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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2022

Public sitting

held on Tuesday 22 November 2022, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

***in the case concerning* Arbitral Award of 3 October 1899**
(Guyana *v.* Venezuela)

VERBATIM RECORD

ANNÉE 2022

Audience publique

tenue le mardi 22 novembre 2022, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

***en l'affaire de la* Sentence arbitrale du 3 octobre 1899**
(Guyana c. Venezuela)

COMPTE RENDU

Present:	President	Donoghue
	Vice-President	Gevorgian
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Sebutinde
		Bhandari
		Robinson
		Salam
		Iwasawa
		Nolte
	Judges *ad hoc*	Wolfrum
		Couvreur
	Registrar	Gautier

Présents : Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Yusuf
Mmes Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte, juges
MM. Wolfrum
Couvreur, juges *ad hoc*

M. Gautier, greffier

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as Agent;

H.E. Ms Elisabeth Harper,

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

Hon. Gail Teixeira, Member of Parliament, Minister of Parliamentary Affairs and Governance,

Mr. Ronald Austin, Ambassador, Adviser to the Leader of the Opposition on Frontier Matters,

Ms Donnette Streete, Director, Frontiers Department, Ministry of Foreign Affairs,

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

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Mr. Larry Davoe, LLM, Director of Legal Consultancy, Office of the Vice-President of the Republic,

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comme membres de la délégation.

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

For reasons made known to me, Judge Bennouna is unable to take part in today's sitting.

The Court meets this morning to hear the second round of oral argument of the Co-operative Republic of Guyana. I shall now give the floor to Professor Pierre d'Argent. You have the floor, Professor.

M. D'ARGENT : Merci, Madame la présidente.

LES EXCEPTIONS PRÉLIMINAIRES SONT IRRECEVABLES

1. Madame la présidente, Mesdames et Messieurs les juges, je répondrai au professeur Zimmermann sur la question de la recevabilité des exceptions préliminaires. Le professeur Sands abordera le bien-fondé des exceptions dont vous êtes saisis.

2. Le Guyana ne conteste en effet pas que la Cour a effectivement été saisie par le Venezuela d'exceptions préliminaires, pas plus qu'il ne conteste la suspension conséquente de la procédure sur le fond, ainsi qu'en a décidé votre ordonnance du 13 juin 2022. Contrairement à ce que sous-entend mon ami le professeur Zimmermann, cette ordonnance n'a toutefois pas statué sur la question de savoir si l'exception vénézuélienne relevait bien de la catégorie des exceptions d'irrecevabilité[1]. L'ordonnance n'a fait que renvoyer à la qualification que le Venezuela donna lui-même à ses exceptions préliminaires en décrivant le fait qu'il en avait déposé[2].

3. Madame la présidente : en contestant la recevabilité des exceptions préliminaires, le Guyana dit simplement qu'il existe des raisons procédurales importantes et sérieuses justifiant que la Cour n'examine pas leur bien-fondé. Dire les exceptions du Venezuela irrecevables, c'est les rejeter pour le motif que ces raisons s'opposent à l'examen de leur bien-fondé. Ni plus, ni moins.

4. Ces raisons tiennent à l'ordonnance de 2018 et à l'arrêt de 2020, à la fois séparément et cumulativement.

5. Les Parties divergent sur le point de savoir si l'exercice de la compétence de la Cour est inclus dans «la question de la compétence» visée par l'ordonnance. Ses termes ne demandaient pourtant pas aux Parties d'éclairer la Cour au sujet de son éventuelle incompétence. Comme je l'ai

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[1] CR 2022/23, p. 24, par. 14 (Zimmermann).

[2] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), ordonnance du 13 juin 2022*.

dit vendredi, la «question de la compétence de la Cour» sont des termes qui englobent à la fois la question de l'existence de la compétence et celle de son exercice[3]. Rien dans le texte de l'ordonnance ne suggère le contraire.

6. Lorsque l'ordonnance préserva la possibilité pour le Venezuela de faire usage de ses droits procéduraux, c'était simplement pour rappeler qu'il pouvait déposer un contre-mémoire sur «la question de la compétence» ou qu'il pouvait soulever des exceptions préliminaires, pourvu que celles-ci fussent effectivement d'irrecevabilité. Contrairement à ce qu'a laissé entendre le professeur Zimmermann[4], le Guyana ne soutient donc pas que les termes de l'ordonnance couvrent les questions de recevabilité en tant que telles. Il soutient seulement que l'exception soulevée par le Venezuela ne relève pas de cette catégorie, tant au regard de sa nature profonde et de ses conséquences si elle venait à être admise qu'au regard du contexte très particulier de l'accord de Genève.

7. Par ailleurs, au moment où l'ordonnance de 2018 fut adoptée, il était déjà très clair que la question de la validité de la sentence était au cœur du différend. La requête introductive d'instance est explicite sur ce point, de même que l'accord de Genève. Il était également déjà très clair aussi que le Venezuela contestait la validité de la sentence sur la base du comportement du Royaume-Uni. En 1962, lorsque le Venezuela soutint pour la première fois que la sentence était nulle, c'était prétendument parce qu'elle aurait été «the result of a political transaction carried out behind Venezuela's back»[5]. Etant reproduite mot pour mot dans la requête introductive d'instance[6], cette prétention vénézuélienne était connue de la Cour lorsqu'elle adopta l'ordonnance de 2018.

8. Cette prétention est certes vague et imprécise, mais elle met immanquablement en cause le Royaume-Uni car de qui d'autre pourrait-il s'agir ? S'il s'agit des arbitres, le principe de l'*Or monétaire* n'est en rien engagé : le professeur Sands y reviendra. Si ce ne sont pas les arbitres, il ne

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[3] CR 2022/22, p. 16, par. 8 (d'Argent).

[4] CR 2022/23, p. 23, par. 11 (Zimmermann).

[5] Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations (14 Feb. 1962), reprinted in U.N. General Assembly, Fourth Committee, 16th Session, Information from Non-Self-Governing Territories transmitted under Article 73 of the Charter, U.N. Doc A/C.4/536 (15 Feb. 1962), paras. 16-17, mémoire du Guyana (19 novembre 2018), annexe 17.

[6] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela),* requête introductive d'instance, enregistrée au Greffe de la Cour le 29 mars 2018, p. 18, par. 40.

peut s'agir à l'évidence que du Royaume-Uni lui-même, ce que le Venezuela n'a pas pu découvrir par votre arrêt.

9. Il est donc tout simplement fallacieux de répéter que votre jugement de 2020 aurait révélé que le comportement britannique serait en cause dans cette affaire[7]. La vérité, Mesdames et Messieurs les juges, mais elle relève du fond ! La vérité est sans doute que le Venezuela ne sait pas très bien lui-même pourquoi ni à cause de qui la sentence serait nulle. Toutefois, il est clair qu'il savait déjà en 1962 qu'il avait des choses à reprocher au Royaume-Uni au sujet de la manière dont l'arbitrage s'était déroulé et qu'il en déduisait un grief de nullité. Il aurait dû s'en expliquer conformément à l'ordonnance. En effet, en demandant aux Parties de s'expliquer sur la «question de [votre] compétence», vous leur avez nécessairement demandé d'exposer les raisons pour lesquelles, alors même que votre compétence existerait, il vous serait interdit de l'exercer. Et Je relève à cet égard en passant que le professeur Zimmermann n'a pas contesté que le principe de l'*Or monétaire* interdit à la Cour d'exercer sa compétence[8].

10. Madame la présidente, Mesdames et Messieurs les juges : désormais, et pour la première fois au cours de cette procédure incidente, le Venezuela soutient que son exception préliminaire concernerait également la «question connexe du règlement définitif du différend [territorial entre les Parties]». Selon le professeur Zimmermann, cette deuxième question étant liée à la première relative à la validité de la sentence, la prétendue irrecevabilité de la première par l'effet du principe de l'*Or monétaire* entraînerait l'irrecevabilité de la seconde[9].

11. Mesdames et Messieurs de la Cour : par cette pirouette de dernière minute, le Venezuela révèle en réalité qu'il aurait dû vous expliquer, conformément à l'ordonnance de 2018, pourquoi la «question connexe» ne relevait pas de votre compétence ni de son exercice. Car si elle n'en relève pas pour la raison qu'elle est liée à la question de la validité de la sentence, laquelle serait infectée par l'exception déduite du principe de l'*Or monétaire*, alors, certainement, le Venezuela aurait dû vous expliquer aussi pourquoi l'absence du Royaume-Uni était un obstacle dirimant à l'exercice de votre compétence s'agissant de cette question connexe.

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[7] CR 2022/23, p. 25, par. 21-22 (Zimmermann).

[8] CR 2022/22, p. 19, par. 17 (d'Argent).

[9] CR 2022/23, p. 24, par. 16 (Zimmermann).

12. Madame la présidente, la deuxième raison faisant obstacle à l'examen du bien-fondé de l'exception préliminaire, et au fait qu'elle puisse être retenue, tient à l'arrêt du 18 décembre 2020.

13. Alors, je ne répéterai pas ce que ma collègue M[e] Beharry vous a très clairement exposé vendredi dernier. Le professeur Zimmermann n'a rien dit du paragraphe 121 de votre arrêt de décembre 2020. Il n'a rien dit du fait que votre arrêt avait décidé que la Cour a «compétence pour connaître de la requête», termes qui indiquent avec force de chose jugée que la Cour a la compétence pour examiner le fond de l'affaire et qu'elle a décidé d'exercer ce pouvoir. Enfin, le professeur Zimmermann n'a en rien expliqué comment il serait possible de défaire votre jugement de 2020, ainsi formulé, par un jugement retenant l'exception préliminaire, quel que soit d'ailleurs le libellé qu'on lui donne.

14. Se prévalant de l'affaire *Nottebohm*, il s'est toutefois déclaré stupéfait[10] («stunned») par l'argument présenté par M[e] Beharry.

15. Madame la présidente, c'est bien plutôt l'invocation de l'affaire *Nottebohm* par le Venezuela pour contourner la force de chose jugée de l'arrêt de 2020 qui est stupéfiante. Le professeur Zimmermann a affirmé devant vous que la Cour «confirmed in 1953 that it had jurisdiction to entertain the case»[11]. Pourtant, l'arrêt de 1953 s'était contenté de rejeter une exception préliminaire d'incompétence[12], ce qui est bien autre chose que d'affirmer positivement, comme vous l'avez fait en 2020, avoir la compétence pour connaître de réclamations. Par ailleurs, si l'arrêt de 1955 mit fin à la procédure en déclarant irrecevable la demande du Lichtenstein, c'était compte tenu de la nationalité de M. Nottebohm[13]. Cela n'a rien à voir avec le casse-tête, avec l'impasse, dans laquelle le Venezuela vous invite à vous enfoncer.

16. J'ajouterai enfin que c'est quelque peu faire insulte à l'intelligence collective de la Cour que de soutenir que, en statuant en décembre 2020, vous n'auriez pas pu vous rendre compte que l'examen de la validité de la sentence, auquel vous avez décidé de procéder, pourrait amener à devoir prendre connaissance du comportement du Royaume-Uni à l'époque de l'arbitrage. Il en est d'autant

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[10] CR 2022/23, p. 26, par. 26 (Zimmermann).

[11] CR 2022/23, p. 26, par. 27 (Zimmermann).

[12] *Nottebohm (Liechtenstein c. Guatemala), exception préliminaire, arrêt, C.I.J. Recueil 1953*, p. 124.

[13] *Nottebohm (Liechtenstein c. Guatemala), deuxième phase, arrêt, C.I.J. Recueil 1955*, p. 4.

plus ainsi que la Cour a statué en l'absence du Venezuela, conformément aux exigences de l'article 53 du Statut[14].

17. Madame la présidente, je remercie la Cour pour sa bienveillante attention et je me permets de vous demander de bien vouloir inviter le professeur Sands à prendre la parole.

The PRESIDENT: I thank Professor d'Argent and I now invite the next speaker, Professor Philippe Sands, to take the floor. You have the floor, Professor.

Mr. SANDS:

SUBSTANTIVE GROUNDS FOR REJECTING VENEZUELA'S PRELIMINARY OBJECTIONS

1. Madam President, Members of the Court, it falls to me to deal briefly with four substantive grounds for rejecting the preliminary objections, in the absence of my dear friend Mr. Reichler, for reasons that are known to you.

2. *First*, only the conduct of the arbitrators — not that of the United Kingdom — could provide a basis for invalidating the 1899 Arbitral Award.

3. *Second*, the *Monetary Gold* principle is not engaged in this case.

4. *Third*, the Parties agree that the United Kingdom has no legal interest in the boundary.

5. *Fourth*, the United Kingdom has consented to the Court's jurisdiction in this case, and to the exercise of that jurisdiction.

A. Only the conduct of the arbitrators could provide a basis for invalidating the 1899 Award

6. I turn first to the allegation of wrongful conduct, which has been put variously as fraud, corruption or deceit, but without any specificity[15]. The gravamen of the Mallet-Prevost allegations was wrongful conduct on the part of certain members of the arbitral tribunal[16]. In the first round, Professor Tams still recognized the need to establish the wrongful conduct of the arbitral tribunal,

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[14] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 463, par. 24.

[15] See e.g. CR 2022/21, pp. 16-18, paras. 9, 22-31 (Rodríguez); *ibid.*, p. 36, paras. 2-4 (Espósito); *ibid.*, pp. 45-48 and 50, paras. 11-14, 17, 19, 23 and 31 (Tams).

[16] See Guyana's Memorial on the merits, 8 Mar. 2021, Vol. I, paras. 5.10, 8.16-8.18.

although he did shift the argument in part to the wrongful conduct of the British Government or its legal team. "[I]f a tribunal is corrupt", he said, "someone must have corrupted it . . . you cannot collude on your own"[17]. But in the second round, as I am sure you will have noticed, the argument had completely changed: the Court heard not a single word, not one word, about the wrongful conduct of the arbitrators, and now the case was entirely about the wrongful conduct of the United Kingdom.

7. Professor Tams was succinct: "the Arbitral Award is invalid because of 'the fraud committed by the United Kingdom in the arbitration'"[18], he told you yesterday. But the alleged wrongful conduct of the arbitrators has just vanished, despite the fact that the Court has ruled that its jurisdiction is focused on the validity of the Arbitral Award. To succeed on the merits, it is not enough for Venezuela to prove wrongful conduct attributable to the United Kingdom. It will not be sufficient to argue that a British lawyer perhaps expressed a desire to communicate with an arbitrator, or actually sought such communication. Venezuela's burden is to prove that one or more of the arbitrators engaged in inappropriate contact with counsel, and this is what influenced the Award. It has offered no evidence to support such an argument. Nothing.

8. This is Venezuela's central problem on this point. "[T]he central question of a potential merits decision is clear", Professor Tams told you, "is the Award invalid because of the . . . conduct of the United Kingdom"[19]? With respect, that is the wrong question. The right question is this one: is the Award invalid because of the conduct of any of the arbitrators? On that question, Venezuela was completely silent, its evidentiary cupboard is bare, empty.

9. Venezuela offers no authority whatsoever for the proposition that the conduct of a party in arbitral proceedings can, of itself, taint an arbitral award. We are not aware of any case of an arbitral award being set aside merely because of the conduct of a party or of its counsel. What is relevant is the conduct of the arbitrators. We are all painfully aware of the unhappy recent arbitration between Croatia and Slovenia. Yes, there was incontrovertible evidence of wrongdoing by the Agent of Slovenia, and by the arbitrator appointed by Slovenia. Would the problem have been as grave if there had only been misconduct by the Agent? Of course not. To be sure, misconduct by an agent or

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[17] CR 2022/21, p. 48, para. 23 (Tams).

[18] CR 2022/23, pp. 11 and 14, paras. 6 and 23 (Tams).

[19] CR 2022/23, p. 11, para. 7 (Tams).

counsel is totally inappropriate — and it may incur professional or other consequences — but in the absence of evidence of misconduct by an arbitrator, it will not of itself taint the outcome. What truly mattered in that case was the misconduct of the arbitrator, which was clearly proven.

10. By contrast, in the present case, Venezuela has offered no evidence of any misconduct or wrongdoing by any arbitrator. Its counsel said absolutely nothing about that in the second round. And that is because their counsel understand that you cannot make so grave an allegation without evidence. And there is no evidence. That, presumably, is why Venezuela said nothing about the material to which we drew your attention: the clear evidence that Professor Martens and his fellow arbitrators acted with impeccable integrity, independence and impartiality. Venezuela's silence means that our evidence is completely unchallenged.

11. But even if there was such evidence, what would be the consequences for a Party to the proceedings? You would have to rule on the State responsibility of the United Kingdom, says Venezuela, like a broken record. Really? No. A finding of misconduct by arbitrators might, of course, be connected to evidence, factual evidence, of wrongdoing attributable to the United Kingdom, but that would not require the Court in a judgment to address the State responsibility of the United Kingdom, because the Court's role in this case is limited to the validity of the Arbitral Award — which is the very subject-matter of this dispute — and that turns on the conduct of the arbitrators. If you find no such misconduct, the consequence is clear: the Award is valid. A finding of misconduct by arbitrators may require factual findings in relation to acts attributable to the United Kingdom, but not any legal findings in relation to the responsibility of the United Kingdom. That is outside your jurisdiction, it is a red herring. The only conduct you have to address is that of the arbitrators. All the rest is noise.

B. The *Monetary Gold* principle is not engaged in this case

12. The second reason Venezuela's preliminary objections fail is that, even if, *quod non*, the lawfulness of Britain's conduct up to and in 1899 was relevant, Venezuela has not established that it forms the very subject-matter of the dispute to be resolved by the Court. As I said, the subject-matter is the validity of the Award, which does not turn on the conduct of any State, not Britain, not Russia, not Venezuela, not the United States. Professor Tams likens this case to *Monetary Gold* and

East Timor, but there is no similarity between those cases and this one. In *Monetary Gold*, if the Court had ruled on Italy's claims against Albania, it would have passed judgment on the rights and obligations of the absent State, and that is what the Court said[20]. Similarly, in *East Timor*, the Court would have had to pass judgment on Indonesia's rights and obligations in respect of treaty-making power on behalf of East Timor[21]. In this case, the Court is called upon to express views on the rights and obligations not of any State, but in relation to the behaviour of the arbitrators. That is the cardinal difference.

13. We have pressed and pressed Venezuela to explain, specifically, what legal rights and obligations of the United Kingdom would constitute the very subject-matter of a judgment in this case. Professor Tams would not tell you. Instead, he passed the buck to Professor Palchetti, who, in the first round, simply tried to avoid the issue: "At this stage, it is immaterial to establish the precise consequences that may flow from the United Kingdom's unlawful conduct"[22]. The best he could come up with was that the Arbitral Award would be invalidated, that Article 69 of the Vienna Convention would return the legal situation to the *status quo ante*, so that the boundary would be undetermined and the territory once again disputed[23]. What are the "consequences" of any of that for the legal interests of the United Kingdom? There are none, we say, because — self-evidently — today it has no interests in the validity of the Arbitral Award, the land boundary or the disputed territory.

14. Yesterday, Professor Palchetti struggled somewhat, but he did manage to come up with one more alleged consequence for the legal rights and obligations of the United Kingdom: if the Arbitral Award was set aside, Venezuela would be able to claim reparations from the United Kingdom for, as he put it, exploiting territory that belonged to Venezuela[24]. With great respect, this truly is an extraordinary argument, a desperate attempt to manufacture some sort of a legal interest of the United Kingdom that might be said, vaguely, to be connected to the very

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[20] *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom of Great Britain and Northern Ireland, and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954*, p. 32.

[21] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 90.

[22] CR 2022/21, p. 56, para. 13 (Palchetti).

[23] CR 2022/21, p. 56, paras. 14-16 (Palchetti).

[24] CR 2022/23, p. 17, para. 6 (Palchetti).

subject-matter of this judgment. In rendering a judgment on the validity of the Arbitral Award, the Court would not remotely have to consider the United Kingdom's post-Award conduct, or to rule on Venezuela's supposed entitlement to reparations for the United Kingdom's post-Arbitral Award administration of territory awarded to it by the arbitrators.

15. Professor Tams artfully avoided any discussion of the consequences for the legal rights and obligations of the United Kingdom. He did not speak of "rights and obligations", which says a lot. Instead, he again applied the wrong test for the application of the *Monetary Gold* principle, the same one he put forward in the first round, and which we exposed as erroneous. In the second round, Professor Tams sought to buttress his position by citing language from the *Phosphates* case, about which he said nothing in the first round, that *Monetary Gold* would apply when the Court is required to rule on an absent State's conduct as a "prerequisite" to issuing the judgment it has been called upon to make[25].

16. But this new argument changes nothing. In the first place, as we have made clear, the Court is not required to rule, in a legal sense, on the United Kingdom's conduct at all; it is only required to rule on the conduct of the arbitrators in issuing its judgment on the validity of the 1899 Award. Second, and in any event, the test is not whether the Court has to rule on the "conduct" of an absent State, as the Court has repeatedly made clear, but — as in *East Timor* — whether its ruling would affect the legal "rights and obligations" of the absent State, such that they would constitute the very subject-matter of the dispute. Professor Tams hovered above the surface of this issue like a dragonfly, avoiding all contact with the murky waters below. He just avoided the question of whether the Court's judgment would affect the legal rights and obligations of an absent State, such that they would constitute the very subject-matter of the issues to be decided. If this case is like any other in the Court's jurisprudence, it is *Cameroon* v. *Nigeria*, where the Court exercised jurisdiction over Cameroon's boundary claim in Lake Chad, even though part of the boundary was the tripoint with Chad[26]. The Court did not consider that this made Chad's rights the very subject-matter of the

[25] CR 2022/23, p. 13, para. 20 (Tams).

[26] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 311-312, paras. 79-81.

dispute. Venezuela's argument is lesser still, as the United Kingdom has no interest in any point along the boundary between Guyana and Venezuela.

C. The United Kingdom has no interest in the boundary between Guyana and Venezuela

17. And this takes us to the third ground for rejecting Venezuela's preliminary objections. Venezuela has admitted, repeatedly, that the United Kingdom has no legal interest in the boundary between Guyana and Venezuela. As a consequence, it should admit that the Court is free to exercise its jurisdiction with respect to the second issue over which the Court ruled that it has jurisdiction in its Judgment of 18 December 2020: "the related question of the definitive settlement of the land boundary dispute between the Co-operative Republic of Guyana and the Bolivarian Republic of Venezuela"[27]. However, as Professor d'Argent just recalled, Venezuela suddenly changed its mind and now argues that its *Monetary Gold* objection somehow infects the related question because it is related to the issue of the validity of the Award. How convenient, it might be said, but plainly wrong in light of the *Monetary Gold* test applied to this related, but nevertheless entirely separate, claim.

18. Professor Tams displayed on the screen the wrong issues to be decided by the Court, and which he then claimed formed the very subject-matter of the dispute[28]. He took those issues from Guyana's Memorial. But the Memorial cannot determine these issues following the Court's Judgment on jurisdiction, in which the Court identified the issues to be decided as the validity of the 1899 Arbitral Award and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela. Venezuela obviously has nothing to say about the second issue — except its infectious approach — and, with its silence, it concedes that the Court can exercise of jurisdiction over this issue. Nor would there be any impediment to the Court fixing the international boundary exactly where the arbitrators did, in light of Venezuela's formal agreement to it in 1905, and its scrupulous conformity to that boundary for more than sixty years, as its own official maps demonstrate. Moreover, in conceding that the Court may exercise jurisdiction over the determination of the land boundary, Venezuela effectively concedes, in our submission, that it may

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[27] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J Reports 2020*, p. 493, para. 138.

[28] CR 2022/21, pp. 45-47, 49 and 50, paras. 15-16, 21 and 30 (Tams).

exercise jurisdiction over the entire Arbitral Award whose sole purpose and effect was to fix that boundary.

D. The United Kingdom has consented to the Court's exercise of jurisdiction over Guyana's claims

19. Which brings me to a fourth basis for rejecting the preliminary objections: on Friday last, we explained that the 1966 Geneva Agreement embodies a clear expression of consent by the United Kingdom to the Court's exercise of jurisdiction over Guyana's claims, which explains why the issue of its participation as a party to these proceedings simply does not arise. We hoped to hear a meaningful, substantive response to that argument. Professor Palchetti did mention the argument, briefly, *en passant*, but he did not engage with the substance of the issue, or any of the evidence to which we referred, and he glossed over or completely ignored all the critical points.

20. Professor Palchetti's principal response was to assert that Article IV of the Geneva Agreement provided no support for Guyana's argument, since those provisions make no mention of the United Kingdom. They are, he said, intended only to set out practical arrangements for the parties[29].

21. That submission is, we say, completely flawed. First, the fact that the United Kingdom is not expressly mentioned in Article IV is totally irrelevant to the question of whether or not the United Kingdom has consented to the Court exercising jurisdiction over Guyana's claims. The existence of consent by the United Kingdom is manifested and evidenced through the United Kingdom's signing of the Geneva Agreement. By signing and being a party to the 1966 Agreement, the United Kingdom consented to *all* of the provisions of the Agreement, including Article IV. It has consented to all processes for the resolution of the controversy conducted in conformity with these provisions, including those conducted pursuant to the process established under Article IV, paragraph 2, including these proceedings.

22. The fact that the United Kingdom is not mentioned in Article IV is, however, relevant for a different reason: it demonstrates that the three parties to the Geneva Agreement intended that only two of them — namely Guyana and Venezuela — would play any role in selecting and participating

[29] CR 2022/23, p. 18, para. 9 (Palchetti).

in the means of the settlement of the controversy. In other words, all three parties to the Geneva Agreement explicitly recognized that only two of them — Guyana and Venezuela — had any legal interest in the disputed issue concerning the validity of the 1899 Award. The third party, the United Kingdom, explicitly recognized that it had no such interest. This Venezuela recognized in its 2019 Memorandum submitted to the Court, a point which Professor Palchetti did not dispute yesterday.

23. Second, Professor Palchetti's characterization of Article IV is not accurate. The Agreement established a binding procedure for the selection of means of settlement of the controversy. This included, ultimately, conferring a power on the Secretary-General of the United Nations to choose "one of the means of settlement provided in Article 33 of the Charter of the United Nations" and, if that means of settlement did not resolve the controversy, to "choose another of the means stipulated in Article 33". As the Court observed in its Judgment at the jurisdiction phase, "the object and purpose of the Geneva Agreement . . . is to *ensure a definitive resolution of the controversy*"[30].

24. Third, it is telling that Professor Palchetti *entirely* failed to address the critical point that it would be absurd to construe the Geneva Agreement as having simultaneously empowered Guyana and Venezuela, or the Secretary-General, to refer the "controversy" regarding the validity of the 1899 Award to the Court, while at the same time rendering that power nugatory by requiring the Court to decline to exercise jurisdiction on *Monetary Gold* grounds. The absurdity — the *total* absurdity of that approach is thrown into even starker relief by the fact that the United Kingdom *expressly envisaged* the possibility of the controversy being referred to the Court pursuant to the Geneva Agreement. As the Court explained at paragraph 107 of its Judgment of 18 December 2020,

> "*the parties to the Geneva Agreement intended to include the possibility of recourse to the International Court of Justice* when they agreed to the Secretary-General choosing among the means set out in Article 33 of the Charter of the United Nations"[31].

25. The Court's use in this paragraph of the words "the parties" includes the United Kingdom.

26. How could it possibly be the case that the parties to the Geneva Agreement (including the United Kingdom) intended to enable the controversy to be referred to and determined, finally, by the

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[30] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 487, para. 114, emphasis added.

[31] *Ibid.*, p. 486, para. 107, emphasis added.

Court, while at the same time rendering such a determination by the Court impossible on the basis of *Monetary Gold*? We are still waiting for an answer from Professor Palchetti on that question, or from anyone on the Venezuelan side. I suspect we will wait a very long time, maybe even another 123 years, when perhaps Venezuela will come back to this Court armed with a death-bed letter from one of its counsel, alleging that he or she spotted in the demeanour of one of these judges before me, a change between last Thursday and today. It is an absurd proposition. It makes one feel, as probably others do, that we are characters from a novel by Gabriel García Márquez.

27. Indeed, Venezuela's *Monetary Gol*d argument falls foul of the same obstacle identified by the Court at paragraph 115 of its December 2020 Judgment: this held that a requirement of further consent before the Court could hear Guyana's claims pursuant to Article IV of the Geneva Agreement would frustrate the very object and purpose of that Agreement. It is worth recalling with care what this Court ruled:

> "[T]he decision taken by the Secretary-General in accordance with the authority conferred upon him under Article IV, paragraph 2, of the Geneva Agreement *would not be effective . . . if it were subject to the further consent of the Parties for its implementation*. Moreover, an interpretation of Article IV, paragraph 2, that would subject the implementation of the decision of the Secretary-General to further consent by the Parties *would be contrary to this provision and to the object and purpose of the Geneva Agreement, which is to ensure a definitive resolution of the controversy, since it would give either Party the power to delay indefinitely the resolution of the controversy by withholding such consent*." [32]

28. In exactly the same way, Madam President, an interpretation of Article IV (2) to the effect that it envisaged an application of the *Monetary Gold* principle in the way argued for by our friends from Venezuela would also be contrary to the provision of Article IV, and to the object and purpose of the 1966 Agreement. The Court's Judgment of December 2020 deserves to be read with care: Venezuela has no good answer to the proposition that, by signing the Geneva Agreement, the United Kingdom has *explicitly* expressed its consent to the Court exercising jurisdiction over Guyana's claims which have been brought pursuant to that Agreement.

29. Finally, this conclusion is fully confirmed by the various statements that have been made by the United Kingdom, and to which we drew your attention last week: statements made in the period after the signing of the 1966 Agreement and — very much more recently — in the period after

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[32] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 487, para. 114, emphasis added.

the Court gave its Judgment in December 2020. Once again, Venezuela offered you, the Court, no alternative interpretation of these many statements. Once again, Venezuela passed in complete silence: it failed to deal with points that are so difficult for its own case.

30. Madam President, Members of the Court, that concludes my submissions on the four points. To conclude for Guyana, I invite you to call the Agent of Guyana to the podium.

The PRESIDENT: I thank Professor Sands for his statement. I shall now give the floor to the Agent of Guyana, the Honourable Carl B. Greenidge. You have the floor, Sir.

Mr. GREENIDGE:

ADDRESS BY THE AGENT OF THE CO-OPERATIVE REPUBLIC OF GUYANA

1. Madam President, distinguished Members of the Court, I begin with an observation, and a question. As will no doubt have been apparent to the Court throughout this hearing, Venezuela's arguments in support of its preliminary objections have been rather long on allegations and rhetoric, but somewhat short on substance. One thing, however, is abundantly clear: Venezuela really does not want this Court to determine the merits of Guyana's claims. Why, one might ask, is that the case? Is it because Venezuela is sincerely concerned that a judgment on those claims will, in its very essence, involve a determination of the rights and obligations of the United Kingdom? Or is it because Venezuela recognizes that the legal and factual merits of Guyana's claims are overwhelming, and that a hearing on the merits of those claims will yield only one possible outcome, namely a judgment adverse to Venezuela's territorial aspirations? The answer, we submit, is obvious.

2. In my opening speech on behalf of Guyana, I noted the irony that Venezuela — a proud, long-standing and vocal opponent of colonialism — was seeking to invoke the rights and "dignity" of a former European colonial Power to prevent this Court from determining a claim brought by its former South American colony, Guyana. However, that is not the only ironic aspect of Venezuela's current stance. Yesterday, the Agent for Venezuela emphatically proclaimed that Venezuela has established "the truth" about a historic wrong committed against it by the 1899 Award[33], and he

[33] CR 2022/23, p. 27, para. 5 (Moncada).

declared that "we come to the International Court of Justice to tell such a historical truth"[34]. In the same breath, he also stressed Venezuela's firm commitment to international law[35]. However, despite these impassioned proclamations, Venezuela remains strangely reluctant for the merits of its version of the "truth" to be exposed to independent scrutiny and determination, in accordance with international law, by the principal judicial organ of the United Nations.

3. As Guyana has shown, Venezuela's position is contradicted by the historical record, including its enthusiastic and decades-long embrace of that Award and the boundary which it established. Venezuela's narrative, which began shortly before Guyana attained independence in 1966, ignores these fundamental contradictions and constantly evolves. Yesterday, it even claimed it had been "dispossess[ed]"[36] of territory by the Arbitral Award. Against this backdrop, one cannot escape the conclusion that it is a desire to continue perpetuating a falsehood, rather than a desire to expose and vindicate the truth, that underlies Venezuela's hostility to the Court hearing Guyana's claims.

4. Instead of proceeding to determine the merits of Guyana's claims, Venezuela urges the Court to decline to exercise jurisdiction, so that the dispute between the Parties could instead be resolved through a process of negotiation. By making that argument, Venezuela once again invites the Court to condemn the Parties to perpetual deadlock and the indefinite continuation of a controversy which has blighted their relations for the entirety of Guyana's existence as a sovereign State, which has nothing less than existential significance for Guyana.

5. This is not a situation where there is even the slightest glimmer of possibility that the long-standing dispute between the Parties could be resolved through negotiation. There is a simple and fundamental reason for this: as this hearing has demonstrated, Guyana and Venezuela hold entirely and intractably opposing positions regarding the validity of the 1899 Award. Guyana maintains that the 1899 Award, and the boundary which it established, are valid. Venezuela maintains the opposite. These positions have been entrenched since Guyana's emergence as a sovereign State some 56 years ago.

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[34] CR 2022/23, p. 27, para. 6 (Moncada).

[35] CR 2022/23, p. 27, para. 8 (Moncada).

[36] CR 2022/23, p. 26, para. 1 (Moncada).

6. All previous efforts to resolve the controversy through mediation or negotiation have failed. As the Court knows, these efforts included a four-year Mixed Commission and an intensive 27-year good offices process, involving no fewer than four successive Secretaries-General, including a final year of enhanced mediation. After more than half a century of unsuccessful attempts to resolve the dispute through mediation and negotiation — processes in which Guyana engaged wholeheartedly — the Secretary-General of the United Nations concluded that "significant progress has not been made toward arriving at a full agreement for the solution of the controversy"[37]. It was for this reason that he chose the Court as "the means to be used for the solution of the controversy"[38]. As the Secretary-General expressly recognized — and as Venezuela well knows — the only hope of a resolution of the controversy lies in a binding and final determination of Guyana's claims by this Court. It is for this reason that Guyana brought those claims before the Court in 2018; and it for this reason that Guyana once again affirms its complete faith and confidence that the Court will proceed to adjudicate those claims independently, impartially and in accordance with international law.

7. Madam President, I will now close Guyana's oral pleadings by reading the final submissions:

> "In accordance with Article 60 of the Rules of Court, for the reasons explained in our Written Observations of 22 July 2022 and during these hearings, the Co-Operative Republic of Guyana respectfully asks the Court:
>
> (a) Pursuant to Article 79*ter*, paragraph 4, of the Rules, to reject Venezuela's preliminary objections as inadmissible or reject them on the basis of the Parties' submissions; and
>
> (b) To fix a date for the submission of Venezuela's Counter-Memorial on the Merits no later than nine months from the date of the Court's ruling on Venezuela's preliminary objections."

8. Madam President, Members of the Court, I should like to conclude by expressing — on behalf of Guyana, its delegation and all of its people — our sincerest thanks and appreciation to all the Members of the Court for your patient attention throughout this hearing. I also express our gratitude to the Registrar, his staff and the Court's interpreters for the professional and courteous assistance which they have provided to the Parties — assistance which has ensured the smooth

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[37] United Nations Secretary-General, Statement attributable to the Spokesman for the Secretary-General on the border controversy between Guyana and Venezuela, 30 Jan. 2018; MG, Vol. IV, Ann. 126.

[38] *Ibid.*

running of the proceedings. And finally, I would like to express our deepest respect, esteem and friendship to the members of Venezuela's delegation, whose presence in the Great Hall of Justice throughout this hearing we warmly acknowledge and appreciate. Thank you all very much indeed.

The PRESIDENT: I thank the Agent of Guyana. The Court takes note of the final submissions of the Co-operative Republic of Guyana, which you have just read on behalf of your Government.

This brings us to the end of the hearings on preliminary objections raised by the Respondent in the case concerning the *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*. I thank the representatives of the Parties for the assistance they have given the Court by their presentations in the course of these hearings. In accordance with practice, I shall request the Agents of the Parties to remain at the Court's disposal to provide any additional information the Court may require.

The Court will now retire for deliberation. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its Judgment. Since the Court has no other business before it today, the sitting is now closed.

The Court rose at 10:50 a.m.

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