva Agreement⁷⁹,
- the argument based on the very title of the Agreement⁸⁰,
- the Geneva Agreement's preamble⁸¹,
- the argument based on Article II, paragraph 3, of the Geneva Agreement⁸²,
- the arguments based on Article IV, paragraphs 1 and 2, of the Geneva Agreement⁸³,
- the argument based on the subsequent practice of the parties⁸⁴,
- my arguments based on both the Port of Spain Protocol, which once again was not even mentioned, and the practice arising thereunder,
- and, finally, the argument based on the understanding, by the United Nations Secretary-General, of the Geneva Agreement⁸⁵.

4. And that then leaves me with addressing Articles I and V of the Geneva Agreement.

B. Article I of the Geneva Agreement

5. Once again, however, also with regard to Article I of the Geneva Agreement, certain of Venezuela's arguments were not addressed, namely

- that the Mixed Commission, given the wording of Article I, had *not* been tasked to settle the controversy between

⁷⁹ CR 2026/26, p. 43 *et seq.*, paras. 15-19 (Zimmermann); CMV, paras. 3.9. *et seq.*; RV, paras. 2.82 *et seq.*

⁸⁰ CR 2026/26, p. 45 *et seq.*, paras. 21-28 (Zimmermann); RV, paras. 2.68 *et seq.*

⁸¹ CR 2026/26, p. 46 *et seq.*, paras. 29-35 (Zimmermann); CMV, paras. 3.51 *et seq.*; RV, paras. 2.10 *et seq.*

⁸² CR 2026/26, p. 50 *et seq.*, paras. 59-62 (Zimmermann); RV, paras. 2.48 *et seq.*

⁸³ CR 2026/26, p. 51 *et seq.*, paras. 63-74 (Zimmermann); RV, paras. 2.51 *et seq.*

⁸⁴ CR 2026/26, p. 53 *et seq.*, paras. 75-82, 91-103 (Zimmermann); CMV, paras. 3.61 *et seq.*; RV, paras. 2.124 *et seq.* and 2.147 *et seq.*

⁸⁵ CR 2026/26, p. 58 *et seq.*, paras. 104-113 (Zimmermann); CMV paras. 3.92 *et seq.*; RV, paras. 2.163 *et seq.*

Venezuela and the United Kingdom “*as to the validity of the Arbitral Award of 1899*”⁸⁶;

- nor that the Mixed Commission had been tasked to decide anything, and even less decide the issue of the validity of the Award.

6. Instead, the Mixed Commission, just like the other actors now acting under Article IV, had been tasked to seek a practical settlement of the controversy, and search for satisfactory solutions to the controversy⁸⁷.

7. Before moving on, it is also worth noting in passing, and indeed telling, that unlike the Washington Agreement, which had referred to a “settlement” *tout court*⁸⁸ to be reached by an arbitration, the Geneva Agreement in contrast specifically aimed at a “*practical settlement*” — “settlement”, “practical settlement” — which an upheld arbitral award obviously could not constitute.

8. Finally, counsel for Guyana at least tried to counter my argument based on the use, by the parties, in Article I of the term “controversy” rather than the term “dispute”, and the thereby implicit reference to the overall boundary controversy that had already been addressed in the 1897 Washington Treaty⁸⁹. In doing so, counsel for Guyana claimed that Article I of the Geneva Agreement concerns, and I quote counsel for Guyana “a controversy *over Venezuela’s contention* that the Award is null and void”⁹⁰. That is how counsel for Guyana described it.

9. But, as you can see, this is not what Article I of the Geneva Agreement says. Article I does not refer to “*a controversy over Venezuela’s contention* that the Award is null and void”, as counsel for Guyana claimed. Instead, and to the contrary, it refers to “the

⁸⁶ CR 2026/26, p. 48, paras. 40-42 (Zimmermann) ; RV paras. 2.26 *et seq.*

⁸⁷ CR 2026/26, p. 47 *et seq.*, paras. 36 *et seq.* (Zimmermann); RV, paras. 2.21 *et seq.*

⁸⁸ Cf. preamble of the 1897 Washington Treaty.

⁸⁹ CR 2026/26, p. 47 *et seq.*, paras. 36-39 (Zimmermann); RV, paras. 2.28, 2.29.

⁹⁰ CR 2026/28, p. 12 *et seq.*, para. 31 (Reichler).

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controversy *that has arisen as a result of* Venezuela's contention that [it] is null and void".

10. Obviously, it was indeed Venezuela's contention as to the nullity that brought the underlying overall boundary controversy back to the floor and that had therefore arisen, as Article I puts it. And it was accordingly that boundary controversy as such, already addressed in the 1897 Washington Treaty, which had once again arisen due to Venezuela's contention, that was then to be solved by virtue of the Geneva Agreement by way of negotiation.

11. And that now brings me to Article V of the Geneva Agreement, and I am really grateful that we finally learned what Guyana thinks Article V stands for. However, Article V does not lead Guyana's arguments anywhere. I make several points:

C. Article V of the Geneva Agreement

12. *First*, and as per its clear wording, Article V is intended to preserve the claims of *both* parties to territorial sovereignty. At the same time, however, there is no hint whatsoever in the text of Article V that it was meant to prevent a *future* practical settlement of the boundary controversy. And how could it be otherwise, since this is the very object and purpose of the Agreement?

13. In other words, Venezuela is *not* arguing that the Geneva Agreement had wanted to set aside *any* claim of territorial sovereignty by Guyana, or by Venezuela for that matter. And this again confirms that it is the overall boundary dispute, and how to solve it, that is the subject-matter of the controversy, and thus also, as Professor Mbengue will further elaborate on, the real issue before the Court.

14. Instead, what Venezuela *is* arguing is that the Geneva Agreement wanted to provide how to reach a practical settlement that would address the territorial claims of both, Guyana and Venezuela, namely by way of negotiations. This is also suggested by the very introductory line of Article V, paragraph 1, which provides that it is meant "to facilitate the greatest possible measure of cooperation and mutual understanding" between the parties.

15. Article V of the Geneva Agreement therefore supports, rather than precludes a practical settlement of the boundary

controversy to be reached by way of negotiation as the only possible way to move forward, with such practical settlement then setting aside any legal effect the 1899 Award might have, *quod non*.

16. *Second*, I cannot but also further note that Guyana aims to assert its territorial claim through a judgment of this Court, hoping that it will confirm the validity of the Award. In Guyana's own reading of Article V, paragraph 2, — *Guyana's* reading — *no* post-1966 acts or activities whatsoever shall constitute a basis for asserting or supporting a claim to territorial sovereignty. But how can Guyana then now assert its claim that the Award is valid by unilaterally bringing, *in 2018*, its case on the basis of the alleged compromissory clause in Article IV of the Geneva Agreement?

17. Thus, in Guyana's own understanding, Article V precludes the possibility to rely on Article IV of the Geneva Agreement to have the claimed validity of the Award, and Guyana's ensuing territorial sovereignty, recognized by the Court.

18. And this understanding of Article V is confirmed by the Court's Judgment in the *Gulf of Maine* case. In said case, Article III, paragraph 2, of the *compromis* provided for a similar "without prejudice" clause as the one contained in Article V. It was meant to keep certain claims of the parties outside of the scope of the *compromis*⁹¹. The Court's Chamber found that the parties "have chosen to reserve for themselves, as the subject of future direct negotiation with a view to an agreement, the determination of the course of the delimitation line between the international boundary terminus and point A"⁹². The Court's Chamber then reached the conclusion that the parties' "intention . . . to have recourse to judicial settlement must be taken within the limits in which it was conceived and expressed"⁹³.

⁹¹ Cf. Article III, paragraph 2 of the *compromis*, see *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 253, para. 5.

⁹² *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 266, para. 23.

⁹³ *Ibid.*

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19. Accordingly, the Court's Chamber then continued that, in the task conferred upon it, it must "conform to the terms by which the Parties have defined this task"⁹⁴.

20. In the Geneva Agreement, Article V is a similar "without prejudice" clause. Its scope is, however, not limited to some positions or claims, as in the *Gulf of Maine* case, but covers *all* positions and claims of the parties. The only conclusion to be drawn therefore is that, indeed, as argued by Venezuela, the parties — to use the words of the Court in *Gulf of Maine* — "have chosen to reserve for themselves, as the subject of direct negotiation with a view to an agreement"⁹⁵ the solution of the controversy addressed by the Geneva Agreement. And this plainly confirms that they had no intention to have recourse to judicial settlement. Accordingly, the parties cannot have defined, in the Geneva Agreement, any task for the Court.

21. *Third*, what is more, is that Article V does not exclude, in any manner whatsoever, the search for a practical settlement of the boundary controversy by way of negotiations. The reason for this is the lack of a clause akin to clause 3 of the Polish-Danzig Agreement which had *explicitly* provided that the subsequent 1923 Polish-Danzig Agreement *itself* did not, and could not, set aside the legal effects of the previous decision of the High Commissioner for Danzig.

22. On Wednesday, counsel for Guyana tried to argue that Article V constitutes a similar savings clause, but maybe a closer look at the two cases would have been helpful to discern the fundamental differences between Article V Geneva Agreement on the one hand, and clause 3 of the Polish-Danzig Agreement on the other.

23. For one, Article V, paragraph 2 Geneva Agreement is solely concerned with post-1966 unilateral acts of the two parties.

24. Article V, paragraph 1, in turn, provides that during the process of searching for an agreed mutually acceptable practical settlement of the overall boundary dispute by the parties, any claim

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

that the Award is valid cannot be dispositive of the controversy since this would amount to a diminution of Venezuela's claim to territorial sovereignty over the disputed territory.

25. Had the parties indeed wanted, as Guyana wants you to believe, to foreclose any practical settlement by way of negotiations, they would have specifically said so in Article V. But, unlike Poland and Danzig in clause 3 of their 1923 Agreement, they did not formulate Article V in such a manner.

26. At the same time, since Article V was meant not to interfere with the parties' territorial claims, its purpose was not, and cannot be, to safeguard the purported validity of the 1899 Award by way of a judgment of the Court since this would prevent Venezuela to bring forward its own claim.

27. On the whole, Article V of the Geneva Agreement therefore supports, rather than precludes a practical settlement of the boundary controversy to be reached by way of negotiation as the only possible way to move forward. This practical settlement would set aside any legal effects the 1899 Award might have, *quod non* — unless, following *mutatis mutandis* the *Gulf of Maine* precedent, Article V forecloses the recourse to judicial settlement *in toto*.

D. Conclusion

28. Before I conclude, let me draw your attention to the extensive substantive discussions that took place in November 1984 between the Parties. During these talks, the Parties discussed in significant detail possible alternative boundary lines. While Venezuela put forward the so-called Shahabuddeen line, which Guyana dismissed⁹⁶, Guyana alternatively proposed a potential cession of a smaller coastal strip⁹⁷.

29. Accordingly, Guyana, in fulfilling then its legal obligations under the Geneva Agreement, was then willing to discuss the territorial controversy as such regardless of its own position as to the alleged validity of the Award. Although these

⁹⁶ CMV, Annex 114.

⁹⁷ CMV, Annex 113, p. 1, para. 2.

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discussions did not result in an agreement, they confirm — the negotiations — once more, that the Parties had moved on from discussions about the invalidity of the Award.

30. Why have we heard nothing, and I repeat nothing, about these Guyanese advances and other advances made by Guyana during their oral submissions? I submit, the question is best answered by Guyana's own representative, Rashleigh Jackson, who in 1985 expressly acknowledged his concerns regarding public reaction should the existence of negotiations about the border become public. He observed that "if it surfaces, the publics (*sic!*) would say: 'what is this talking about?'"⁹⁸. That statement is difficult to reconcile with Guyana's present attempt to portray the post-1966 process as involving no meaningful engagement concerning the territorial controversy itself. To the contrary, it reflects an awareness that substantive discussions were in fact taking place, albeit in a politically sensitive context.

31. Guyana has thus played both sides of the fence. It is only during these proceedings that Guyana has adopted a markedly different — and difficult to comprehend — position. But Guyana cannot *ex post facto* undo its own subsequent practice and its own understanding of the Geneva Agreement, tasking the parties to reach mutually acceptable practical solutions for their long-standing boundary dispute.

32. Members of the Court, in 1966, the parties committed themselves to an agreed diplomatic process, meant to bring about a practical settlement of a long-standing territorial controversy caused by a, to say the least — as you have seen — fundamentally flawed Award on the validity of which they held completely divergent views. Four years later, with Guyana having gained full independence, Guyana re-committed itself to this process by signing the Port of Spain Protocol.

33. In fulfilling the obligations arising under the Geneva Agreement, both Parties have engaged in negotiations addressing the root causes of their conflict, namely their boundary dispute as such. The Court must not now second-guess the Parties' intentions

⁹⁸ RV, Annex 31, p. 225.

or override their free choice to opt for the path of reaching mutually acceptable solutions leading to a practical settlement of their boundary dispute.

34. Yet, Guyana now claims that, if the Court were to follow Venezuela's arguments, it would lead to "eternal negotiations"⁹⁹. That warrants two remarks.

35. For one, it is the Parties' understanding of the Geneva Agreement, and the Parties' understanding alone, as reflected in the Geneva Agreement and their agreed subsequent practice, that, as the ILC has confirmed, provides an "authentic means of interpretation"¹⁰⁰ not to be second-guessed by external actors. It is for that reason, I submit, that Guyana has not engaged at all, ever since it brought the case before you, with the practice of the Parties ever since 1966 up to the 2023 joint declaration. This practice, as Venezuela has demonstrated, confirms that it has always been the shared view of both, Guyana and Venezuela, that they wanted to reach a practical settlement on the boundary controversy by way of negotiations, whatever their fundamentally divergent views on the nullity of the Award up to today are. And Guyana cannot *ex post facto* undo this subsequent joint practice.

36. Finally, let us step back for a moment and reflect on the Beagle Channel conflict between Chile and Argentina. It confirms that even a conflict which — just like the case at hand — *first*, dated back to at least the middle of the nineteenth century and which, *second*, concerned the contestation of an arbitral award as being "irrevocably null and void" — as the claim was made by one party then in the Beagle Channel — may be solved by way of an agreed mediation. As you are aware, Chile and Argentina managed to reach a peaceful settlement of their long-standing controversy and concluded, in 1984, a Treaty of Peace and Friendship¹⁰¹, which, as

⁹⁹ CR 2026/28, p. 32, para. 18 (d'Argent).

¹⁰⁰ ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties (2018), Conclusion 3.

¹⁰¹ Treaty of Peace and Friendship, signed at Vatican City, 29 November 1984, *UNTS*, Vol. 1399, 1985, No. 23392.

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the parties themselves put it, “constitute[d] a compromise”, solving the boundary dispute for good.

37. Guyana has provided no answer, and was unable to provide an answer anyhow, why what was possible for Argentina and Chile in the 1980s, cannot be possible for Guyana and Venezuela today — despite Guyana’s commitment to do so in the Geneva Agreement, and despite the fundamental flaws inherent in the 1899 Award leading to its nullity.

38. Mr President, Members of the Court, I thank you, as always, for your kind attention, and would now kindly request you, Mr President, to call Professor Mbengue to the podium. Thank you very much.

The PRESIDENT: I thank Professor Zimmermann. Before I give the floor to the next speaker, the Court will observe a break of 15 minutes. The hearing is suspended.

The Court adjourned from 4.20 p.m. to 4.35 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now call Professor Makane Mbengue to the podium. You have the floor, Sir.

Mr MBENGUE:

**REBUTTAL -- REAL ISSUE, DECOLONIZATION,
NOVATION**

1. Mr President, distinguished Members of the Court, it is, again, a privilege to appear before you on behalf of the Bolivarian Republic of Venezuela.

2. You have just heard Professor Zimmermann methodically dismantling Guyana's flawed reading of the Geneva Agreement. I shall now take up the torch and address the arguments □ the very few arguments □ Guyana managed to marshal in countering Venezuela's first round of submissions on the real issue in these proceedings, the notion of novation and the relevance of decolonization.

3. Mr President, Venezuela does not appear before you to litigate a case you have no jurisdiction to hear. Venezuela appears, rather, to ensure that its voice - and the historical truth it carries - is not drowned out by Guyana's monologue. Oral hearings, in that sense, are far more than the procedural right enshrined in Article 43 of the Statute. They allow the international community to judge for itself the merits of each side's position. But this requires States to seize the opportunity to answer each other during an oral stage. And on Friday, that opportunity was Guyana's: it had before it two sets of written submissions and Venezuela's first round of oral pleadings.

4. This opportunity, Guyana squandered. Not only did its first round of oral pleadings fail, as we demonstrated on Wednesday, to engage with the Rejoinder, but its second round compounded the error, recycling what it stated in its written submissions. Guyana was there; its team received the verbatim. And yet, somehow, it refused to engage.

5. I shall nonetheless take up the few crumbs Guyana has left us and address them in turn.

6. *First*, I will show that Guyana has still not answered Venezuela's position that the real issue in these proceedings is governed by the Geneva Agreement and its requirement of a

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mutually satisfactory practical settlement. *Second*, I will address Guyana's new attempts to resist the conclusion that the 1899 framework was novated by the Geneva Agreement. *Third*, I will return to decolonization and show why Guyana's reliance on the stability of colonial boundaries cannot displace the specific legal framework Guyana and Venezuela themselves adopted in 1966.

Real issue

7. Mr President, delineating the “real issue” or “subject-matter”, on an objective basis, is a fixture of international adjudication. We explained on Wednesday what is at stake: ensuring that a decision is not misled by a unilateral presentation of a case.

8. Venezuela further demonstrated that the Court is yet to identify the real issue in this case and that this exercise leads to one conclusion: the controversy is governed by the Geneva Agreement and by the obligation it lays on Guyana and Venezuela to seek a mutually satisfactory solution.

9. Guyana offered no answer as to the “real issue”. Instead, it tried to deflect the matter, in two principal ways:

(a) *First*, Professor d'Argent quoted past statements from Venezuela's counsel to suggest that Venezuela accepts that the validity of the Award is at stake in these proceedings¹⁰². But it goes without saying that these statements, made in incidental proceedings and taken outside their context, do not represent Venezuela's constant position - and in line with both States' practice since 1966 - that the question of validity is moot.

(b) *Second*, Professor d'Argent sought again to confuse the “real issue” and the scope of the Court's *ratione materiae* jurisdiction¹⁰³. But I insist: these are not the same thing. They are, if you will, two circles that may overlap, and only what falls at their intersection can be adjudicated. Venezuela's position is that there is no overlap here, and no role for the Court to play.

10. Guyana's sole engagement with the critical identification of the “real issue” was to assert that the 2020 Judgment has already determined it. How - we were not told; but in the verbatim

¹⁰² CR 2026/28, p. 27-28, paras. 5-7 (d'Argent).

¹⁰³ CR 2026/28, p. 33, para. 20 (d'Argent).

Professor d'Argent inserted a footnote¹⁰⁴ - a footnote referring to paragraphs 66 and 135 of the 2020 Judgment. Did these paragraphs bear any resemblance to the language typically used by the Court to identify the real issue or the subject-matter? No: paragraph 66 of the 2020 Judgment does not even mention these terms; paragraph 135 only makes a conclusion as to the Court's jurisdiction *ratione materiae* - which, as we explained last week, differs from the subject-matter.

11. Beyond this, Guyana fell back on recycling arguments from its written submissions and thought it had found a lifeline in the doctrine of *res judicata*.

12. A word is needed on this. Counsel for Guyana described again on Friday *res judicata* as a kind of guillotine. But your jurisprudence is clear that the Court is not in the habit of fashioning straitjackets out of its own words. I shall make three points.

13. *First*, and as put by the Court in the *Genocide Convention* case, “[i]f a matter has not in fact been determined, expressly or by necessary implication, then no force of *res judicata* attaches to it”¹⁰⁵. The “real issue” was not determined in 2020. That Judgment was only on jurisdiction; it did not identify what needs to be decided on the merits. Guyana's argument would transform *res judicata* into something it is not: a device by which a jurisdictional judgment silently decides the merits. But more importantly, Guyana's approach conflicts with the Court's *jurisprudence constante* that incidental proceedings cannot, ever, prejudice the merits of a case¹⁰⁶.

¹⁰⁴ CR 2026/28, footnote 74.

¹⁰⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 95, para. 126.

¹⁰⁶ *Certain German Interests in Polish Upper Silesia, Jurisdiction, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6; Legality of Use of Force (Serbia and Montenegro v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2004 (III), p.1335, para. 72; South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase, Judgment, I.C.J. Reports 1966, pp. 36-37, para. 59.*

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14. *Second*, the scope of the 2020 Judgment *res judicata* is not as broad as alleged by Guyana. Read the *dispositif*. Read paragraph 138. The Court spoke of the “*question of the definitive settlement of the land boundary*”, “*definitive settlement of the land boundary*”. I emphasize the word: *settlement*. *Règlement* in French. Not delimitation, not determination of the line □ settlement. That word is precisely the language of the Geneva Agreement itself. Article I speaks of “satisfactory solutions for the practical *settlement* of the controversy” for both Guayana and Venezuela. The Court followed the wording of the Geneva Agreement far more closely than counsel for Guyana.

15. *Third*, Mr President, on Friday Mr Reichler placed considerable weight on the reasoning behind the *dispositif* to sustain Guyana’s view of what it is *res judicata*. It is true that where the meaning of the *dispositif* requires clarification, recourse may be had to the reasoning. But the reasoning is consulted to *clarify the meaning of what was decided*¹⁰⁷ — not to expand it. Paragraph 64 of the 2020 Judgment, quoted in full by Guyana, records two things: *one*, the historical fact of the disagreement between Guyana and Venezuela over the validity of the Award. And *two*, the obligation under Article I of the Geneva Agreement to pursue a practical settlement of the controversy. The first — the validity of the Award — is the past. The second — the obligation under Article I — is the framework that governs the controversy today.

16. Guyana never engages with that framework, and never even properly acknowledges its existence. On Wednesday, I asked a simple question¹⁰⁸: why was the Geneva Agreement ever concluded? What did the parties seek to achieve? Venezuela has a clear answer to that question, but Guyana offered none. We do not know what legal function Guyana attributes to the Geneva Agreement; maybe they do not know it either. But the Agreement is in force, and needs to be respected.

¹⁰⁷ *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia/Peru) (Colombia v. Peru), Judgment, I.C.J. Reports 1950, p. 402.*

¹⁰⁸ CR 2026/26, p. 26, para. 37 (Mbengue).

17. In this connection, Venezuela invoked *Northern Cameroons* for the principle that “[t]here are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, cannot ignore”. But if counsel for Guyana does not care for *Northern Cameroons*, perhaps they will accept *Haya de la Torre*. In that case, this Court was asked to choose among the various ways in which an asylum could be terminated. The Court declined, reasoning that

“these courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court’s judicial function to make such a choice”¹⁰⁹.

18. 1951, Mr President. The principle Venezuela invokes is not novel. And what did the Court then do in 1951? It expressed confidence that Colombia and Peru would be able to find, in the Court’s own words, “a practical and satisfactory solution”¹¹⁰. The very language Venezuela has placed at the centre of its pleadings. The very language of Article I of the Geneva Agreement; and the very “real issue” at stake.

Novation

19. Let me now turn to novation. Mr President, on Monday last week, Professor d’Argent thought that he could wave away the argument of novation with a simple syllogism¹¹¹. We showed, on Wednesday, that his syllogism was wrong. It is precisely because of the disagreement about the validity of the 1899 Award that novation became necessary. Professor d’Argent would have novation impossible whenever it is most needed □ whenever two States hold incompatible views on a prior legal framework¹¹².

¹⁰⁹ *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 79.

¹¹⁰ *Ibid.*, p. 83.

¹¹¹ CR 2026/24, p. 32, para. 27 (d’Argent).

¹¹² CR 2026/26, p. 35, para. 84 (Mbengue). ¹¹³ CR 2026/28, pp. 21-24, paras. 24-34 (Reichler)

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20. On Friday, Guyana tried two new strategies. Mr Reichler argued that Article V of the Geneva Agreement is a saving clause that preserves Guyana's rights under the 1899 Award and forecloses any novation¹¹³. Professor d'Argent asked: what, exactly, was novated?¹¹³ Both arguments fail.

21. I turn first to Mr Reichler's reading of Article V. Professor Zimmermann has already demonstrated that the text of the provision does not support that reading, and that indeed Article V reflects the limits imposed on the Court's decision in this case. I add only one point, which bears specifically on novation.

22. Article V, paragraph 1 is symmetrical. It preserves "bases of claim" □ for Venezuela, for British Guiana, for the United Kingdom □ on the same terms, for all. And a "basis of claim" is something a State *asserts*; it is what a party points to when asked what justifies its position. Article V, paragraph 1, freezes those assertions, nothing more.

23. So, if Article V, paragraph 1, saves Guyana's reliance on the 1899 Award, it equally saves Venezuela's contention that the Award is null. Both stand. Neither is endorsed. And those two preserved assertions are, word for word, the two claims that Article I identifies as part of the controversy Guyana and Venezuela must settle. Therefore, if anything, Article V *confirms* novation by sending the parties' competing claims forward, into Article I, for resolution. Professor Zimmermann has already drawn the further consequence under paragraph 2 of Article V: no post-1966 act may constitute a basis for asserting or supporting a claim to territorial sovereignty, unless accepted by the Parties. And a judgment endorsing the validity of the 1899 Award would breach that provision.

24. I turn now to Professor d'Argent's question. What was novated? The Award? The 1897 Treaty? The 1905 Treaty? The boundary itself? □ Professor d'Argent said Venezuela had identified none of them.

25. The answer, Mr President, is the whole framework. Not any of those instruments standing alone. The framework they

¹¹³ CR 2026/28, p. 29, para. 12 (d'Argent).

constituted *together* □ a framework designed, in the language of the 1897 Treaty, to produce a “full, perfect, and final settlement” of the boundary. The 1897 Treaty supplied the procedure; the 1899 Award supplied the line; the 1905 Agreement supplied the demarcation. *That* framework, as a whole, is what was novated, because it could not deliver on its promise. The Geneva Agreement replaced it with a different framework: an obligation under Article I to seek satisfactory solutions for the practical settlement of the controversy, within the procedural architecture of Articles II and IV of the Geneva Agreement.

Decolonization

26. Finally, let me turn to decolonization.

27. Mr President, the back-and-forth between pleadings is helpful to shed light on a controversy. Sometimes, this results in some degree of agreement.

28. As happened here: counsel for Guyana finally acknowledged the relevance of decolonization. More, they disavowed any support for “acts of great colonial wrongdoing”¹¹⁴, and they aptly referred to the “iconic resolution on decolonization adopted by the General Assembly in 1960”¹¹⁵.

29. But they draw the wrong lessons from that historical background. I am not talking of the bizarre argument whereby Venezuela, historically a champion of the anti-colonial movement, somehow became a new colonial bully trying to intimidate Guyana; or of the baseless, groundless contention that Venezuela hindered or delayed Guyana’s path to independence. These contentions deserve no answer.

30. No, I am referring to Guyana’s misguided attempt to desecrate the decolonization movement by turning it into a mechanism for laundering colonial dispossession into stable title.

31. Professor Pellet¹¹⁶ cited *Burkina Faso/Mali* for the proposition that maintaining the status quo in the context of

¹¹⁴ CR 2026/28, p. 25, para. 35 (Reichler).

¹¹⁵ CR 2026/28, p. 52, para. 21 (Sands).

¹¹⁶ CR 2026/28, p. 35, para. 8 (Pellet).

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decolonization is often “the wisest course”; Professor d’Argent¹¹⁷, meanwhile, relied on this Court’s recent judgment in *Gabon/Equatorial Guinea* to argue that the “territorial base and boundaries left . . . by the colonial power” have a “*permanence distincte*” that needs to be respected.

32. These arguments are flawed: they proceed, without naming it, from the notion of *uti possidetis*, which finds no application in this case. The principle *uti possidetis* preserves boundaries that existed in law at independence or according to colonial *effectivités*. But we are here dealing with an external border between an already-independent State, Venezuela, and a newly-decolonized entity, Guyana — an entirely different situation. And an external border whose very lawfulness *is* the controversy. The African examples invoked by Guyana have no purchase here. *Uti possidetis* is the “wisest course” when no alternatives exist; it cannot help a State that benefits from the status quo, and it certainly cannot allow States to ignore an obligation to reach a mutually satisfactory solution.

33. But it was Professor Sands that pushed this argument to extreme limits. He did so wielding the typical and uninspired argument that challenging one colonial border is endangering them all. This is the “open the floodgate” argument all over again, recycled from Professor Pellet’s intervention on Monday. Professor Sands then asked whether “an age of instability and uncertainty” that “would run directly contrary to the wisdom of Africa” is “what Professor Mbengue [me] is asking you to do?”¹¹⁸

34. Well, let me reply to this challenge directly by noting that it is, once again and regrettably, based on a failure to engage with Venezuela’s case and ignore the Geneva Agreement. This is not any border that is at stake here, but a border subject to, and governed, by a dedicated, and indeed rather unique international instrument. An instrument that commits its parties to seek a mutually satisfactory solution to their pending territorial controversy.

¹¹⁷ CR 2026/28, p. 29, para. 12 (d’Argent), citing *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment of 19 May 2025, p. 42, para. 128.

¹¹⁸ 119 CR 2026/28, p. 54, para. 25 (Sands).

Reaching such an agreement would not destabilize international law, or betray the goals of decolonization, as Guyana would have you believe □ instead, it would be international law at work, international law remedying an act of great colonial wrongdoing.

35. And so, this is the right conclusion to draw from the Geneva Agreement's roots in the decolonization movement. That the peoples of Guyana and Venezuela are the bearers of that movement's promise. And that both are best served, not by a judicial endorsement of a colonial-era artefact, but by the framework the Geneva Agreement established. A framework of negotiation, of mutual satisfaction, and of solutions that two sovereign equals can accept.

Conclusion

36. Mr President, Members of the Court, I come to my conclusion.

37. On Friday, Guyana's counsel opened their rebuttal by referring to the myths that allegedly power Venezuela's position. There is no merit to that position, but Guyana is right that a myth informs this controversy □ a myth enacted by Guyana itself.

38. Guyana casts itself as poor Sisyphus □ burdened, toiling, condemned. But unlike Sisyphus, Guyana was not condemned by the gods. It chose its boulder, its summit, and, above all, its climb.

39. The boulder is the 1899 Award, and Guyana tries to roll it up the mountain of the Geneva Agreement, hoping somehow to reach the summit of a mutually satisfactory solution. But each time, each time the boulder rolls back down. It must roll back down, because a corrupt Award cannot carry Guyana to a solution that is mutually satisfactory.

40. That is the point Guyana cannot escape: the Geneva Agreement was not concluded to entrench the 1899 Award, but to supersede it. And as long as the Agreement governs this controversy, the path forward cannot be the judicial resurrection of a colonial artifact. It must be the practical settlement the Parties committed to seek: a mutually satisfactory solution □ a summit that, once the boulder is set down, Guyana and Venezuela may walk toward side by side.

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41. Mr President, Members of the Court, I thank you for your kind attention and would ask you to give the floor to Dr Arianny Seijo Noguera, Attorney General of Venezuela. Thank you.

The PRESIDENT: I thank Professor Mbengue. I now give the floor to the Attorney General of Venezuela, Dr Arianny Seijo. You have the floor, Madam.

Ms SEIJO NOGUERA:

[English translation provided by the Bolivarian Republic of Venezuela]

1. Mr President, Members of the Court, it is a great honour for me to appear before you on behalf of my country, the Bolivarian Republic of Venezuela.

2. Venezuela remains firm in its refusal to recognize the Court's jurisdiction; therefore, its presence here does not constitute, nor should it ever be interpreted as, an acceptance of the Court's jurisdiction to rule on this territorial dispute. This has been its historic position for over a century.

3. Venezuela is here before you simply because it cannot remain silent and allow Guyana to use this Great Hall of Justice to deny the terms, object and purpose of the 1966 Agreement.

4. In my capacity as Solicitor General of Venezuela and as an international jurist, I will present the final legal observations on this matter. During the course of these oral hearings, you have heard Venezuela's historical truth, which demonstrates its historical position and its deep commitment to international law as the foundation of peaceful relations among all States.

5. And it is precisely for these reasons that Venezuela has consistently and unequivocally maintained its position that the 1899 Award is null and void.

6. This was the reason why, during the decolonization period, Venezuela and the United Kingdom, once the evidence came to light, put the issue of the 1899 Award behind them and redefined their relationship in the 1966 Geneva Agreement. I applaud the statement by the Attorney General of Guyana regarding his country's "deep commitment to international law", but I am compelled to recall that the Geneva Agreement is not merely a norm of international law, but rather the norm of international law that Venezuela and Guyana imposed upon themselves. *Pacta sunt servanda*.

1. Legal argument 1: the Geneva Agreement

7. Mr President, Members of the Court, I would like to refer to the 1966 Geneva Agreement as the sole binding instrument governing the territorial dispute over Guayana Esequiba.

8. As presented by Professors Mbengue and Zimmermann, Venezuela's position on the real issue or the subject matter of the dispute between Venezuela and Guyana is not the invalidity of the 1899 Arbitral Award. The real issue of the dispute is the obligation, under the 1966 Geneva Agreement, to seek a "mutually satisfactory solution" to their territorial dispute.

9. Regrettably, Guyana has attempted to distort the subject-matter of the dispute with the malicious absurdity of convincing the Court to legitimize the 1899 Award, a product of the unfortunate colonial past that our two countries endured in different ways.

10. Affirming the validity or invalidity of the 1899 Award would perpetuate a profoundly illicit and unlawful colonial outcome, which the parties to the Geneva Agreement superseded and set aside. This is a settled and resolved matter.

11. In contrast, the 1966 Geneva Agreement "novated" the previous legal régime that the colonial Power had imposed through structural coercion. By signing the Geneva Agreement, the parties replaced the fraudulent legal framework □ which had been sought to be established by the 1897 Treaty, the 1899 colonialist Award, and the 1905 demarcation agreement □ with a new framework: one in which they committed to seeking satisfactory solutions for the practical resolution of the territorial dispute.

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12. The Geneva Agreement is part of the decolonization process. This process involves more than merely granting independence to occupied territories; it also entails redressing the injustices of territorial dispossession committed against sovereign States.

2. Legal argument 2: theory of “non-cure”: Venezuela never waived its right to challenge the invalidity of the Award

13. Mr President, Members of the Court, I will now address Guyana’s false allegation regarding Venezuela’s alleged acquiescence and its purported theory of cure, based on Venezuela’s conduct following the issuance of the award. Professors Thouvenin and Azaria have demonstrated that this argument is fundamentally flawed and lacks evidentiary basis.

13. On the one hand, there is no legal principle in international law that allows the nullity of an arbitral award to be “cured” by the conduct of the parties. In any case, Venezuela has always opposed such a principle, especially during the Vienna Conference on the Law of Treaties. Furthermore, one cannot remedy what arose from illegality and fraud.

14. The evidence gathered by Venezuela demonstrates that it never waived its right to invoke the invalidity of the Award. This was unequivocally established in the Geneva Agreement.

15. Furthermore, a State may only invoke the invalidity of the award when it possesses evidence to prove it. Venezuela only obtained such evidence *following* the publication of the MalletPrevost memorandum; around that time, the British archives were partially opened, and subsequent investigations were conducted, which enabled Venezuela to demonstrate the defects in the Award.

16. In this regard, Venezuela’s conduct reflects the degree of seriousness and diligence expected of a State under international law with respect to challenging an arbitral award of the importance and magnitude of the fraudulent 1899 Award.

18. *Moreover*, the circumstances of the time confirm that Venezuela was a victim of the United Kingdom’s imperialist greed.

19. I am compelled to point out, Mr President, that Guyana maliciously seeks to deny the asymmetry of power that existed between Venezuela and the Powers of the time. A country devastated by war *was not in a position to confront the world's greatest naval and military Power* of that era in order to preserve its right to invalidate an award.

20. The absurdity of Guyana's claim does not end there. Guyana asks the Court to consider an even more irrational proposition as reasonable. Guyana argues that Venezuela □ regardless of the circumstances of extreme military disparities in the early twentieth century □ *was in a position to, and was expected to*, challenge an arbitral award, even without evidence to demonstrate the award's invalidity. *And it was expected to do so*, knowing that it would have to be prepared to endure another war at the hands of *its aggressor* - a war that it would undoubtedly lose again. With the utmost respect, Mr President, Guyana's claim runs counter to justice and good faith - and defies all reason.

3. Legal argument 3: the invalidity of the Award

21. Venezuela has made it clear that the real issue and what matters in this dispute is the 1966 Geneva Agreement. However, Mr President, Members of the Court, I would like to raise a third point before presenting my final conclusions. As Professors Tams and Palchetti clearly explained, even if the dispute concerned the 1899 Award, Guyana's assertion that the Award is valid completely fails. Venezuela has clearly demonstrated, with reliable evidence, that the 1899 Award is null and void, and that Guyana's unilateral submission to the Court lacks any basis.

22. *First*, Venezuela has demonstrated that the 1897 Treaty of Washington is invalid on grounds of error and fraud. Therefore, the 1899 Award, which was based on this invalid Treaty, is inevitably, and *consequently*, also invalid.

23. *Second*, Venezuela has provided evidence, including contemporary evidence, showing that it was coerced into accepting the 1897 Treaty of Washington, which invalidates the Treaty itself as well as the subsequent 1899 Award. There is also *contemporary* evidence demonstrating that Venezuela was the victim of coercion and during □ having been threatened with the use of force □ in the

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months immediately preceding the negotiations of the 1897 Treaty of Washington between Great Britain and the United States.

24. *Third*, Venezuela's historical position has been that the 1899 Award also suffered from multiple defects. Venezuela convincingly demonstrated, with substantial evidence, that the Award is invalid primarily for the following two reasons: *first*, the Tribunal did not state the grounds on which the decision was based; *second*, the Tribunal exceeded its authority. There are five instances of this abuse of power:

- 1) The Tribunal failed to answer one of the questions posed to it in Article III of the Washington Treaty;
- 2) The Tribunal failed to apply the rules specified in Article IV;
- 3) The Tribunal acted in a manner inconsistent with the scope of its powers by deciding on matters outside its jurisdiction;
- 4) The Tribunal did not act impartially, as required under Article V of the Washington Treaty; 5) The Tribunal failed to fulfil its duty to render a decision based on the law.

Concluding remarks

25. Mr President, Members of the Court, I have two concluding remarks.

26. *First*, I will comment on the documentary record. Despite the obstacles and difficulties created by the United Kingdom to prevent Venezuela from accessing the original sources, we have been able to compile and present *hundreds* of documents.

27. This documentary evidence has been compiled and analysed over many years by Venezuelan and British experts, who examined the archives of the United Kingdom, as well as Venezuela's national archives, in order to investigate the circumstances surrounding the null and void Award of 1899.

28. This process has been a source of deep sadness, as it has laid bare in great detail and reignited the injustice that our country has had to endure for more than 120 years, due to the unjust and invalid Treaty of Washington of 1897 and the unjust and invalid Arbitral Award of 1899 - both products of the colonial era that our country has hoped and strived to leave behind.

29. Venezuela is also aware of the probable existence of other relevant documents. With regard to such documentation, the conduct of the United Kingdom and Guyana is inexcusable.

30. Archival documents from April 1970, to which access has only recently been granted, confirm that the United Kingdom actively co-operated with Guyana in the preparation of this case. The relevant file, held at the British National Archives under reference number FCO 63/477, contains documents demonstrating cooperation between the Government of the United Kingdom and Guyana's legal advisers regarding the territorial dispute with Venezuela.

31. These documents reveal that British authorities acknowledged they were in possession of archival material that might not be available elsewhere. Consequently, the United Kingdom provided Guyana's legal advisers with access to restricted documents, including confidential material, while denying Venezuela equivalent access. This constitutes a serious violation of the principle of equality of arms.

32. But there is more. The United Kingdom's history of selectively destroying archives in the context of the decolonization process is also confirmed by the documents identified by reference numbers FCO 141/19928 and FCO 63/476. This must not be ignored.

33. In an effort to remedy this asymmetry, on 25 April 2023, Venezuela transmitted a Note Verbale expressing its concern regarding Guyana's exclusive access to documents related to the dispute. In that Note, Venezuela recalled the existence of a set of documents communicated by the United Kingdom to Guyana without notification or transmission to Venezuela or the United Nations, as required by the Geneva Agreement.

34. Venezuela made a specific request: that Guyana share a detailed list of the documents received, as well as any other documents obtained exclusively and without Venezuela's knowledge. Guyana's response of 22 June 2023 categorically rejected any obligation to provide such documentation.

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35. I now turn to my *second* observation. Throughout these hearings, Guyana's lawyers have portrayed Venezuela's position as a "myth" or a "fiction". They also attempted to counter the weight of Venezuela's arguments and historical position with shameful personal attacks and disparagements against Venezuela's legal team.

36. I will not go into Guyana's tactics, which are inelegant, inappropriate, and lack the dignity expected in this type of proceeding, especially from a State that claims to respect international law. These tactics reveal that Venezuela's official position, its arguments and the evidence supporting them can only be met by Guyana with insults, offenses and a lack of professionalism. Any reasonable observer would see through these tactics and draw the appropriate conclusions from them. Venezuela is very proud of its legal team and is enormously grateful to them for their dedication and professionalism.

37. Mr President, Members of the Court, it was the existence of two contradictory positions regarding the validity of the 1899 Award that led, in 1966, to the Geneva Agreement. The Agreement was not concluded because one party was right and the other was living in a fantasy. It was concluded because both parties recognized that their disagreement could not be resolved by determining who was right about the past, but only by agreeing on a way forward.

38. Venezuela is willing to resolve the dispute over the territorial border with Guyana. But such a solution must be achieved in accordance with the only valid legal framework governing the dispute: the 1966 Geneva Agreement and its mandate to reach a mutually satisfactory solution to the territorial dispute between Venezuela and Guyana.

39. Mr President, Members of the Court, I thank you very much for your kind attention. I respectfully request that you grant the floor to the President of the Bolivarian Republic of Venezuela to take the stand.

The PRESIDENT: I thank the Attorney General. I now invite the Acting President of Venezuela, Her Excellency Ms Delcy Rodríguez, to address the Court. Your Excellency, you have the floor.

Ms RODRÍGUEZ:

[English translation provided by the Bolivarian Republic of Venezuela]

1. Mr President, Members of the Court, I come before this Court to bring the voice of a people who deeply cherish justice, peace, and international law. It is the people of the Bolivarian Republic of Venezuela.

2. On 3 December 2023, our people turned out in large numbers at the polls and gave us a series of clear and unequivocal mandates. Allow me to highlight the following:

3. *First*, to maintain the historic position of not submitting their existential matters, such as independence and territorial integrity, to judicial mechanisms.

4. *Second*, to uphold the Geneva Agreement as the only valid legal instrument for resolving the territorial dispute over Guayana Esequiba.

5. *Third*, to defend the territory of Guayana Esequiba by all peaceful means, in accordance with international law. True to those mandates, I stand before you this afternoon.

6. Mr President, Venezuela's historic position of not submitting matters related to its vital interests to judicial dispute resolution mechanisms is not an act of defiance or disregard for the Court as an institution of the United Nations. Venezuela is a fervent promoter and defender of international law. For this reason, it respects the International Court of Justice as the principal judicial body of the United Nations.

7. However, this is a matter of defending one of the essential attributes of our State, namely its sovereignty. Venezuela has never

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consented to submit the territorial dispute over Guayana Esequiba to the jurisdiction of this Court. In no way does Article IV of the Geneva Agreement constitute an arbitration clause.

8. With this in mind, since 2018, Venezuela has filed various briefs and intervened in different hearings before this Court with a twofold purpose:

9. First, to attempt to uphold international law in the face of this anti-legal absurdity promoted by Guyana. Second, to demonstrate to the world the truth regarding the rights that, since its inception, have belonged to Venezuela over the territory of Guayana Esequiba. This does not imply recognition of the Court's jurisdiction in the territorial dispute.

10. Mr President, the territorial dispute over Guayana Esequiba is governed by a legally binding international treaty that must be complied with by the parties in good faith. This instrument is none other than the 1966 Geneva Agreement.

11. It is a unique treaty for which it would be difficult to find a parallel in decolonization practice, seeking to resolve a colonial injustice through a mutually acceptable settlement. A negotiated solution is, therefore, an inevitable and indispensable condition of the dispute.

12. The Geneva Agreement buries and moves beyond the debate over the validity or invalidity of the 1899 Award. The Agreement recognizes that the border dispute could not be resolved in those terms and directs it toward a process aimed at achieving a practical, satisfactory, and mutually acceptable outcome. This framework cannot be circumvented, reformulated, or replaced through unilateral recourse to judicial resolution. It is law between the parties.

13. The preparatory work on the Geneva Agreement, its title, preamble, and articles, as well as the subsequent practice of the parties, demonstrate that resolving the legal question of the validity or invalidity of the award was never on the horizon. It was not a legal controversy. The object, nature, and purpose have always been to resolve the territorial dispute over Guayana Esequiba through political, peaceful, and diplomatic negotiation.

14. The dispute does not concern the confirmation or invalidation of an award. It concerns the resolution of a territorial dispute that both Parties expressly recognized as unresolved in 1966, and for which they agreed upon a specific method of resolution. That method is negotiation, not imposition. There are no winners or losers.

15. This negotiation process was neither exhausted nor abandoned by Venezuela; it was undermined by Guyana's conduct. At a time when the mechanisms provided for in the Geneva Agreement remained fully in force, Guyana unilaterally chose to shift the dispute from the realm of negotiation to that of judicial resolution, in open violation of the agreed-upon legal framework.

16. That shift was not innocent. It coincided with the discovery, in 2015, of an oil find described as "world-renowned". Guyana ceased to act in good faith and harboured a silent intention to evade compliance with the Geneva Agreement.

17. From that moment on, Guyana abandoned the logic of a mutually acceptable solution and adopted an unlawful strategy of judicialization aimed at obtaining, through this Court and without Venezuela's consent, what it could not achieve under the Geneva Agreement: validating a fraudulent award. An all-or-nothing approach.

18. Negotiation was replaced by litigation; good offices, by pressure; and political consensus, by unilateral action that perpetuates and exacerbates the dispute.

19. Venezuela cannot accept that this shift, driven by Guyana, redefines the nature of the dispute or the manner in which it should be resolved. Nor can it support the use of the Court as an instrument to consolidate that change, in violation of the Geneva Agreement and international law.

20. This is not a criticism of the judicial function. On the contrary, it is a defence of its scope. This Court was not created to supplant the will of States, but to act within the limits defined by that will. And those limits, in this case, are clearly established in the Geneva Agreement.

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21. Venezuela will not renounce its history, nor its legitimate rights — rights expressly recognized and preserved in the Geneva Agreement — simply because Guyana now seeks, unilaterally and opportunistically, to redefine the dispute. For us, the Guayana Esequiba is not reduced to mere economic and commercial interests. It forms part of our inalienable historical legacy. 22. 22. Guyana is evading its obligations and seeking to revive the debate over the validity or invalidity of the award. Through this manipulation, the Agreement itself, the Port of Spain Protocol, and decades of bilateral negotiations — including those conducted under the good offices of several UN Secretaries-General — are being disregarded.

23. This is not an oversight. It is a clear violation of the 1966 Agreement, which does not stand up to rigorous scrutiny. The narrative presented belongs to a different story, one that is divorced from historical and legal precedent. It invites the Court, in bad faith, to set aside more than a century of state practice in favour of a manipulated version of reality.

24. Mr President, members of the Court as part of its defence of the truth, Venezuela has made available to this Court — and henceforth to the world — abundant evidence confirming its historical rights over Guayana Esequiba, as well as the parties' decision to resolve the territorial dispute through the Geneva Agreement.

25. Despite the British blockade of evidentiary sources and the destruction of documents, Venezuela compiled and submitted a comprehensive and coherent body of documentation, consisting of more than three thousand (3,000) pages of evidence, distributed across several volumes.

23.26. The body of evidence presented to the Court includes international treaties and agreements, colonial and historical documents, extensive diplomatic correspondence, negotiation records, official statements, United Nations documents, as well as a substantial collection of maps.

27. Taken as a whole, this evidence confirms the nullity of the 1899 Arbitral Award. It also unequivocally reflects a long-standing practice and mutual recognition by Guyana and Venezuela

of the existence of a territorial dispute and the need to resolve it through direct negotiations aimed at reaching a mutually satisfactory solution, as established and required by the 1966 Geneva Agreement.

28. The evidence is irrefutable. Guayana Esequiba has been part of Venezuelan territory since its inception. In 1777, the Spanish Crown created the Captaincy General of Venezuela, comprising, among others, the Province of Guayana.

29. This administrative unit is the territorial origin of what later became the Republic of Venezuela, which was born with its Declaration of Independence and its 1811 Constitution. From that time onward, all the constitutions of the Republic of Venezuela have reflected the fact that Guayana Esequiba belongs to Venezuelan territory.

30. In 1825, the United Kingdom recognized Gran Colombia, whose eastern border was the territory of Venezuela's Guayana Esequiba. The United Kingdom never held any title to the territory of Guayana Esequiba. Its successor state did not hold it, nor does it hold it now. It seeks to artificially forge such a title through this process.

31. Beginning in 1840, the British Crown — aware of the immense gold reserves in that territory — established a strategy to plunder it. To this end, it enlisted a German adventurer to unilaterally draw an arbitrary line within Venezuelan territory: the so-called Schomburgk Line, which has never been validated or recognized by Venezuela.

32. Later, the United Kingdom attempted to consolidate this dispossession through a sham arbitration, which concluded with the fraudulent and rigged award of 1899. Today, they are attempting to validate that fraud through this biased process riddled with legal inconsistencies. There are even those who have dared to publicly predict the outcome of this procedure.

33. The truth of the award and its deceptive nature highlight the intention of Guyana — and of those who pushed it toward this reckless action — to tarnish and erode the prestige of this Court.

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How can they expect this Court to stain its history with a ruling that revives and legitimizes such a colonial judicial fraud?

34. Mr President, the negotiation process carried out by the parties following the signing of the Geneva Agreement demonstrates that there are various mechanisms to definitively resolve the territorial dispute. All are based on political dialogue and direct negotiation between the parties.

35. Both in the Joint Commission talks and in the good offices process, both parties put forward creative proposals aimed at reaching a practical, satisfactory, and mutually acceptable settlement. In fact, the former Prime Minister of Guyana, Forbes Burnham, a signatory to the Geneva Agreement, proposed signing a new agreement that would settle the border issue, linked to the construction of a hydroelectric project in the Upper Mazaruni region.

36. It should be noted that every step and mechanism throughout this process was adopted with the prior and express consent of both parties to the Geneva Agreement.

37. Regrettably, the UN Secretary-General abandoned this practice, which had been followed for over 50 years, yielding to the strong and intense pressure from lobbyists hired by the Cooperative Republic of Guyana, driven by powerful energy interests, as evidenced by the confessions of former Guyanese Minister Raphael Trotman. This dangerously exacerbated the controversy between the parties.

38. The global energy landscape points to high demand for hydrocarbons in the short and medium term, driven, among other factors, by the boom in new technologies. Venezuela holds the world's largest reserves of oil and natural gas and is considered a strategic target by major powers.

39. At the heart of the current development of this territorial dispute lies the region's hydrocarbon wealth, which has sparked the interest of major consumers and transnational oil companies that view the resources available in the area as a major opportunity. These vital interests have further complicated this historic dispute.

40. Only a practical, satisfactory, and mutually acceptable settlement of the dispute can create the conditions of stability and trust required for both countries, as well as the interests of third parties involved, to fully capitalize on the potential of that territory for the benefit of sustainable economic development and the social well-being of the peoples of the region.

41. Mr President, members of the Court, the dichotomous approach of validity or invalidity put forward by Guyana in its unilateral application is profoundly pernicious and futile.

42. No judgment by this Court on the territorial dispute will provide a definitive solution acceptable to the parties. On the contrary, it will exacerbate the differences and lead the parties to entrench themselves in their respective positions, distancing them from the practical, satisfactory, and mutually acceptable settlement to which they committed in 1966 by signing the Geneva Agreement.

43. Such a judgment may conclude a case, but it will not put an end to the territorial dispute over the Guayana Esequiba, as conceived and agreed upon by Venezuela, the United Kingdom, and Guyana. At best, it would return to the same impasse that the Geneva Agreement overcame.

44. Proof of this can be found in Guyana's unprecedented and extravagant submissions before this Court, which reflect an inexcusable spirit of superiority.

45. Just as colonial empires erased the history of the peoples they sought to dominate, this Court is being asked to order the destruction of maps, prohibit the teaching of history, eliminate symbols, and tear Guayana Esequiba from the hearts of Venezuelans. The aim is to erase the memory of a people in order to nullify their future.

46. Annihilating history will never legitimize dispossession. The truth will always prevail.

47. Mr President, this Court was created to resolve conflicts, not to encourage them. Only a political and negotiated solution to the territorial dispute can lay a solid and stable foundation for good

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neighbourliness, cooperation, shared economic development, and the promotion of secure investment in the region.

48. Venezuela will never endorse a violation of the Geneva Agreement and international law. To validate a ruling that seeks to disregard a legal instrument that is in force and has been duly deposited with the United Nations would run counter to the international legal order.

49. Even if the Court were to declare the award invalid, Venezuela would be unable to comply with such a ruling, as it would also be nullifying the Geneva Agreement and international law. It follows very clearly from this that there is no legal possibility of recognizing a decision resulting from this process, whatever it may be.

50. This is not an act of disrespect toward this esteemed Court. It is an act of unwavering defence of Venezuela's rights, of international law, and of the integrity of this Court as the principal judicial organ of the United Nations.

51. My presence before this Court demonstrates not only the importance that the territory of Guayana Esequiba holds for us. It is also clear evidence of the respect we have for the Court as an institution.

52. Mr President, Venezuela is ready and prepared to achieve the noble and peaceful purpose of the Geneva Agreement: to reach, by all means at its disposal, a practical, satisfactory, and mutually acceptable solution for the parties.

53. In today's turbulent world, we have reached a historic moment where we can demonstrate that dialogue and negotiation are the path to coexistence, happiness and well-being for our peoples. It is time to take a step forward. There is no other way.

54. A high-level bilateral meeting, organized by key regional stakeholders, will undoubtedly be far more productive and effective in achieving that goal.

55. Mr President, a country's virtue is not measured by its territorial size but by its efforts in the legitimate defence of its sovereignty, territorial integrity, and inalienable rights.

56. Guyana and Venezuela are called upon by history and geography to coexist, understand one another, and build a shared future. Therefore, the only real path forward for this dispute is a return to direct dialogue and the search for creative and mutually beneficial solutions that will transform a dispute inherited from colonialism into an opportunity for cooperation, joint development, and the well-being of future generations of both peoples.

57. To the people of Guyana I say: Venezuela is a peaceful nation, and our common destiny will always be intertwined.

58. Venezuela will never surrender its historic rights and territorial integrity, the legacy of our ancestors.

59. We bear the scars of history on our skin and in our souls the tenacity of the peoples who learned to defend what is ours, to not give up in the face of difficulties, and to march together towards a future of peace and development.

The PRESIDENT: I thank Her Excellency the Acting President of Venezuela for her statement. I now call the Agent of Venezuela, His Excellency Mr Samuel Reinaldo Moncada, to the podium. You have the floor, Sir.

Mr MONCADA:

[English translation provided by the Bolivarian Republic of Venezuela]

CLOSING STATEMENTS

1. Mr President, Members of the Court, I will now read into the record the closing statements of the Bolivarian Republic of Venezuela in these oral proceedings.

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“In the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, for the reasons explained in the Written and Oral phase, the Bolivarian Republic of Venezuela respectfully reiterates its requests to the Court to:

1) abstain from intervening in the territorial controversy between Venezuela and Guyana on Guayana Esequiba and from interfering with the obligations arising from the 1966 Geneva Agreement regarding the settlement of said dispute in an amicable, satisfactory and acceptable manner to the Parties, by means of peaceful, political and diplomatic negotiations,

and,

2) consequently, refuse to hear and dismiss the Co-operative Republic of Guyana’s claims.”

2. Finally, on behalf of the Venezuelan team, I would like to thank you, Mr President, Members of the Court, the Registry and its staff. We also extend our sincere gratitude to the interpreters for their excellent work, and in particular for the interpretation of these oral pleadings into Spanish. My thanks go as well to the delegation of Guyana.

3. In addition, I wish to express my deepest gratitude to Venezuela’s distinguished counsel, and to the women and men who make up the Venezuelan delegation. It has been both a privilege and an honour to work alongside you in this case.

Thank you for your kind attention.

The PRESIDENT: I thank the Agent of Venezuela.

The Court has taken note of the final submissions of the Parties. I would like to thank the Agents, counsel and advocates for their statements. In accordance with practice, I shall request both Agents to remain at the Court’s disposal to provide any additional information it may require. With this proviso, I declare closed the oral proceedings on the merits in the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

GUYANA v. VENEZUELA
Arbitral Award of 3 October 1899 Case

The Court will now retire for deliberation. The Agents of the Parties will be advised in due course of the date on which the Court will deliver its Judgment.

Since the Court has no other business before it today, the sitting is closed.

The Court rose at 5.55 p.m.

INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Release

Unofficial

No. 2026/13

11 May 2026

Arbitral Award of 3 October 1899 (Guyana v. Venezuela)

Conclusion of the public hearings on the merits held from
Monday 4 to Monday 11 May 2026

THE HAGUE, 11 May 2026. The public hearings on the merits in the case concerning Arbitral Award of 3 October 1899 (Guyana v. Venezuela) concluded today with the final submissions of Venezuela. The hearings, which opened on Monday 4 May 2026, comprised two rounds of oral argument.

The delegation of Guyana was led by Hon. Hugh Hilton Todd, Minister for Foreign Affairs and International Cooperation, and Hon. Carl B. Greenidge, former Minister for Foreign Affairs and International Cooperation, as Agent. The delegation of Venezuela was led by HE Ms Delcy Rodríguez Gómez, Acting President of the Bolivarian Republic of Venezuela, and Mr Samuel Reinaldo Moncada Acosta, Ambassador, Permanent Representative

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of the Bolivarian Republic of Venezuela to the United Nations, as Agent.

The final submissions of the Parties, made by the Agents at the end of Guyana's oral argument on Friday 8 May 2026 and Venezuela's oral argument on Monday 11 May 2026, can be found on the *website* of the Court in verbatim records 2026/28 and 2026/29, respectively. The verbatim records also include the lists of the delegations.

The Court will now begin its deliberation.

The Court's decision will be delivered at a public sitting, the date of which will be announced in due course.

Earlier *press releases* relating to this case are available on the Court's website.