

INTERNATIONAL COURT OF JUSTICE

ARBITRAL AWARD OF 3 OCTOBER 1899

(GUYANA V. VENEZUELA)

THE TRUTH ABOUT THE GUAYANA ESEQUIBA

Rejoinder of the Bolivarian Republic of Venezuela



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INTRODUCTION

1. The Bolivarian Republic of Venezuela (hereinafter Venezuela) has historically maintained the position of not submitting matters related to its vital interests, such as its independence and territorial integrity, to dispute resolution mechanisms by third parties, including the International Court of Justice. This position, which arose after the fraud committed with the Arbitral Award of 1899, seeks to protect the most sacred interests of our nation.

2. Based on this position, Venezuela has formally objected to the Court's alleged jurisdiction to hear the Application submitted by the Cooperative Republic of Guyana (hereinafter Guyana). There is no basis whatsoever, even *prima facie*, for establishing the Court's jurisdiction to hear Guyana's unilateral claim. Venezuela has never expressly given its consent, nor can it be inferred from the content of Article IV of the Agreement to Settle the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed in Geneva on 17 February 1966 (hereinafter the Geneva Agreement).

3. Notwithstanding the foregoing, Venezuela, in order to leave no room for inertia and the vacuum in defending the historical truth and its legitimate rights through peaceful means, has decided to submit this document to continue exposing to the world the violation of an international treaty and the attempt to confiscate the rights that historically belong to Venezuela over the territory of Guayana Esequiba, orchestrated through the manipulation of the International Court of Justice in a fabricated case that clearly violates international law.

4. Therefore, this document does not in any way imply recognition of the Court's jurisdiction over the territorial dispute concerning Guayana Esequiba, nor of any decision the Court may adopt in this regard. Likewise, the practical use of

the terms “Memorial”, “Counter-Memorial”, “Reply” or “Rejoinder” serves solely a methodological purpose, namely, to facilitate the smooth reading of this document.

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5. On 8 April 2024, Venezuela deposited with the Registry of the Court a Counter-Memorial entitled “The Truth of the Bolivarian Republic of Venezuela on Guayana Esequiba. Historical Position” in response to Guyana’s Memorial in the proceedings unilaterally instituted by it.

6. The aforementioned Counter-Memorial, whose conclusions Venezuela now fully reaffirms, was the subject of a Reply by Guyana, which was deposited with the Registry of the Court on 9 December 2024.

7. In its Reply, Guyana fails miserably in its attempt to disprove and dismantle Venezuela’s historical titles and rights, as well as its solid legal grounds. The most striking feature of Guyana’s document, leaving aside its pretentious, arrogant, and at some point, discourteous tone *vis-à-vis* Venezuela, lies in its strenuous effort to get out of the true object and purpose of the Geneva Agreement.

8. Contrary to Guyana’s claim, the Geneva Agreement was not concluded “to resolve the controversy over the validity of the 1899 award,”¹ but rather to govern the territorial dispute concerning the border between Venezuela and British Guiana, now Guyana, and to reach a practical and mutually satisfactory settlement thereof. This intention is clearly evident from the title of the Agreement, its preamble, and the language that is consistently repeated throughout its articles.

¹ *Guyana’s Reply* (“GR”), p. 3, paragraph 17.

9. It is very significant that, after having repeatedly invoked Article IV, paragraph 2 of the Geneva Agreement to underpin the alleged jurisdiction of the Court in a matter that is beyond its jurisdiction, Guyana has disregarded the other clauses of the Agreement, thus violating the legal indivisibility of this instrument. If there is one thing that the Geneva Agreement is conspicuous for in Guyana's Reply, it is its absence.

10. Venezuela will demonstrate that Guyana's Reply is riddled with errors, distortions and a selective and decontextualised reading of the facts and the law. The Venezuelan contention that the Arbitral Award of 3 October 1899 is null and void was the premise of the negotiation that led to the Geneva Agreement. Yet, solving the issue of the invalidity of the Arbitral Award was not the purpose of the Geneva Agreement. Rather, the aim of the Geneva Agreement was to set aside this dispute on which the parties could not reach an agreement and to enter into a commitment to search for a practical settlement, satisfactory for both, Venezuela and Guyana

11. Guyana's Reply is yet another display of bad faith and ill intent, within the framework of a campaign of deception and manipulation that is part of a carefully orchestrated plan to unilaterally transform a diplomatic process into a judicial one, with the aim of satisfying the desires of transnational energy companies.

12. In 2015, while the good offices process under the auspices of the United Nations Secretary-General was still actively ongoing, Guyana, in coordination with its funder ExxonMobil, unilaterally decided that the controversy should be referred to the International Court of Justice, in order to gain quick access to, and exploit, a "world-class oil discovery."²

² "ExxonMobil: Well Offshore Guyana Confirms 'World-Class' Oil Discovery," *Hartenergy*, 30 June 2016 (<https://www.hartenergy.com/exclusives/exxonmobil-well-offshore-guyana-confirms-world-class-oil-discovery-28873>). See also "Exxon Mobil announces significant oil discovery

13. At the same time Guyana adopted an obstructionist and evasive approach designed to frustrate and violate the Geneva Agreement. Despite having formally agreed to extend the good offices process—including elements of mediation—Guyana never intended to act in good faith or to seek a “mutually satisfactory solution”, as it was expressly obligated to do under the Geneva Agreement.

14. As confirmed by Guyana’s former Minister for Natural Resources, Raphael Trotman, Guyana managed to convince the UN Secretary-General to break with the 49-year-old practice of mutual consent in the choice of means of dispute settlement and refer the matter to the International Court of Justice in clear violation of Venezuela’s express will, duly notified to the Secretary General.

15. Guyana has made all efforts to convince the international community that Venezuela is aggressive and on the verge of attacking it. This is a standard “strategy” of Guyana. In its quest to discredit Venezuela, Guyana has regularly denounced Venezuela for alleged “threats of recourse to force” over the past decades, and as history has proven, on no occasion have these allegations been true or accurate.³

16. On the contrary, since 2015, Guyana has systematically sought to expand and consolidate its military alliances with the United States and NATO in order to threaten Venezuela with the use of force.⁴ This is clearly an attempt to revive the

offshore Guyana,” *ExxonMobil* web site, 20 May 2015, (<https://corporate.exxonmobil.com/locations/guyana/news-releases/exxonmobil-announces-significant-oil-discovery-offshore-guyana>).

³ See *Memorandum of Venezuela, Question of Jurisdiction and/or Admissibility*, 28 November 2019, paras. 116-121.

⁴ See “Southern Command poised to assist GDF to monitor Guyana’s airspace”, DEMERARAWAVES, 1 February 2024, available at <https://demerarawaves.com/2024/02/01/us-southern-command-poised-to-assist-gdf-to-monitor-guyanas-airspace/>. See the following posted on X by U.S. Southern Command, @Southcom, on the 24th of March 2024: “Unjustified claim...” #SOUTHCOM Commander Gen. Laura Richardson discussed the recent Guyana-Venezuela border controversy & #SOUTHCOM efforts to support Guyana during testimony before the Senate Armed Services Committee #SASC today.” See also de video available at <https://x.com/Southcom/status/1768343841499971658>

colonialist structural coercion of the 19th and 20th centuries and force Venezuela to relinquish its legitimate titles and rights over the territory it has owned since its inception.

17. This multifaceted strategy is doomed to failure. Venezuela will never waive its historical rights over Guayana Esequiba nor will it endorse the violation of the Geneva Agreement, a legally binding international treaty that establishes the only mechanism for achieving a peaceful and final settlement of the territorial dispute. This instrument is the only true path to ensuring peace in the region.

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18. After this Introduction, Part One of this Rejoinder (Chapters I-IV) focuses on the Geneva Agreement, on its object and purpose within its natural context of the decolonisation process in which it is inserted, which not only protects the self-determination of colonial populations, but also the claims of sovereign States dispossessed of a part of their territory as a result of the expansive voracity of the British Empire and of other colonialist powers, whether codified through unjust treaties or set out in arbitral awards, which cannot prevail, even supposing —*quod non*— that they could theoretically dismiss the clear grounds for the nullity of an anachronistic arbitral award from an outdated era now consigned to the darkest chapters of history.

19. The principles and norms applicable to decolonisation provide shelter to Venezuela's claim to Guayana Esequiba. Dispossessed States were forced, by gunboat diplomacy, to endure colonial impositions, while what was called, with iniquitous arrogance, the “international law of civilized countries” prevailed—one

of the most outstanding coryphaeus of which was, precisely, Fyodor Martens, president of the arbitral tribunal that adopted the 1899 Arbitral Award.

20. However, international decolonisation law has prevailed over the old colonial order. When the time came for a substantial alteration of the territorial *status quo* due to the imperative of decolonisation, the claims were activated. The right of retrocession of outraged States, stifled for decades, had to be taken into account. The time had come to correct a historical injustice by returning the stolen territories to their rightful owners.

21. Venezuela has always been a staunch advocate of Guyana's emancipation from the colonial yoke. However, independence does not entitle Guyana to inherit the United Kingdom's role as victimiser against Venezuela, nor does it justify Guyana taking advantage of its status to harm its neighbour, consolidating the plundering of the British Empire for its own benefit.

22. The Geneva Agreement was the result of a negotiation conducted within the framework of decolonisation and entailed the novation of any obligations of the parties under previous instruments. Under the Geneva Agreement, the parties undertook to negotiate a practical and satisfactory settlement of the territorial controversy between Venezuela and British Guiana, regardless of their conflicting views on the validity or nullity of the 1899 Arbitral Award and its application as provided for under the 1905 agreement. The United Kingdom (with Guyana) explicitly acknowledged that the negotiation and signing of the Geneva Agreement had been triggered by the Venezuelan contention that the 1899 Arbitral Award was null and void, but the Agreement did not intend at any time to address this issue in the dispute settlement process.

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23. In this context, it is very serious that the Court intends to rule on the validity or invalidity of the 1899 Arbitral Award, an issue that has been buried and superseded by the Geneva Agreement. However, since Guyana has placed this issue at the centre of its strategy, it must be addressed in order to uphold historical truth and prevent any violation of international law in the attempt to annihilate the Geneva Agreement. This gives rise to Part Two of this Rejoinder.

24. Venezuela is accordingly going to devote a whole chapter —Chapter V— to reaffirming the solid grounds for nullity of the 1897 Treaty of Washington and the 1899 Arbitral Award, as set out in its Counter-Memorial, relying in particular on additional documentary evidence that was not available at the time the 8 April 2024 Counter-Memorial was submitted.

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25. Venezuela is going to devote Chapter VI of this Rejoinder to refute Guyana's extensive and lengthy presentation regarding the merely alleged Venezuelan acquiescence to the situation derived from the 1899 award. There has been no such acquiescence and, therefore, Guyana cannot use Venezuela's conduct to cure the vices of the 1897 treaty and the 1899 Arbitral Award. On the other hand, it will hardly be necessary to dwell on the alleged life of the 1905 agreement and the survival of the demarcated border in the face of the ailments of the agreement. The 1905 Agreement and the border delimited by it are simple execution of the award, and hence depend on it and die with it.

26. It is false that Venezuela had access to evidence to prove its legitimate claim before 1949. Harboursing a suspicion is one thing, but having sufficient evidence to prove it is quite another. Guyana deliberately disregards the essential distinction in judicial proceedings between knowing and proving.

27. The Mallet-Prevost memorandum, drafted in 1944 and, following the instructions of its author, published only in 1949, after his death, as well as the partial opening of the British Archives that same year, provided evidence proving the invalidity of the 1899 Award. This evidence formed the basis for complaints that were clearly formulated from that moment onwards in various media outlets and multilateral forums, and not only from 1962 onwards, as Guyana maliciously claims.

28. It is impossible to overlook the fact that the United Kingdom has, to this day, deliberately blocked access to the information contained in its archives, which were only partially opened decades after the award was rendered.⁵ This partial disclosure seeks to conceal the United Kingdom's active participation in the crime committed against Venezuela. There is no way for the United Kingdom to dilute its participation and evade its responsibility in the territorial spoliation carried out against Venezuela. They were the direct perpetrators of the fraud in collusion with the United States of America.

29. Venezuela must also insist, once again, on the structural coercion of which it was a victim before, in and after the 1899 Arbitral Award, a concept that Guyana glosses lightly and disdainfully over in its Reply. Today, Guyana's conduct serves as an instrument of the United States and the United Kingdom to destabilize Venezuela.

30. The British Empire, known throughout the world for its aggressive expansionism, negotiated with the United States a rigged arbitration to retain the territories usurped from Venezuela in exchange for recognising the hegemony of the United States in the Americas, underpinned by the Monroe Doctrine. This

⁵ See Email from the Freedom of Information Requests' Office, The National Archives UK, **Annex 41**.

negotiation can be traced to the founding date of the *entente cordiale* of the two great powers on both sides of the Atlantic: Monroeism.

31. Venezuela's meek resignation for years did not crystallize its acquiescence, but it was merely a prudent response to the to the imminent threat posed by a powerful and expansionist empire willing to use force to exacerbate the dispossession to which it had already subjected a Republic weakened by its repeated internal conflicts. Faced with the threat of losing even more territory if it protested the fraudulent Award, Venezuela was forced to tolerate the dispossession, which left it with nothing but control over the mouth of the Orinoco River. Venezuela could raise its voice safely to protest only when the world order began to change and the decolonisation movement rightfully took off.

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32. In the last of its chapters (Chapter 5, "Appropriate Remedies"), Guyana's Reply seeks to sneak in a particularly irrelevant issue. Venezuela is not going to dedicate one more line to Guyana's treacherous initiative to take the debate to sterile paths.

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33. Consequently, the Court has no role to play in the territorial dispute between Venezuela and Guyana over Guayana Esequiba and must not interfere with the obligations arising from the 1966 Geneva Agreement, which provides for that the settlement of that dispute can only be achieved through a friendly, satisfactory and acceptable agreement between the parties, through peaceful, political and diplomatic means.

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34. Volume II includes the Documentary Annexes that support the statements made by Venezuela in this document.

PART ONE: ABOUT THE GENEVA AGREEMENT

INTRODUCTION TO PART I

1. This First Part of Venezuela's Rejoinder is dedicated to the foundational instrument that governs the present controversy: the 1966 Geneva Agreement ("the Geneva Agreement"). Venezuela will demonstrate that this Agreement, far from being a mere procedural waypoint, lies at the very heart of the dispute, having fundamentally redefined the Parties' relationship and having provide an agreed pathway to a resolution of the controversy.

2. The Geneva Agreement was meticulously crafted not to adjudicate the validity of the 1899 Arbitral Award ("the 1899 Arbitral Award"), but rather to supersede the contentious legacy of that Award and to establish a new framework for achieving a practical, mutually satisfactory, and definitive settlement of the territorial controversy between Venezuela and the then soon-to-be independent Guyana.

3. Regrettably, Guyana's submissions to this Court have consistently sought to sidestep the true import of the Geneva Agreement. Instead, Guyana tried to pursue a narrow and erroneous focus on the 1899 Arbitral Award, with malicious intent to evade its responsibilities under the Geneva Agreement. Venezuela will accordingly demonstrate for one that Guyana's approach not only mischaracterizes the very nature and object of the dispute as defined by the Parties themselves in 1966. Besides, and second, it will also show that Guyana's attempt to manipulate the dispute before the Court also disregards fundamental principles of international law concerning treaty interpretation, decolonisation, and the transformation of legal obligations.

4. To elucidate these critical points, Part One is structured as follows:

- a. In a first, introductory **Chapter I**, Venezuela will address Guyana's persistent failure to engage in any meaningful way with the Geneva

Agreement and its implications. Venezuela will thus expose how Guyana's tactical decision to ignore the Geneva Agreement's core purpose has obscured the true nature of the dispute, which is not the alleged simple question of the 1899 Arbitral Award's validity. Rather, the dispute is about the search for a mutually acceptable solution, as mandated by the Geneva Agreement itself.

b. In a second, foundational **Chapter II**, Venezuela will then undertake a thorough examination of the Geneva Agreement, interpreting its very text, its object and purpose in accordance with well-established principles of international law, including Article 31 Vienna Convention on the Law of Treaties ("VCLT"), as having codified customary law on the matter. This chapter will accordingly delve into the Agreement's Preamble, its title and its operative provisions, alongside its *travaux préparatoires* and the subsequent practice of the Parties, all of which demonstrate conclusively that the Agreement was intended from the outset to move beyond the issue of the invalidity of the 1899 Arbitral Award and instead achieve a practical settlement of the entire territorial controversy.

c. A third, contextual **Chapter III** will then situate the Geneva Agreement within its crucial historical and legal context, namely the decolonisation of British Guiana. Venezuela will demonstrate that the Geneva Agreement must be understood as an instrument designed to address and rectify colonial injustices, reflecting the then-ascendant principles of self-determination and the need for newly independent States to resolve inherited controversies on a basis of equality and mutual consent, rather than through the perpetuation of colonial-era impositions.

d. In a last **Chapter IV**, Venezuela will further establish that the Geneva Agreement effected a novation of the prior legal relationship between the Parties. By creating new, distinct obligations and a framework for their fulfilment, the Geneva Agreement extinguished any legal regime previously predicated on the 1899 Arbitral Award. This chapter will thus demonstrate that the novation enshrined in the Geneva Agreement precludes an all too simplistic return to the question of the Award's validity and mandates adherence to the new, agreed-upon path towards a negotiated, mutually satisfactory resolution.

5. Through these chapters, Venezuela will demonstrate that the Geneva Agreement constitutes the indispensable lens through which the territorial controversy between Guyana and Venezuela must be viewed and, ultimately, resolved by the Parties in accordance with its agreed terms.

CHAPTER I: GUYANA'S ESCAPE AND OMISSIONS

A. INTRODUCTION

1.1. Faced with proceedings it never consented to, and with the risk of the Court unjustly ruling on matters which it has no jurisdiction to address, Venezuela, in its writing of April 8, 2024, sought to identify the true and genuine object of the dispute.

1.2. This approach was the logical and indeed, only appropriate development of Venezuela's early protests that Guyana's unilateral description of the dispute was fraudulent and misleading.⁶ Venezuela thus sought to ensure a real and adequate view of the parties' intents, expectations and commitments in accordance with the Geneva Agreement. As Venezuela has demonstrated at length, the Agreement delineates a specific controversy which bears no resemblance to what Guyana has described in its Memorial. For this reason, a substantial part of the Venezuela's Counter-memorial, (i.e., Chapters 2, 3, and 7) was dedicated to these issues.

1.3. Yet, Guyana in its Reply deliberately and utterly side-stepped these questions, curtly dismissing them in the introduction as something that "do[es] not call for a detailed response".⁷ Instead, Guyana opted to persist with what Venezuela, already in its writing of April 8, 2024, had described as its "monomaniacal focus on the validity of the 1899 Award".⁸

1.4. In what follows, this Chapter will thus review Guyana's failure in the Reply to act upon its duties – notably reflects its partial and malicious intention to interpret the Geneva Agreement and to engage with Venezuela's broader arguments in the

⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 5. See, in this respect, Memorandum of Venezuela, paras. 104 et seq.

⁷ GR, para. 1.6.

⁸ Venezuela's Counter-Memorial ("VCM"), p. 19.

Counter-memorial. This will serve as a background to an overview -in Chapter II- of what is the true and genuine object of the controversy.

B. GUYANA NOT ONLY EVADES ITS OBLIGATIONS BUT ALSO IGNORES THE HISTORICAL TRUTH OF VENEZUELA

1.5. As a first step, it is essential to address the manner in which Guyana has chosen to approach this matter.

1.6. Despite its continued and well-founded opposition to the Court's jurisdiction, Venezuela has, from the outset, sought to enlighten it to the truth of the facts and the dark intentions of Guyana.⁹ This concern notably underpinned Venezuela's preliminary objections, designed to ensure that the rights of a third party were not adjudicated upon.¹⁰ A further illustration of this approach can be found in Venezuela's choice to dedicate several chapters of its Counter-memorial, to the complex interplay between the 1899 Arbitral Award and the Geneva Agreement.

1.7. Guyana's approach, as will be shown, in turn, has been radically different. This approach reflects a profound lack of respect for the parties' commitment, contained in the Geneva Agreement, to find a mutually satisfactory resolution, and, besides, demonstrates a systematic disregard for the core principles of international law.

a) Guyana's approach is not in keeping with the duty of good faith

1.8. The principle of good faith (*bona fides*) is a cornerstone of international legal proceedings. It requires parties to "deal honestly and fairly with each other,

⁹ For instance, and as explained in Venezuela's Preliminary Objections to the Admissibility of the Application, 7 June 2022, para. 29, Venezuela "wanted to emphasize its opposition to the jurisdiction of the Court by not appearing in the open proceeding on this issue, but it did spend its energy making its reasons available to the Court in one memorandum, accompanied by an annex".

¹⁰ Venezuela's Preliminary Objections to the Admissibility of the Application, 7 June 2022.

[...] represent their motives and purposes truthfully, and [...] refrain from taking unfair advantage”.¹¹ This principle applies broadly to treaty interpretation, dispute settlement, and the conduct of proceedings before international courts and tribunals.¹²

1.9. Guyana itself is well aware of this duty: in its arbitration with Suriname, it sought the cooperation of the respondent in locating documentary evidence – leading the tribunal to “emphasize[...] to both Parties the importance of equality of arms and good faith cooperation in international legal proceedings”.¹³

1.10. Wise words – yet words that Guyana has not only forgotten, but were also mocked by its own failure to provide crucial documentary evidence to Venezuela. A failure on par with Guyana’s procedural and substantive breaches of its Geneva Agreement and its other international law duties.¹⁴

¹¹ A. D’Amato, Good Faith, Encyclopedia of Public International Law, vol. 7, p. 107 (R. Bernhardt, ed. 1984). As cited in *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 107. See also “Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among State”, p. 124.

¹² *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.

¹³ *Delimitation of maritime boundary (Guyana v. Suriname)*, PCA Case No. 2004-04, Award, 17 September 2007, para. 20. See also *Id.*, Procedural Order No. 4, para. 15: “Whereas the Arbitral Tribunal, having considered the positions of the Parties with regard to access to documents, is of the view that both Parties should co-operate in granting access to relevant documents in order to facilitate the work of the Tribunal”.

¹⁴ Notably, Guyana has violated its obligations under the 1966 Geneva Agreement by acting unilaterally as if the territorial dispute has been resolved (e.g., by proceeding to the militarisation of the disputed territory). Together with Guyana’s bad faith during the negotiations and the good offices process, this conduct is contrary to the principles of the threat of the use force, good faith in the performance of treaties, the non-aggravation of the dispute, and the principle of peaceful settlement of disputes enshrined in the UN Charter and the 1966 Geneva Agreement.

b) The Interpretative Task

1.11. Interpreting an international legal instrument is the international legal task *par excellence*.¹⁵

1.12. This task relies on a widely-accepted range of rules and principles governing interpretation, chiefly embodied in the Vienna Convention on the Law of Treaties (“VCLT”). The customary character of the principles governing interpretation is nearly unanimously recognised. These interpretative rules serve as safeguards against arbitrary or self-serving readings of legal instruments. Consequently, the interpretative process cannot be treated lightly, ignored, or substituted by a party’s own preferred – and, in this case, distorted – meaning.

1.13. In the case at hand, Guyana’s failure to engage meaningfully with the Geneva Agreement undermines the accurate delimitation of the extent of the controversy. Venezuela’s Counter-memorial, dedicated extensive analysis to such an interpretative exercise, and demonstrated the integral nature of the Geneva Agreement – its object, purpose, and the ordinary meaning of its provisions in accordance with international law. This was done not merely out of strategic necessity, but as a fundamental contribution to the proper settlement of the controversy.

1.14. Guyana, assisted by a team of experienced international lawyers, is fully aware of the importance of this interpretative task. Indeed, it once sought to interpret the Geneva Agreement under international law, to argue that the Court had jurisdiction over this dispute. In its Memorial, Guyana accordingly dedicated several chapters reviewing the background to the Geneva Agreement¹⁶ before

¹⁵ Hollis, Duncan B., ‘The Existential Function of Interpretation in International Law’ in Andrea Bianchi, Daniel Peat & Matthew Windsor (eds.) *Interpretation in International Law* (Oxford University Press 2014).

¹⁶ Guyana’s Memorial (Jurisdiction and/or Admissibility), Chapter 2.

proceeding to interpret it¹⁷ – misleadingly, and in a way that denatured its actual terms, but nonetheless ostensibly in light of the VCLT.

1.15. However, as will be established next, there is no such attempt whatsoever contained in the Reply, which skirts any interpretation of the Geneva Agreement’s application to the merits of the case at hand. This selective and opportunistic approach to interpretation undermines the credibility of Guyana’s legal position.

1. The deliberate decision of Guyana to ignore the Geneva Agreement

1.16. In light of what precedes, the shortcomings of Guyana’s approach become particularly glaring in two respects: (a) its utter failure to engage meaningfully with the Geneva Agreement – the very legal foundation of these proceedings – and (b) its dogmatic, almost stubborn, refusal to engage with Venezuela’s legal contentions, thereby trying to evade the substantive issues before the Court.

a) The Unexplainable Disappearance of the Geneva Agreement from Guyana’s Submissions

1.17. Guyana filed its Application relying on the Geneva Agreement, duly provided as one of the few Annexes which accompanied it.¹⁸ Indeed, Guyana’s entire jurisdictional argument is predicated on its reading of Article IV, para. 2, of the Geneva Agreement – a reading which Venezuela has already demonstrated to be flawed and inconsistent with the text, object, and purpose of the Agreement.

1.18. More importantly, the Geneva Agreement does not merely set the procedural framework seeking a resolution to the territorial controversy; it governs this controversy itself, defining the manner in which the dispute is to be settled and the principles that should guide this research. Even Guyana concedes this point: it has cited Venezuela’s contention that the Geneva Agreement “governs as law the

¹⁷ *Ibid.*, Chapter 3.

¹⁸ *See* Application instituting proceedings, 29 March 2018, Annex 4.

territorial controversy on the Essequibo”.¹⁹ Guyana bears the responsibility to demonstrate a sound understanding of the instrument upon which it relies. That responsibility derives from the principle of good faith under Article 26 of the VCLT. As put by the Court, this principle “obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized”.²⁰

1.19. Given this foundational role, one would expect that a proper interpretation of the Geneva Agreement would be at the centre of Guyana’s submissions, and that Guyana would engage comprehensively with its object, purpose, and scope.

1.20. However, there is no such interpretative exercise in Guyana’s Reply.

1.21. In fact, Guyana’s Reply is bereft of any interpretative analysis at all. The term “interpretation” is conspicuously absent; the VCLT is sparsely referred to, and mostly in the context of Guyana’s dogmatic attempts to validate the fraudulent 1899 Arbitral Award.

1.22. In other words, Guyana’s contention is that a key legal instrument, an instrument that both parties agree governs the dispute, can be utterly set aside and ignored. This assertion, which contradicts the most basic precepts of international law, represents an attempt to falsify the *true nature* of the controversy.

1.23. One may further suspect that this strange *aversion* to the Geneva Agreement is what also led Guyana, tactically, to refuse to engage with the facts and narrative that preceded it and led to its conclusion – and instead to insist, against all evidence to the contrary, that Venezuela somehow acquiesced to the 1899 Arbitral Award. Instead, as spelled out in further details below, the Geneva Agreement purposefully

¹⁹ Application instituting proceedings, 29 March 2018, para. 15, citing Ministry of Foreign Affairs of Venezuela, Note Verbale, No. 000322, 28 February 2018.

²⁰ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, pp. 78-79, para. 142.

left the question of the validity of the Award behind (Chapter II), to operate a novation of the parties' legal relationship (Chapter IV).

1.24. The only context in which the Guyana's Reply references the Geneva Agreement, if at all, is to support its argument that Venezuela had, through its supposed actions, already accepted the 1899 Arbitral Award and its established boundary.²¹ Leaving aside the sheer contradiction at the heart of this argument – i.e., that Venezuela would have entered a specific instrument that changed *nothing* to the previous, unjust situation – this only confirms that Guyana is determined to breach the Geneva Agreement, and the specific way it described the dispute between the parties – and how it should be resolved.

1.25. Guyana's disregard for the Geneva Agreement – and what it entails – is patent in the Guyana's limited citations to it in the Reply: just over 30 references,²² most of them discussed in a three-page span, which includes several quotes from Venezuela's own citations to the Geneva Agreement in its Counter-memorial. Even where the Agreement is invoked, it is treated as a factual backdrop only rather than as a legally operative instrument governing the dispute.

1.26. This cavalier dismissal of the Geneva Agreement is, furthermore, all the more striking as Guyana, in its previous submissions, relied heavily upon it to establish the Court's jurisdiction. Strikingly, the instrument is cited nearly as often in the 15 short pages of its Application²³ as in Guyana's latest, 200-page Reply.²⁴ It was a key plank of the Guyana's flawed jurisdictional reasoning in the Memorial but is nowhere to be found when discussing how the controversy should be

²¹ GR, paras. 4.81-4.87.

²² By comparison, the Geneva Agreement is cited 179 times in VCM.

²³ See Application instituting proceedings, 29 March 2018; the Geneva Agreement is cited 24 times.

²⁴ GR, the Geneva Agreement is cited only 30 times.

resolved. In short, when the Agreement served Guyana's strategic interests, it was treated as a crucial legal foundation; when it became inconvenient, it was discarded.

1.27. Reading through the lines – since this is the only recourse one has –, Guyana's assumption seems to be that the Geneva Agreement only provides for a “mechanism”,²⁵ or “framework”²⁶ for resolving their dispute, defined by Guyana in its Application, and nothing more. But this is a self-serving construction of a complex and important treaty. Rather, the Geneva Agreement is much more than a mere procedural stepping stone; it is a *substantive* instrument designed to address a specific controversy and to provide a path towards a mutually acceptable practical solution²⁷. This character would have been evident to Guyana – had it taken the step of interpreting *bona fide* it and engage further with Venezuela's position.

1.28. In other words, Guyana's deliberate refusal to engage with the Geneva Agreement thus has profound implications: it undermines the credibility of its position and calls into question the sincerity of its submissions before the Court.

b) Guyana's Failure to Engage with Venezuela's Chief Contentions

1.29. As highlighted above, the question of the exact nature -territorial- of the controversy is spelled out over dozens of pages and is central to Venezuela's Counter-memorial.

1.30. And yet, from the other side, utter *silence*. Guyana has deliberately chosen not to engage with this fundamental argument. In fact, it went so far as to state that Venezuela's contentions “do[es] not call for a detailed response from Guyana.”²⁸

²⁵ GR, para. 1.7.

²⁶ See, e.g., GR, para. 4.85.

²⁷ See, e.g., 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: “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.” (emphasis added)

²⁸ GR, para. 1.6.

This curt dismissal of a fundamental argument is, at the very least, a remarkable omission; in light of the central importance of the Geneva Agreement, this is an astonishing abdication of procedural responsibility – and proves one thing: that Guyana lacks any sound response.

1.31. The most that Guyana offers is then a single, perfunctory paragraph in the introduction that fails to engage at all with the argument.²⁹ In that paragraph, Guyana relies on an argument that is, upon analysis, entirely circular, and which again utterly fails to engage with Venezuela’s arguments. Guyana’s argument, in a nutshell, is that “resolving the controversy over the validity of the 1899 Award is the very purpose of the Geneva Agreement.”³⁰ To then simply assert that, by way of consequence, the 1899 Award’s validity is at issue, without providing any substantive analysis, is not a contribution to the correct understanding of the matter.

1.32. It is, instead, nothing but a dogmatic assertion – a mere statement of what Guyana wishes the Court to believe rather than an actual engagement with Venezuela’s legal position, or a genuine attempt at interpreting the key instrument to resolve the dispute. It thus also ignores the core contention advanced by Venezuela: that the Geneva Agreement does not mandate any assessment of the validity of the 1899 Arbitral Award, but instead sets forth a framework for negotiation of a practical solution, acceptable to both Parties, of their territorial controversy, within which a panoply of considerations must be taken into account.

1.33. A similar *petitio principii* pervades another section of the Guyana’s Reply,³¹ where Guyana argues that it can, somehow, rely on Venezuela’s alleged acquiescence of the 1899 Arbitral Award – even though the parties executed an

²⁹ Guyana further acknowledges the argument, without rebutting it (GR, footnote 378).

³⁰ Guyana’s reliance on the Court’s 2020 Judgment, a judgment that it obtained by misrepresenting the scope and content of the Geneva Agreement, is unavailing.

³¹ GR, paras. 4.81-4.87.

instrument, the Geneva Agreement, that gave lie to any such acquiescence, if there ever was any – *quo non*. At this juncture as well, Guyana fails to engage in a proper interpretative exercise that would demonstrate that the Agreement offers no basis for, and indeed is antithetical to, the remedy it seeks, i.e., the confirmation of the 1899 Arbitral Award.³²

1.34. What is particularly striking is that Guyana is aware of Venezuela's argument about the Geneva Agreement, and noted the "numerous" times it had been made.³³ Guyana even provides several quotes from the Venezuela's writing of April 8, 2024, in a footnote,³⁴ which also pointed out – correctly – that this argument has deep roots, since it was already part of the truth narrated by Venezuela in its 2019 Memorandum. The fact that Guyana has recognized the argument's prominence while simultaneously refusing to engage with it raises serious concerns about the credibility of its approach.

2. Guyana has obscured the true dispute between the Parties

1.35. Having established that Guyana, for tactical reasons, has opted to misrepresent the object of this dispute and evaded a debate on this point, Venezuela wishes to restate what has been demonstrated in its Counter-memorial: namely, that the Geneva Agreement's object and purpose has never been to settle the dispute as to the 1899 Arbitral Award, let alone through a judgment of the International Court of Justice. Instead, the Parties concluded the Geneva Agreement with the aim of rectifying the historical injustices resulting from the 1899 Arbitral Award. The Geneva Agreement was not intended to confirm or adjudicate the validity of that contested Award, but, first and foremost, as a way for the Parties to leave that Award behind them and, instead, seek a mutually satisfactory solution to the

³² In Chapter IV below, Venezuela will demonstrate how the Geneva Agreement – as a novation of the parties' obligations – rules out argument about acquiescence.

³³ GR, para. 4.82.

³⁴ GR, para. 3.78.

outstanding territorial controversy between the Parties. This fundamental purpose is evident from the text, context, and subsequent practice of the Parties under the Agreement.

1.36. The Court lacks jurisdiction over this controversy. However, if the Court had jurisdiction (*quo non*), it is settled law that it can and should decide by itself the scope and profile of the dispute³⁵ – in other words, “to isolate the real issue in the case and to identify the object of the claim”.³⁶ It should be done “on an objective basis”.³⁷ Accordingly, the Court may find that the dispute differs from what an applicant strategically alleges; this determination is, indeed, a “matter [...] of substance, not form”.³⁸

1.37. While the Geneva Agreement is *not* as a special agreement in the mould of those the Court is familiar with, it should nonetheless be subject to the same principles.³⁹ Therefore, Guyana’s description of the controversy is a malicious attempt to influence the perception of its subject matter. By contrast, any genuine

³⁵ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015, p. 592, 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. 71, 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, p. 558, 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, p. 3, para. 51.

³⁶ *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”.

³⁷ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015, p. 592, para. 26. *Fisheries Jurisdiction (Spain v. Canada)*, Jurisdiction of the Court, Judgment, I. C.J. Reports 1998, p. 432, para. 30.

³⁸ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018, p. 292, para. 48.

³⁹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Jurisdiction of the Court, Judgment, I.C.J. Reports 2020, p. 455, para. 1.

and lawful effort to find a solution to the controversy must begin with an objective identification of its “real issue”.

1.38. In any event, the Court’s preliminary findings as to the subject-matter of the dispute have been premised on a misleading presentation by Guyana. Whatever the Court might have found in this respect would therefore qualify as *obiter dicta*.

1.39. This is why, even though the Court concluded erroneously that the validity of the 1899 Arbitral Award falls within the scope *ratione materiae* of its jurisdiction,⁴⁰ this does not mean that it can effectively exercise that jurisdiction to resolve a matter that the parties have agreed to settle through a mutually satisfactory solution, as set out in the Geneva Agreement.

1.40. In the *Northern Cameroons* case, the Court stressed that:

“[...] even 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. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court’s judicial integrity.”⁴¹

1.41. The case at hand is a perfect example of the limits of the “judicial function”: where the parties have agreed between themselves, as will be demonstrated below,

⁴⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455, paras. 128-135.

⁴¹ *Case concerning the Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections, Judgment of 2 December 1963*: *I.C.J. Reports 1963*, p. 29. See also *Frontier Dispute (Burkina Faso/Niger)*, *Judgment*, *I.C.J. Reports 2013*, p. 44, para. 45; *Orascom TMT Investments S.à r.l. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, *Decision on Annulment*, 17 September 2020, para. 257.

that what they are seeking is an amicable resolution of their dispute, the Court would be ill-advised to go beyond this function and interfere with that process in a manner that would prevent reaching a mutually satisfactory solution.⁴² In particular, the Court should not do anything that would place them in an asymmetric situation where one party is the full “winner”, while the other can never hope to achieve much – an outcome that would distort the very essence of the Geneva Agreement, which was designed to facilitate a mutually acceptable resolution rather than impose a unilateral adjudication.

1.42. It is therefore clear that the Court has no role to play in resolving the territorial dispute over the Guayana Esequiba. Any other approach would exacerbate the dispute and constitute a flagrant violation of the Geneva agreement.

⁴² See, e.g., *Haya de la Torre Case (Colombia v. Peru)*, Judgment, *I.C.J. Reports*, 1951, page 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.”

CHAPTER II: THE FRAUDULENT SUBMISSION OF GUYANA BEFORE THE COURT AND THE REAL INTERPRETATION OF THE GENEVA AGREEMENT

A. INTRODUCTION

2.1. When the parties entered into the negotiations that ultimately led to the conclusion of the 1966 Geneva Agreement, they were deeply divided by an obvious and fundamental disagreement as to the purpose of what was to become the Geneva Agreement. While the United Kingdom wanted the said agreement to focus on the issue of the (in)validity of the 1899 Arbitral Award, Venezuela sought that the future agreement to provide for a way to reach a mutually satisfactory negotiated solution of the territorial controversy. Yet, as will be subsequently shown, and as confirmed by its *travaux préparatoires*⁴³, it was the latter position that was ultimately accepted by *both* parties, *i.e.* Venezuela *and* the United Kingdom, and that was accordingly incorporated into, and is reflected in, the very text of the Geneva Agreement.

2.2. It is against this background that the parties, by entering into the Geneva Agreement, aimed at solving their territorial controversy for good, and thereby bring about a peaceful solution to their overall territorial controversy. Hence, it is malicious to claim, as Guyana does, that the parties of the Geneva Agreement had wanted the process envisaged by the said agreement to focus on the issue of the (in)validity of the 1899 Arbitral Award.⁴⁴ Rather, they wanted to detach themselves from the issue of the validity and invalidity of the 1899 Arbitral Award, as this would have not solved the overall dispute pending at the time between the Republic of Venezuela and Guyana's then colonial power, the United Kingdom, and now between Venezuela and Guyana.

⁴³ See paras. 2.82-2.123.

⁴⁴ *Ibid.*

2.3. Put otherwise, whatever might have then been the legal situation as to the (in)validity of the 1899 Arbitral Award prevailing at the time of the conclusion of the Geneva Agreement, and whatever might be the current legal situation as to this very question today, is legally irrelevant. Any such dispute has been superseded by the joint will of the parties to exclusively search for, and reach, a mutually acceptable practical settlement of the territorial controversy between at the time Venezuela and the United Kingdom, and now between Venezuela and Guyana, *i.e.* one that would satisfy the interests of *both* sides, and to do so regardless of the issue of the (in)validity of the 1899 Arbitral Award.

2.4. Notably, it must be assumed on the one hand that the colonial power, in the wake of Guyana's decolonisation process, must have strived for such an overall solution since otherwise it would have left Guyana with a pending and ongoing territorial controversy and with unsettled boundaries.

2.5. On the other hand, Venezuela, both in the wake of Guyana's independence and thereafter, repeatedly confirmed that it did not agree with the Venezuelan-Guyanese boundary as having allegedly been determined by the 1899 Arbitral Award.⁴⁵

2.6. Given the structure and very text of the Geneva Agreement, they wanted to reach such an overall settlement by way of negotiations. As was already outlined in Venezuela's Counter-Memorial⁴⁶, and as will subsequently be shown in more detail, the Geneva Agreement was, first and foremost, a way for the parties to leave behind them the harmful consequences of the null and void 1899 Arbitral Award –

⁴⁵ See already VCM, para. 3.14 at fn. 71.; see also Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, p. 7 ff., **Annex 2**; UN General Assembly, Twentieth Session, 1398th Plenary Meeting, 16 December 1965, Statement of the Venezuelan Representative, paras. 45–49; Letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Michael Stewart, Minister of Foreign Affairs of Great Britain, dated 2 November 1965, **Annex 26**.

⁴⁶ VCM, paras. 2.1-3.118.

in a context where its validity was thoroughly contested – and, instead, seek a mutually satisfactory solution to the controversy through a novation of their legal relationship. That remains its purpose to this day.

2.7. This core purpose is clearly enshrined in the text, context, and object of the Geneva Agreement, in accordance with Article 31, para.1, of the VCLT, which requires interpretation of treaties “in good faith in accordance with the ordinary meaning to be given to [... its] terms [...] in their context and in the light of its object and purpose” (B). It can also be discerned from the *travaux préparatoires* (C) and the subsequent practice of the Parties (D).

B. THE GENEVA AGREEMENT’S ORDINARY MEANING IN LIGHT OF ITS OBJECT AND PURPOSE

2.8. When starting with the ordinary meaning of the Geneva Agreement, the analysis should first consider the following elements:

- a. The Agreement’s goal of “resolv[ing] the controversy over the frontier” is explicit from its very title and preamble;⁴⁷
- b. Article I of the Geneva Agreement mandates the establishment of a Mixed Commission for the purpose “of seeking *satisfactory* solutions for the *practical* settlement of the controversy between Venezuela and the United Kingdom.”⁴⁸ This formulation, repeated in the *travaux préparatoires*,⁴⁹ emphasizes a negotiated outcome rather than a legal determination of the 1899 Arbitral Award’s (in)validity.

⁴⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 73.

⁴⁸ Geneva Agreement, Article I (emphasis added).

⁴⁹ Letter of 16 December 1965 to the Secretary-General from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland, and Venezuela before the United Nations, 18 December 1965 (VCM, Annex 43).

c. The Mixed Commission was conceived as a diplomatic rather than a legal body. In other words, the Geneva Agreement did not establish a mechanism to review or confirm the 1899 Arbitral Award; instead, it provided a structured process for the diplomatic and political negotiations that should pave the way to a resolution, in stark contrast to a framework geared toward adjudication or confirmation of the 1899 Arbitral Award.

d. Article IV of the Geneva Agreement explicitly envisions a progressive and stepwise approach to dispute resolution, incorporating negotiations, mediation, and other non-adjudicative means. These mechanisms are inherently ill-suited to a binary question of the 1899 Arbitral Award's validity or invalidity. As Venezuela has consistently maintained,⁵⁰ the principles of graduality and progressivity embedded in Article IV demonstrate that the Geneva Agreement was designed to facilitate an evolving political settlement, rather than a rigid judicial determination.

e. Crucially, the United Kingdom (and later Guyana) expressly opposed any reference to arbitration or recourse to the Court during the negotiation of the Geneva Agreement.⁵¹ This historical fact is directly at odds with Guyana's present claim that the Agreement contemplated a judicial resolution.

⁵⁰ Memorandum of Venezuela, paras. 51, 106.

⁵¹ 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**, pp. 11-12, and p. 16.

2.9. With this overview of the Agreement in the background, a more detailed focus confirms that the parties were aiming at a negotiated, mutually-satisfactory resolution of the controversy.

1. Preamble of the Geneva Agreement

2.10. That the Geneva Agreement addresses the territorial issue as such, and not the (in)validity of the 1899 Arbitral Award, is first confirmed by the wording of its preamble. As the Court has, time and again, stated, it is notably the preamble that has to be taken into account when interpreting a treaty. As the Court put it as early as 1952:

“(…) the interpretation of the provisions of the Act [of Algeciras] must take into account its purposes, which are set forth in the Preamble (…)”⁵²

while the Court in 2002 considered

“(…) that the object and purpose of the 1891 Convention [between the Netherlands and the United Kingdom] was (…) shown by the preamble to the Convention (…)”⁵³

2.11. As a matter of fact, as again confirmed by the Court, this applies particularly to the preamble of arbitration agreements, in which the parties may express their desire to reach a settlement of their dispute.⁵⁴ In the preamble they may thereby

⁵² *Case concerning rights of nationals of the United States of America in Morocco, Judgment, I.C.J. Reports 1952*, p. 197.

⁵³ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I. C. J. Reports 2002*, p. 625, para. 51.

⁵⁴ *Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports 1991*, p. 53, para. 56.

circumscribe the aim of such a treaty, unless specific treaty provisions were to limit their consent as far as the powers of the arbitral tribunal are concerned.⁵⁵

2.12. In the case at hand, the preamble of the Geneva Agreement unequivocally provides 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 (...) *in a manner acceptable to both parties*”,⁵⁶

and that this attempt, besides, should 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 (...)”.⁵⁷

2.13. This wording confirms that the Geneva Agreement, in line with, as will be shown, other provisions of the treaty as well as the Joint Communiqué of 7 November 1963, aimed to settle the overall *bilateral boundary issue at large*. It did so by referring to the wish to settle the “*controversy* between Venezuela and the United Kingdom *over the frontier*”,⁵⁸ rather than decide upon the issue of the validity or nullity of the 1899 Arbitral Award.

2.14. This result is further confirmed by the fact that, as the preamble puts it, “*any outstanding controversy*”⁵⁹ pending between the parties should be resolved, and that it ought to be resolved in a *manner acceptable to both parties*. Yet, to state the

⁵⁵ *See mutatis mutandis, Ibid.*

⁵⁶ Emphasis added.

⁵⁷ Emphasis added.

⁵⁸ Emphasis added.

⁵⁹ Emphasis added.

obvious, by its very character, deciding the issue of the validity or the nullity of the 1899 Arbitral Award could never be satisfactory to both parties since it would either unilaterally favour Guyana or Venezuela. Rather, the parties in concluding the Geneva Agreement aimed at reaching a mutually acceptable *negotiated* agreement, thereby setting aside their dispute as to (in)validity of the 1899 Arbitral Award.

2.15. Moreover, as the Court itself, notwithstanding the fact that it lacks jurisdiction to decide the case at hand, has stressed

“(…) 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.”⁶⁰

2.16. The Court further underlined that “(…) [t]he Agreement also refers, in Article I, to the task of “seeking satisfactory solutions for the practical settlement of the controversy”⁶¹, all of which in the Court’s view thus indicated

“(…) that the object and purpose of the Geneva Agreement is to ensure *a definitive resolution of the controversy* between the Parties.”⁶²

2.17. It is patent that a judicial decision dealing with the issue of the nullity of the 1899 Arbitral Award would not lead to a definitive, mutually satisfactory resolution of the territorial controversy.⁶³ Such a judgment would thus be contrary to the very object and purpose of the Geneva Agreement.⁶⁴

⁶⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 73; emphasis added.

⁶¹ *Ibid.*

⁶² *Ibid.*; emphasis added.

⁶³ *Ibid.*, para. 86.

⁶⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 86.

2.18. This understanding of the Geneva Agreement was shared by the parties to that agreement given that in a

“(…) joint statement on the ministerial conversations held in Geneva on 16 and 17 February 1966 between the Venezuelan Minister for Foreign Affairs, his British counterpart and the Prime Minister of British Guiana declare[d] that ‘[a]s a consequence of the deliberations an agreement [*i.e.* the Geneva Agreement] was reached whose stipulations will enable a definitive solution for [the] problems [relating to the relations between Venezuela and British Guiana]’.”⁶⁵

2.19. In that regard, it ought to be also underlined that the treaty, as perceived by the parties themselves, was meant to bring about a definitive, satisfactory solution of their bilateral territorial problem as such instead of focusing on the issue of the invalidity of the 1899 Arbitral Award.

2.20. It thus follows that the task of the dispute settlement mechanism provided for in Articles I to IV of the Geneva Agreement can only be to provide for a solution that will not only resolve *the whole of the controversy* pending between the parties, but that will do so in a way that is satisfactory for both, Guyana *and* Venezuela, and thereby, and thereby only, lead to a *definitive solution* to the overall boundary controversy. For this reason, the exclusion of the Court as a means of solution of this controversy is evident.

2. Article I of the Geneva Agreement

2.21. The very wording of Article I of the Geneva Agreement confirms that this Agreement was from its very outset meant to solve the territorial dispute by

⁶⁵ *Ibid.*, para. 87.

obliging the parties to seek a mutually acceptable solution. Article I of the Geneva Agreement reads in English as follows:

“A Mixed Commission shall be established with the *task of 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.”⁶⁶,

while the equally authentic Spanish version provides as follows:

“Se establece una Comisión Mixta *con el encargo de buscar soluciones satisfactorias para el arreglo práctico de la controversia* entre Venezuela y el Reino Unido *surgida como consecuencia* de la contención venezolana de que el Laudo arbitral de 1899 sobre la frontera entre Venezuela y Guayana Británica es nulo e irritó.”⁶⁷

- a) Venezuela’s contention as the starting point for a search for a mutually acceptable solution to the overall territorial controversy

2.22. This provision thus did not instruct the Mixed Commission to settle the dispute between Venezuela and the United Kingdom as to the nullity or validity of the Arbitral Award of 1899. Rather, the provision, given its very explicit wording, not only empowered, but also obliged, the Mixed Commission to seek a solution to the overall dispute, specifying that such solution needed to be satisfactory to both parties.

⁶⁶ Emphasis added.

⁶⁷ Emphasis added.

2.23. To that end, the parties jointly defined the dispute to be settled by the Mixed Commission, as one that

“(…) *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”.⁶⁸

2.24. This falls in line with Venezuela’s initial position as described above and entails that it was the two parties’ *jointly agreed* position that the Venezuelan contention as to the nullity of the 1899 Arbitral Award had only brought to light a broader controversy for which the parties now wanted to seek satisfactory solutions. This, however, further entails that the Geneva Agreement was meant from the outset, contrary to Guyana’s claim, to provide for a practical settlement of the overall territorial question pending between the parties, rather than focusing on the issue of the nullity of the 1899 Arbitral Award.

2.25. Put otherwise, the Venezuelan contention, as confirmed by the usage of the words ‘*has arisen*’, was only the starting point of the overall controversy: The ongoing and still existing controversy to be solved by the methods provided for in Articles I and IV of the Geneva Agreement was considered to be a broader one, namely “to seek a *solution to the frontier dispute* between the parties that *originated* from their opposing views as to the validity of the 1899 Award”.⁶⁹

b) The broad task of the dispute settlement mechanisms foreseen

2.26. Moreover, the parties agreed that any solution to be reached must be one that would lead to a practical settlement of the controversy *in toto*, *i.e.*, the one

⁶⁸ Emphasis added.

⁶⁹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455, para. 65; emphasis added.

concerning the frontier between Venezuela and British Guyana, which had already been placed before the General Assembly's 4th Committee by Venezuela in 1962.

2.27. Had it been the intention of the parties to entrust the Mixed Commission, and the other dispute settlement mechanisms envisaged in Article IV Geneva Agreement, with only a much more limited task, *i.e.* with the task to determine the nullity or validity of the 1899 Arbitral Award, it would have been most natural, if not mandatory, for the parties to formulate Article I of the Geneva Agreement differently, namely 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.”

2.28. It should be further highlighted that Article I refers to the “controversy” / “controversia” – and not to a “dispute” / “diferendo”. This wording choice is important, since it means that the Geneva Agreement deliberately sought to echo Article IV of the 1897 Washington Treaty, which had already used the term ‘controversy’ when referring to the *original* dispute that was submitted to the arbitral tribunal. The Washington Treaty, in turn, had established the tribunal “*to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela*”.⁷⁰

2.29. The 1897 Washington Treaty had however, to again state the obvious, been concluded *prior to* the 1899 Arbitral Award, and thus well *before any dispute as to the invalidity of said award could have even arisen*. Accordingly, the parties of the 1897 Washington Treaty, *i.e.*, the same parties as those of the Geneva Agreement,

⁷⁰ Article I Treaty of Arbitration between Great Britain and the United States of Venezuela, 2 February 1897 (Washington Treaty); emphasis added; *see Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 64.

namely Venezuela and the United Kingdom, by using the term ‘controversy’ in 1897 could have therefore only referred to the boundary issue at large, and not to any dispute related to the invalidity of the 1899 Arbitral Award. By necessary implication, the ‘controversia’ to be settled by the Geneva Agreement was *not* the dispute relating to the invalidity of the 1899 Arbitral Award, but rather the overall bilateral controversy *in toto* that was still pending between the parties.

2.30. This is obviously what the parties had in mind when they drafted, and agreed to Article I of the Geneva Agreement, as adopted and as reflected in the very text of the provision. And as further confirmed by its drafting history, the parties opted for a wording that was meant to prevent further discussions on the (in)validity of the Award.⁷¹ The competence of the Mixed Commission (and hence also the follow-up mechanism provided for in Article IV Geneva Agreement), was thus much broader, and tasked said Commission to further, and possibly reach, a mutually acceptable solution to the overall territorial controversy *at large*.

2.31. It is worth noting in passing and at this stage, that by agreeing to task the Mixed Commission to search for a practical agreement, the parties did not mean that the inability of the Mixed Commission to reach such agreement would entail that this goal should be given up. Rather, in such a scenario they wanted to then successively exhaust the further methods of peaceful settlement of disputes provided for in Article 33 of the UN Charter, and notably negotiations, as mandated by Art. IV, para. 2 Geneva Agreement until a definitive solution is reached *by the parties*.

⁷¹ For a detailed analysis *see* paras. 2.82-2.123; *see* also Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965, **Annex 27 A**, as well as the Cypher message from Blas Pérez to Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 20 October 1965, **Annex 27 B**.

c) The *search* for satisfactory solutions

2.32. Moreover, Article I Geneva Agreement entrusted the Mixed Commission “with the task of *seeking*”⁷² satisfactory solutions for the boundary controversy. Had the parties wanted to task the Mixed Commission (and hence also the other ensuing mechanisms contemplated in Article IV Geneva Agreement), to simply *decide* upon the nullity of the 1899 Arbitral Award, it would have been most natural for them to provide for a different formula. In particular, the parties would have then entrusted the Mixed Commission with the mandate ‘of *finding*’ (rather than *seeking*) a solution for the controversy by determining whether the award was valid or rather not. Yet, the parties decided otherwise.

2.33. As a matter of fact, the reference to the very notion of ‘*seeking* satisfactory solutions’ in Article I Geneva Agreement implies the willingness by the parties to entrust the Mixed Commission with a mandate where the invalidity of the Arbitral Award was barely tangential given that the very point of seeking a resolution to a dispute implies a process, rather than merely making a finding as to a legal situation that already exists.

2.34. The Geneva Agreement was accordingly meant as a future-oriented, forward-looking instrument, rather than one that was meant to address what had happened in the past. This is further confirmed by the fact that the Mixed Commission was tasked to seek ‘*satisfactory* solutions’/ ‘*soluciones satisfactorias*’.

d) The notion of *satisfactory* solutions

2.35. The notion of ‘*satisfactory*’ solutions implies that the Mixed Commission was obliged to reach a negotiated result that would be in line with the interests of *both* sides, since otherwise this could never constitute a mutually *satisfactory* result. Yet, any such *satisfactory* result by necessary implication must constitute a

⁷² Emphasis added.

compromise between the positions of the two parties. Accordingly, the Mixed Commission was not meant to make a finding on either the validity or the nullity of the 1899 Arbitral Award, since finding either way could not satisfy the interests of *both* sides. Thus, such a limited approach could *per definitionem* not have led to a result that would satisfy the interest of both parties.

2.36. Put otherwise, a finding by the Mixed Commission (and accordingly by *any* of the other mechanisms provided for in Article IV Geneva Agreement) that the 1899 Arbitral Award was valid, and that it had determined the boundary would have satisfied Guyana, but only Guyana. *Vice versa* finding the said award to be invalid would have merely satisfied the interests of Venezuela, but only Venezuela's. Neither finding could however constitute a 'satisfactory' solution, as required by Article IV of the Geneva Agreement.

2.37. As a matter of fact, any solution by the Mixed Commission that would have focused on the question of the validity or nullity of the 1899 Arbitral Award, could *necessarily* only decide that either the award would be valid or invalid. Any such binary solution could thus not constitute a satisfactory solution, nor indeed a solution equally acceptable to both parties, as required by the text of the Geneva Agreement.

e) The reference to satisfactory *solutions*

2.38. Moreover, the Mixed Commission's task was not limited to merely reaching a binary solution as to the validity versus nullity of the award, is also underlined by the fact that the text of Article I Geneva of the Agreement refers to the aim of finding 'satisfactory solutions'/ 'soluciones satisfactorias' to the controversy in the plural, rather than referring to a single 'satisfactory solution'/ 'solución satisfactoria' in the singular. Had the parties to the Geneva Agreement wanted to focus, as Guyana claims, on the issue of the (in)validity of the 1899 Arbitral Award, it would have been logical, and indeed mandatory, to task the Mixed Commission

to reach a ‘satisfactory solution’/ ‘solución satisfactoria’ in the singular to this distinct single issue.

2.39. This is further confirmed, if ever there was need, by the fact that the parties in their subsequent practice explored various formula for finding mutually acceptable solutions, including but not limited to discussing different boundary lines, joint exploitation of the territory, or other forms of economic cooperation.⁷³

2.40. This wording thus entails that what the parties agreed on was that the various mechanisms contemplated in Articles I and IV of the Geneva Agreement ought to find various possible solutions to resolve the overall frontier controversy. The use of the notion of ‘solutions’ in the plural thus excludes the possibility to merely establishing a boundary line based on the one which had been wrongly and fraudulently, determined by the 1899 Arbitral Award.

f) The notion of a ‘practical settlement’

2.41. Moreover, Art. I of the Geneva Agreement provides that its goal is to reach a ‘practical settlement’ of the controversy between the parties. This is not the first case of an agreement that strive for a ‘practical settlement’ of a dispute and relates to a prior decision with effect of *res judicata*. In the *Polish Postal Service in Danzig* Advisory Opinion the Permanent Court of International Justice had to similarly deal with the interrelationship between, in that case, a 1922 decision of the High Commissioner of the League of Nations in Danzig and a subsequent agreement reached in 1923 between the Senate of the Free City of Danzig on the one hand, and Poland on the other.

⁷³ See paras. 2.124-2.181.

2.42. The Court found that the functions of the High Commissioner were of a judicial character⁷⁴ and that the decision he had rendered as to the scope of Poland's rights in Danzig concerning its postal service had become final and binding upon the parties,⁷⁵ *i.e.*, that it had acquired the force of *res judicata*. Just as in the matter at hand, when a dispute then arose between the parties concerning this decision Poland and Danzig concluded an agreement meant – just like the Geneva Agreement – to supersede the previous decision, its *res judicata* effect notwithstanding.⁷⁶ Said agreement thus set out the parameters how to solve the dispute as to the scope of the rights of Poland to establish a postal service in Danzig whatever the content of the previous decision by the High Commissioner, and regardless of its *res judicata* character.

2.43. There is one fundamental difference between the agreement between Poland and Danzig compared to the Geneva Agreement. The former, in sharp contrast with the latter, had made clear that “[t]his *practical settlement* of the question in no way changes the legal position.”⁷⁷ It goes without saying that, had this savings clause *not* be inserted into the 1923 Agreement concluded by the two parties, it would have legally superseded the 1922 decision of the High Commissioner – the latter's final and binding character notwithstanding.

2.44. Venezuela and the United Kingdom, just like Poland and Danzig at the time, could have certainly inserted a clause in the Geneva Agreement akin to the language just quoted from the 1923 Agreement between Danzig and Poland providing that said agreement ‘in no way changes the legal position’. They would have done so if

⁷⁴ PCIJ, *Collection of Advisory Opinions, Polish Postal Service in Danzig, Ser. B, No. 11, May 16th 1925*, p. 6 et seq.

⁷⁵ *Ibid.*, p. 25.

⁷⁶ Minutes of the 24th session of the Council of the League of Nations with text of the Agreement of April 18, 1923 between the Senate of the Free City of Danzig and Poland; text to be found in PCIJ, Ser. B, No. 11, p. 6 et seq. (164-165).

⁷⁷ Emphasis added.

they had wished by concluding the Geneva Agreement to *not* thereby set aside the 1899 Arbitral Award and its legal effect (if at all).

2.45. Had the parties done so (which they did not) any *res judicata* effect of the 1899 Arbitral Award (if ever it did possess one at the first place, *quod non*) would have been safeguarded – just like the final and binding effect of the 1922 decision of the High Commissioner of Danzig was safeguarded by the 1923 agreement due to its savings clause. Yet, to state the obvious, in the case of the Geneva Agreement, no such savings clause was inserted, nor indeed ever contemplated.

2.46. Instead of following the approach from this well-known advisory opinion, the drafters of the Geneva Agreement deliberately opted for a new start, aimed at reaching a practical settlement of the underlying boundary controversy in order to bring about a mutually satisfactory negotiated solution to their overall territorial dispute, and not upholding the content 1899 Arbitral Award whatever its validity and legal status. Put otherwise, the parties were willing to replace the 1899 Arbitral Award, on which they held fundamentally divergent and irreconcilable positions, with a new practical settlement, regardless of the Award's legal status. Otherwise, it would neither have made sense for the Geneva Agreement to even formally acknowledge Venezuela's contention as to the invalidity of the 1899 Arbitral Award.

2.47. In the same vein, in his opinion in the Eastern Greenland case, *Judge Vogt* quoted a statement of *Norwegian Minister Ihlen* explaining that "(...) the Danish Government fully recognized the weight of the geographical and economic arguments in favour of uniting these islands [i.e. Spitzbergen/Svalbard] with Norway, and considered this as the most *practical settlement*."⁷⁸ Here, once again, the notion of 'practical settlement' meant, like in the case at hand, just this, namely

⁷⁸ PCIJ, *Legal Status of Eastern Greenland, Judgment, Ser. A/B, Judgments, Orders and Advisory Opinions, 1933, No. 53*, p. 21, Diss. Op. Vogt, p. 115.

a practical political settlement, *i.e.* an agreed bilateral negotiated future-oriented settlement of a pending boundary issue, taking into account different parameters and notably here geographical and economic factors, rather than a mere confirmation of a previously (ill-)defined boundary.

3. Article II of the Geneva Agreement

2.48. The broad scope of the Geneva Agreement and its goal to reach a mutually agreed solution to the various aspects of the overall boundary controversy, rather than focusing on the issue of the invalidity of the 1899 Arbitral Award, is further confirmed by Article II, para. 3 Geneva Agreement.

2.49. The provision foresees that ‘*any individual matter under consideration*’,⁷⁹ may also be considered by additional experts as appointed by the Mixed Commission. This, once again, implies that there exists a wide range of ‘matters’ that form part of the overall controversy to be considered under the Geneva Agreement. Accordingly, all methods provided for in Article IV Geneva Agreement, ought to try to resolve the overall boundary controversy, rather than focusing on the issue of the invalidity of the 1899 Arbitral Award.

2.50. 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 (in)validity of an arbitral award, as being a purely legal undertaking in nature, would have not required such experts. It could have been undertaken by the Mixed Commission alone. The reference in Article II Geneva Agreement to such experts thus, once again, confirms that the

⁷⁹ Emphasis added.

overall aim of the Geneva Agreement was *not* meant to decide upon, and eventually reach an agreement on, the invalidity of the 1899 Arbitral Award.

4. Article IV of the Geneva Agreement

2.51. Similarly, Article IV Geneva Agreement also implies a broad understanding of the ‘controversy’ to be solved.

a) Article IV, para. 1 of the Geneva Agreement

2.52. For one, Article IV, para. 1 refers to a ‘full agreement for the solution of the controversy’, which the Mixed Commission might not reach, and where it shall then refer ‘*any outstanding questions*’ to the governments of Guyana and Venezuela. Yet, if the controversy to be dealt with by the Mixed Commission had been meant to refer to the invalidity of the 1899 Arbitral Award, there could have eventually only been one single outstanding unresolved question, namely the issue of the award’s validity or its nullity itself.

2.53. In contrast thereto, Article IV, para. 1 Geneva Agreement presupposes that, apart from that very issue, and even if an agreement could have been reached concerning that question either way, there would still continue to exist other ‘outstanding questions’. This in turn confirms that the parties understood that, even if, *quod non*, the question of the invalidity of the 1899 Arbitral Award had been settled, there would still have remained ‘outstanding questions’ pending between the parties. The notion of ‘outstanding questions’ obviously thus meant the issue how to resolve the overall frontier controversy as such, and how to delimit the frontier between the two countries in order to reach a mutually acceptable solution.

2.54. Accordingly, Article IV, para. 1 Geneva Agreement implies an overall process that resolves *any* outstanding questions pending between the parties related to the overall frontier controversy.⁸⁰

b) Article IV, para. 2 of the Geneva Agreement

2.55. This result is further confirmed by Article IV, para. 2 Geneva Agreement and its reference to the methods of peaceful settlement of disputes contained in Article 33 UN Charter. Article 33 UN Charter, to state the obvious, *inter alia* makes references to negotiations, mediation, and conciliation as possible means to solve a given dispute.

2.56. Yet, as the Court has confirmed on several occasions, negotiations entail a process where both parties may not insist upon their own respective position without contemplating any modification of it.⁸¹ The parties to the Geneva Agreement, by making reference to Article 33 UN Charter generally, and to negotiations more specifically, had thus foreseen that the overall controversy ought to be settled by way of negotiations, and must have thus necessarily contemplated modifications to their respective positions.

2.57. Given that the determination as to the validity or invalidity of an arbitral award would, by its very nature, constitute a legal question *par excellence*⁸², it could however only be decided one way. Accordingly, this limited question would, by its very nature, not be susceptible to negotiations. It follows that the parties, by

⁸⁰ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court*, Judgment, I.C.J. Reports 2020, p. 455 para. 130.

⁸¹ *North Sea Continental Shelf Case*, I.C.J. Reports 1969, p. 3, 47; see also *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, 77; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14 para. 146; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment, I.C.J. Reports 2011, p. 17 paras. 157–59.

⁸² Declaration of Judge Tomka, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court*, Judgment, I.C.J. Reports 2020, p. 455 para. 6.

referring to Article 33 UN Charter, and thus the possibility of solving their boundary controversy *by way of bilateral negotiations*, must have necessarily envisaged to reach a solution that provides for a compromise reconciling their divergent position on how to dispose of the territory.

2.58. Any such “*full agreement* for the solution of the controversy”, expressly contemplated in Art. IV Geneva Agreement, further necessarily implies that the dispute is amicably resolved in a manner acceptable to both parties taking into account their respective positions, and which cannot be the outcome of a judicial decision based on legal considerations only.

2.59. As a matter of fact, a judicial decision, by its very nature, is imposed by an adjudicatory body and reflects the application of legal rules to the facts, as determined by the court or tribunal. It therefore does not depend on the parties’ consent to the substance of the outcome. In contrast, Art. IV Geneva Agreement, by referring to the goal of reaching a full agreement for the solution of the controversy; implies an agreement to be reached *ex novo* by the parties, rather than a binding adjudication on the issue of the invalidity of the 1899 Arbitral Award

2.60. *Mutatis mutandis*, the same considerations do apply to the implicit references in Article IV, para. 2 of the Geneva Agreement to the concepts of mediation and good offices, which, once again, presuppose either the aim of reaching a mutually acceptable compromise solution⁸³, or efforts to induce the parties to resume negotiations.⁸⁴

2.61. Those references to negotiations, mediation, and good offices in Article IV, para. 2 Geneva Agreement therefore all imply that the parties had envisaged that

⁸³ Simma *et. al.*, The Charter of the United Nations: A Commentary, Volume I (3rd Edition), 2012, Article 33 para. 28.

⁸⁴ *Ibid.*, para. 30.

any solution to the controversy addressed in the Geneva Agreement necessarily encompasses issues other than the question of the validity or nullity of the 1899 Arbitral Award.

2.62. This result is also further confirmed by Article V Geneva Agreement.

5. Article V of the Geneva Agreement

a) Article V, para. 1 of the Geneva Agreement

2.63. Article V, para. 1 Geneva Agreement unequivocally accepts that Venezuela has a territorial claim to the disputed territory. Furthermore, Article V, para. 1 Geneva Agreement also confirms that the Geneva Agreement as such cannot be interpreted as amounting to a renunciation of such claim of territorial sovereignty, and that these rights or claims to the territory are not being prejudiced in any manner by entering into the treaty. This, by the same token, entails that, until an agreement has been reached that satisfies the interests of *both* parties, such claims may still be asserted.

2.64. *A contrario* it follows that Article V, para. 1 Geneva Agreement assumes by necessary implication that both, the parties, as well as third actors, involved in the settlement of the overall dispute, must strive for a solution taking into account such claims to territorial sovereignty by the parties to the controversy. This in turn excludes a solution that would necessarily involve either side completely giving up their claim to territorial sovereignty over the area in question.

b) Article V, para. 2 of the Geneva Agreement

2.65. Besides, Article V, para. 2 Geneva Agreement further provides that the parties may also reach agreements within the framework of the Mixed Commission to allow for acts and activities, which may then serve to support or create rights of sovereignty in the disputed territory, provided the parties have previously accepted such activities. This, once again, confirms that the parties had reached a consensus

in the Geneva Agreement that regardless as to whether the 1899 Arbitral Award was to be considered valid or void, any such result would still not constitute the final outcome as to the delimitation of the boundary and the legal regime governing the disputed territory. Rather, other factors, including *inter alia* the aforementioned agreed activities contemplated in Article V, para. 2 Geneva Agreement, would have to be considered, in any case, in order to determine the legal status of the territory in question, or parts thereof.

2.66. On the whole, therefore, throughout its very text, the Geneva Agreement assumes that a holistic solution ought to be found for the overall frontier controversy between Venezuela and the United Kingdom, respectively Guyana after its independence. The Geneva Agreement accordingly provides for the need to seek a satisfactory result for the overall territorial controversy that must be mutually acceptable rather than providing for a solution based on a determination on the (in)validity of the 1899 Arbitral Award.

2.67. This result is, apart from the wording *stricto sensu* of the Geneva Agreement, further confirmed by the very title of the treaty.

6. Title of the Agreement

2.68. As the Court has stated, the actual terms of a treaty are to be also interpreted in light of its title. Thus, the Court has *inter alia* in the Oil Platforms case noted that

“(…) the actual title of the Treaty of 1955 [between the United States and Iran] - contrary to that of most similar treaties concluded by the United States at that time, such as the Treaty of 1956 between the United States and Nicaragua - refers, besides ‘Amity’ and ‘Consular

Rights’, not to ‘Commerce’ but, more broadly, to ‘Economic Relations’.”⁸⁵

2.69. Considering this title, the Court in said case concluded that the notion of ‘commerce’, as used in the treaty, is to be broadly interpreted.⁸⁶

2.70. What is more is that, as again confirmed by the Court’s jurisprudence, it is the title of a given treaty which provides an indication as to the object and purpose of the instrument concerned.⁸⁷

2.71. As far as the Geneva Agreement is concerned, the treaty is referred to as 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*”.⁸⁸ Put otherwise, it is *not* titled “Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland *over the Validity of the Arbitral Award of 1899*”.

2.72. It goes without saying that, had the parties indeed wanted to focus on the issue of the invalidity of the 1899 Arbitral Award by concluding the Geneva Agreement, instead of searching for an overall settlement of their territorial dispute, they would have chosen a title in line with this significantly more limited goal. Instead, they deliberately chose a significantly broader title.⁸⁹

2.73. This is confirmed, *a contrario, inter alia* by the agreement between Honduras and Nicaragua related to the Arbitral Award handed down by the King

⁸⁵ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, p. 803, 819 para. 47.

⁸⁶ *Ibid.*, para. 49.

⁸⁷ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 7 para. 57.

⁸⁸ Emphasis added.

⁸⁹ VCM, para. 3.49.

of Spain on 23 December 1906.⁹⁰ Said agreement specifically referred to “the disagreement existing between them *with respect to the Arbitral Award* handed down by His Majesty the King of Spain on 23 December 1906”⁹¹, rather than to the boundary dispute as such. It is obvious that Venezuela and the United Kingdom, when negotiating the Geneva Agreement, were fully aware of that agreement which the Court had been dealing with in the Case concerning the Arbitral Award made by the King of Spain on 23 December 1906 just some years before in its 1960 judgment. Hence, had Venezuela and the United Kingdom, when concluding the Geneva Agreement, also wanted to thereby settle the question of the (in-)validity of the 1899 Arbitral Award they would have certainly chosen the same language as Honduras and Nicaragua had done just some years earlier. Instead, Venezuela and the United Kingdom deliberately opted for a much broader formula.

2.74. As a matter of fact

“(…) the object of the Geneva Agreement was to seek a solution to the *frontier dispute* between the parties that *originated* from their opposing views as to the validity of the 1899 Award.”⁹²

2.75. Hence, the Geneva Agreement was meant

“(…) to ensure a definitive resolution of the dispute between Venezuela and the United Kingdom *over the frontier* between Venezuela and British Guiana”.⁹³

⁹⁰ For the text of the agreement see *Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960*, I.C.J. Reports 1960, p.192 et seq., p. 203.

⁹¹ Emphasis added.

⁹² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 2020, p. 455 para. 65; emphasis added.

⁹³ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 2020, p. 455 para. 130; emphasis added.

2.76. Accordingly, while the territorial controversy to be settled by the Geneva Agreement *originated* from their opposing views as to the (in)validity of the 1899 Arbitral Award, the said controversy from the outset extended beyond that very question. The very object and purpose of the Geneva Agreement, in line with the wording of its title, is thus *not* to address the question of the nullity of the arbitral award. Rather, the Geneva Agreement aimed from its very outset to address the overall causes of the parties' bilateral frontier controversy and thereby bring about a peaceful solution to their overall territorial disagreement.

2.77. This reading of the Geneva Agreement is the most natural one.⁹⁴ To pretend, as Guyana does, that the final outcome of this dispute should be an entirely asymmetrical solution where one party (Guyana) could get everything, and the other party (Venezuela) nothing, is a malicious reading of the Geneva Agreement, which begs the question as to why, exactly, have the parties decided to enter into it.

2.78. One could also look at what the Geneva Agreement's text *does* not provide, and in particular, at the fact that the instrument does not, at any point, stipulate that answering the question of the validity or invalidity of the Arbitral Award is a pre-condition for the mutually satisfactory solution the Parties are seeking.

2.79. This omission – which undermines the *entire* case of Guyana in these proceedings – can only be deliberate: the Geneva Agreement was drafted at a time when the negotiators were necessarily aware of the *King of Spain Award* case, in

⁹⁴ See, e.g., *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Dissenting opinion of Judge Gevorgian, para. 16, opining that the “Agreement’s object and purpose consists of facilitating an agreed solution to the controversy.”; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Partly Separate and Partly Dissenting Opinion of Judge *ad hoc* Couvreur, para. 37: “the 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.”

which the parties had squarely and directly referred the dispute as to the award's validity to the Court – by contrast with this matter.

2.80. More importantly, the Geneva Agreement was negotiated and executed after the Parties had *unsuccessfully* established contacts to present their disagreements regarding the validity or invalidity of the 1899 Arbitral Award.⁹⁵

2.81. It is only such an interpretation of the Geneva Agreement that is also in line with the drafting history of the Geneva Agreement and the subsequent practice of the parties.

C. THE *TRAVAUX PRÉPARATOIRES* CONFIRM THE ORDINARY MEANING OF THE GENEVA AGREEMENT

2.82. In its Counter-Memorial Venezuela has already extensively demonstrated that the drafting history of the Geneva Agreement confirms that both Venezuela, as well as the United Kingdom and respectively Guyana, from the very beginning of the negotiations leading to the adoption of the Geneva Agreement, and indeed even before, had in mind that the envisaged agreement should settle the overall boundary controversy, rather than focusing on the dispute about the (in)validity of the 1899 Arbitral Award.⁹⁶

2.83. Venezuela uses this opportunity to outline once again, and in even more detail, the essential steps in the negotiation process, namely the December 1965 London Meeting and the following Geneva Conference, that confirm the parties' understanding as to the goal of the future Geneva Agreement, namely to settle the overall frontier dispute.

⁹⁵ As noted by the Court, in *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Preliminary Objection, Judgment*, *I.C.J. Reports* 2023, p. 262, para. 37.

⁹⁶ VCM, paras. 3.9 *et seq.*, especially paras. 3.24 *et seq.* and 3.42 *et seq.*

1. Agenda for the London Ministerial Meeting on 9 and 10 December 1965

2.84. Already prior to the conclusion of the Geneva Agreement in 1966 the governments of then (British-)Guiana, Venezuela and the United Kingdom had discussed practical solutions to the *overall* territorial controversy, discussions that led to the adoption of the Geneva Agreement and must inform its interpretation.

2.85. After the parties had initially entered into technical debates on expert level in 1963, negotiations then took place between October and December 1965 between Venezuela and the United Kingdom,⁹⁷ which culminated in ministerial meetings on 9 and 10 December 1965 that took place in London.

2.86. As will become apparent from the discussions leading to the adoption of the agenda of this meeting, the content of the meetings themselves and the subsequent practice thereto, the very aim of these negotiations, which constituted the framework for the upcoming Geneva Conference and the ensuing Geneva Agreement, was to reach a practical settlement of the boundary controversy, rather than to deal with the (in)validity of the 1899 Arbitral Award.

2.87. How the Agenda had been drafted was explained in a contemporary confidential document from Venezuela's Ambassador to the United Kingdom, Hector Santaella. In particular, Ambassador Santaella described the Agenda's wording as a drafting victory for Venezuela, since it broke entirely with the UK's erstwhile position, which had only committed to a "documentary review" regarding the 1899 Arbitral Award.⁹⁸ The title of the Agenda – which does not mention the

⁹⁷ VCM, paras. 3.24.-3.37.

⁹⁸ See the Statement of Mr. C.T. Crowe, Representative of the United Kingdom, at the 349th meeting of the Special Political Committee on 13 November 1962, UN Doc. A/SPC/72, p. 18: "mon gouvernement, avec le plein assentiment du Gouvernement de la Guyane britannique, est disposé à discuter avec le Gouvernement vénézuélien, par les voies diplomatiques, de dispositions à prendre en vue d'un examen tripartite de la volumineuse documentation afférente à cette question [...]. En faisant cette offre, je dois bien préciser qu'il ne s'agit nullement d'une offre d'entamer des conversations de fond sur la révision de

Award at all – as well as its content – e.g., the need for “time limits” to fulfil the parties’ agreement – evidence that the parties were seeking a reset of their relationship, one that leaves the award in the dustbin of history.⁹⁹

2.88. This was illuminatingly explained in the words of Ambassador Santaella:

“This wording, as we had envisaged from the outset, tended to avoid mentioning the 1899 Award, by stating, in a straightforward manner, that there is a border dispute whose solution would be sought at the Ministerial Conference. If Great Britain were to accept such wording, it would be somewhat implicit that the 1899 Award was not an adequate solution to the problem and, therefore, that the boundary question is open to redetermination. In this way, it would have been easy to consider the Award as non-existent at once, which could mean an immediate triumph for Venezuela. It could almost be said that, with such a wording, the Ministerial Conference would be almost unnecessary, since, England having admitted the non-existence of the Award on the agenda itself, the only way left would be to fix a new border.”

2.89. He added:

“those who are sure of the validity of their titles do not allow themselves to seek ‘practical solutions’ for those who dispute their right.”¹⁰⁰

la frontière.” How this position gradually changed is recounted in 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**.

⁹⁹ Confidential letter from Venezuela’s Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, **Annex 25**, para. 11.

¹⁰⁰ *Ibid.*, para. 47.

2.90. Further historical documents confirm that inner view of the negotiations. At the outset there had been a debate as to the scope and goal of these negotiations. The United Kingdom's initial position had been that the upcoming talks ought to only encompass a documentary review of the process that had led to the 1899 Arbitral Award.¹⁰¹ Accordingly, as confirmed by a contemporary report, the first two agenda items for the forthcoming meeting in London in December 1965, as initially proposed by the United Kingdom, would have focused solely on the 1899 Arbitral Award and the examination of experts' reports concerning its (in)validity.¹⁰²

2.91. Venezuela, on the other hand, insisted that the second agenda item be changed, lest it entail a renewed discussion on the validity or invalidity of the Award only.¹⁰³ This in turn could have led the United Kingdom claiming once more that the envisaged agreement to be concluded, *i.e.* the Geneva Agreement, would not deal with the border controversy as such.¹⁰⁴

2.92. Accordingly, Venezuela introduced a different wording for agenda item 2, namely that the negotiations ought to seek solutions for the practical settlement of the boundary controversy.¹⁰⁵ The United Kingdom finally agreed to the inclusion of this item, as proposed by Venezuela.¹⁰⁶ Thus, the parties ultimately decided to address the overall border issue in their Ministerial Conference in 1965, as

¹⁰¹ See Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para. 4, **Annex 25**.

¹⁰² See for details Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965, **Annex 27 A**.

¹⁰³ *Ibid.*

¹⁰⁴ See Cypher message from Blas Pérez to Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 20 October 1965, **Annex 27 B**.

¹⁰⁵ *Ibid.*; see also Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965, **Annex 27 A**.

¹⁰⁶ See para. 2.96 below.

confirmed by the very text of the adopted agenda, which then led to the Geneva Agreement.

2.93. The London Conference accordingly took place on the basis of the “Agenda for the continuation at Ministerial level of governmental conversations *concerning the controversy* between Venezuela and the United Kingdom *over the frontier* with British Guiana (...)”.¹⁰⁷ The very title of the agenda alone already confirmed that these negotiations, unlike the previous bilateral technical debates that had taken place in 1963, were meant to address the substance of the boundary dispute rather than the issue of the dispute about the validity or invalidity of the 1899 Arbitral Award.

2.94. Within these meetings a total of five different agreed agenda items were then discussed. The most relevant ones are the first two, namely item 1 entitled

“Exchange of points of view about the reports of the Experts on the examination of documents and discussion of the consequences derived from them. Need for dispute settlement”

and item 2 entitled

“To seek satisfactory solutions for the practical settlement of the controversy that has arisen as a result of the Venezuelan contention that the 1899 Award is null and void”.¹⁰⁸

2.95. While the first issue related, as mentioned, to the “Exchange of points of view about the reports of the Experts on the examination of documents and

¹⁰⁷ Text of the agreed agenda to be found in Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December, **Annex 1**; emphasis added.

¹⁰⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455 para. 132.

discussion of the consequences derived from them. Need for dispute settlement”, by the same token it also stressed the need for dispute settlement. It goes without saying, however, that a mere documentary review would have not been able to resolve the underlying dispute between the parties.¹⁰⁹ If anything, it could have only laid down the historical and factual foundation for a broader dispute settlement approach. By accepting the “need for dispute settlement”, a phrase, which has been introduced by Venezuela, the United Kingdom admitted to the existence of an open question, which calls for deliberations, and defined it as a dispute to be then solved by seeking a practical settlement of the matter.

2.96. The second item on the agenda was however, as also mentioned, to

“(…) [b]uscar soluciones satisfactorias para el arreglo práctico de la controversia que ha surgido como resultado de la contención venezolana de que el Leudo de 1899 es nulo e írrito”.

respectively

“(…) seek satisfactory solutions for the practical settlement of the controversy that has arisen as a result of the Venezuelan contention that the 1899 Award is null and void”.¹¹⁰

2.97. This demonstrates that the parties from the very outset clearly differentiated between, on the one hand, issues regarding the (in)validity of the 1899 Arbitral Award, and, on the other, issues relating to the overall border controversy. Whilst the United Kingdom thus had initially wanted to focus solely on the status of the

¹⁰⁹ This was stressed as early as 1965 by Venezuela, *i.e.* already prior to the adoption of the Geneva Agreement, *see* Confidential letter from Venezuela’s Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para. 8, **Annex 25**.

¹¹⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455 para. 132.

Arbitral Award, it ultimately relinquished its position. Thus, by the end of the day the parties explicitly decided to address the overall controversy in their negotiations and hence later also in their future agreement.

2.98. Furthermore, in item 4 of the agenda the parties, again following a proposition by Venezuela,¹¹¹ agreed to set deadlines for the implementation of what may be agreed in relation to the first, second and third item of the agenda. However, setting a deadline for the ‘fulfilment’ of a documentary review seems to be far-fetched. Rather, said deadline must have meant to cover, for one, the resolution of the overall dispute (contemplated in item 1), and besides, to do so by agreeing on satisfactory solutions for the practical settlement of the boundary controversy (contemplated in item 2).

2.99. Apart from setting out the agenda of the forthcoming meeting in London, *The Joint Communiqué* further stated that “[i]deas and proposals for the practical settlement of the controversy were exchanged”. Yet, ‘ideas and proposals’ cannot certainly be related to the binary question whether an arbitral award is valid or not.

2.100. Lastly, the Joint Communiqué further stated that “[n]either side [has] been able to accept the conclusions of the experts appointed by the other side” on the issue of the (in)validity of the 1899 Arbitral Award. Accordingly, it was already then that the parties agreed to discard any further debate on item 1 (dealing with the examination of the reasons for a possible invalidity of the 1899 Arbitral Award) which, they stated, “will not be considered” any further in the future negotiations. This once again confirms that the focus of the parties in the forthcoming negotiations of the future Geneva Agreement should be the search for a practical settlement of the overall boundary controversy.

¹¹¹ Confidential letter from Venezuela’s Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para.7, **Annex 25**.

2. Content of the Ministerial Level Conversations on 9 and 10 December 1965

2.101. The fact that the parties aimed to reach a practical settlement of the boundary controversy rather than to deal with the (in)validity of the 1899 Arbitral Award was then further confirmed by the content of the meeting that took place in line with the agreed agenda.

2.102. Notably, during the London meeting on 9 and 10 December 1965, the parties debated alternative substantive solutions to the dispute.

2.103. As Venezuela already pointed out in its Counter-Memorial¹¹² (and although Guyana, once again, did not engage with that argument), these propositions included, *inter alia*, an agreement that, similar to the Antarctic Treaty of 1959, would have kept the legal status of the disputed territory *in limbo*,¹¹³ or a possible joint administration of the disputed area.¹¹⁴

2.104. Remarkably, as confirmed by the British record of the conversation, such joint administration was proposed by Guyana itself rather than by Venezuela.¹¹⁵ This fact alone is telling since Guyana even before the conclusion of the Geneva Agreement thus envisaged a *substantive* solution to the overall territorial controversy, rather than a settlement based on the nullity or validity of the 1899 Arbitral Award.

¹¹² VCM, 8 April 2024, para. 3.38.

¹¹³ 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. VCM, Annex 86.

¹¹⁴ Government of the United Kingdom, Record of Discussions between the Foreign Secretary, the Venezuelan Minister for Foreign Affairs and the Premier of British Guiana at the Foreign Office on 9 December 1965, No. AV 1081/326, 9 December 1965, p. 4, Guyana's Memorial (Jurisdiction and/or Admissibility), Volume II, Annex 28, p. 4.

¹¹⁵ *Ibid.*

3. Subsequent Behaviour of the Parties following the London Conference

2.105. The London meeting on 9 and 10 December 1965 was followed by a joint communiqué dated 10 December 1965, in which the Minister of Foreign Affairs of Venezuela on the one hand and the Secretary of State for Foreign Affairs of the United Kingdom on the other jointly stated, that during the meeting they had “(...) exchanged ideas and proposals for a practical *settlement* of the *dispute*.”¹¹⁶

2.106. The representatives further decided that

“(...) some of these [exchanged ideas and proposals] should receive further consideration and that Ministers should continue the present discussions in the week starting 13 February , 1966 at Geneva in order to consider those proposal [...]”.¹¹⁷

2.107. This once again confirms that the aim of the future negotiations leading to the adoption of the Geneva Agreement was to reach a practical settlement of the boundary controversy rather than deal with the (in)validity of the 1899 Arbitral Award.

2.108. That this was not a mere coincidence, but rather a deliberate concession by the United Kingdom became apparent in January and February 1966 when the British Parliamentary Under-Secretary of State for Foreign Affairs, Lord Walston, visited Venezuela. In reply to questions by journalists, he outlined the British position at the forthcoming Geneva Conference, that was to follow the London meeting of 9/10 December 1965, and would adopt the future Geneva Agreement. Press reports claimed that in his statements Lord Walston, as well as other high-ranking British officials, had stated that the Geneva Conference would address the

¹¹⁶ Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December, **Annex 1**; emphasis added.

¹¹⁷ *Ibid.*

question of economic aid to British Guiana, but that the Venezuelan claim as to the disputed territory would not to be discussed.¹¹⁸

2.109. This led to a diplomatic note of 4 February 1966 by the Venezuelan Ministry of Foreign Affairs addressed to the British embassy in Caracas. The note stated:

“Such statements appear to contradict the commitment made by their country with Venezuela, according to the agenda, signed in London on December 1, 1965, and the joint communiqué of December 10 of that year.

This agenda represents a commitment to ‘seek satisfactory solutions to the practical settlement of a dispute’ which the joint communiqué says ‘threatens to break the traditionally cordial relations between Venezuela on the one hand, and the United Kingdom and British Guiana, on the other.’

Our two countries are committed to finding solutions to the dispute between Venezuela and the United Kingdom on the border with British Guiana. Therefore, it is inconceivable that on the eve of the meeting of foreign ministers in Geneva, a declaration that the controversy will not be even considered.

The government of Venezuela considers it necessary to request an explanation from the government of Her Britannic Majesty, in the sense that the meeting in Geneva will discuss the points agreed in the agenda, which includes in its title and, under No. 2, the Venezuelan territorial claim and the search for practical solutions to resolve it. Otherwise, the

¹¹⁸ 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. 12; O. Ishmael, *The Trail of Diplomacy, The Guyana-Venezuela Border Issue*, vol. II (2015), p. 111.

Venezuelan government will be forced to reconsider their attendance at the meeting on February 16 and 17.”¹¹⁹

2.110. It is particularly worth noting that Venezuela thereby made it a *conditio sine qua non* for its attendance of the forthcoming negotiations that the latter would focus on Venezuela’s territorial claim and the search for practical solutions to resolve it. As such, it is disingenuous to claim that the Geneva Agreement is not focused on solving the boundary issue as such.

2.111. On 8 February 1966, the Ambassador of the United Kingdom to Venezuela then visited the Venezuelan Foreign Minister transmitting a reply note on behalf of his government declaring that any such statement, as described in the Venezuelan note just mentioned, had not been made neither by Lord Watson nor by any other British representative. 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”.¹²⁰

2.112. Moreover, the British ambassador reassured the Venezuelan Foreign Minister, that “[a]s far as Her Majesty’s government is concerned, the agenda for the Geneva meeting remains the same, as agreed in the Joint Communiqué of 10 December 1965”.¹²¹

¹¹⁹ Republic of Venezuela, Ministry of Foreign Affairs, Claim to Guayana Esequiba Documents 1962 -1981 (1981), p. 66-67, Guyana’s Memorial (Jurisdiction and/or Admissibility), Vol II, Annex 39.

¹²⁰ Ministry of Foreign Affairs of Venezuela, Office of Information, Press and Publications, Bulletin N°350-C, dated 8 February 1966, **Annex 36**, p. 1; emphasis added.

¹²¹ Presentation to the National Congress by Mr Ignacio Iribarren Borges, Minister of Foreign Affairs, on the Geneva Agreement and the Law approving the Geneva Agreement, 17 March 1966, Annex 2, p. 13.

2.113. This proves Great Britain's continued agreement with the objective of the Geneva Agreement, which is to find satisfactory solutions for the practical settlement of the controversy, given that it had thus 'ratified'¹²² the above-mentioned agenda of December 1965 despite knowing well its background and the implications that this wording carried.

2.114. On the whole therefore, the Agenda, as well as the content and the subsequent acceptance of the outcome of the London meeting of December 9/10, 1965 confirm that the discussions leading to the Geneva Conference were meant to bring about an overall solution to the territorial controversy. All this leaves therefore no doubt that the validity or invalidity of the 1899 Arbitral Award simply ceased to be an issue in play in the context of the negotiations of the Geneva Agreement. And this is not simply how Venezuela understood it at the time. Days before the signature of the Geneva Agreement, the United Kingdom expressly disavowed press reports that suggested that point 2 of the Agenda – i.e., the need to find “practical solutions” to the controversy – would not be discussed.¹²³ And in contemporary resolutions, neighbouring States – such as Panama and Colombia – expressed the vow that, “through diplomatic proceedings, the Venezuelan Republic recover the territory of Guyana Esequiba.”¹²⁴

4. Geneva Conference

2.115. This aim was further pursued during the Geneva Conference itself, where the Geneva Agreement was concluded. During these negotiations, Venezuela and

¹²² 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. 14. See also Ministry of Foreign Affairs of Venezuela, Office of Information, Press and Publications, Bulletin N°350-C, dated 8 February 1966, **Annex 36**, p. 1.

¹²³ *Ibid.*

¹²⁴ Ministry of Foreign Affairs, Office of Information, Press and Publications. Bulletin No. 349-C, dated 26 January 1966, **Annex 35**.

the United Kingdom, as shown, decided not to further examine the expert reports and documents nor to discuss the consequences derived therefrom.¹²⁵

2.116. Rather, the Geneva Conference focused fully on “seeking satisfactory solutions for the practical settlement of the dispute.” Thereby, the parties left the issue of the (in)validity of the report behind and redirected the conference’s focus to new, practical solutions of the territorial controversy. This is reflected in the drafting process and its final outcome, *i.e.* the 1966 Geneva Agreement.

2.117. As was already briefly mentioned in Venezuela’s Counter-Memorial,¹²⁶ the specific wording of the Geneva Agreement and its preamble was discussed again in February 1966.

2.118. The British representatives, which in 1965 had still tried to insist that the ‘controversy’ to be addressed by the future agreement [*i.e.* the Geneva Agreement] was meant to cover the issue of the (in)validity of the 1899 Arbitral Award,¹²⁷ finally agreed to the formula which had been proposed by Venezuela to settle the controversy in 1966.¹²⁸ Namely, that the purpose of the envisaged agreement was meant to provide for ‘satisfactory solutions’ of the overall frontier controversy.

2.119. It is telling, that the United Kingdom had initially preferred the notion of ‘satisfactory solution’ (in the singular), which the future Geneva Agreement was meant to provide for, rather than ‘satisfactory solutions’ (in the plural).¹²⁹ Yet, it was that latter formula, which had been proposed by Venezuela, that was later used

¹²⁵ 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. 12; Note Verbale from the Foreign Secretary of the United Kingdom to the U.K. Ambassador to Venezuela, 25 February 1966, VCM, 8 April 2024, Annex 69, para. 2.

¹²⁶ VCM, 8 April 2024, para. 3.52– 3.53.

¹²⁷ See Guyana’s Memorial (Jurisdiction and/or Admissibility) – Volume II, Annex 28, p. 3.

¹²⁸ 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. 15-16.

¹²⁹ See Guyana’s Memorial (Jurisdiction and/or Admissibility), Volume II, Annex 30, para. 6.

by the parties in the final version of the Geneva Agreement.¹³⁰ This, as shown above, indicates that the parties ultimately agreed to draft an agreement that was meant to provide for a holistic solution to their overall territorial controversy.

2.120. Besides, on the very day of the signing of the Geneva Agreement, Guyana and Venezuela again issued a Joint Communiqué, which also forms part of the context of the treaty, in which the parties referred to the goal of the agreement as being the “*practical settlement of outstanding problems*”.¹³¹ By referring to the *practical* settlement of outstanding problems, and following up on the drafting process and the adoption of the aforementioned broad preamble, this final statement reiterates that the Geneva Agreement from the outset had been drafted not only to address the border controversy as such, but that it was also meant to be settled by the parties by way of negotiations.

2.121. Such reading is further supported by looking at the domestic ratification process of the Geneva Agreement by Venezuela. Foreign Minister Ignacio Iribarren Borges pointed to the same elements, and to the Agenda in particular, as denoting the changing attitude of the United Kingdom, and their desire to resolve the controversy over the frontier while giving no heed to the 1899 Arbitral Award.¹³²

2.122. In a particularly important statement, Venezuelan President Raúl Leoni described the Geneva Agreement to the Venezuelan parliament as such:

“By signing the Geneva Agreement, the National Government has not only defended the intangibility of our territory *by placing our claim in the same situation as the border dispute was when it was submitted to*

¹³⁰ *Ibid.*, Volume II, Annex 28, p. 3.

¹³¹ Joint Communiqué on the Ministerial Talks held in Geneva on 6 and 17 February 1966, 17 February 1966, VCM, Vol. III, Annex 94; emphasis added.

¹³² 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. 10.

arbitration in 1897, but has been consistent with Venezuela's traditional international position inspired by the principles enshrined in the Preamble of the Constitution, which order cooperation with other nations, in the aims of the international community, on the basis of reciprocal respect for sovereignty, self-determination of peoples and repudiation of war and conquest as instruments of international policy.”¹³³

2.123. How would that contemporary reading of the Geneva Agreement comport with Guyana's contention that the Court should overlook it, and simply confirm and validate the 1899 Arbitral Award is never explained in the Guyana's Reply, as Guyana preferred to ignore this inconvenient issue.

D. SUBSEQUENT PRACTICE CONFIRMS THE NATURE AND THE OBJECT OF THE GENEVA AGREEMENT

2.124. Article 31, para.3, lit. (b) of the VCLT next provides that “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” shall be taken into account when interpreting a treaty. In this case, the Parties' subsequent practice overwhelmingly supports that the Geneva Agreement is meant to settle the overall border controversy.

1. Work of the Mixed Commission

2.125. After the entry into force of the Geneva Agreement, the Mixed Commission established by said agreement began its work, the content of which has already been outlined in Venezuela's Counter-Memorial.¹³⁴

2.126. What is crucial in that regard is that, while the Mixed Commission was unable to reach a compromise solution as to the overall boundary controversy, the

¹³³ Memorandum of Venezuela, Annex, p. 25 (emphasis added).

¹³⁴ VCM, paras. 3.61.-3.65.

work of the Mixed Commission only tangentially addressed the dispute about the (in)validity of the 1899 Arbitral Award.

2.127. Rather, the parties involved in the work of the Mixed Commission, *i.e.*, Venezuela and the by then independent Guyana, notably discussed substantive issues how to reach a mutually acceptable overall solution to their boundary controversy.

2.128. Already during the very first session of the Mixed Commission on 4 July 1966 it was the Guyanese representative Mr. Shahabuddeen who *inter alia* stated, that Guyana is “not insensible to the real nature of the claim being put forward by Venezuela”.¹³⁵ This is also in line with Guyana’s position during the later work of the Mixed Commission stating that

“(…) the parties have been devided [*sic!*] on the question whether any *territorial issues* could be examined without the Mixed Commission first dealing with the fundamental Venezuelan contention that the arbitral award was null and void.”¹³⁶

2.129. This statement by Guyana presupposes that even in Guyana’s own view, territorial deliberations were well within the mandate of the Mixed Commission, and are thus clearly within the mandate of all other dispute settlement mechanisms contemplated in Article IV Geneva Agreement.

2.130. That the parties were willing to solve the *overall* territorial controversy existing between them within the framework of the Mixed Commission is furthermore proven by the actions taken as part of its work. Notably, as was already

¹³⁵ First Interim Report, Minutes of the 4th Meeting, 1st Session of the Mixed Commission, 4 July 1966 (VCM, Annex 95, p. 5.).

¹³⁶ Statement read by Sir Donald Jackson on behalf of the Guyanese Delegation in the Mixed Commission (APPENDIX D), 2 April 1968 (VCM, Annex 44).

previously addressed in more detail by Venezuela¹³⁷, the Mixed Commission, in their meetings, established a Sub-Commission 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 (…).”¹³⁸

2.131. This Sub-Commission was obliged to report back to the Mixed Commission. These *substantive* reports covering the above-mentioned issues were then in turn discussed by the Mixed Commission. This confirms for one that during the work of the Mixed Commission the parties focused on issues well beyond the issue of the (in)validity of the 1899 Arbitral Award. They thus took it for granted that the mandate of the Mixed Commission established under Article I Geneva Agreement was not limited to dealing with only this question. By instead actively seeking a substantive solution to their overall territorial controversy, they therefore, by the same token, confirmed their shared understanding that the Geneva Agreement generally, and its Article IV in particular, mandates the various dispute settlement mechanisms to bring about an overarching solution to this bilateral territorial controversy.

2.132. This result that neither the mandate of the Mixed Commission – nor indeed that of any of the other alternative mechanisms contemplated in Article IV – was confined to making a determination as to the invalidity of the 1899 Arbitral Award is further confirmed by the Final Report adopted by the Mixed Commission in 1970.

2.133. While the Mixed Commission could not reach an agreed result in its Final Report, Guyana added a separate memorandum to said report. In this memorandum,

¹³⁷ VCM, 8 April 2024, paras. 3.63-3.64.

¹³⁸ Third Interim Report, 7th Session of the Mixed Commission, 27 and 28 December of 1967 (VCM, Annex 97, p. 5.).

Guyana once more drew attention to its proposal to provide for a special development programme for Guyana and Venezuela which would have included the disputed territory, and which was to be implemented through multinational cooperation

“(…) with the aim that such a program should be accepted as the *solution to the substantive problem* given Venezuela’s position”.¹³⁹

2.134. After no consensus could be reached on neither the various Guyanese nor Venezuelan propositions, Guyana thereby tried to compromise and formally accepted Venezuela’s position that the scope of the mandate of the Mixed Commission was to address *substantive* issues related to the territorial dispute as such. It was thus on this issue, namely that the object and purpose of the Geneva Agreement was to bring about a substantive solution to the overall territorial controversy, that the parties had indeed subsequently reached an agreement.

2.135. Once the Mixed Commission had submitted its Final Report to the parties, Venezuela and Guyana then embarked on negotiations, which in 1970 led to the signing of the Port of Spain Protocol.

2. 1970 Port of Spain Protocol

2.136. As noted above, the parties’ treaty practice – which is instrumental in interpreting it – in this case notably includes the Port of Spain Protocol, a moratorium agreed upon in 1970. In the Counter-Memorial,¹⁴⁰ Venezuela demonstrated that Port of Spain Protocol – which is never even considered in the Guyana’s Reply¹⁴¹ – as yet another attempt for the Parties to reach a settlement of

¹³⁹ Final Report of the Mixed Commission, Separate Memorandum by Guyana of 17 June 1970 (VCM, Annex 101, p. 4) emphasis added.

¹⁴⁰ VCM, paras. 3.66-3.91.

¹⁴¹ While the Protocol is cited once, it is only in the context of Guyana’s argument that Venezuela had allegedly acquiesced 1899 to the Award: see GR, para. 4.94.

this dispute by drawing a line over the null 1899 Arbitral Award. The Port of Spain Protocol further confirms the real purpose of the Geneva Agreement, in the following manner:

- a. It acknowledged the work of the Mixed Commission,¹⁴² making clear that this was the way forward;
- b. It emphasised “the promotion of mutual confidence and positive and friendly intercourse between Guyana and Venezuela”,¹⁴³ as well as “all possibilities of better understanding between them and between their peoples”;¹⁴⁴
- c. It referred several times to the “controversy” in the Geneva Agreement, never suggesting that it was this related to the issue of the (in)validity of the 1899 Arbitral Award;¹⁴⁵ while
- d. The changes to the Geneva Agreement specified in the Protocol, such as substituting mentions of “British Guiana” with “Guyana”,¹⁴⁶ cemented the agreement’s role in the context of decolonisation (a matter which will be taken up in the next Chapter);

2.137. The Protocol’s validity period of (renewable) 12-year spans (or any amount of time agreed between the parties, but never fewer than 5 years)¹⁴⁷ indicates that the parties were contemplating a long and meticulous diplomatic process. In this context, it bears recalling that Guyana, not Venezuela, had been in favour of

¹⁴² Port of Spain Protocol, Preamble and Article III.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, Article I.

¹⁴⁵ *Ibid.*, Articles II and III.

¹⁴⁶ *Ibid.*, Article IV.

¹⁴⁷ *Ibid.*, Article V.

prolongating the Protocol¹⁴⁸ – thus evidencing that it had thought, at least at that time, that such direct diplomatic endeavours were the only possible approach to the controversy.

2.138. Apart from the preamble of the said protocol¹⁴⁹ and its Article 1¹⁵⁰, it is also its very title, as well as Articles 2 and 3 of the Port of Spain Protocol that reconfirm that the Geneva Agreement was meant from its very outset to bring about an agreed solution to the overall territorial dispute.

2.139. As a matter of fact, the parties in the very title of the Port of Spain Protocol continued to refer to their attempt to

“(…) resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland *over the frontier between Venezuela and British Guiana*”.¹⁵¹

2.140. Hence, the parties, once again, did not refer to their controversy as being one related to the validity of the 1899 Arbitral Award. Rather, their disagreement was still perceived as one overall territorial controversy, which larger dispute they now aimed to settle by way of the Port of Spain Protocol.

2.141. Moreover, Article II of the Port of Spain Protocol aimed at freezing the territorial *status quo ante*. However, it also referenced once again, and thereby recognised, the Venezuelan “contention referred to in Article I of the Geneva Agreement”. Yet, Venezuela’s contention from the very beginning of the process leading to the adoption of the Geneva Agreement, related to a claim that a mutually acceptable solution for the overall territorial controversy ought to be found.

¹⁴⁸ Memorandum of Venezuela, Annex, pp. 57 *et seq.*

¹⁴⁹ On that *see* VCM, para. 3.69.

¹⁵⁰ *Ibid.*, para. 3.70-3.71.

¹⁵¹ Emphasis added.

2.142. Finally, Article III Port of Spain Protocol suspended the applicability of Article IV of the Geneva Agreement. It however also provided that, once the Port of Spain Protocol were to cease to be in force, as it did in 1982, 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* (…”.¹⁵²

2.143. This indicates, and reconfirms, that the parties’ continued aim was to reach a full, i.e., overall agreement for the whole of the boundary controversy, as defined in the Geneva Agreement, rather than focusing on the merely partial issue whether or not the 1899 Arbitral Award was invalid.

2.144. This understanding was confirmed by a statement of the then Guyanese Prime Minister Burnham on the day of the signing of Port of Spain Protocol. In this statement he referred to “outstanding problems” and understood the Port of Spain Protocol as a mean to resolve “all differences between us [i.e. between Guyana and Venezuela]”.¹⁵³ Thus, from the very beginning it was Guyana’s own position, when negotiating, drafting and adopting the Port of Spain Protocol, that the Protocol shall address the boundary controversy in toto in a holistic manner.

2.145. That such a practical solution to the overall dispute was intended, and that Guyana was also open to discuss issues beyond the invalidity of the 1899 Arbitral Award as part of the Port of Spain Protocol, is also further confirmed by later

¹⁵² Emphasis added.

¹⁵³ Statement by the Prime Minister, Hon. L.F.S. Burnham, in the National Assembly, Georgetown, 18 June 1970 (VCM, Annex 45, para. 12, 14) emphasis added.

practice, such as a communication of Guyana to the United Nations Secretary General dated 2 November 1981:

“The spirit generated by the Protocol of Port-of-Spain provided the climate for exploratory conversations *of substance* which took place in 1978 between the then President of Venezuela, Carlos Andrés Pérez, and Guyana’s then Prime Minister, Forbes Burnham. These conversations examined in considerable depth the state of relations between Guyana and Venezuela and were regarded as helpful in *advancing the objectives of the Protocol* and in *opening the way for a more ordered search for a settlement* of the controversy which stemmed from the Venezuelan contention that the Award of 1899 was a nullity.”¹⁵⁴

2.146. Guyana thereby confirmed that *substantive discussions* as to the overall frontier issue indeed were the object of the Port of Spain Protocol, and thereby also of the Geneva Agreement that the said Protocol was meant to further implement. Put otherwise, in concluding the Port of Spain Protocol, the parties reiterated their joint wish to reach a mutually acceptable solution by way of negotiations.

3. Further Subsequent State Practice Confirm the Wish of the Parties to Provide for a Mutually Acceptable Solution of Their Territorial Controversy

2.147. As was evidenced in detail in Venezuela’s Counter-Memorial,¹⁵⁵ and as is further demonstrated above, the Geneva Agreement (and thereafter the Port of Spain Protocol) were both meant to provide for an overall, mutually acceptable

¹⁵⁴ 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 (VCM, Annex 148, p. 11) emphasis added.

¹⁵⁵ VCM, paras. 3.49-3.60.

solution to the underlying frontier controversy between Venezuela and Guyana, rather than focusing on the issue of the invalidity of the 1899 Arbitral Award.

2.148. The subsequent practice by both, Venezuela and Guyana, further confirms this result given that the contracting parties ever since 1966, and notably since 1970, engaged in further bilateral negotiations that did *not* focus on the validity or invalidity of the 1899 Arbitral Award. Instead, the parties were trying to bring about an agreement on the future legal status of the disputed territory and how to determine its boundaries.

2.149. It is particularly worth recalling, as per the practice already mentioned¹⁵⁶, that it was Guyana that on several occasions referred to the need to solve the boundary controversy as such in line with the Geneva Agreement, and it was Guyana that submitted concrete proposals how to delimit the boundary regardless of the legal status of the 1899 Arbitral Award.¹⁵⁷

2.150. As shown, during the post Port of Spain Protocol period multiple border hypotheses were discussed by Guyana and Venezuela.¹⁵⁸ Notably, during the negotiations Dr. Shahabuddeen presented on behalf Guyana a proposal which contained what might be considered a modified ‘Aberdeen line’.¹⁵⁹ In agreement with Guyanese Prime Minister Burnham he suggested to use this line, which, to state the obvious, deviated from the boundary line wrongly determined by the 1899 Arbitral Award, as a preliminary working hypothesis.¹⁶⁰ During this round of negotiations discussions then followed as to the possibility of Guyana eventually

¹⁵⁶ VCM, paras. 3.72.-3.91.

¹⁵⁷ *Ibid.*, paras. 3.75 et seq.

¹⁵⁸ *Ibid.*

¹⁵⁹ Confidential Report by Morales Paul, p. 9, 10 (VCM, Vol. III Annex 108).

¹⁶⁰ *Ibid.*

accepting at least partially Venezuela's territorial claim, thereby granting Venezuela a larger outlet to the Atlantic Ocean.¹⁶¹

2.151. Further discussions then also took place between the Guyanese ambassador and Brigadier General Mendoza in the 1980s.¹⁶² Once again the parties did not discuss the issue of the invalidity of the 1899 Arbitral Award, but instead, and in line with the object and purpose of the Geneva Agreement and the Port of Spain Protocol, discussed what the Guyanese ambassador himself referred to as the 'territorial problem' or the 'territorial controversy' ("reclamación territorial" and "problema territorial") to be solved by such bilateral negotiations.¹⁶³

2.152. It is also noteworthy that, in 1983, Venezuela had proposed to enter into direct negotiations with Guyana on the overall boundary controversy. Guyana in turn proposed to have recourse, *inter alia*, to either the United Nations General Assembly or the United Nations Security Council.¹⁶⁴ What is important to note, however, is that both the General Assembly and the Security Council, to state the obvious, as *political* organs of the United Nations, are neither meant to solve, nor are they equipped to solve, a purely legal dispute. Yet, the question whether the 1899 Arbitral Award is valid or null and void is legal question *par excellence*.¹⁶⁵

2.153. *A contrario*, this confirms that Guyana, when proposing to have the controversy solved either within the framework of the General Assembly or the Security Council, shared Venezuela's understanding that the 'controversy' to be solved related to the question of how to delimit the boundary, but *not* the purely

¹⁶¹ *Ibid.*, p. 13; see Clyde, The Guyana-Venezuela Territorial Controversy: the International Approaches of the Government of Guyana, 1966-1992 (2002), p. 189.

¹⁶² Report on the courtesy visit of Ambassador R. Collins of Guyana, to Brigadier General (AV) Ramón Enrique Mendoza Ibarra, Director General of Frontiers (VCM, Annex 90, p. 2).

¹⁶³ *Ibid.*

¹⁶⁴ See Press Release, Ministry of Foreign Affairs of Guyana, 30 March 1983 (VCM, Annex 47).

¹⁶⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455, Declaration of Judge Tomka, para. 6.

legal issue of the invalidity of the 1899 Arbitral Award. Otherwise, Guyana's proposal to either have the General Assembly or the Security Council address this controversy would have been nonsensical.

2.154. The fact that the parties understood that the Geneva Agreement's purpose was to reach an overall mutually acceptable agreement is further confirmed by further extensive substantive discussions that took place on 10 November 1984.

2.155. During those so-called Figueredo/Ramphal conversations between then Secretary General of the Commonwealth and former Minister of Foreign Relations of Guyana, Ramphal, and the personal representative of the Venezuelan President, Figueredo, the parties again concerned themselves with the delimitation of the bilateral border.¹⁶⁶

2.156. During these talks, and according to a contemporaneous record of the negotiations, the parties discussed in significant detail possible alternative boundary lines. Although these discussions did not result in an agreement, they at the very least confirm once more that the parties had moved away from discussions about the invalidity of the Arbitral Award. Instead, and in line with the Geneva Agreement, they addressed the delimitation of the frontier as such.¹⁶⁷

2.157. And while Venezuela, in this context, put forward the so-called Shahabudeen line (which Guyana dismissed),¹⁶⁸ Guyana alternatively proposed what it understood as a potential cession of a smaller coastal strip.¹⁶⁹ At the same

¹⁶⁶ VCM, para. 3.96.

¹⁶⁷ I. Report concerning conversations held between Emilio Figueredo and Shridat Ramphal, November 1984, 19 February 1990, VCM, Vol. III Annex 114; Office of Border Affairs, File No. 27, Report by Emilio Figueredo, 10 November 1984, VCM, Vol. III Annex 113.

¹⁶⁸ I. Report concerning conversations held between Emilio Figueredo and Shridat Ramphal, November 1984, 19 February 1990, VCM, Vol. III Annex 114.

¹⁶⁹ Office of Border Affairs, File No. 27, Report by Emilio Figueredo, 10 November 1984, VCM, Vol. III Annex 113, p. 1 para. 2.

time, Guyana was open to adjust the maritime borders, and even presented a concrete proposal in that regard.¹⁷⁰ Accordingly, Guyana, in then fulfilling its legal obligations under the Geneva Agreement, was willing to discuss the territorial controversy as such regardless of its own position as to the alleged validity of the 1899 Arbitral Award. These negotiations, and, in particular, Guyana's own proposals, again demonstrate that the 'controversy' that the Geneva Agreement was meant to provide a solution for by way of negotiations is a territorial one rather than one concerning the invalidity of the 1899 Arbitral Award.

2.158. This was followed by meetings between the Venezuelan Foreign Minister Simón Alberto Consalvi and the Guyanese Foreign Minister Rashleigh Jackson in September 1985. Guyanese Foreign Minister Jackson was pleased with the negotiations taking place, stating they provide an

“(...) opportunity of having discussions on the affairs affecting our relations. Among them, the *issues raising in the border area* [...]”.¹⁷¹

2.159. During these negotiations both, the need for the framework for cooperation in the disputed territory and the proper dispute settlement mechanism, were discussed. In this regard, Jackson stated the Guyanese's intention that the above-mentioned Ramphall-Figueroa conversations continue.

2.160. This highlights Guyana's then willingness to engage in meaningful negotiations, which aimed at finding practical solutions for the boundary controversy as such rather than focusing on the (in)validity of the Award. More importantly, however, Jackson elaborated the domestic political difficulty of the

¹⁷⁰ *Ibid.* para. 3; see Report concerning conversations held between Emilio Figueroa and Shridat Ramphal, November 1984, 19 February 1990, VCM, Vol. III Annex 114, p. 5.

¹⁷¹ Minutes from the meetings of the Ministers of Foreign Affairs Consalvi and Jackson, dated 24 September 1985, **Annex 31**; emphasis added.

negotiations, namely that “[t]he problem is how to manage the publics.”¹⁷² It was for that reason that he was anxious about the Ramphall-Figueredo conversations being leaked to the Guyanese public.¹⁷³

2.161. On the whole this subsequent practice once again confirms that it was the joint understanding of both, Guyana and Venezuela, that each and every of the methods for the peaceful settlement of disputes contemplated in Article IV Geneva Agreement should, and indeed must, address the overall boundary dispute, regardless of the question of the nullity of the 1899 Arbitral Award.

2.162. Although these negotiations have so far not yet brought about an agreement, this practice unequivocally confirms that *both* parties understood the controversy under the Geneva Agreement to be territorial in nature, and that the very object and purpose of the Geneva Agreement was, and continues to be, to bring about an overall practical solution to this bilateral boundary controversy.

4. Post-1982 good offices efforts by the Secretary General of the United Nations

2.163. This broad scope of the ‘controversy’, and that it ought to be solved by addressing the issue of the delimitation of the boundary anew, while leaving the controversial issue of the invalidity of the 1899 Arbitral behind, is further confirmed by the content and approach underlying the good offices of the Secretary General undertaken in the framework of the Article IV Geneva Agreement.

2.164. As, once again, outlined in detail in Venezuela’s Counter-Memorial, the post-1982 good offices efforts by the Secretary General of the United Nations sought to reach a negotiated settlement to the overall “border controversy”.¹⁷⁴

¹⁷² *Ibid.*, p. 8.

¹⁷³ *Ibid.*, p. 6.

¹⁷⁴ VCM, paras. 3.97 et seq.

While this good office effort did not yield any final result, it is worth noting that, the parties, as well as notably the representatives of the Secretary General, dealt frequently with the substantive question as to how the boundary controversy as such can be resolved. As such, they shared the understanding as to the scope and telos of the Geneva Agreement, namely that it was meant from the very outset to provide for a mutually acceptable negotiated settlement of the overall frontier controversy.

2.165. This understanding of the mandate of the good offices of the UN Secretary General was not only reflected in internal debates. Rather, it was also communicated publicly, as confirmed by a 1998 Joint Declaration of the Presidents of Guyana and Venezuela emphasizing their support for the Good Offices of the Special Representative for a mutually satisfactory solution to the *territorial* controversy.¹⁷⁵

2.166. Notably, in a letter dated 18 August 1998 to the former Minister of Foreign Affairs of Guyana, the Guyanese President herself reiterated that the purpose of the Good Offices process is to

“(...) explore *all* avenues that would lead to a settlement of the *border controversy* in an open-ended exchange of views under the ‘chairmanship’ of Sir Alister McIntyre.”¹⁷⁶

2.167. In the same vein, she referred to the controversy as being one “over the border with Venezuela.”¹⁷⁷ This is in line with a statement of Venezuelan Foreign

¹⁷⁵ Joint Communiqué issued on the occasion of the State visit to Venezuela of the president of the Cooperative Republic of Guyana, H.E. Mrs Janet Jagan, 23 July 1998 (VCM, Annex 49, p. 2) emphasis added.

¹⁷⁶ Letter to Mr. Rashleigh Jackson by President Janet Jagan dated 18 August 1998 (VCM, Annex 126) emphasis added.

¹⁷⁷ *Ibid.*

Minister José Vicente Rangel, who soon thereafter in 1999 confirmed the solution to be found in the Good Offices process must be “reasonable, fair and equitable”.¹⁷⁸

2.168. Similarly, upon a request of the representative of the Secretary General, Oliver Jackmann, the parties prepared a paper containing their views on the way the good offices process should be conducted. This paper, which was accepted by both parties, stated that the parties “(...) recognize the mandate of the good officer in assisting them to resolve problems, differences, disputes and controversies.”¹⁷⁹ The fact that the parties phrased this in the plural proves that they understood the controversy to be resolved comprised the border issue as such since otherwise they would have used a singular referring to their controversy (in the singular) as to the (in)validity of the 1899 Arbitral Award.

2.169. Notably, this interpretation of the mandate of the Geneva Agreement was not only shared by the parties, but also by the Secretary General himself as well as by representatives. In a press release the Secretary General, as early as 1993, stressed his willingness to secure

“(...) a *mutually satisfactory* settlement of the *controversy*”,¹⁸⁰

without even mentioning the 1899 Arbitral Award once.

2.170. Most importantly, however, in a letter to the Venezuelan government of 6 October 2010, Norman Girvan, in his function as the Personal Representative of the Secretary General, himself referred to “the *border controversy* between Guyana

¹⁷⁸ Memorandum of Venezuela, Annex p. 100.

¹⁷⁹ Report from Luis Herrera to the Minister of Foreign Affairs, concerning the answer to Mr. Ralph Ramkarram about the role of the Good Officer, dated 11 July 2003, **Annex 37**.

¹⁸⁰ UN Doc. SG/SM/5108, 24 September 1993 (VCM, Annex 130) emphasis added.

and Venezuela” in general, and “the border issue” as such that needed to be resolved.¹⁸¹

2.171. He later repeated this understanding of his mandate arising under Article IV Geneva Agreement on several occasions. In 2012 he thus organized a workshop with the parties related to the “border controversy”.¹⁸² One year later, in 2013, when reflecting upon the Good Offices progress, he reiterated that the United Nations remain committed to supporting the parties in the pursuit of a mutually satisfactory resolution of the “*controversia fronteriza*”, *i.e.* the *border* dispute.¹⁸³ Once again, the ‘controversy’ was thus not considered as one related to the (in)validity of the 1899 Arbitral Award, but the issue to be solved in accordance with Article IV Geneva Agreement was rather considered to be the frontier matter as such.

2.172. Similarly, already upon Mr. Girvan’s appointment the United Nations Secretary General in a press release had labelled the dispute as constituting a “[*b*]order controversy between Guyana, Venezuela”.¹⁸⁴ He equally concluded that the “United Nations remains committed to supporting the Parties in the search for a *mutually satisfactory* resolution of the border dispute.”¹⁸⁵

2.173. It is also telling that the Secretary-General on 12 November 2015 issued a document entitled “The Way Forward”,¹⁸⁶ and in which the Secretary-General *inter alia* referred to the need for the parties to bring about “(...) a *practical solution* to the controversy (...)”¹⁸⁷ “. This, once again, confirmed that the Secretary General,

¹⁸¹ Letter by Norman Girvan to Nicolás Maduro Moros dated 6 October 2010 (VCM, Annex 135) emphasis added.

¹⁸² UN News, UN envoy hails workshop related to Guyana-Venezuela border dispute, 17 May 2012, (VCM, Annex 136).

¹⁸³ Letter by Norman Girvan to Elías Jaua dated 29 October 2013 (VCM, Annex 138) emphasis added.

¹⁸⁴ UN Doc. SG/A/1230-BIO/4183 of 20 April 2010 (VCM, Annex 134) emphasis added.

¹⁸⁵ Letter by Norman Girvan to Elías Jaua dated 29 October 2013 (VCM, Annex 138).

¹⁸⁶ VCM, para. 1.13.

¹⁸⁷ Guyana’s Memorial (Jurisdiction and/or Admissibility), Vol. IV, Annex 100.

too, took the position that the overarching goal of the Geneva Agreement from the very outset has been to bring about a *practical* solution to the overall controversy by the parties by way of negotiations.

2.174. By the same token, this also indicates that it was the Secretary General's considered position that a decision focusing on the issue of the invalidity of the 1899 Arbitral Award, would not be in line with the object and purpose of the Geneva Agreement.

2.175. After taking office on 1 January 2017, the new Secretary-General, Mr. António Guterres, then appointed a new personal representative and gave him a strengthened mandate of *mediation*.¹⁸⁸ Inherent in the concept of mediation is the idea to find a mutually acceptable *compromise* solution to a dispute with the help of the mediator by way of negotiations.¹⁸⁹

2.176. This again implies that any solution that would focus on the invalidity of the 1899 Arbitral Award, and could thus only lead to an either-or-decision, is incompatible with the very idea of the Secretary General acting as a mediator. Instead, the Secretary General perceived his role as being obliged as a mediator to propose solutions that could be mutually acceptable, *i.e.*, would indeed constitute a compromise.

5. Joint Communiqués of the parties as to the scope and character of the 'controversy' and possible solutions thereto

2.177. The parties also shared this common understanding of the goal of the dispute settlement process to be undertaken under Article IV Geneva Agreement. As was

¹⁸⁸ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455 para. 58; emphasis added.

¹⁸⁹ Simma *et. al*, *The Charter of the United Nations: A Commentary*, Volume I (3rd Edition), 2012, Article 33 para. 28.

already outlined in Venezuela's Counter-Memorial,¹⁹⁰ it is apparent from the three Joint Communiqués from 2004, 2010 and 2013 respectively, that the parties deliberately abstained to refer to the issue of the invalidity of the Arbitral Award. Instead, they rather focused on practical and satisfactory solutions to be found for the territorial controversy as such.¹⁹¹

2.178. Thus, on the conclusion of a visit of President of Venezuela Hugo Chávez to Guyana the two parties in 2004 referred to the “search for a peaceful and *practical settlement* of the controversy” undertaken within the framework of the United Nations Good Offices Process.¹⁹²

2.179. In the same way, in a Joint Communiqué of 2010, Guyana and Venezuela reaffirmed their confidence in the Good Offices process, which allowed them to move forward towards finding a *practical and satisfactory* solution to the *territorial* controversy. The relevant communiqué accordingly 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*”

and in Spanish:

¹⁹⁰ VCM, paras. 2.30; 3.112-3.115.

¹⁹¹ See 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 (VCM, Annex 51); Joint Statement of presidents Hugo Chavez Frías and Bharrat Jagdeo on the occasion of the official visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela, 21 July 2010, para. 11 (VCM, Annex 52); as well as 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 (VCM, Annex 53).

¹⁹² 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 (VCM, Annex 51) emphasis added.

“(…) reafirmaron su confianza en el Proceso de los Buenos Oficios como Mecanismo que ofrece la ventaja de permitir a las Partes avanzar en una *solución práctica y satisfactoria* a la *controversia territorial*”.¹⁹³

2.180. This joint perception of the scope of the controversy, and how to solve it by way of a practical settlement, was reiterated on the occasion of a visit of President Maduro in Georgetown on 31 August 2013.¹⁹⁴

2.181. On the whole, the parties thus aligned themselves with the view taken by the United Nations Secretary General and its various special representatives, namely that only an overall settlement that would take into account the interests of *both* parties would be in line with the Geneva Agreement.

E. CONCLUSION

2.182. On the whole, therefore, both, the parties to the dispute, as well as external actors mandated by Article IV Geneva Agreement, all understood Article IV Geneva Agreement as requiring, a search for a *mutually acceptable and practicable solution* to the overall territorial controversy, which the 1899 Arbitral Award had not been able to bring about, and to do so regardless of the question as to its invalidity.

2.183. This is the only path that is in line with the very object and purpose of the Geneva Agreement, as confirmed by its text, preamble, and drafting history, as well as the subsequent practice, not only of the parties to the Geneva Agreement, but also of the Secretary General.

¹⁹³ Joint Statement by Presidents Hugo Chávez Frías and Bharrat Jagdeo on the Occasion of the Official Visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela, Caracas 21 July 2010, para. 11 (VCM, Annex 52) emphasis added.

¹⁹⁴ 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, para. 3 (VCM, Annex 53).

2.184. Indeed, Guyana has long agreed that an amicable settlement was the mandated way forward, and acted accordingly, as illustrated by its participation in the good offices process over the years. It is striking in this respect that Guyana's written submissions are almost completely silent on these decades of negotiations, as if they never happened and the parties negotiated in vain. Guyana changed its attitude and position only in 2015, when it consciously decided to give in and yield to the oil transnationals, and to subordinate its relationship with Venezuela to the economic interests of those oil majors.

2.185. The evidence therefore overwhelmingly favours a reading of the Geneva Agreement that left the question of the *legal* validity of the 1899 Arbitral Award behind, and committed the parties – Venezuela and a soon-to-be independent Guyana- to a new legal relationship, one premised on a path of cooperation and negotiations designed at reaching a mutually-satisfactory solution.

2.186. Guyana has persisted in its misleading approach to the dispute, in particular by maliciously attempting to divert the focus toward the validity of the 1899 Arbitral Award. While Venezuela has provided sufficient elements to disprove Guyana's reliance on that Award's validity¹⁹⁵ the question is, ultimately, irrelevant: an outcome that merely repeats the Award would represent a negation of what the Geneva Agreement is, why it was executed, and what it stands for.

2.187. The Court has itself recognized that the validity of the 1899 Arbitral Award is not necessarily dispositive. In its 2020 Judgment, the Court acknowledged that a finding that the Award was null and void would not, in itself, settle the dispute.¹⁹⁶

¹⁹⁵ VCM, Chapters 5-6.

¹⁹⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 455, para. 86.

It follows that the opposite conclusion – affirming the validity of the Award – would likewise fail to resolve the underlying controversy.

2.188. The true object of the Geneva Agreement is to provide a framework – procedural and substantive – for reaching a conclusive, equitable, and mutually agreeable resolution. A winner-takes-all judicial decision on the Award’s (in)validity is fundamentally incompatible with that objective.

2.189. Any analysis of the Award’s validity should not detract from the Geneva Agreement’s fundamental purpose: securing a lasting and mutually satisfactory settlement of the Essequibo controversy.

CHAPTER III: THE DECOLONISATION IMPERATIVE

A. INTRODUCTION

3.1. The Reply was not only silent on the interpretation of the Geneva Agreement and the true object of the territorial controversy, it was also deliberately blind to Venezuela's fundamental arguments situating this case within the framework of the international law of decolonisation.

3.2. As recently put by Judge Tladi:

[C]olonialism is a blemish on the history of humanity and indeed, on the reputation of international law – one of the most egregious violations against humanity, whose consequences continue to be felt long after its formal end, and will likely continue to be felt for decades or even centuries to come. Yet, on the other hand, international law continues to respect, normatively, many of the legacies of colonialism [...].¹⁹⁷

3.3. Sadly, this case is yet another example of the lingering persistence of the colonial era's cruelty and injustice. However, it is also an example of negotiations and efforts designed to remedy these circumstances, efforts that culminated with the Geneva Agreement and the independence of British Guiana – but remains to be perfected.

3.4. This Chapter addresses the crucial intersection of the Geneva Agreement with the principles of decolonisation under international law, arguing that the Agreement, a product of colonial power dynamics, must be understood within the context of redressing colonial wrongs – of which the 1899 Arbitral Award is a

¹⁹⁷ *Land and Maritime Delimitation and Sovereignty Over Islands (Gabon v. Equatorial Guinea)*, Judgment, 19 May 2025, Separate Opinion of Judge Tladi, para. 2.

perfect embodiment – and the right to self-determination. The parties’ decision to novate their legal relationship, the consequences of which are analysed in the next Chapter, should be appreciated in light of these goals.

B. THE IMPERATIVE TO REMEDY COLONIAL WRONGS

3.5. Decolonisation is not merely a historical event but an ongoing legal imperative, and this case must be examined through that lens.

1. Decolonisation requires the rectification of colonial injustices

3.6. Decolonisation under international law mandates the eradication of colonialism in all its forms, encompassing not only the formal transfer of political control but also the redress of colonial injustices and the realization of the self-determination of formerly-colonised peoples and nations. In a “defining moment” of the decolonisation movement,¹⁹⁸ the United Nations adopted Resolution 1514, entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples”, which specifically condemns colonialism and asserts the right to self-determination, a core tenet of decolonisation.¹⁹⁹ As confirmed by the Court,²⁰⁰ “although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm”.

3.7. This position was in accordance with the principles of the Charter of the United Nations, the foundational document of the post-colonial international order,

¹⁹⁸ *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. 71, para. 86.

¹⁹⁹ UNGA Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples; See also UNGA Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

²⁰⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, para. 150.

which explicitly affirms the inalienable right to self-determination of all peoples,²⁰¹ in a strong rebuke to the colonial orders of the past. This right of self-determination is a *jus cogens* norm, representing the most fundamental and peremptory norms of general international law, reflecting the core values of the international community, and is binding on all states, regardless of their consent.²⁰² The principle of self-determination, therefore, is a critical tool in addressing the pernicious legacies of colonialism.

3.8. Venezuela has always supported this principle, and acted accordingly. In particular, Venezuela called for Guyana's independence, based on its "long-standing anti-colonial position dating back to its own struggle for sovereignty and independence."²⁰³ Venezuela's legislative branch supported "the total independence of British Guiana and its immediate inclusion into a democratic system."²⁰⁴ Before the United Nations' General Assembly, Venezuela stressed in no unclear terms that the colonial legacy of the territorial controversy with the United Kingdom does not condition its support for Guyana's independence²⁰⁵

²⁰¹ UN Charter, Arts. 1(2), 55.

²⁰² *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136, para. 155.

²⁰³ 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). In this same regard see Note from the Minister of Foreign Affairs of Venezuela Mr. Ignacio Iribarren Borges, to the Ambassador of Great Britain, Sir Anthony H. Lincoln, 18 May 1966, available at *Ibidem*, p. 100, and Statement by the Minister of Labour, Mr. Hens Silva Torres, and by Ambassador Francisco Alvarez Chacin, at the International Labour Organization (ILO), June 1966, at *Ibidem*, p. 112-113.

²⁰⁴ *Ibid.*; Memorandum of Venezuela, p. 7.

²⁰⁵ UNGA 20th session, 1398th Plenary Meeting, 16th December 1965 (3pm), p. 4 (Mr. Sosa Rodriguez, Venezuela): "I wish to confirm that Venezuela has at no time made its support for the independence of British Guiana conditional upon the prior settlement of its claim to part of that Territory, which is the subject of conversations between the Governments of the United Kingdom, Venezuela and British Guiana continued from those held in 1962. That position too remains unchanged." See also *Ibid.*, p. 15 (Mr. Medina, Colombia).

Guyana was recognised as a sovereign State on the same day of its independence, expressly stating the persistence of its claim.²⁰⁶

3.9. The purpose of decolonisation, however, extends beyond merely granting formal political independence; it demands the rectification of historical injustices, including the restitution of territory or compensation for lost resources, and the dismantling of the structures of colonial domination²⁰⁷. Within this context, decolonisation entails not only the ending of formal political control but also the addressing of colonial-era territorial disputes. This encompasses not only the redrawing of borders but also the restitution of territories that were unjustly seized or administered during the colonial period. The principle of decolonisation, in this context, is intrinsically linked to the principle of self-determination.

3.10. In the *Frontier Dispute (Burkina Faso/Mali)*, Judge *ad hoc* Abi Saab stressed that there can “be no question of even circuitously finding in contemporary international law any retroactive legitimisation whatever of colonialism as an institution.”²⁰⁸ Quoting that passage, Judge Bennouna later described colonialism as “an institution which law and history have definitively classed among those which have been profoundly violent and unjust because of their violation of the dignity and freedoms of entire populations”, and asked “whether, when drawing frontiers, contemporary international law can rely on law produced by such an institution”.²⁰⁹

²⁰⁶ Memorandum of Venezuela, Annex, p. 38.

²⁰⁷ See, e.g., Ministry of Foreign Affairs, Office of Information, Press and Publications. Bulletin No. 349-C, dated 26 January 1966, **Annex 35**, which contains Panama’s Resolution expressing the hope that, in granting independence to Guyana, the UK government “does not wish to perpetuate an era of colonialism in the American continent based on territorial usurpation”.

²⁰⁸ *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, *I.C.J. Reports 1986*, p. 554, Separate Opinion of Judge *ad hoc* Abi-Saab, para. 4.

²⁰⁹ *Frontier Dispute (Burkina Faso/Niger)*, Judgment, *I.C.J. Reports 2013*, p. 44, Declaration of Judge Bennouna, p. 2.

3.11. As recently put by a member of the Court, “[t]he answer to Judge Bennouna’s question is a clear and simple no.”²¹⁰

2. The Decolonisation of British Guiana as a Lost Opportunity to Rectify Colonial Wrongs

3.12. This case, and the history of British Guianas decolonisation, is a perfect illustration of the efforts expanded by formerly-dependent states to correct the crimes of colonialism.

3.13. In April 1948, the Organization of American States, declaring it “a just aspiration of the American Republics that colonialism and the occupation of American territories by extra-continental countries should be brought to an end”, created the American Committee of Dependent Territories.²¹¹ In this context, the head of the Venezuelan delegation recalled “Venezuelans’ right, in the event of a serene and cordial re-evaluation of the history and geography of the Americas, to assert their territorial claims over areas now under colonial tutelage and which in the past belonged to our own sphere.”²¹² In a subsequent meeting, Venezuela registered its view that Guyana’s anticipated independence should not have any consequence on its own right to obtain reparation from the damages it suffered from the manoeuvres of Guyana’s colonial master.²¹³

²¹⁰ *Land and Maritime Delimitation and Sovereignty Over Islands (Gabon v. Equatorial Guinea)*, Judgment, 19 May 2025, Separate Opinion of Judge Yusuf, para. 9.

²¹¹ C. G. Fenwick, “The American Committee on Dependent Territories” (1950) 44 *The American Journal of International Law* 2, pp. 363-370.

²¹² As recounted in the memorandum from Venezuela’s Ministry of Foreign Affairs entitled “The problem of the borders of Venezuela with British Guiana and the Venezuelan position before the independence of this country”, 3 January 1966, p. 1.

²¹³ Resolutions and declarations in international forums on the territorial issue with British Guiana, **Annex 34**, p. 3.

3.14. This explains why, at the time, Venezuela was hopeful that the issue be resolved quickly,²¹⁴ and with the participation of British Guiana.²¹⁵ This needs to be contrasted with the deceitful attitude of the United Kingdom, which stated before the United Nations that they expected to quell this issue before independence of Guyana,²¹⁶ all the while its own diplomats were stating that “our general aim will be to try to string the Venezuelans along amicably until British Guiana is independent”.²¹⁷

3.15. As such, when the United Nations, in pursuance of its mandate to support and accomplish decolonisation, turned towards the situation of what was then British Guiana, the existence of negotiations between the UK and Venezuela was at the forefront of everyone’s minds.²¹⁸ Before the United Nations, Venezuela repeated its support for Guyana’s self-determination, regardless of its rightful claims to part of the territory at stake.²¹⁹ (Similar sentiments were expressed to the UK directly.²²⁰) The eventual adoption, by the Fourth Committee of Resolution VII dealing with the decolonisation of British Guiana (among many other non-independent territories)²²¹ saw many states, and Latin American states in particular,

²¹⁴ Confidential letter from Venezuela’s Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, **Annex 25**, para. 31.

²¹⁵ 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. 3.

²¹⁶ Statement of Mr. C.T. Crowe, Representative of the United Kingdom, at the 349th meeting of the Special Political Committee on 13 November 1962, UN Doc. A/SPC/72, p. 16: “espérons cependant que cette question pourra être réglée une fois pour toutes et que la Guyane britannique accédera à l’indépendance sans que le moindre doute s’élève quant à son territoire et ses frontières”. Mr. Crowe further rejected the idea of leaving the issue for Guyana itself to resolve once it becomes independent.

²¹⁷ Letter from Edmonds to John, dated 23 March 1962, **Annex 23**, p. 2.

²¹⁸ UNGA, 20th session, Fourth Committee 1583rd meeting, 10 December 1965 (11am).

²¹⁹ *Ibid*, p. 427 (Mr. Sosa Rodriguez, Venezuela), para. 5.

²²⁰ Letter from Venezuela’s Ambassador in London, Dr. Héctor Santaella to Michael Stewart, Minister of Foreign Affairs of Great Britain, dated 2 November 1965, **Annex 26**: “In the case of British Guiana, the reasons that move Venezuela to strongly desire its independence are even more powerful [...]”

²²¹ Fourth Committee, A/6160, 13 December 1965.

abstain over the lack of reference to the territorial controversy.²²² As powerfully stated by Uruguay at the subsequent Plenary Meeting of the UNGA:

In the draft resolution we have just adopted there is not a word about [the controversy]. [...]. The Latin American delegations wanted to rectify it, but in a more detailed way: in other words, they wanted to ensure that when a resolution as important as that on British Guiana was adopted, the problem would not be disregarded. As a matter of simple logic affecting the continuity of the work of the United Nations, some reference should have been made to it so that the omission would not be interpreted as a decision of the Assembly. [...]

The dispute will not cease to exist merely because it is not mentioned in the resolution. This kind of problem is a millstone round the neck of a small country on the threshold of independence [...].²²³

3.16. Even after Guyana's independence and the signature of the Geneva Agreement, Venezuela left no doubt that the controversy remained tainted by its colonial roots, and cried for a resolution in line with the anti-decolonisation principles. When the Agreement was presented to Venezuela's National Congress, one of the very first words of its Ministry of Foreign Affairs was to hope that, "[a]t the twilight of the colonialist era, hope was rekindled that one day the injustice we had been victims of would be redressed."²²⁴ And when, in the 1980s, Guyana

²²² *Ibid.*, recording the position of Spain (para. 11), Peru (para. 12), Costa Rica (para. 14), Nicaragua (para. 15), Colombia (para. 16), Argentina (paras. 18-19), Dominican Republic (para. 22), Paraguay (para. 23), El Salvador (para. 24), Guatemala (para. 37), Honduras (para. 42), Panama (para. 43) – all of which preferred to abstain in light of the lack of specific reference to the controversy. Most other states, while voting for the Resolution, expressed their wish that the controversy be ultimately settled to the mutual satisfaction of the parties involved.

²²³ UNGA 20th session, 1398th Plenary Meeting, 16th December 1965 (3pm), p. 22 (Mr. Marques Sere, Uruguay), paras. 247-248.

²²⁴ 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.

circulated a false and misleading view of the controversy,²²⁵ Venezuela had to set the record straight: this was just an attempt to “consolidate an injustice and frustrate a just claim for the benefit of Guyana, as the heir to colonial spoliation.”²²⁶

3.17. As demonstrated by the *Chagos Archipelago* Advisory Opinion, the Court has recognized the continuing relevance of decolonisation, even where formal independence has been achieved, as a necessary process to ensure that the fundamental principles of self-determination and the protection of human rights are upheld.²²⁷ The Court’s focus on the illegality of the UK’s separation of the Chagos Archipelago from Mauritius highlights the importance of ensuring that the process of decolonisation is complete and that the interests of the formerly colonized population are fully taken into account. This ruling demonstrates that decolonisation is not simply a historical event, but an ongoing process.

3.18. Moreover, *Chagos* confirms that an administering power’s undue influence over colonial-era legal mechanisms is relevant to assessing their legitimacy. Here, as in *Chagos*, the UK exercised significant influence over the arbitral process, ensuring an outcome that secured its colonial interests rather than a fair and equitable resolution. The Court’s ruling in *Chagos* thus provides a direct legal precedent for reassessing the legitimacy of the British colonisation of South America, the fraught arbitration process, and the 1899 Award under modern international law.

3.19. This further means that, assuming for the sake of argument that the 1899 Arbitral Award were valid (*quod non*), its territorial consequences could not be

²²⁵ 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, with attached memorandum (VCM, Annex 148).

²²⁶ 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. 3.

²²⁷ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, ICJ Reports 2019, p. 95, para. 174.

applied in absolute and unconditional terms in a dispute where the law of decolonisation is the governing legal framework. The object and purpose of the applicable principles and norms of decolonisation is to remedy the very injustices caused by imperial territorial arrangements.

3.20. In other words, decolonisation law does not merely recognize the self-determination of indigenous populations, but also protects the territorial claims of sovereign states dispossessed by colonial expansionism. The international community has consistently upheld the obligation to negotiate retrocession of such territories, overriding any colonial-era instruments that had previously legitimized imperial territorial claims.

C. THE GENEVA AGREEMENT AND THE CULMINATION OF THE DECOLONISATION

3.21. Being adopted in the middle of the most important decade for the decolonisation movement, the 1966 Geneva Agreement must be understood as a direct consequence of this intensifying global movement for decolonisation and the impending independence of British Guiana. The Agreement reflected a growing international consensus that colonial powers should address outstanding grievances and territorial disputes inherited from the colonial era, especially those involving newly independent states. A few years later, Venezuela indeed described it as such: “a formal agreement by which the three parties involved committed themselves to a political search for peaceful solutions to a dispute inherited from colonialism.”²²⁸

3.22. The timing of the Agreement – just three months before British Guiana’s independence – was not coincidental but deliberate. The preamble explicitly references “the forthcoming independence of Guyana”, and Article VIII specifically provides for Guyana to become a party to the Agreement upon

²²⁸ 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.

independence. This timing demonstrates that all parties recognised that the colonial-era legal framework was insufficient for the post-colonial relationship between Venezuela and an independent Guyana.

3.23. The participation of British Guiana as a distinct entity in the negotiation and conclusion of the Agreement further demonstrates its decolonisation context. Despite not yet being formally independent, British Guiana participated as a separate party from the United Kingdom, with its own representatives and interests, a situation explicitly wished-for by Venezuela at the time.²²⁹ This unique arrangement reflected the recognition that the controversy would primarily affect the relationship between Venezuela and the soon-to-be independent state. Likewise, the fact that the Mixed Commission was composed only of representatives from Venezuela and British Guiana, with no direct participation by the United Kingdom, reflected the recognition that the controversy's resolution would primarily affect the relationship between Venezuela and the newly independent Guyana, not the colonial power.

3.24. As such, and as Venezuela has already shown,²³⁰ the execution of the Geneva Agreement demonstrates a shared recognition among all parties that the 1899 Arbitral Award, a product of the colonial era, did not provide a definitive or just resolution to the territorial controversy. Its flaws certainly have historical relevance: they represent one of the most glaring examples of “might-made-right”, or of the perversion of nascent international justice for imperial goals. But that historical question, interesting as it is – and which Venezuela reviews at length in Part Two of this Rejoinder – is not, and cannot be of any use in reaching a mutually-satisfactory resolution to the controversy.

²²⁹ 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. 3.

²³⁰ VCM, Chapter 2.

3.25. Instead, the dual lens of decolonisation and state equality provides a clearer view of what the Geneva Agreement is and is not about. This was reflected in the attitude of the parties towards the conclusion of the Agreement (as well as the subsequent Port-of-Spain Agreement, into which independent Guyana entered freely).

a. The United Kingdom, facing increasing pressure to grant independence to its colonies, (and secure its interests in doing so),²³¹ sought a mechanism to address pre-existing disputes and ensure a smoother transition to independence. This is consistent with the decolonisation goals.

b. British Guiana's participation in the Geneva Agreement as a party in its own right reflects the evolution of the principle of self-determination, which mandated the involvement of the colonized people in decisions affecting their future. As an impending newly independent state, Guyana had the capacity to assess the Award, and its participation suggests recognition by the soon-to-be independent state that a new path for resolution was needed.

c. Venezuela, free at last from the colonial shackles in the first quarter of XIX century and from the gunboat diplomacy that defined the XIX

²³¹ In particular, as recounted in contemporary documents, the UK at the time was in the midst of the grave crisis to its authority over the Commonwealth caused by the calls for independence in Rhodesia: *see* Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para. 37, and 39 (**Annex 25**): "In such a harsh and difficult scenario, would Great Britain immediately abandon British Guiana in its claim against Venezuela, exposing itself to the repudiation of the Commonwealth and especially Afro-Asians? On the other hand, would Great Britain openly confront Venezuela and Latin America?"

and early XX centuries, could finally challenge the 1899 Arbitral Award.²³²

3.26. In the same vein, the appointment of a Mixed Commission to seek a mutually agreeable settlement cannot but be read as a significant departure from a rigid defence of the 1899 Arbitral Award that would have prevailed – and that did prevail – before the decolonisation era. At the very least, this approach implicitly acknowledged the need to address the colonial-era injustice.

3.27. In other words, what the Geneva Agreement did was to set the Parties (i.e., Venezuela, and the soon-to-be independent Guyana) on the path of reaching a solution that is mutually beneficial and does not repeat the mistakes (and dead-end) of the colonial situation that had prevailed between Venezuela and the United Kingdom.²³³

3.28. By contrast, insisting – as Guyana now does – that the Geneva Agreement endorsed the *status quo* and the behaviour of the British Empire is patently incompatible with the Agreement’s time and context.

²³² This had been clearly stated in the context of the Experts’ Meeting to review the Documentary evidence: *see, e.g.*, Expert’s conversations on the boundary issue Venezuela-British Guiana, Minutes of the Twelfth Session, dated 2 April 1964 (10:00 am), statement by Father Ojer: “Venezuela’s internal and international situation forced my country to postpone the denunciation of the Award. This is well-known history, but it is worth pointing out some facts. It was a period of internal Venezuelan conflict, of civil wars, and a time when the great Powers, primarily England and Germany, were exerting pressure on Venezuela to pay off its debts [...] Venezuela was even aware that Germany wanted to seize Margarita Island to settle its claims for unpaid debts. And we know that even Italy, although it had only one debt owed by Venezuela amounting to two million bolivars—a sum which today might seem ridiculous—nonetheless that amount shows how, for a small sum, a foreign country would declare a blockade against a weak nation. Of course, this attitude by the great Powers was only possible in the colonial era, not in this current era when nations aspire to the fulfilment of international justice.” *See Annex 30.*

²³³ *See, e.g., Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Partly Separate and Partly Dissenting Opinion of Judge ad hoc Couvreur, I.C.J. Reports 2023*, para. 37: “the 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.”

3.29. The Geneva Agreement, therefore, must be understood as a crucial step in the process of decolonisation, demonstrating a commitment to address colonial-era grievances and to seek a just and equitable solution to a territorial controversy that stemmed from the imbalances of the colonial period. As the next Chapter will explain, this approach – leaving a flawed legal relationship in the past for the benefit of a new framework – comports with the international law notion of novation.

CHAPTER IV: THE GENEVA AGREEMENT AS A NOVATION INSTRUMENT

A. INTRODUCTION

4.1. Entered into in the shadow of impending decolonisation and in response to Venezuela's enduring objection to the 1899 Arbitral Award, the Agreement marked a decisive departure from the legal framework previously imposed by colonial power dynamics. In doing so, it gave rise to a new legal regime, one shaped by mutual consent, oriented toward a negotiated resolution, and grounded in the normative evolution of international law.

4.2. This transformation is best understood as a novation, i.e., a mutually-agreed substitution of the previous situation based on colonial domination for a new negotiated framework. The Geneva Agreement amounted to such a novation and must be interpreted and applied as such.

4.3. In what follows, Venezuela thus demonstrates that the concept of novation is recognised under international law **(B)**, before establishing that the Geneva Agreement meets all the criteria for novation, both formally and substantively **(C)**. On this basis, this chapter further explores the legal consequences of novation for this matter – and most notably, in the Court's obligation to respect the transformed legal relationship **(D)**.

B. INTERNATIONAL LAW RECOGNIZES NOVATION AS A MECHANISM FOR THE SUBSTITUTION OF OBLIGATIONS

4.4. This section outlines the essential elements of novation, its doctrinal basis in both general and international law **(1)**, and the legal consequences that follow once novation is established **(2)** – chief among them, the extinction of the prior regime and the binding character of the new one.

1. Novation as Substitution of Legal Obligations Through Mutual Consent

4.5. It is undisputed that the venerable institution of novation applies in international law. The notion, known since Roman law,²³⁴ describes how a legal relationship, while subsisting between the same parties, may acquire a different content.²³⁵ This transformation constitutes the replacement of one set of obligations with another through mutual consent, or else the substitution of a different party in the relationship.²³⁶ By mutually replacing the colonial-era regime with a tailored framework, both Venezuela and the United Kingdom (and, eventually, Guyana) stood to benefit equally, making novation the natural and mutually advantageous way forward.

4.6. Novation may take several forms: it may create a new obligation between the same parties, substitute a different creditor, introduce a different debtor, or involve both a new creditor and debtor.²³⁷ For a novation to be effective, the new

²³⁴ 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 constituatur, ut prior perematur. novatio enim a novo nomen accipit et a nova obligation” (Digest, 46.2.1.1). See also L. Caflish, “The Law of State Succession: Theoretical Observations”, *Nederlands Tijdschrift voor Internationaal Recht*. 1963; 10(4), 337-366, at 361.

²³⁵ See J.H.W. Verzijl, *International Law in Historical Perspective*, Volume VI (1973), pp. 777-778, citing the examples of an obligation to make restitution of an object or territory replaced by pecuniary compensation; a treaty claims to military assistance substituted with another form; and an engagement to grant autonomy replacing an initial undertaking for an independence vote. Verzijl specifically mentions the 1814 case where the Netherlands’ obligation to compensate Sweden for Guadeloupe’s retrocession to France was transformed from territorial to financial compensation (see preamble of the Anglo-Swedish Treaty of 13 August 1814, Martens, N.R., II, 55, and its first additional article, *Ibid.*, 60); and the 1839/1873 case where the Netherlands’ obligation to Belgium regarding a canal across Limburg territory was later replaced with an obligation to allow a railway instead (see Article 12 of the Treaty of Separation with Belgium of 19 April 1839, Martens, N.R. XVI2, 773, and joint declaration of 18 June 1873, made on the exchange of the ratifications of their treaty of 13 January 1873, *Ibid.*, N.R.G.2, II, 1 and 3).

²³⁶ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 16, Dissenting opinion of Judge Gerald Fitzmaurice, pp. 52-55.

²³⁷ R. Martha, *The Financial Obligation in International Law* (Oxford University Press, 2015), p. 574.

obligation must contain something different from the original one; otherwise, the old obligation remains unchanged. Most importantly, the intention to novate must be clear and unambiguous.²³⁸

4.7. International tribunals have consistently recognized that novation occurs when an existing legal obligation is replaced by a new one through mutual agreement. Judge Fitzmaurice's opinion in the *Namibia* Advisory Opinion explicitly recognised this concept, emphasizing that novation requires "consent in order to be good as such".²³⁹ He further explained that novation requires "consent unequivocally and unambiguously expressed, or at least evidenced by unequivocal acts or conduct".²⁴⁰ This requirement ensures that parties cannot be bound by obligations that haven't been replaced without their agreement. Obligations cannot therefore be replaced without proper consent, as this would improperly impose new obligations without the required legal foundation.²⁴¹

2. The Legal Consequences When Novation Is Established: Original Obligations Are Extinguished

4.8. Novation fundamentally transforms the substance of legal obligations rather than merely modifying their details. Its primary legal consequence is the extinction of the original obligations between the parties.²⁴²

4.9. This extinction of prior obligations distinguishes novation from amendment. Following an amendment, the original obligation continues in a modified form; following a novation, it is replaced entirely by a new obligation.

²³⁸ *Ibid.*

²³⁹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, Dissenting opinion of Judge Gerald Fitzmaurice, para. 52.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*, paras. 52-53 (explaining that without proper consent, no novation could occur with respect to South Africa's obligations under the Mandate).

²⁴² Martha, *The Financial Obligation in International Law* (Oxford University Press, 2015), p. 573.

The fundamental consequence of this transformation is that once parties have consented to transform their legal relationship through novation, they cannot selectively invoke aspects of their previous relationship while disregarding the novation. Principles of good faith require respecting this transformation of the legal relation in its entirety.

4.10. For the avoidance of doubt, novation does not impair the principle of *pacta sunt servanda*. Rather, it represents the exercise of sovereign rights to transform commitments into new ones better suited to evolving relationships. As the Permanent Court of International Justice recognized in the *Oscar Chinn* case, when parties conclude a new agreement concerning matters previously regulated by other instruments, this new agreement becomes the one governing the relationship.²⁴³ The Court there acknowledged that by entering into the Convention of Saint-Germain, the parties had effectively transformed their previous obligations under earlier agreements, stating that “no matter what interest may in other respects, attach to these Acts [...] the Convention of Saint-Germain of 1919 [...] must be regarded by the Court as the Act which it is asked to apply”.²⁴⁴

4.11. By extinguishing prior obligations and creating new ones, novation establishes an entirely fresh legal foundation for the relationship between parties. This transformative effect is particularly significant in disputes rooted in the colonial era. When parties deliberately novate, as the Parties to the Geneva Agreement did, such arrangements to create a framework more appropriate to relations between sovereign equals, international law requires that this transformation be fully respected.

²⁴³ *The Oscar Chinn Case*, P.C.I.J., Serie A/B, Judgment, Orders and Advisory Opinions, n° 63, 1934, p. 84.

²⁴⁴ *Ibid.*, p. 80.

4.12. Through the Geneva Agreement, Venezuela and the United Kingdom, with Guyana as a party, transformed their legal relationship regarding the territorial controversy. Whatever obligations may have resulted from the invalid 1899 Arbitral Award and its ineffectual implementation in the 1905 demarcation agreement would have been in any event novated into a new obligation: to seek a practical, peaceful, and satisfactory solution for both parties.

C. THE GENEVA AGREEMENT AS AN INSTRUMENT OF NOVATION

4.13. The clearest manifestation of the Geneva Agreement's novation effect lies in its substitution of the rigid, binary logic of the 1899 Award with a forward-looking commitment to mutual satisfaction (1). Where the colonial framework purported to impose a definitive and unalterable territorial determination, the Geneva Agreement created an entirely new legal regime—one structured around a cooperative process and grounded in the consent of all parties, including the soon-to-be independent Guyana. For this reason, the Geneva Agreement must be seen as it is: a structured response to the decolonisation imperative (2).

1. Novation Replaced Binary Determination With Mutual Satisfaction As the Governing Principle

4.14. The Geneva Agreement established both procedural and substantive obligations that were entirely absent from the previous legal framework, further demonstrating its novation effect. These new obligations fundamentally altered how the controversy would be addressed.

4.15. Procedurally, the Agreement created a structured process for resolving the controversy that had no parallel in the previous framework. Article II established the Mixed Commission, with specific provisions for its composition, timeline, and reporting requirements. Article IV further created a progressive mechanism for resolving the controversy if the Commission failed, providing for successive recourse to various means of peaceful settlement.

4.16. Substantively, the Agreement transformed the parties' obligations regarding the territorial controversy. Instead of claiming to be bound by the null and void 1899 Arbitral Award as "a full, perfect, and final settlement" under the Washington Treaty, the parties became obligated to seek "satisfactory solutions for the practical settlement of the controversy." This is why Venezuela described the Agreement before the United Nations as the "legal statute" governing this issue.²⁴⁵ This new substantive obligation replaced rather than supplemented the previous one.

4.17. The Agreement also created new substantive obligations specific to the relationship between the Parties. Furthermore, Article VIII provided that upon independence, Guyana would become a party to the Agreement, creating direct obligations between Venezuela and Guyana that had not existed previously – a key feature demonstrating the Geneva Agreement's place in the decolonisation movement. This provision further demonstrates the novation effect of the Agreement, as it created a new legal relationship rather than merely transferring existing obligations.

4.18. That the Geneva Agreement amounted to such a fundamental change of the legal relationship between the parties is patent from the contemporary views of its drafters. In a statement before the National Congress, Venezuela's Foreign Minister Ignacio Iribarren Borges confessed that it was the result of a compromise between the parties, and therefore "[c]learly [...] not the ideal solution to the problem".²⁴⁶ However, he added, the Agreement had the virtue of placing on a new footing the positions of those who demanded the return of the usurped territory by virtue of a

²⁴⁵ 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: "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." (emphasis added).

²⁴⁶ 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. 17.

null Award, and those who, having no doubt about their sovereignty over that territory, were not willing to even entertain dialogue about this.²⁴⁷

4.19. Two points merit particular consideration.

a. First, it is essential to distinguish between treaties that involve rights *in rem* – so-called “dispositive treaties” – and those that establish personal obligations requiring novation for successor states. International law clearly differentiates between dispositive treaties, which attach rights and obligations directly to the territory itself and thus transfer automatically upon changes in sovereignty, and treaties creating personal obligations that do not automatically transfer but require a deliberate act of novation.²⁴⁸ Treaties *in rem* are intrinsically tied to territorial sovereignty and therefore automatically shift attribution with changes in sovereignty. In contrast, other treaties, although potentially transferable to successor states, require at least the tacit consent of the other party, amounting effectively to a novation.²⁴⁹

Describing the Geneva Agreement as anything else but a novation would indeed imply that the Agreement functions as a dispositive treaty – one that automatically transfers rights *in rem* with a change in sovereignty. However, this interpretation runs counter to both its textual provisions and its underlying purpose. The Geneva Agreement explicitly creates new procedural and substantive obligations through mechanisms that require clear, mutual consent rather than merely transferring pre-existing rights. In essence, to reject the novation

²⁴⁷ *Ibid.*

²⁴⁸ H. Thirlway, “Concepts, Principles, Rules and Analogies: International and Municipal Legal Reasoning” (Volume 294), *RCADI*, p. 356.

²⁴⁹ K. Zemanek, “State Succession after Decolonization” (Volume 116), *RCADI*, p. 244.

argument is to misconstrue the deliberate transformation that the Agreement embodies: a reset of the legal relationship between the parties in a manner that addressed the inequities of the colonial era.

b. Second, and equally important, is a consideration of how the Agreement challenges the notion of a “final determination”. International jurisprudence provides support for this understanding of how parties can replace previously “final” determinations through mutual consent. Particularly instructive is the 2009 *Abyei* arbitration, which expressly recognized the concept of novation in the context of a territorial dispute. In that case, the Tribunal acknowledged that when both parties consented to arbitration in 2008, this had the effect of reopening the “ABC Experts’ Report” that was previously accepted as “final and binding”, thus “*novating* the issues for decision”.²⁵⁰

4.20. This approach is particularly relevant when compared to the novatory mechanism at the heart of the Geneva Agreement. Just as the *Abyei* arbitration illustrates the possibility of revisiting and revising earlier determinations through mutual consent, the Geneva Agreement itself should overcome the obsolete legal obligations allegedly derived from the 1899 Arbitral Award and replace them with a new, consensual framework geared towards a mutually-satisfactory solution. In other words, the Agreement was not intended to simply amend the colonial-era decision; it was meant to transform the entire legal relationship between the parties, establishing a regime of obligations that reflects contemporary principles of decolonisation, self-determination, and mutual satisfaction.

4.21. The approach taken in the *Abyei* arbitration further epitomises the parties’ ability to re-open issues that were previously regarded as settled. When the parties

²⁵⁰ P.C.A. The Govern of Sudan/ The Sudan People’s Liberation Movement/Army *Abyei Arbitration*, 22 July 2009, para. 450 (emphasis added).

agree to do so, they are effectively nullifying the finality of earlier decisions. In the *Abyei* case, the Tribunal's authority to review the mandate of the ABC Experts signalled that any instrument – however once binding – can be rendered obsolete if the parties, through clear mutual agreement, opt for a new process of determination. This is analogous to the function of the Geneva Agreement, where the parties deliberately sought to replace the fraudulent 1899 Arbitral Award with a framework that would foster a negotiated and equitable resolution of the dispute.

4.22. Just as, in the *Abyei* arbitration, the parties' consent allowed for a mechanism that both re-examined and effectively modified the existing legal order, by entering into the Geneva Agreement Venezuela, the United Kingdom, and the future state of Guyana agreed to a novatory process that precluded any later reliance on the null and void 1899 Arbitral Award. In both scenarios, the parties' commitment to a new set of obligations ensures that the legal framework governing the controversy is responsive to contemporary needs and is not unduly burdened by outdated decisions.

2. The Geneva Agreement as a Structured Response to Decolonisation Imperatives

4.23. As explained in the previous Chapter, the Geneva Agreement cannot be understood outside of the decolonisation context, of which Guyana has first-hand experience. Decolonisation occasioned a necessary and a radical transformation of colonial-era legal frameworks. As such, the novation effect brought about by the Geneva Agreement must also be understood within that context.

4.24. The Agreement's structure as a novation rather than a mere succession arrangement was essential to its decolonisation function. By creating new obligations focused on mutual satisfaction rather than simply transferring colonial-era obligations to the newly independent state, the Agreement provided a

framework for addressing the territorial controversy in a manner consistent with the emerging post-colonial international order.

4.25. In this context, the role of the United Kingdom in negotiating and executing the Geneva Agreement as a novation bears particular scrutiny **(a)**, as well as the timing of the Geneva Agreement – just before Guyana’s independence **(b)**.

a) The role of the United Kingdom

4.26. The United Kingdom’s established practice further confirms international recognition of novation as a distinct and deliberate mechanism for the transformation of treaty obligations following independence.

4.27. One clear example can be found, e.g., in the UK’s approach towards Laos concerning the continued applicability of the Anglo-French Civil Procedure Convention of 1922. Initially extended to French Indo-China in 1933, this convention became the subject of correspondence between Laos and the United Kingdom after Laotian independence. While Laos initially maintained that the convention continued automatically due to the Treaty of Friendship and Association between France and Laos (1953), the UK explicitly rejected this automatic succession.

4.28. Instead, the UK emphasised that continuation required an explicit agreement between the newly independent state and the pre-existing contracting party. In its diplomatic note of 26 December 1962, Laos ultimately accepted this position. The UK’s stance was unequivocal: automatic succession by newly independent territories to treaty rights and obligations entered into by the colonial power was not recognized unless explicitly agreed upon after independence. According to British practice, the post-independence agreement constituted a novation, establishing new obligations between the parties distinct from and

replacing the original colonial arrangement²⁵¹. The UK's careful and overall consistent stance on these matters is well documented, *inter alia*, in the work of the International Law Commission ("ILC").²⁵²

4.29. It follows that, when negotiating and executing the Geneva Agreement, the UK was entirely cognisant of the critical distinction between automatic succession and deliberate novation. What is more, the UK's insistence on an explicit post-independence agreement with Laos highlights the foundational requirement for novation: clear, deliberate, and mutual consent to establish substantively new obligations.

4.30. While the Geneva Agreement situation is distinct in that the UK continued explicitly as a party alongside Venezuela and the newly independent Guyana, this difference reinforces, rather than undermines the novation argument. Far from merely transferring existing colonial-era obligations, the continued participation of the UK highlights that the Geneva Agreement represented a conscious redefinition and transformation of obligations involving all relevant parties. The UK's continuation as a party demonstrates that the novation in this case was even clearer and more deliberate, as all parties – including the former colonial power – actively consented to the creation of an entirely new framework.

4.31. Thus, the Geneva Agreement explicitly transformed the legal relationship between the parties from a colonial-era binary determination concerning the (in)validity of the 1899 Arbitral Award to a new, cooperative framework focused on finding a mutually-satisfactory solution.

²⁵¹ See United Nations Legislative Series (1967) 188–9.

²⁵² See *Yearbook of the International Law Commission, 1969*, Vol. II, p. 60, including the reference to a similar case where the UK notably warned Burma that a devolution agreement could not bind third states without explicit consent, suggesting formal accession as the preferred route.

b) The Timing of the Agreement just Before Independence Was Deliberate and Significant

4.32. Agreements concluded immediately before independence hold particular significance under international law, as highlighted in discussions by the ILC. Such agreements, often termed “devolution agreements,” typically aim at anticipating the legal relationships that will govern the newly independent state.

4.33. The ILC has extensively debated the status and legal effects of these pre-independence arrangements, recognising their frequent occurrence but underscoring their inherently complex legal status. Article 8 of the 1978 Vienna Convention on State Succession explicitly addresses this issue, stating clearly that obligations or rights under treaties do not automatically transfer to a successor state merely because an agreement providing for such transfer has been concluded between the predecessor and successor states.

4.34. Crawford specifically discusses this complexity by referencing the Treaty of Friendship concluded between Belgium and Congo on 29 June 1960, just one day prior to Congo’s independence.²⁵³ He pointed out that, according to the ILC discussions, the conclusion of such an agreement alone was insufficient to constitute a novation. This treaty primarily aimed at transferring existing rights and obligations and did not necessarily indicate a clear intent or explicit consent by all parties required to effectuate a novation. During these discussions, differing views emerged: Ago argued strongly in favour of the inherent international validity of such agreements, whereas Yasseen, Bedjaoui, and Ushakov expressed significant scepticism regarding their validity and effectiveness in automatically transferring obligations.

²⁵³ James Crawford, *The Creation of States in International Law*, (Oxford University Press 2010, 2nd edition), pp. 659-660.

4.35. The ILC itself explicitly recognized the Geneva Agreement of 1966 between the United Kingdom and Venezuela as a distinct and noteworthy example of a bilateral treaty concluded just before independence.²⁵⁴ In its commentary on Article 10 of the Draft Articles on State Succession, the ILC expressly cites the Geneva Agreement as a model, noting that the reference in its preamble to consultation with British Guiana, as well the provision in Article VIII to the effect that the successor State must formally accept participation. The ILC specifically emphasized that this Agreement explicitly provided for Guyana's future participation upon independence, underscoring its deliberate and anticipatory nature. Article VIII of the Agreement clearly stated that upon achieving independence, Guyana would become a party alongside Venezuela and the United Kingdom. The Agreement was formally approved by the House of Assembly of British Guiana prior to independence, a clear expression of explicit consent by the emerging state. Furthermore, Venezuela explicitly highlighted this provision upon notifying the Secretary-General of the Agreement's entry into force, reinforcing the significance of Guyana's explicit participation as a newly independent state.

4.36. Against that background, the best and most conclusive evidence that the Geneva Agreement amounts to novation is offered by its own provisions. Unlike typical pre-independence agreements – such as the Belgium-Congo treaty mentioned above, which primarily sought to transfer existing obligations – the Geneva Agreement explicitly established new and substantively different obligations. Specifically, it created a structured process involving a Mixed Commission and subsequent peaceful settlement mechanisms, distinctly different from any obligations previously existing under colonial-era arrangements. Furthermore, its substantive obligation to seek mutually satisfactory practical solutions clearly denoted a novel legal framework intentionally designed for the

²⁵⁴ Yearbook of the International Law Commission, 1974, Vol. II, Part One, p. 195.

post-colonial relationship. Thus, while the ILC's recognition highlights the deliberate nature of the Geneva Agreement, it is the explicit terms and structures within the Agreement itself that firmly establish its unique character as an instrument of novation under international law.

D. LEGAL IMPLICATIONS OF THE NOVATION THAT THE COURT MUST RESPECT

4.37. Once novation is established, its legal consequences are unavoidable. Having supplanted the 1899 Arbitral Award as the governing framework, the Geneva Agreement redefined not only the nature of the controversy and the obligations of the Parties, but also the role of any means convened for its resolution. Any resolution to this matter must therefore proceed not from the premises of the discredited 1899 Arbitral Award, but from the obligations – procedural and substantive – undertaken anew by Venezuela and the United Kingdom, and inherited by Guyana, in 1966. It is therefore conclusive that the Court has no role whatsoever in the resolution of the territorial dispute that is to be resolved through the Agreement.

1. The Court Must Respect the New Obligations Created by the Agreement

4.38. Venezuela has made it very clear that the Court lacks jurisdiction under the Geneva Agreement; however, it remains the basis of the controversy, which must be resolved by the parties in light of its object and purpose. As explained above,²⁵⁵ an interpretation of the Geneva Agreement under the structures of the VCLT – a fundamental constraint Guyana failed to apply– leads to an inescapable conclusion:

²⁵⁵ *Supra*, Chapter II.

the parties committed to let the 1899 Arbitral Award behind, and to work towards a mutually-satisfactory solution.

4.39. As further demonstrated above,²⁵⁶ the Agreement replaced the colonial and imperialist paradigm of “might makes right” with a bilateral framework of negotiated resolution. The controversy therefore is not – and cannot be – centred around the adjudication of colonial-era claim as if frozen in time, but as to how the parties could land on a mutually satisfactory solution, consistent with the Agreement’s object and purpose.

2. The Inapplicability of Acquiescence Arguments in the Face of Novation

4.40. Venezuela never acquiesced to the 1899 Arbitral Award. Any allegation to the contrary is legally untenable, and even more so in light of the novation.

4.41. In the Counter-Memorial, Venezuela demonstrated that Guyana’s focus on acquiescence was unsustainable.²⁵⁷ We will return to this point in Chapter VI. The Award’s flaws and injustice were readily apparent to everyone – including two of the arbitrators, who concluded that arbitration on such terms could not be a proper way to settle disputes.²⁵⁸ Venezuela then forcefully contested the Award once it learned of the Mallet-Prevost Memorandum, which evidenced all concerns it previously held, in multiple *fora* and circumstances, and collected the necessary proofs.²⁵⁹

4.42. Moreover, the Counter-Memorial evidenced that this alleged acquiescence is entirely belied by the Geneva Agreement,²⁶⁰ whose very object and purpose – as

²⁵⁶ *Supra*, Chapter III.

²⁵⁷ VCM, Chapter 7.

²⁵⁸ VCM, Chapter 7, para. 2.9, quoting from Library of Congress, Richard Olney Papers, Vol. 12. pp. 455-457.

²⁵⁹ *Ibid.*, paras. 2-25-2.29.

²⁶⁰ *Ibid.*, paras. 7.47-7.48.

explained above – was to transform the parties’ relationship and set up a framework – procedural *and* substantive – to resolve the controversy. Once again, Guyana fails to explain why the parties ever executed the Geneva Agreement if the question was already settled.

4.43. That Venezuela did not acquiesce to the award is further demonstrated by its clear and consistent position during the UN General Assembly Plenary Meeting on 16 December 1965, a critical juncture merely five months before British Guiana was scheduled to achieve independence on 26 May 1966.²⁶¹ At this meeting, Venezuela’s representative not only solemnly reaffirmed that Venezuela “maintains its claim intact, since it relates to inalienable and absolute rights which it cannot renounce” and pointed to ongoing trilateral discussions as part of an agreed procedure, but also took the significant step of abstaining from the vote on the resolution welcoming British Guiana’s independence *precisely* due to the “complete omission” of any reference to Venezuela’s long-standing claim in the resolution.²⁶² This stance was supported by several other Latin American States who also abstained or expressed reservations for similar reasons, underscoring the unresolved nature of the territorial controversy.²⁶³

4.44. But, even if Venezuela had, in fact, acquiesced before 1966 (which it did not), the Geneva Agreement extinguished such considerations by establishing a new framework²⁶⁴ governed by principles of good faith and decolonisation.

²⁶¹ UNGA 20th session 1398th Plenary Meeting, *supra* note 205.

²⁶² *Ibid.*, paras. 9, 49, 50 (Mr. Sosa Rodriguez).

²⁶³ Colombia (Mr. Marin Vanegas) noting the “obvious lacuna” of not referencing the claim, para. 178; Dominican Republic (Mr. Heredia Bonetti) stating its abstention was because “Venezuela’s claim should be mentioned,” para 88; Costa Rica (Mr. Redondo Gomez) abstaining because Venezuela “was not given an opportunity to place on record the existence of a frontier or territorial dispute,” para 235; and Uruguay (Mr. Marques Sere) mentioning efforts to include a formula that “would recognize the existence of a problem involving a territorial dispute,” para 246

²⁶⁴ *Ibid. supra*, para. 4.30.

4.45. That understanding was reflected in the conduct of the United Kingdom itself. In a confidential 1983 communication, the Foreign and Commonwealth Office stressed the importance of not giving the impression that the UK still had *locus standi* in the dispute – effectively acknowledging that they still considered that there was a “dispute”, if one for Venezuela and Guyana to resolve under the terms of the Geneva Agreement.²⁶⁵ Far from suggesting that the controversy had been resolved, this confirmed that the Agreement had created a new bilateral regime, displacing the Award as the dispositive instrument.

4.46. This is, indeed, the very point of the novation that the Geneva Agreement represented at the time. Under this new regime, the parties left the dispute as to the Award behind, and demand that the territorial controversy be resolved on terms acceptable to both sides.

3. A Winner-Takes-All Validation of the 1899 Arbitral Award Would Contradict the Novation and Sanction an Unconscionably Asymmetric Outcome

4.47. To pretend a mechanical validation of the 1899 Arbitral Award would thus fly in the face of the Geneva Agreement. The Agreement was explicitly designed to move beyond a binary, adjudicative resolution and toward a negotiated, politically acceptable settlement. Beside flowing from a good faith reading of the treaty, this has long been the understanding the parties themselves.²⁶⁶ In practical terms, this means that the absurd adventure into which Guyana has dragged the Court, pretending of it a ruling that simply affirms the validity of the 1899 Arbitral Award would revive a framework the Parties mutually abandoned nearly six decades ago. It would reduce the Geneva Agreement to an empty shell and elevate

²⁶⁵ Letter from Adrian Sindall to David Gore Booth, dated 5 October 1983, **Annex 28**.

²⁶⁶ See, e.g., para. 4.31 above.

a discredited colonial artefact above an international agreement concluded under the aegis of the decolonisation movement.

4.48. This is why Guyana's proposed approach is also deeply unconscionable, because it seeks to perpetrate and entrench a repugnant set of asymmetries:

a. An asymmetry of burdens: the Geneva Agreement is very clear that the dispute arose from the parties' inability to agree as to the validity or invalidity of the 1899 Arbitral Award, which is why they opted to give a new impetus to their negotiations through a Mixed Commission (of a deliberate diplomatic, and not legal, bend), while keeping in mind that what they are really after is a practical and amicable settlement of the controversy. Guyana's fraudulent strategy, by contrast, pretends to place the burden of proof fully on Venezuela yet again, which is expected to prove something that generations of jurists and diplomats have argued over without managing to resolve.

This is not all: as noted by the Court²⁶⁷ and individual judges,²⁶⁸ even if Venezuela manages to prove the award's invalidity -which it certainly is- in this abusive procedure initiated by Guyana, Venezuela would then have to relitigate its claim to the Essequibo territory – an enormous endeavour if the original arbitration's record is to be followed, and an endeavour where Venezuela is on the back foot, given Guyana's long stewardship of that territory under the aegis of the fraudulent 1899 Arbitral Award.

²⁶⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 86.

²⁶⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, Declaration of Judge Tomka, para. 7; *Id.*, Dissenting Opinion of Judge Bennouna, para. 10.

It bears stressing that for both of these issues (the validity of the 1899 Award and the territorial claims), the evidence is old and partially inexistent, enhancing the odds of an unjust outcome. Averting such an outcome is, again, why the parties undertook under the Geneva Agreement to reach an amicable, diplomatic solution to the controversy – a practical over a “legal” solution (if the Award even deserves that qualification) that is odious to one party.

b. An asymmetry of outcomes: under Guyana’s delirious manipulation of the Geneva Agreement, the final settlement of the controversy can take one of two forms: either Guyana is fully victorious and gains 100% of its claims as to the Essequibo territory; or the parties will have to find a middle ground, meaning that Venezuela can never, in no circumstance, obtain sovereignty over the entire territory that, by right, belongs to it.

4.49. Again, one wonders why Venezuela would have entered into the Geneva Agreement – what it expected to gain from it –, and why did *both* parties engage in decades of good offices and negotiations, if supposedly the parties agreed that any solution should be favourable to Guyana, and that if it does not win, it’s a draw. Such an idea is absolutely absurd.

4.50. The truth is that the Geneva Agreement was never a procedural formality, nor a quiet endorsement of a colonial imposition. It was a sovereign act of resistance, a deliberate break from the juridical legacy of empire. For Venezuela, it represented a path toward justice rooted in equality, mutual respect, and the emerging principles of decolonised international law. To pretend to reduce that act to a mere formality for resurrecting a stillborn award is to erase its historical meaning.

4.51. The decades of negotiations and good offices undertaken by Venezuela and Guyana under the Geneva Agreement were not empty gestures, but evidence of a shared understanding: that the arbitral ruling imposed under colonial domination had been left behind.²⁶⁹ This is consistent with the position expressed in *Gabon/Equatorial Guinea*, where the Court stated that it “attaches great weight to the clear, and mutually consistent, conduct of the Parties over many years of negotiations disregarding” the earlier treaty—adding that “[t]he natural inference from this conduct is that at no point did they consider themselves bound by it”.²⁷⁰

4.52. Guyana’s position is reprehensible: it presents itself as the heir to the rights attributed to the United Kingdom by an award as fraudulent as it is repugnant in which it played no part. Yet, Guyana is also one of the parties to an agreement that drew a line over that award in the hope of finding a just solution to a territorial controversy, and it should be held to that obligation (*pacta sunt servanda*).

4. The Obligation to Seek a Mutually Satisfactory Solution of the Territorial Controversy as the Only Outcome

4.53. As repeated several times in the Counter-Memorial and this Rejoinder, the Court lacks jurisdiction over the case; its intervention is at odds with the actual content of the legal obligations that bind the Parties – obligations that, framed in the terms of an instrument such as the Geneva Agreement, cannot lead to any outcome in terms of victory or defeat, but one that requires mutual satisfaction.

²⁶⁹ See Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December, **Annex 1**, recording that the parties exchanged ideas and proposals aimed at a practical settlement of the controversy and that, while it was agreed that certain proposals merited further consideration and that ministerial discussions would resume in Geneva during the week beginning 13 February 1966 to examine these and any additional proposals consistent with the agreed Agenda, but that, as neither side accepted the conclusions of the experts appointed by the other, the exchange of views on the experts’ reports on the examination of documents and discussion of the consequences resulting therefrom would not be discussed.

²⁷⁰ *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment of 19 May 2025, para. 91.

4.54. Accordingly, the only possible outcome is to recognize and respect the binding obligation of the Parties to seek a practical solution of its territorial controversy acceptable to both through negotiations. This obligation, as the Court put it in *Gabon/Equatorial Guinea*, “does not prevent the Parties from agreeing to adjust their land boundary in light of the existing situation on the ground and the interests of the local populations”.²⁷¹ But even so, this obligation is not discretionary, arising as it does from the Agreement, which remains in force, and from the legal logic of novation, which requires that the new obligation replace the old.

²⁷¹ *Id.*, Judgment of 19 May 2025, para. 157.

PART TWO: BEFORE THE GENEVA AGREEMENT

INTRODUCTION TO PART II

1. Having established in Part One the paramount importance and transformative nature of the 1966 Geneva Agreement, this Second Part of this document turns to the historical antecedents that necessitated this novation of the parties' legal relationship and their hope to finally reach a satisfactory settlement of their territorial controversy. Specifically, Part Two will address the parties' previous, and disappointed hope to settle this dispute through the 1899 Arbitral Award. Due to its profound injustices and inherent invalidity, the Award ultimately served to aggravate the dispossession.

2. As also demonstrated in the previous part, the (in)validity of the 1899 Arbitral Award is no longer the decisive factor for the resolution of the current dispute; its primary relevance today is historical. However, an examination of the 1899 Arbitral Award – its flawed genesis, its procedurally and substantively vitiated character, and the manifest injustices it wrought – is indispensable. It illuminates the origins of the controversy and provides the crucial context for understanding why the Parties to the Geneva Agreement consciously chose to bury the 1899 Arbitral Award and chart a new course toward a practical, satisfactory and mutually acceptable settlement.

3. Therefore, the discussion of the 1899 Arbitral Award in this Part is not a concession to Guyana's malicious attempts to defraud the international justice system by unilaterally proposing a process to validate that null and void instrument, which cannot be remedied. Rather, it is driven by a moral imperative to reaffirm the historical truth of the dispossession committed against Venezuela and to thoroughly demonstrate why the 1899 Arbitral Award could never serve as a legitimate or stable basis for relations between the Parties. Indeed, it was the overwhelming evidence of grounds for nullification that convinced the Parties of the necessity to novate the pre-existing legal framework through the Geneva

Agreement. As Guyana has undertaken a spiteful manoeuvre intended to rehabilitate the 1899 Arbitral Award and deny its fundamental flaws, Venezuela is compelled to set the record straight.

4. This Part comprises

a. Chapter V shall meticulously dissect the 1899 Arbitral Award, exposing the multiple, interrelated grounds that render it invalid under established principles of international law. Venezuela will first address and refute Guyana's persistent distortion of the historical facts surrounding the negotiation of the 1897 Treaty of Washington and the arbitral proceedings (**Section B**). Thereafter, Venezuela will demonstrate conclusively that the 1899 Arbitral Award is invalid because: it was rendered on the basis of an invalid treaty procured by error and fraud (**Section C**); the Tribunal improperly failed to state the reasons on which it was based (**Section D**); and the Tribunal manifestly exceeded its powers as granted under the Treaty of Washington (**Section E**). This chapter will conclude by reflecting on the illegitimate genesis of the arbitral award in the shadow of colonialism (**section F**).

b. In a subsequent Chapter VI, Venezuela's will address Guyana's erroneous theory positing that Venezuela's conduct after 1899 would have supposedly validated or cured the inherent defects of the Arbitral Award. Venezuela will demonstrate that Guyana's assertions about its post-1899 conduct are irrelevant for such purposes (**section B**). Furthermore, it will establish that, even if considered, Venezuela's actions, undertaken in a context of structural coercion and before the full extent of the Award's nullity was known, cannot be construed as acquiescence (**section C**). Finally, Venezuela will show that the 1905 demarcation, being merely a technical exercise to mark the line dictated

by the invalid 1899 Arbitral Award, cannot save the Award or the unlawfully established boundary (**section D**).

5. Through this detailed historical and legal analysis, Part Two will provide an irrefutable account of the injustice that lies at the heart of this long-standing controversy, thereby underscoring the wisdom and necessity of the Geneva Agreement as the sole legitimate framework for its resolution.

CHAPTER V: A FRAUDULENT AWARD VITIATED BY MANIFOLD GROUNDS OF INVALIDITY

A. INTRODUCTION

5.1. As indicated in preceding chapters, the 1966 Geneva Agreement requires the parties to reach an amicable and satisfactory settlement of their territorial controversy. The Geneva Agreement reflects the desire of all parties to move beyond prior debates about the (in)validity of the 1899 Arbitral Award. As such, the question of whether the 1899 Arbitral Award is valid or not is no longer useful for determining how the parties can resolve their territorial controversy. Today, the relevance of this question is only historical. Shedding light on the origin of the controversy between Venezuela and Great Britain helps understand why the parties of the Geneva Agreement accepted to replace the 1899 Arbitral Award with a framework that would foster a negotiated and equitable settlement of the dispute.

5.2. It is with this basic premise in mind that Venezuela engages with the question of the (in)validity of the 1899 Arbitral Award. The fact that Venezuela addresses this question must not and cannot be taken as an acceptance of the framework proposed by Guyana regarding the dispute. Venezuela remains faithful to the obligations it has assumed under the Geneva Agreement. This also means that, while the evidence of the invalidity of the Award is clear and irrefutable, Venezuela has to move beyond such invalidity, as the resolution of the controversy hinges exclusively on negotiations leading to an amicable and satisfactory settlement.

5.3. Venezuela will address the (in)validity to demonstrate that it was the victim of a fraud that dispossessed it of its territory. Generations of lawyers and historians, from Venezuela and abroad, have contributed to accumulate evidence of the fraudulent and unjust events that led to the Award of 3 October 1899. These efforts had a major role in convincing the Parties to novate the legal framework for the

settlement of their controversy by concluding the Geneva Agreement. Now that Guyana is attempting to call into question the historical truth of the injustice perpetrated at end of the 19th century, in terms that exceeded those employed before by the UK itself, Venezuela is compelled to refute these false allegations.

5.4. Chapter 5 of Venezuela's Counter-Memorial demonstrated that the Arbitral Award of 3 October 1899 is invalid. As set out in that context, this invalidity is the result of three different, alternative yet interrelated reasons, namely: (a) the fact that the Award was rendered on the basis of an invalid treaty; (b) the fact that the Award failed to state the reasons on which it was based, and (c) the fact that, in rendering the Award, the Tribunal had manifestly exceeded its powers.

5.5. Venezuela's arguments were developed on the basis of the factual account of the period preceding the 1899 Arbitral Award, including the negotiations of the 1897 Treaty of Washington and the proceedings before the Tribunal. They assessed the Award against the yardstick of the internationally-recognised rules governing the invalidity of Awards, drawing on principles adopted in 1875 by the Institut de Droit International,²⁷² the subsequent work of the International Law Commission,²⁷³ and the clarifications brought about by the Court's 1960 judgment assessing the validity of the Arbitral Award made by the King of Spain on 23 December 1906 and its subsequent judgment concerning the Arbitral Award of 31 July 1989.²⁷⁴

5.6. Guyana's response to Venezuela's arguments, set out in its Reply, is selective and often formalistic. However, it does mark an acknowledgement contrary to the position it seemed to be taking in its Memorial; Guyana no longer

²⁷² *Institut de Droit International, Draft Regulations for International Arbitral Procedure*, Basel session 1875.

²⁷³ ILC, *Draft Convention on Arbitral Procedure*, with commentaries, UN Doc. A/CN.4/92 (1955).

²⁷⁴ See, respectively, *ICJ Reports 1960*, 192; *ICJ Reports 1991*, 53.

disputes that Awards – including those rendered in 1899 – are only binding if they are not vitiated by defects resulting in their invalidity. What is more, it now accepts that their invalidity can be assessed even where the underlying treaty does not expressly envisage such a possibility. Venezuela welcomes this clarification.

5.7. Despite its belated recognition of the applicable legal standards, Guyana in its Reply continues to disregard the grave and glaring defects of the 1899 Award. Its position on the question of (in)validity is informed by – and can only be explained by – its wilful misreading and distortion of the historical record. Venezuela’s response in this chapter thus begins with an analysis of these distortions (**section B**). Following that, Venezuela engages with Guyana’s selective treatment of the three defects that render the 1899 Award invalid, affirming in turn that the Award was rendered on the basis of an invalid treaty (**section C**), improperly failed to state the reasons on which it was based (**section D**), and was based on a manifest excess of the powers granted to the Tribunal under the Treaty of Washington (**section E**). The Chapter will conclude with a reflection on the illegitimate genesis of the 1899 Arbitral Award in the shadow of Colonialism (**section F**).

B. GUYANA’S DISTORTION OF THE HISTORICAL FACTS

5.8. Before addressing the different grounds that render the 1899 Arbitral Award invalid, Venezuela deems it necessary to address again some basic points regarding the events that preceded the Tribunal’s decision. Guyana’s Reply is based on such a distortion of the historical facts that re-establishing an accurate picture of reality is imperative.

5.9. In this section, given that the facts which took place during the negotiations of the 1897 Treaty and the proceedings leading to the 1899 Award have already been duly recounted, and their repetition is therefore unnecessary, Venezuela will not restate its historical position of those facts. In that respect Venezuela maintains

all positions already set forth in Chapter 5 of its Counter-Memorial. This section will only respond to the different points of fact made by Guyana in its Reply, which features multiple attempts to deny the unjust and fraudulent treatment inflicted upon Venezuela by the United States and Great Britain imposed on Venezuela. It will start with some general considerations about Guyana's approach to the relevant facts (1). It will then move to correct some of most glaring distortions concerning, respectively, (2) Venezuela's role in the negotiation of the 1897 Treaty, (3) the inclusion of a rule on prescription in the Treaty, (4) the exclusion of Venezuelan arbitrators, and (5) the coercion exerted on Venezuela for accepting the Treaty.

1. Guyana's attempt to build a narrative that makes a mockery of reality: Venezuela did not "get what it wanted"

5.10. It has been the longstanding position of Venezuela that the 1899 Arbitral Award "was the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights"²⁷⁵. In its Counter-Memorial, Venezuela exposed once again its historical position on this matter. In particular, Venezuela provided ample evidence showing that a) it was forced to conclude an arbitration treaty that was clearly prejudicial to its interests, and b) that the arbitral proceedings that took place in Paris were marred by grave irregularities.

5.11. In its Reply, Guyana has not provided a credible answer to the extensive account of the relevant facts offered by Venezuela in its Counter-Memorial. Nor has it made a serious attempt to engage with the evidence submitted by Venezuela to support this account. Three aspects of Guyana's approach to the historical facts warrant a general comment.

5.12. First, Guyana systematically and stubbornly denies even the most evident forms of fraud and coercion of which Venezuela was victim. What an external and

²⁷⁵ Letter from the Permanent Representative of Venezuela, 1962 (VCM, Annex 140).

impartial observer qualified as “une situation quasi-coloniale”²⁷⁶ is presented by Guyana as the privileged situation of an American State under multiple pressures which, thanks to the loyal support of its powerful neighbour, the United States, was able first to coerce Great Britain into accepting arbitration²⁷⁷, then to negotiate an arbitration agreement where “nothing was included ... contrary to its interests”²⁷⁸, and finally to obtain an award which was fully satisfactory to it²⁷⁹. This account of the facts makes a mockery of reality.²⁸⁰ Not even the circumstance that no Venezuelan arbitrator was allowed to sit on the bench of the Tribunal is regarded as problematic by Guyana. In Guyana’s narrative, by obtaining such a composition of the Tribunal, Venezuela allegedly “got what it desired”, since, first, having two United States Supreme Court Justices was supposedly advantageous to Venezuela²⁸¹ and, secondly, because in the end Venezuela was empowered to appoint as one of the arbitrators a Justice of the United States Supreme Court²⁸².

5.13. Guyana’s blatant denial of the unequal treatment imposed upon Venezuela by the United States and Great Britain is outrageous, distorting historical reality to an extreme degree. Such distortion reveals much about Guyana’s approach to historical facts.

5.14. Secondly, in a clear attempt to sow confusion and divert the Court’s attention from the relevant events, Guyana does not hesitate to assert alleged contradictions in Venezuela’s accounts of the historical facts, where in fact there

²⁷⁶ 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*, Springer, Dordrecht, p. 247.

²⁷⁷ GR, para. 2.38.

²⁷⁸ GR, para. 2.56.

²⁷⁹ GR, para. 4.10.

²⁸⁰ In fact, as Guyana itself recognizes, the position of Venezuela, prior, during and after the negotiations of the 1897 Treaty was one of great vulnerability “in the face of Great Britain’s superior military power”. GR 2.18.

²⁸¹ GR, para. 2.83.

²⁸² GR, para. 2.82.

are none. To illustrate this point, in its Reply Guyana devotes considerable energy and many pages to an attempt to demonstrate that Venezuela had requested the intermediation of the United States in order to convince Great Britain to accept arbitration²⁸³. Yet, somehow for Guyana, this circumstance entails that Venezuela cannot now claim, without falling into contradiction, that it was the victim of a fraudulent and unjust process²⁸⁴.

5.15. According to Guyana, supposedly, the fact that Venezuela had requested the intermediation of the United States would be in itself evidence that Venezuela obtained exactly what it wanted. It is clear, however, that there is no contradiction in observing that, while it was Venezuela which requested the United States to intercede, both the United States and the United Kingdom behaved in a way that was highly prejudicial to Venezuela's rights and interests. By focusing disproportionately on Venezuela's request for intermediation, Guyana is simply attempting to direct the attention away from the pertinent facts. Its entire strategy of Guyana aims at building a false narrative asserting that Venezuela "got what it desired" rather than engaging in good faith with the historical evidence presented by Venezuela.

5.16. Thirdly, in its Reply Guyana has alluded several times to a supposed change in Venezuela's account of the historical facts. It contends that it is only now that Venezuela has claimed, for the first time, to have been the victim of a fraudulent collusion between the United States and Great Britain²⁸⁵ or raised the question of the improper communications between British lawyers and British arbitrators²⁸⁶. It

²⁸³ GR, paras. 2.15-2.39.

²⁸⁴ GR, para. 2.29.

²⁸⁵ GR, para. 2.39.

²⁸⁶ GR, para. 3.56.

also pretends that the claim that Venezuela was coerced into concluding the arbitration treaty is a new one²⁸⁷.

5.17. Again, Guyana's assertions distort reality. Venezuela's position, consistently supported by extensive documentary evidence, has remained unchanged over decades. In its Counter-Memorial Venezuela reaffirmed the position to which it has consistently adhered and which it has set forth in different international contexts. To contend, as Guyana does in its Reply, that Venezuela had referred to a collusion between the United States and Great Britain only now is preposterous or in bad faith. A plain reading of the many documents contained in the annexes to Venezuela's Counter-Memorial suffices to confirm that Venezuela has consistently argued that "during the course of the negotiation [of the Arbitral Treaty] , Venezuela was left aside, particularly during its final and most important stage"²⁸⁸, that "the scope of various clauses of the Arbitral Treaty, particularly the prescription clause was made understood to Venezuela in a way different from the one confidentially agreed between (the U.S. Secretary of State) Olney, and the British Government"²⁸⁹, and that "British judges acted under the influence of the British Government"²⁹⁰.

2. Venezuela was not involved in the negotiation, it was only informed of the result

5.18. In its Counter-Memorial, Venezuela has provided much evidence showing that the Arbitration Treaty was negotiated by the United States and Great Britain behind Venezuela's back. The message of the Venezuelan President to the

²⁸⁷ GR, para. 2.96.

²⁸⁸ Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, VCM, Annex 150, p. 12.

²⁸⁹ *Ibid.*, p. 12.

²⁹⁰ *Ibid.*, p. 40.

Venezuelan Congress of 20 February 1897²⁹¹, the letters exchanged between Great Britain's and United States negotiators²⁹², the documents showing the vain attempts made by Venezuela to change the text agreed upon by the negotiating states, all converge in showing that – to use the words of a leading British historian - Venezuela “was not consulted till the very end of the negotiations, and then only perfunctorily”²⁹³.

5.19. In its Reply, Guyana makes no attempt whatsoever to engage with this evidence. By contrast, it claims that there was a close collaboration between the United States and Venezuela throughout the negotiations. Its claim relies on three main arguments, all of which are entirely unsubstantiated.

5.20. First, Guyana emphasizes that there is no evidence showing Venezuela's dissatisfaction with the way in which the United States and Great Britain conducted the negotiation²⁹⁴. To the contrary, Guyana pretends that Venezuela was supposedly satisfied by the manner in which negotiations were conducted and refers to the words of gratitude towards the United States expressed by the Venezuelan President on 20 February 1897 to support its claim²⁹⁵.

5.21. Guyana's claim begs the question. It pretends that Venezuela was involved in the negotiations simply because allegedly there is no evidence showing Venezuela's dissatisfaction with the conduct of the United States. In fact, the letter

²⁹¹ Message from President Joaquín Sinforiano De Jesús Crespo to Congress, 20 February 1897, reprinted in Odeen Ishmael, “Chapter 13: The Arbitral Tribunal and the Award” in *Trail of Diplomacy*, GNI Publications, 1998 (available at: http://www.guyananeews.org/features/trail_diplomacy_pt3.html).

²⁹² Private letter from Sir Julian Pauncefote, British Ambassador in Washington, to Lord Salisbury, 8 December 1886, in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 36 (VCM Annex 150); Telegram from Olney to Storow, 12 December 1896 (VCM, Annex 60).

²⁹³ R. A. Humphreys, “Anglo-American Rivalries and the Venezuela Crisis”, in *Transactions of the Royal Historical Society*, Vol. 17 (1967), pp. 131-164, at p. 158.

²⁹⁴ GR, para 2.41.

²⁹⁵ GR, para. 2.54.

sent by the Venezuelan Minister for Foreign Affairs, Rojas, to Andrade, on 9 December 1896, clearly noted that Venezuela had not actively participated in the negotiations: “[the Executive of Venezuela] has decided to accept, not simply, but with certain changes, the articles proposed, in the drafting of which, unfortunately, it was not given a part”²⁹⁶. Moreover, as the evidence presented in the Counter-Memorial clearly shows, Venezuela was prevented from expressing any possible dissatisfaction. When, in December 1896, it was presented, for the first time, with the text negotiated by the United States and Great Britain, it was given no possibility of making her voice heard. The United States made it clear that the slightest form of dissatisfaction would have been regarded as a sign of ingratitude and would have constituted a hindrance to arbitration. The reply of Secretary of State Olney’s to Venezuela’s timid request to modify the text negotiated by the United States and Great Britain speaks loudly about the position to which Venezuela was relegated: “Present Venezuelan attitude offensive – tends to block all negotiations”²⁹⁷.

5.22. Guyana insists that Venezuela was fully satisfied with the result of the negotiation and gives as evidence the attestations of gratitude towards the United States expressed by different Venezuelan authorities. Yet, it is hardly surprising that a State in the vulnerable position Venezuela had at the time would thank its powerful intermediary, even when that intermediary behaved disloyally by prioritizing its own interests to Venezuela’s detriment – as it indisputably did. The United States had its own political agenda, based on the Monroe Doctrine, which was imposed for the first time using this dispute as a pretext. It wanted Venezuela to sign the Treaty rapidly, irrespective of whether the Treaty was prejudicial to Venezuela’s rights and interests. The letter sent by the President of the United States, Cleveland, to the President of Venezuela, Crespo, was very clear in that

²⁹⁶ Letter from Rojas to Andrade dated 9 December 1896, VCM, Vol. III, Annex 59, p. 2.

²⁹⁷ Telegram from Olney to Storow, 12 December 1896, VCM, Annex 60.

respect: how could Venezuela refrain from accepting a treaty that was presented as “the best possible solution to all concerned of the long pending question?”²⁹⁸ Venezuela was heavily dependent on the support of the United States. It could not risk losing that support and be exposed to the reactions of Great Britain. In this atmosphere imposed by the United States to break the will of Venezuela, all that was open to it was to feign polite gratitude towards its powerful neighbour. The speech of the Venezuelan President of 20 February 1897 reflects this situation²⁹⁹. The President did not fail to report Venezuela’s lack of involvement in the negotiation; at the same time, he could not avoid thanking the United States for having acted as it did.

5.23. Secondly, Guyana claims that documentary record during the relevant period supposedly demonstrates that the United States constantly informed Venezuela about the progress of the negotiations³⁰⁰. Ironically, a significant portion of the documentary record referred to by Guyana consists of letters exchanged between U.S. Secretary of State Olney and British authorities. Guyana fails to mention the compelling evidence of Olney’s deception of Venezuela, revealed to Pauncefote.³⁰¹ Guyana attempts to mask this reality, either by misrepresenting

²⁹⁸ Letter from Mr. Cleveland to General Crespo, dated 8 December 1896, **Annex 13**.

²⁹⁹ Message from President Joaquín Sinforiano De Jesús Crespo to Congress, 20 February 1897, reprinted in Odeen Ishmael, “Chapter 13: The Arbitral Tribunal and the Award” in *Trail of Diplomacy*, GNI Publications, 1998 (available at: http://www.guyananeews.org/features/trail_diplomacy_pt3.html).

³⁰⁰ GR, para. 2.45.

³⁰¹ “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 the 13th July, 1896, was the last thing of record. I did not so reply until I had first written Mr. Cridler, Third Assistant Secretary of State, and received from him an assurance to that effect, made after an examination of the State Department files. The Counsel for Venezuela have unquestionably been banking on that statement of Mr. Cridler’s and my own ever since, and would be both surprised and irritated, and perhaps justly so, if now confronted with writing they had been led to believe did not exist.”, *see* Letter from Richard Olney to Julian Pauncefote, dated 24 May 1899, **Annex 19**.

Olney's position as Venezuela's own³⁰² or by using ambiguous formulas such as "the United States (with Venezuela's concurrence)"³⁰³, without however providing any evidence showing that the Government of Venezuela was indeed consulted or expressed its support.

5.24. Thirdly, Guyana emphasizes the role played in the negotiations by James J. Storrow, the U.S. lawyer who acted as Venezuelan legal advisor during the negotiations. It contends that the letters exchanged between Storrow and Olney during the negotiations testify of the close collaboration between the Venezuelan Government and the United States³⁰⁴.

5.25. Venezuela has already disposed of this matter in its Counter-Memorial, where it addressed the ambiguous role played by Storrow³⁰⁵. While appointed to represent Venezuela's interests, Storrow failed to act as an intermediary between the Venezuelan government and the United States. In fact, he almost never consulted the Government of Venezuela. In several instances, and particularly in the final stages leading up to the conclusion of the Treaty, he played a radically different role: he was the key individual entrusted by the U.S. Secretary of State Olney with the task of convincing Venezuela to accept the text negotiated between the United States and Great Britain.

5.26. In fact, the Government in Caracas had repeatedly expressed its lack of confidence in Storrow, as well as its disagreement with the views expressed by him over the delimitation of the disputed territory. The words of the Venezuelan Minister for foreign affairs are clear in this respect: "You will by this date be aware

³⁰² See in particular the letter referred to at fn. 82 of GR. In this letter, Pauncefoot wrote: "I regret to report that the Secretary of State cannot be induced to accept your Lordship's proposal". No mention is made of any opposition from the Government of Venezuela.

³⁰³ GR, para. 2.48.

³⁰⁴ GR, paras. 2.49-2.52.

³⁰⁵ VCM 5.24.

of the various and powerful motives which have obliged the government to reserve the services of the above-mentioned gentleman, or to defer for the moment the engagement of his services regarding the question of the boundaries of Guayana. The more one meditates on the disparity between his ideas and our ideas concerning the understanding of the territorial rights of the Republic and between his view and our view of the titles on which the Republic relies to defend the Esequibo line, the more dangerous or inconvenient his role in the dispute is deemed to be.”³⁰⁶ If in the end Venezuela accepted to be represented by Storrow, it was only because of the pressure made by the United States. As Olney clearly communicated to Andrade, Venezuela “could not make a greater mistake than to waste the services of such a person as Mr. Storrow”³⁰⁷.

5.27. Guyana contests that there is no evidence demonstrating Storrow’s lack of loyalty to his client³⁰⁸. Yet, a simple review of the correspondence between Storrow and Olney clearly supports Venezuela’s position. In particular, throughout the duration of the negotiation between the United States and Great Britain, of the text of the Arbitration Treaty text, Storrow sent several messages to Olney. Yet, he never mentioned consulting the Government of Venezuela presenting its position. Only once, in a letter of 11 June 1896, did he inform Olney that “I am to send my work to Caracas for inspection before it is filed”, adding immediately after, as if he had to justify himself, that “that is a natural and reasonable request”³⁰⁹. In other circumstances, he openly admitted that he was privy to what the views of the Government of Venezuela were³¹⁰ or defended views despite being aware that Venezuela “would hardly agree to that”³¹¹. The correspondence between Olney

³⁰⁶ Letter from Pedro Ezequiel Rojas to José Andrade, dated 18 May 1896, **Annex 6**.

³⁰⁷ Letter from José Andrade to Pedro Ezequiel Rojas, dated 13 May 1896, **Annex 5**.

³⁰⁸ GR, para. 2.66.

³⁰⁹ Letter from James Storrow to Richard Olney, dated 11 June 1896, **Annex 7**, p. 6.

³¹⁰ Letter from James Storrow to Richard Olney, dated 29 August 1896, **Annex 10**.

³¹¹ Letter from James Storrow to Richard Olney, dated 15 June 1896, **Annex 8**.

and Storrow continued between September and November 1896, the most intense months of negotiations. Nowhere is there in this correspondence a reference to contacts with, or to the views of, the Venezuelan Government. Because of his strict relationship with Olney, Storrow could have been aware of the negotiations between the US Secretary of State and Pauncefoot; he certainly did not inform Venezuela about it. A clear description of Storrow's attitude was given by the American lead counsel for Venezuela, Harrison, two years later. Being informed by his English counterpart of the existence of a confidential correspondence between Olney and Pauncefoot, Harrison observed: "I suppose these notes now presented by Sir Charles [Webster] were not before the Venezuelan Government, but I must believe that they were known to Mr. Storrow; for his relations to Mr. Olney were very confidential... I think 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" ³¹².

5.28. When, in November 1896, the text negotiated between the United States and Great Britain was transmitted to the Government of Venezuela, Storrow was sent to Caracas to present the text. At that point, his role became essentially that of informing Olney about the reactions of the Venezuelan Government and of devising strategies for getting the text accepted. The following exchange of telegrams between Storrow and Olney is highly illustrative in this regard³¹³. On 10 December 1896, Storrow cabled to Olney that there were "sharp attacks about appointment of arbitrators" as well as specific requests concerning the prescription clause³¹⁴. In a new telegram dated 12 December, he wrote: "I prefer no definite answer at present. Would like confidential indication your views". On the same date, Olney replied

³¹² Letter from Benjamin Harrison to Mallet-Prevost, dated 9 March 1899, **Annex 16**.

³¹³ See also letter from James Storrow to Richard Olney, dated 29 August 1896, **Annex 10**.

³¹⁴ The changes requested by Venezuela are detailed in the letter sent by the Venezuelan Minister for Foreign Affairs, Rojas, to Andrade, on 9 December 1896, VCM, Vol. III, Annex 59.

that “Matter closed as between Great Britain and United States”. The day after Storror replied: “Your cable pleases me. Things better. I think I can work it out. President firm”³¹⁵.

5.29. The facts Guyana presents as evidence of a supposed collaboration – Storror’s presence, Olney’s self-appointed role as a defender of Venezuela’s interests, the absence of clear signs of dissatisfaction from Caracas – in fact prove the opposite. They are markers not of partnership, but of coercion. Guyana’s claim is baseless. The Arbitration Treaty was imposed on Venezuela, which was deliberately excluded from a negotiation that predetermined and conditioned the arbitral outcome, thereby putting its territorial rights at risk.

3. The 50-years prescription rule was imposed on Venezuela despite being prejudicial to its interests

5.30. Equally baseless is Guyana’s contention that, far from being opposed to it, “Venezuela favoured inclusion of a rule providing that effective occupation for a prescribed period would constitute valid title to a disputed territory”³¹⁶.

5.31. In addressing the adverse prescription rule a preliminary remark is in order. In its Counter-Memorial, Venezuela developed two distinct arguments in relation to this rule. It argued, first, that the rule in question was clearly prejudicial to Venezuelan interest³¹⁷ and, secondly, that the true meaning of this clause, as agreed between the United States and Great Britain through confidential correspondence, was concealed from Venezuela³¹⁸. In its Reply, Guyana addresses the two arguments together in a twelve-pages section entitled “The 50-year Prescription Rule Was Not Fraudulent and Did Not Prejudice Venezuela”. In fact, ten out of

³¹⁵ See Cable sent by James Storror to Richard Olney, dated 10 December 1896, **Annex 14**.

³¹⁶ GR, para.2.59.

³¹⁷ VCM, paras. 5.33-5.40.

³¹⁸ VCM paras. 5.41-5.67.

twelve pages of this section are directed to rebut Venezuela's argument that the inclusion of the prescription clause was contrary to Venezuela's interests, while only the last two pages rapidly address the question of the confidential agreements between the United States and Great Britain.

5.32. In the following paragraphs, Venezuela will address the argument that the prescription rule was prejudicial to Venezuela. The second argument, on the existence of confidential agreements, will be addressed later together with the question of the invalidity of the 1897 Arbitration Treaty.

5.33. To support its contention that Venezuela supposedly favoured the inclusion of the prescription rule, Guyana relies on the same mix of arguments it uses to claim that Venezuela had been actively involved in the negotiation of the Treaty – namely that supposedly Venezuela never communicated to Olney its opposition to the prescription rule³¹⁹; that Venezuela would have expressed its gratitude towards the United States for the result of the negotiations³²⁰; that in order to defend Venezuelan interests, Olney would have opposed Great Britain's request to refer to a period of prescription shorter than 50 years³²¹; and Storror allegedly supported the inclusion of a rule on adverse prescription³²².

5.34. There is no reason to repeat what has already been said about the role of Storror, the position of Olney, or the fact that Venezuela was not given the possibility of making her voice heard in the negotiation of the Treaty. It is sufficient to consider the different legal title claimed by Venezuela and Great Britain to support their respective claim over the contested territory to realize that the

³¹⁹ GR, para. 2.61.

³²⁰ GR, paras. 2.69-2.70.

³²¹ GR, para. 2.62.

³²² GR, paras. 2.63-2.68.

inclusion of a rule on prescription, including a rule setting a 50 year period for prescription, was prejudicial to Venezuela.

5.35. Venezuela had consistently based its claim of sovereignty over the disputed territory on the discovery of the coast of Guayana by Spain and on the succession of Venezuela into the rights which Spain had over that territory. Discovery and succession were the titles invoked against Great Britain to contest the illegal occupation of the territory of Guayana in the decades before the negotiation of the Arbitration Treaty. It was essentially on these titles that Venezuela based its legal arguments before the Arbitral Tribunal in Paris³²³.

5.36. By contrast, Great Britain, unable to rely on any historical title, and in order to legitimize its aggressive campaign of occupation of the territory of Guayana, consistently denied the relevance of titles based on discovery and invoked de facto control to justify its claim of sovereignty³²⁴. The inclusion of a rule on prescription, particularly with a short time period, was clearly essential for the legal strategy pursued by Great Britain.

5.37. When the negotiations of the arbitration treaty started, the United States was well aware that Venezuela based its legal claim on discovery and succession, and that it was therefore prejudicial to Venezuela to introduce a rule expressly recognizing that prescription made good title. In its Reply, Guyana contests that Venezuela did not cite any source to support this assertion³²⁵. In fact, the sources and evidence are clearly reported in Venezuelan Counter-Memorial. Guyana merely fails to engage with them.

³²³ *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. IV, Paris, 1899, p. 583 and pp. 870 ff.

³²⁴ Letters from Lord Salisbury to Sir Julian Pauncefote, dated 26 November 1895, **Annex 3**.

³²⁵ GR, para. 2.56.

5.38. At paragraph 5.35 of its Counter-Memorial, Venezuela refers to the letter of 5 February 1896 sent to Olney by the Venezuelan Foreign Minister, Pedro Ezequiel Rojas. This letter constitutes a reply by Venezuela to the note sent to Olney on 16 November 1895 by the Secretary of State of Great Britain, Lord Salisbury. In this long letter, Rojas set out in a very detailed way the legal arguments on which Venezuela relied to defend its claim to sovereignty. He made clear that “Spain, as the first discoverer of the coasts of Guayana, could well be considered as owner of the territories thereof, for otherwise the Dutch would not need her recognition of them to make valid their acquisitions in the said territory”³²⁶. He also emphasized that “Venezuela inherited the rights which Spain had in the Captaincy-general of that name”³²⁷.

5.39. Importantly, in the letter Rojas underlined that prescription was the main legal argument on which Great Britain pretended to assert its sovereignty³²⁸. In a detailed analysis of the views expressed by legal scholars on prescription, Rojas pointed out that “several of them hold opinions against prescription, others admit, at the most, immemorial prescription”³²⁹. He also specified that, even if international law were to accept that prescription may, under certain conditions, constitute valid title, Venezuela could not accept to recognize that such conditions were met in the case of Guayana. He stated in clear terms: “the only thing that will be refuted will be the allegation of prescription of twenty-five or fifty years, applying the rules of Ortolan: 1st Great Britain could not possess as owner territories not specified as belonging to the grantor, nor included expressly in the transfer made by Holland...4th The English possession has been and is forcible, which renders it impossible of being converted into lawful origin, however long it

³²⁶ Memorandum by The Ministry of Foreign Affairs of Venezuela: relative to the note of Lord Salisbury to Mr. Olney, dated 26 November 1895, **Annex 33**, p. 17.

³²⁷ *Ibid.*, p. 11.

³²⁸ *Ibid.*, p. 53.

³²⁹ *Ibid.* p. 45.

may last; and it only serves to aggravate by its duration the offense against the proprietor”³³⁰.

5.40. Despite Venezuela’s clear refusal to regard prescription as a valid title to settle the dispute over the territory of Guayana Esequiba, the United States and Great Britain not only agreed to include the rule on prescription in the Arbitration Treaty. What is more, they gave it a prominent place among the rules that the arbitrators were instructed to apply. Olney did not pay any attention to the position of Venezuela as expressed in Rojas’ letter.

5.41. Aware that Venezuelan authorities would resist the inclusion of such rule into the treaty, the United States did not hesitate to mislead them into believing that the rule would have better protected Venezuela’s interests. In a dramatic reversal of the position expressed by the Venezuelan Foreign Minister a few months before, the rule on prescription was presented as a success for Venezuela. Demonstrating once again his lack of loyalty to his client, Storrow sought to overcome the resistance opposed by the Government’s legal experts in Caracas, by falsely affirming that it had been the United States which had led Great Britain to accept the rule on prescription, and not the other way round: “[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. To get England to assent to a rule we wanted was not giving away our case³³¹.”

5.42. Despite the pressure exerted by the United States in order to have the text accepted, Venezuela made a final desperate attempt to modify the rule. This is evidenced by the letter sent by the Venezuelan Foreign Minister, Rojas, to Andrade, on 9 December 1896³³². In his correspondence from Caracas, Storrow informed

³³⁰ *Ibid.*, pp. 54-55.

³³¹ Letter from James Storrow to Richard Olney, dated 29 November 1896, **Annex 11**.

³³² Letter from Rojas to Andrade, 9 December 1896, VCM, Vol. III, Annex 59.

Olney of the mounting criticism against the draft text, including as regards the rule of prescription. In order to address these concerns, in a telegram of 10 December 1896 Storrow transmitted to Olney the following request: “Also would like a clause that rule (a) refers to international law for definition what acts constitute adverse holding. Can you do something?”³³³.

5.43. This request was in line with the historical position of Venezuela on this matter, as reported *inter alia* in the Rojas’s letter of February 1896. As previously noted, Rojas had stressed that under international law prescription may not transform forcible possession into a valid title.

5.44. Yet, once again, Venezuela’s request remained dead letter and its objections dismissed. Olney’s reply was categorical: “Matter closed as between Great Britain and United States”³³⁴.

4. The absence of any Venezuelan arbitrator is the clearest evidence of the fraudulent and unjust treatment accorded to Venezuela

5.45. As already observed, Guyana’s distortion of the historical facts becomes most evident and most outrageous when it comes to the absence of Venezuelan arbitrators in the composition of the arbitral Tribunal. In its Reply, Guyana contends that, with that composition, Venezuela “got what it wanted”³³⁵. Guyana’s position relies on two arguments: First, that the absence of Venezuelan arbitrators was a condition forcefully defended by Great Britain but that did not reflect the position of the United States³³⁶; secondly, that upon Venezuela’s request that the United States to have a say in the appointment of arbitrators, Olney actively

³³³ Cable sent by James Storrow to Richard Olney, dated 10 December 1896, **Annex 14**.

³³⁴ Telegram from Richard Olney to James Storrow, dated 12 December 1896, **Annex 15**.

³³⁵ GR, para. 2.90.

³³⁶ *Ibid.* paras. 2.79-2.80.

engaged to change the text negotiated with Great Britain, thereby giving Venezuela “what it wanted”³³⁷.

5.46. Guyana’s approach to this issue reveals the extent to which it misconstrues the relevant facts. It fails entirely to engage with – or even mention – the evidence submitted by Venezuela showing that, since the early stages of the negotiations, the United States had shown its intention to restrict the composition of the tribunal to English and U.S. judges. Moreover, Guyana distorts the historical record by focusing solely on Venezuela’s last-minute request to amend Article II of the draft text, while wilfully ignoring all other relevant facts.

5.47. In paragraph 5.27 of its Counter-memorial, Venezuela reviewed the telegram sent on 14 January 1896 by United States Secretary of State, Olney, in which he proposed to Great Britain that no Venezuelan arbitrator be included on the future arbitral tribunal: “Tribunal to consist of two members of present American Commission, of two persons chosen by Great Britain, and of a fifth agreed upon by the two Governments”³³⁸. Even more telling, in a confidential note of 25 January 1896, the President of the United States advanced the following proposal: “New proposal to be created by agreement between United States and Great Britain, consisting of two Englishmen and two Americans”³³⁹.

5.48. Guyana makes no attempt whatsoever to rebut this evidence. It simply ignores it, and the reason is clear. This evidence flatly contradicts Guyana’s narrative. It shows that, the United States was against the appointment of Venezuelan arbitrators, and that it was the United States, and not Great Britain, that first suggested replacing Venezuelan arbitrators with United States ones.

³³⁷ *Ibid.* 2.86.

³³⁸ VCM, Annex 55.

³³⁹ Confidential note with proposal from the President of the United States on the composition of the Arbitral Tribunal, dated 25 January 1896, **Annex 4**.

5.49. This evidence also shows that since the beginning of the negotiations, Great Britain and the United States agreed on this issue. Seeking to downplay this fact and cast the United States as a loyal defender of Venezuelan interests, Guyana cites to the concern expressed by Sir Julian Pauncefote over the possibility of the United States accepting the request of Venezuela to appoint a Venezuelan arbitrator. In particular, Guyana quotes this line from a private letter to Lord Salisbury of 8 December 1896: “I am a little uneasy as to whether the U.S. judges may not be urged by him [Secretary of State Olney] to appoint a Venezuelan as Arbitrator”.³⁴⁰

5.50. The quotation is misleading. A full reading of Pauncefote’s letter reveals the broader context. In it, Pauncefote wrote to Salisbury:

“There is no danger of Mr. Olney listening a moment to the Venezuelan howl for a modification of our terms of Arbitration. But I am a little uneasy as to whether the U.S. judges may not be urged by him [Secretary of State Olney] to appoint a Venezuelan as Arbitrator. I enclose a copy of a private note I received from him, and of my reply. He has not revived the subject since the Press here seems to assume that there is an understanding between Mr. Olney and Sr. Andrade that a Venezuelan will be appointed. But it seems to me that there has been an implied understanding with us throughout the whole correspondence and negotiation that the Arbitrators on the side of Venezuela should be American [..]”³⁴¹.

5.51. The letter confirms three points: a) there was an understanding between Great Britain and the United States about the exclusion of Venezuelan arbitrators, b) that Venezuela was never informed nor consulted about this solution, and c) that

³⁴⁰ GR, para 2.80.

³⁴¹ VCM, Annex 150 (emphasis added).

Great Britain had been given assurances that, whatever the reaction of the Venezuelan Government to the draft text, that text would have not been modified.

5.52. Subsequent events fully confirmed Pauncefote's prediction that that "[t]here is no danger of Mr. Olney listening a moment to the Venezuelan howl". At the very time Pauncefote wrote to Salisbury, Storror – then in Caracas to present for the first time the draft treaty to the Venezuelan authorities – wrote a telegram to Olney: "Treaty stands accepted as cabled but there are sharp attacks about appointment of arbitrators and cabinet very desirous have one Venezuelan on tribunal. This would help much with public and Congress"³⁴². Olney's well-known response was blunt and final: "Matter closed as between Great Britain and United States"³⁴³.

5.53. Guyana notes in its Reply³⁴⁴ that, following repeated attempts by Venezuela, the United States and Great Britain eventually agreed to amend Article II of the draft. But Guyana shamelessly presents this superficial adjustment as a victory for Venezuela, as evidence of the fact that Venezuela "got what it wanted". In fact, this superficial modification was meant to mask the arrogance and contempt for Venezuela. The common understanding that had guided the action of the United States and Great Britain throughout the whole negotiation – that the Arbitrators on the side of Venezuela should be American – remained fully intact through to the final text.

5. Fearing British Aggression with United States Support, Venezuela Was Coerced into Signing the Arbitration Treaty

5.54. In its Counter-memorial, Venezuela clearly sets out the impossible dilemma it faced when the United States first communicated to it the draft arbitration treaty negotiated with Great Britain. The draft was clearly contrary to the rights and

³⁴² Cable sent by James Storror to Richard Olney, dated 10 December 1896, **Annex 14**.

³⁴³ Telegram from Richard Olney to James Storror, dated 12 December 1896, **Annex 15**.

³⁴⁴ GR, para 2.82.

interests of Venezuela. But rejecting it would have had two grave consequences: first, the loss of U.S. alleged support; and secondly, a return to the *status quo* prior to the United States' intermediation, marked by repeated incursions and forcible occupation by Great Britain of increasingly large parts of territories claimed by Venezuela. Guyana itself acknowledges this in its Reply, noting that "[t]he alternative for Venezuela was to forego arbitration of the territorial dispute, which has long been its central objective, and once again expose itself to conflict with Great Britain"³⁴⁵.

5.55. Venezuela and Guyana, however, appear to disagree about the consequences that a return to the conflict with Great Britain would have concretely entailed for Venezuela. Guyana admits that a return to the conflict with Great Britain would have had consequences for Venezuela but argues that these consequences "were a reflection of the geopolitical reality, not evidence of 'coercion' by Great Britain or the United States"³⁴⁶. For Venezuela, what Guyana qualifies as "geopolitical reality" is simply a euphemism that masks a reality in which for decades Great Britain had used force against Venezuela to extend its control over the Venezuelan territory. Venezuela was coerced into accepting the treaty precisely because the refusal to sign it would have entailed being again exposed to the aggressive attitude of Great Britain – and this time without being able to rely on the support of the United States.

5.56. Guyana objects that there is no evidence that Venezuela was exposed to a serious risk of forcible actions by Great Britain. This objection is baseless. It also contradicts Guyana's admission that, if Venezuela strongly pushed for a peaceful settlement of the dispute through arbitration and requested the intervention of the United States to obtain it, it was because there existed a situation of structural

³⁴⁵ GR, para. 2.60.

³⁴⁶ GR, para. 2. 99.

coercion dictated by Great Britain's territorial expansion. This situation of structural coercion did not disappear in 1896. To the contrary, the threat of a further territorial expansion by Great Britain became more concrete than ever when Venezuela was asked to accept the text negotiated between the United States and Great Britain.

5.57. The records of the years immediately preceding the start of negotiations over the arbitration treaty provide abundant evidence of the aggressive attitude of Great Britain and of the sentiment of vulnerability resented by Venezuela. Guyana itself, in its Reply, openly recognizes this historical reality.

5.58. As Guyana reports, first in 1883 and then in 1887, Venezuela, "alarmed by the ongoing westward expansion of British settlement into what it claimed was its own territory" and "[f]eeling vulnerable in the face of Great Britain's superior military power and diplomatic stalemate", repeatedly sought U.S. assistance to resolve the dispute peacefully³⁴⁷.

5.59. Guyana also cites the 19 December 1894 letter from Venezuela's Minister in Washington, José Andrade, to W. Q. Gresham, Secretary of State of the United States. In this letter, Andrade clearly explained the danger that the aggressive attitude of Great Britain represented in the eyes of Venezuelan authorities: "As Your Excellency will understand, the dispute already has a phase that we could 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 centres. In view of this, and as the Venezuelan Government always endeavours to exhaust all lawful means to reach an amicable settlement, it wishes to inform the Embassy of the new danger posed by this matter [..]"³⁴⁸.

³⁴⁷ GR, paras. 2.16-2.20.

³⁴⁸ See the letter reported in GR, para. 2.23.

5.60. In a message sent to Lord Salisbury on July 1895, equally reported in Guyana's Reply, Secretary of State Olney refers openly to "new alleged instances of British aggression upon Venezuelan territory". Olney admitted that the attitude of Great Britain "in effect deprives Venezuela of her free reason and puts her under virtual duress"³⁴⁹.

5.61. In sum, there is conclusive evidence showing that Venezuela faced constant threats of British aggression and saw the arbitration treaty, brokered by the U.S., as its only peaceful alternative. Guyana cannot insist that Venezuela appealed to the United States to help it obtain an arbitration agreement, without at the same time recognizing that such help from the United States was Venezuela's only option to put to a halt Great Britain's military threat.

5.62. This the more so since the forcible interventions by Great Britain continued even in the months when negotiations were taking place. In a letter send to Olney on 18 August 1896, Andrade informed about a "new aggression of Great Britain", making clear that "if the Republic does not firmly stand against such advances of the British, they will take them as far as they please, and will then say that the territories thus occupied cannot be arbitrated because they are Settled Districts"³⁵⁰. The structural coercion of which Venezuela was victim is clearly evidenced by the fact that, in the same cable with which Andrade informed Olney that Venezuela was keen to accept the result of the negotiation, he also wrote that "Venezuela expects by treaty or by diplomatic notes through your agreement to prevent aggression or unfriendly acts near line of contact and also that no new mining concessions shall be granted"³⁵¹.

³⁴⁹ GR para. 2.27-2.29.

³⁵⁰ Letter from José Andrade to Richard Olney, dated 18 August 1896, **Annex. 9**.

³⁵¹ Cable from José Andrade to Richard Olney, dated 5 December 1896, **Annex 12**.

5.63. Venezuela's consent to be bound by a treaty which was unjust and prejudicial to its interests, was not freely given. In fact, that consent was procured by the threat of forcible measures against it. As shown in Venezuela's Counter-Memorial, the United States had made it clear that they would have withdrawn their support to Venezuela had Venezuela not accepted the treaty³⁵². This would have immediately exposed Venezuela to the risk of Great Britain using again force to extend its dominion over the disputed territory.

5.64. A last observation is in order. In its Reply Guyana refers to a statement made by the President of Venezuela, Crespo, in which he declared that "[t]he 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"³⁵³. Guyana suggests that this statement is evidence of the fact that Venezuela was not coerced into signing the arbitration treaty. This is disingenuous. That President Crespo felt compelled to state there was no coercion speaks volumes about the perception in Caracas at the time as regards the pressure put on the government to accept the text. And importantly, Crespo was clearly referring to the conduct of the United States, not Great Britain. President Crespo was denying that the United States had coerced Venezuela into accepting the Treaty – an opinion which, as reported by Storrow to Olney³⁵⁴, found support in Venezuelan public opinion. This denial had nothing to do with the threat to the use of force coming from Great Britain.

6. Interim conclusion

5.65. In its Counter-Memorial Venezuela has provided a rich body of evidence showing the unjust and fraudulent treatment accorded to it by the United States and Great Britain during the negotiation of the 1897 Treaty. In its Reply Guyana avoids

³⁵² VCM, para. 5.75.

³⁵³ GR, 2.100.

³⁵⁴ Letter from James Storrow to Richard Olney, dated 29 November 1896, **Annex 11**.

to seriously engage with such evidence, preferring to describe a parallel reality in which Venezuela allegedly actively instructed the United States about the conduct of the negotiation, where the exclusion of any Venezuelan arbitrator was clearly in the interest of Venezuela, and where the 50-years prescription rule was the best solution to defend Venezuela's legal claims. This parallel reality is grounded in a shameless manipulation of the facts. Venezuela had no role in the negotiation and did not get what it wanted. The colonial dynamic at play in the relationship with Great Britain and the United States forced Venezuela to sign a treaty which was openly contrary to its interests – a treaty which, as shown in the next section of this chapter, was negotiated so to avoid to make Venezuela aware of the true meaning of certain crucial clauses.

C. THE AWARD IS INVALID BECAUSE IT WAS RENDERED ON THE BASIS OF AN INVALID TREATY

5.66. The Arbitration Treaty of 1897 was invalid on the ground of error and fraud. This is so because, as stated in 1965 by the Minister of Foreign Affairs of Venezuela, Ignacio Iribarren Borges, “the correspondence exchanged between the United States and Great Britain during the decisive period of the negotiation (September to November 1896) was concealed from Venezuela until 1899, in other words, two years after the signature of the Treaty”³⁵⁵. In its Counter-Memorial, Venezuela demonstrated how both the law and facts support its position.

5.67. As regards the applicable law, Guyana concedes that “Articles 48 and 49 of the 1969 Convention reflect, in large part, the rules applicable at the time the Washington Treaty was signed and ratified”³⁵⁶ and that “the Parties are not

³⁵⁵ Statement made by Dr. Ignacio Iribarren Borges, Venezuelan Foreign Minister, to the Ministerial Conference Held in London (9 December 1965), Guyana's Memorial on the Merits (“GMM”), Vol. IV, Annex 76.

³⁵⁶ GR, para. 2.7.

significantly divided on this point”³⁵⁷. Guyana does not give clear indications about the possible residual differences between the Parties. It only observes that “Venezuela fails to point out that the error must be demonstrated by ‘convincing evidence’”³⁵⁸. If this is Guyana’s only objection, in a rare moment of clarity, it is evident that it finally acknowledges the applicable law. Venezuela does not object that error or fraud must be proved by convincing evidence. It is indeed by convincing evidence that Venezuela has demonstrated the error and fraud of which it was victim.

5.68. In its Counter-Memorial, Venezuela presented evidence showing irrefutably that during the negotiations of the Arbitration Treaty, the United States and Great Britain exchanged confidential correspondence, that this correspondence concerned the interpretation to be given to fundamental clauses of the Treaty, that Venezuela was never informed of these exchanges between the two negotiating states, and that the relevant correspondence was used against Venezuela during the arbitral proceedings in Paris.

5.69. In its Reply, Guyana fails to engage with the evidence presented by Venezuela. It devotes only two pages to this issue³⁵⁹, even though it is crucial for determining the alleged validity of the 1897 Treaty.

5.70. Venezuela will not restate here what it has already extensively demonstrated in its Counter-Memorial³⁶⁰. Given the importance of these points, however, it deems it useful to recall the two issues on which the existence of this confidential correspondence had a most evident impact.

³⁵⁷ GR, para. 2.9.

³⁵⁸ GR, para. 2.10.

³⁵⁹ GR, paras. 2.71-2.78.

³⁶⁰ VCM, paras. 5.41-5.67.

5.71. The first issue concerns the interpretation to be given to Article IV (a) of the 1897 Treaty. According to this provision, “[a]dverse holding or prescription during a period of fifty years shall make a good title”. Unlike Article IV (c), which expressly establishes that the critical date for the application of that clauses is “the date of this Treaty”³⁶¹, Article IV (a) does not provide that the critical date for calculating the fifty-year period is the date of the conclusion of the 1897 Treaty. The difference in formulation between Article 4 (a) and Article 4 (c) clearly supports the view that the starting point for calculating the prescription period was not 1897.

5.72. In its Counter-Memorial, Venezuela provided evidence showing that, during the arbitral proceedings, Great Britain made use of the confidential correspondence³⁶² – unknown until that moment to Venezuela – to show that it was the intention of the negotiating parties to take the date of the conclusion of the Treaty as critical date for prescription³⁶³. In particular, Venezuela provided evidence attesting the following facts³⁶⁴:

- That in its written memorial submitted to the Arbitral Tribunal, Venezuela had argued that the starting point for prescription was the date when Great Britain acquired the Colony of British Guiana and that therefore Article IV (a) had no application to the period subsequent to 1814;

³⁶¹ “In determining the boundary-line, if territory of one party be 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, such effect shall be given to, such occupation as reason, justice, the principles of international law, and the equities of” the case shall, in the opinion of the Tribunal, require”.

³⁶² *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. I, Paris, 1899, p. 27.

³⁶³ *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. VII, Paris, 1899, p. 1752.

³⁶⁴ VCM, paras. 5.49-5.61.

- That, as it results from a letter of 12 May 1899 sent by lead counsel of Great Britain, Sir Webster to the American counsel for Venezuela, Mallet Prevost, neither the Venezuelan Government nor the U.S. lawyers defending Venezuela were aware of the confidential correspondence, which contradicted the interpretation defended by Venezuela³⁶⁵;
- That, after the initial refusal of the U.S. lawyers defending Venezuela to accept the request of Great Britain to change Venezuela's position in this regard, the British Ambassador, Pauncefote, in a letter of 12 May 1899, informed Secretary of State Olney of Great Britain's intention to use the confidential correspondence to show that the negotiating parties had agreed that the relevant period for prescription was the period immediately prior to the date of the Treaty; Olney's response to Pauncefote provides a further evidence of the fact that at the most important stage of the negotiation Venezuela was left in the dark;³⁶⁶
- That the Venezuelan Government, informed by the U.S. lawyers in Paris about Great Britain's request to withdraw the argument, strongly opposed any change in the legal strategy;³⁶⁷

³⁶⁵ See Letter from Richard Webster to Mallet-Prevost, dated 12 May 1899, **Annex 18** ("We gather from your letter that those who prepare the Argument on behalf of Venezuela were not acquainted with the Correspondence which led up to the Treaty of Arbitration. This may no doubt to some extent account for the contentions to which we were obliged to take exception, because we are convinced that no one who was a party to or acquainted with the negotiations between Mr. Olney and Sir Julian Pauncefote can have any doubt whatever that the position which we take up is not only justified by the antecedent negotiations, but is the only one which is consistent with them").

³⁶⁶ Letter from Richard Olney to Julian Pauncefote, dated 24 May 1899, **Annex 19**.

³⁶⁷ Letter from J. Calcaño to José Andrade, dated 23 March 1899, **Annex 17**.

- That in a private meeting with the lead counsel of Great Britain, which took place on 13 June 1899, the American lead counsel for Venezuela, Harrison, accepted to withdraw the argument, considering that “the good faith of the United States, through whom the Treaty was made, was involved in the matter”³⁶⁸;
- That, in an oral statement before the Arbitral Tribunal, Harrison, referring to the confidential letters exchanged between Olney and Pauncefote – and openly contravening the instructions of the Venezuelan Government – did in fact withdraw the argument, affirming: “I would not be candid if I did not say [the notes] seem clearly to indicate that Mr. Olney and Sir Julian Pauncefote understood that the prescriptive period applied to the years after 1814”³⁶⁹.

5.73. Guyana’s says nothing on this matter. Not a word on Venezuela’s original position in respect of the interpretation of the Treaty. Not a word on the Great Britain’s pressure on the U.S. lawyer defending Venezuela to withdraw that argument. Not a word on the use made by Great Britain of the confidential correspondence. Not a word on the indecent attitude shown by U.S. lead counsel for Venezuela, Harrison, who withdrew the Venezuelan argument despite clear instructions to the contrary received from the Venezuelan authorities.

5.74. Guyana maliciously argues that Venezuela cannot invoke an error in which it allegedly took part. Yet, it provides no evidence of Venezuela’s participation in the error. The best it can offer, in this respect, is the unsubstantiated statement that “it is most unlikely that the contents [of the confidential letters] were not known by

³⁶⁸ 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*, p. 27 (available at the Peace Palace Library).

³⁶⁹ *Verbatim* record of the 1899 proceedings, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, pp. 28-30 (available at the Peace Palace Library).

Venezuela's representatives — Mr. Storrow and Minister Andrade — who met with the Secretary at his home the previous evening”³⁷⁰. Yet, what appears most unlikely to Guyana, appears very likely to the U.S. lawyers defending Venezuela. In a striking passage of a letter sent to Mallet Prevost on 9 March 1899, the American lead counsel for Venezuela, Harrison, observed: “I suppose these notes now presented by Sir Charles [Webster] were not before the Venezuelan Government, but I must believe that they were known to Mr. Storrow; for his relations to Mr. Olney were very confidential”³⁷¹. He also added: “I think 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”³⁷².

5.75. Guyana also claims that Venezuela could have avoided the error by not introducing the confidential correspondence into evidence before the Tribunal. This is yet another distortion. The evidence shows that it was Great Britain – not Venezuela – that introduced the documents and threatened to use them, both with Olney and the U.S. lawyers defending Venezuela, making it clear that it intended to make use of the confidential correspondence to oppose Venezuela's arguments. It was Great Britain which presented the documents to the Tribunal. Guyana's response – a mix of omissions and unsubstantiated allegations – reveals the absence of arguments to rebut Venezuela's contention.

5.76. These facts clearly establish that the conditions of Articles 48 (error) and 49 (fraud) of the VCLT are met. Venezuela was misled about the meaning of a critical clause. By keeping their correspondence confidential, the United States and Great Britain concealed to Venezuela the existence of an agreement about the interpretation to be given to Article IV. The error and fraud concerned an essential

³⁷⁰ GR, para. 2.76.

³⁷¹ Letter from Benjamin Harrison to Mallet-Prevost, dated 9 March 1899, **Annex 16**.

³⁷² *Ibid*.

part of the 1897 Treaty, as the determination of the relevant period for the calculation of the prescription was crucial for establishing the impact of the rule of prescription on Venezuela's aspiration to see its sovereignty over the disputed territory recognized by the Tribunal. Finally, Venezuela did not contribute to the error since it was not, and could not be, aware of the existence of a confidential correspondence between Great Britain and the United States. The disloyal attitude of the U.S. lawyers and advisors representing Venezuela both during the negotiations of the Treaty and during the arbitral proceedings further contributed to keep Venezuela in the dark about the true meaning of the prescription clause.

5.77. The error and fraud of which Venezuela was victim is also confirmed by the use made by Great Britain of another piece of confidential correspondence, concerning this time the 1850 Agreement between Venezuela and Great Britain.

5.78. In its Counter-memorial³⁷³, Venezuela has provided ample evidence showing that, during the negotiations of the 1897 Treaty, the United States and Great Britain had agreed not to refer to the 1850 Agreement in the text of the Arbitration agreement. Venezuela was never consulted about this decision, as also attested by the fact that, once informed of the content of the draft text, the Venezuelan Foreign Minister requested that a reference to the Agreement be included in the Arbitration Agreement³⁷⁴ – a request which remained dead letter. The confidential correspondence attesting the agreement on this point between the two negotiating States was later used during the arbitral proceedings for interpreting the content of the clause of the 1897 Treaty dealing with prescription.

³⁷³ VCM, paras. 5.62-5.67.

³⁷⁴ Letter from Rojas to Andrade dated 9 December 1896, VCM, Vol. III, Annex 59. ("The third addition is as follows: 'The High Contracting Parties confirm the agreement concluded among them on the 18th of November and 20th of December of 1850, by which they declared that they had no intention of occupying any part of the territory in dispute, and that they would abstain from taking measures that could justly be considered as aggressive'").

5.79. In its Reply, Guyana fails to provide serious arguments against the existence of such confidential agreement. It first observes that there is no evidence demonstrating that the letter of the Venezuelan Foreign Minister, which was addressed to the Venezuelan Ambassador in Washington, was ever communicated to the United States³⁷⁵ – as if one should assume that the Ambassador of Venezuela had the authority of refusing to transmit the letter of the Venezuelan Foreign Minister to the U.S. authorities. Guyana is lying; there is evidence. Guyana omits Andrade's report to the Venezuelan Foreign Minister, Rojas, about its meeting with Olney.³⁷⁶

5.80. Guyana also insists that the omission of any reference to the 1850 Agreement had no consequences for Venezuela. This would be so, according to Guyana, because, by fixing in 50 year the period for prescription, Olney would have ensured that the 1897 Treaty preserved the force of that Agreement³⁷⁷.

5.81. This argument is entirely without merit. It fails to recognize the critical role of the 1850 Agreement in determining the starting point for the prescription period. This is a crucial point, as an express reference to the 1850 Agreement in the 1897 Treaty would have provided a decisive argument for interpreting the Treaty to the effect that the starting point could not be 1897, as claimed by Great Britain, but have been earlier, namely before 1850. This is because the 1850 Agreement, by binding both Venezuela and Great Britain not to occupy the disputed territory, prevented Great Britain from asserting that prescription could run during the period

³⁷⁵ GR, para. 2.71.

³⁷⁶ "Mr. Olney found all the additions commendable, save the one regarding prescription, about which he expressed with some discouragement that he deemed it superfluous, believing such an interpretation as that which concerned Venezuela to be neither possible nor 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. 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." *See* Letter from José Andrade to Pedro Ezequiel Rojas, dated 28 December 1896, **Annex 39**.

³⁷⁷ GR, para. 2.74.

in which the Agreement remained in force. In other words, an occupation since 1847 would have been interrupted after three years and, therefore, could not create any title to the disputed territory.

5.82. Venezuela has consistently emphasized the importance of the 1850 Agreement in determining the applicable prescription period. Indeed, during the proceedings before the Arbitral Tribunal, Venezuela maintained the view that prescription could not run during the period covered by Agreement³⁷⁸.

5.83. Yet, the agreement between Great Britain and the United States “not to give the Agreement of 1850 any status on the face of the Convention even by reference”, as indicated in the confidential letter of Secretary of State Olney of 29 October 1886³⁷⁹, deprived this argument of much of its force. The letter, which was disclosed during the proceedings, diminished the importance to be accorded to the 1850 Agreement. It even allowed to raise doubts as to its continued validity. Great Britain did not fail to exploit this circumstance. As reported in the Counter-memorial, Great Britain claimed before the Tribunal that the Agreement had come to an end before 1886 and that the critical date for the purposes of the prescription period was only the date of the conclusion of the Treaty³⁸⁰.

5.84. The existence of confidential correspondence concerning the status of the 1850 Agreement in the relation to the Arbitration Treaty confirms that Venezuela was induced into error and was a victim of fraud when giving its consent to the Treaty. For this reason, the 1897 Treaty is to be regarded as null and void.

³⁷⁸ *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. VII, Paris, 1899, pp. 2041-2051.

³⁷⁹ 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 (VCM, Vol. IV, Annex 150).

³⁸⁰ VCM, para. 5.67.

D. THE AWARD IS INVALID BECAUSE THE TRIBUNAL FAILED TO STATE THE REASONS ON WHICH IT WAS BASED

5.85. In its Counter-memorial Venezuela has demonstrated that the absence of any reasoning in the 3 October 1899 Award is, by itself, sufficient ground to declare the Award null and void. Two distinct arguments support such conclusion.

5.86. First, as set out in paras 6.60-6-71 of Venezuela's Counter-memorial, international law imposes on adjudicator a duty to state the reasons for an award. Failure to state the reasons is a recognized ground of invalidity of the award.

5.87. In its Reply, Guyana offers no new rebuttal, merely confining itself to repeating what it had already written in its Memorial. Its position hinges a single contention, namely that the law in force at the time when the Award was rendered allegedly did not require that an award be reasoned and did not recognize the absence of reasons as a ground of invalidity of an award.

5.88. Guyana seems to suggest that at the relevant epoch there was no consensus among states about the existence of a duty to state the reasons for an award. It refers to the 1899 Hague Peace Conference to support its contention³⁸¹. But this argument collapses under scrutiny. The principal opposition at the Conference came from the Russian delegate, Martens. In its Counter-memorial Venezuela had detailed how Martens' objections were isolated and unpersuasive.³⁸² It suffices here to note that Martens' opposition remained an isolated voice. In fact, legal scholars widely agree that the 1899 Hague Conference marked the formal establishment of the duty to give reasons³⁸³. Writing in 1903, Alvarez could observe that "[l]'opinion des

³⁸¹ GMM, para. 8.33 and GR para 3.13.

³⁸² VCM, paras. 6.74-6.76.

³⁸³ Castberg, 'L'excès de pouvoir dans la justice internationale' (1931) 35 *Recueil des cours* 353, at p. 389 ("La règle d'après laquelle les sentences arbitrales doivent être motivées 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").

publicistes est unanime sur ce point. Toute sentence doit être motivée, sauf dispense expresse dans le compromis”³⁸⁴.

5.89. While the 1875 Resolution of the *Institut de droit international* recognizes a duty to state the reason, it does not list the lack of reasons as an autonomous ground of invalidity of an award. Yet, this is more a question of form than substance. An overview of the scholarly consensus at the time reveals that while certain authors regarded the lack of reasons as an autonomous ground of invalidity of awards³⁸⁵, others qualified it as a species of excess of power – a ground of invalidity which is, in fact, expressly mentioned in the 1875 Resolution³⁸⁶. Either way, an unreasoned award was invalid.

5.90. This also finds indirect confirmation in the Court’s judgment in *Arbitral Award made by the King of Spain*. Contrary to what Guyana alleges, the lack of reason was very much at issue in that case. The Court did address Nicaragua’s claim concerning “the alleged lack or inadequacy of reasons in support of the conclusions arrived at by the arbitrators”³⁸⁷. The fact that the Court did not elaborate on whether this was a recognized ground of invalidity simply reflects that the parties themselves were, on this point, in agreement³⁸⁸.

³⁸⁴ Alvarez, ‘Des occupations de territoires contestés: A propos de la question de limites entre le Chili et la République Argentine’ (1903) 10 *Revue générale de droit international public* 651, at p. 681.

³⁸⁵ Fiore, *Le droit international codifié et sa sanction juridique*, Paris, 1890, p. 294; Pierantoni, “La nullité d’un arbitrage international” (1898) 30 *Revue de Droit International et de Législation Comparée*, p. 459.

³⁸⁶ Castberg, ‘L’excès de pouvoir dans la justice internationale’ (1931) 35 *Recueil des cours* 353, at p. 389; Balasko, *Causes de nullité de la sentence arbitrale en droit international public*, Paris, 1938, p. 273.

³⁸⁷ *Arbitral Award made by the King of Spain on 23 December 1906, Judgment*, I.C.J. Reports 1960, p. 216.

³⁸⁸ *Arbitral Award made by the King of Spain on 23 December 1906, Judgment*, I.C.J. Reports 1960, p. 346. (Röling) (see also <https://www.icj-cij.org/sites/default/files/case-related/39/039-19600915-ORA-01-00-BI.pdf>).

5.91. Guyana devotes also considerable energy in showing that the Arbitration Treaty of 1897 does not contain any explicit reference to the duty of the arbitrators to state the reason for the award³⁸⁹. The omission, however, is simply irrelevant, as under international law applicable at the time existed independently of treaty language. Arbitrators, therefore, were under a general duty to state the reasons for the award. The only question is whether the Treaty explicitly relieved the Tribunal of that duty – which it did not.

5.92. In its Counter-memorial Venezuela has already demonstrated that the structure and content of the 1897 Treaty strongly imply an expectation that the Tribunal would provide a reasoned decision³⁹⁰. The fact that the Treaty, in a very detailed way, indicated the rules to be applied to adjudge the case, together with the fact the arbitrators had been selected on the basis of their legal expertise and background, all militate in favour of this reading.

5.93. This expectation is also confirmed by contemporaneous statements. Of particular importance, in this respect, is a statement made at The Hague Peace Conference in 1899 by the representative of the United States a few months before the Tribunal rendered its award. Replying to Martens, who had expressed his opposition against the possibility that an award of an arbitral tribunal be subject to revision, Mr Holls observed:

“Before the decision has been rendered it is not always possible to know what species of fact or what argumentation has made the greatest impression upon the judges and has determined their decision. Take, for example, the question in controversy at this moment before the court of arbitration of which our honourable colleague from Russia is acting so worthily as president - the question of the frontier between British

³⁸⁹ GMM, paras. 8.20-8.29; GR, para. 3.10.

³⁹⁰ VCM, paras. 6.63-6.67.

Guiana and Venezuela. In this case the delay of three or six months could not be truly called anything but minimal, in view of the fact that this difference has existed and gone on for three or four years, and, in a form more or less obscure, for more than eighty years. It would therefore be unimportant whether the decision should be rendered on the first of October or the first of January, by comparison with the danger arising from a manifestly erroneous or unjust decision. Among other things this controversy implies the interpretation of treaties made more than two hundred and fifty years ago; it includes a great number of historical precedents, or questions about colonization, of jurisdiction over the barbarous tribes, as well as questions of the weight and authority to be given to different maps. Upon these latter both parties will lay great stress, in order to prove that their contentions have already been recognized and admitted. Up to the moment of the decision of the tribunal it will be impossible to know what kind of facts and what argumentation have determined the award”³⁹¹.

5.94. As this passage makes clear, the representative of the United States clearly expected that the award of the Tribunal presided by Martens would set “the facts and argumentation” at the basis of the decision. In other words, he expected a reasoned award. The statement is all the more telling since it comes from the representative of the very state which had negotiated the treaty.

5.95. In sum, the 1899 Arbitral Award was rendered at a time when the duty to state the reason for an award was widely recognized by states and on the basis of an arbitration treaty which, because of its specific features, clearly created an expectation that the Tribunal would provide reasons for its decision.

³⁹¹ J.B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, pp. 621-622.

5.96. Guyana nevertheless contends that these circumstances are insufficient to conclude that the 1899 Arbitral Award was invalid for absence of reasons. To support its contention, it refers to the arbitration practice of the 19th century, in an attempt to show that unreasoned awards reflected the norm at the time the 1899 Arbitral Award was rendered.

5.97. But Guyana's argument amounts to little more than the collection of unrelated and contextually irrelevant arbitral decisions. The examples it cites either predate the evolution of modern arbitration law or, for the specific features of the concerned arbitral agreements, are entirely inapposite.

5.98. The awards in the River Saint Croix and in Decision under Article IV of the Treaty of Ghent cases³⁹² were rendered respectively more than a century and more than eighty years before the 1899 Arbitral Award – at a time when international arbitration was still in its infancy. In the Halifax Fisheries Commission and in Award by the Venezuela-United States Mixed Commission at Washington cases,³⁹³ the arbitrators were requested to decide the claims submitted to them “in accordance with justice and equity”³⁹⁴. As already observed in Venezuela's Counter-memorial³⁹⁵, where a *compromis* authorized an adjudicator to decide *ex aequo et bono*, arbitrators often did not consider it necessary to issue reasoned decisions. In the Demarcation of the Puna de Atacama boundary between Argentine Republic and Chile case³⁹⁶, it was the *compromis* which dispensed the arbitrators from rendering a reasoned award. As Guyana admits, “Article IV of the

³⁹² GR, pp. 179-182.

³⁹³ *Ibid.*, pp. 182-184 and pp. 186-188.

³⁹⁴ H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire documentaire des arbitrages internationaux*, 1902, p. 149 and p. 421.

³⁹⁵ VCM, para. 6.66.

³⁹⁶ GR, pp. 188-189.

1898 Agreement provided that there should be a statement of reasons only for a dissenting opinion”³⁹⁷.

5.99. Confusingly, Guyana’s list also includes decisions that do, in fact, contain statements of reasoning. This is clearly the case, as Venezuela already observed in its Counter-memorial³⁹⁸, for the awards rendered in the Bering Sea Fisheries and in the San Domingo Improvement Company Claims cases³⁹⁹. During the 1899 Hague Conference Martens himself cited the Bering Sea award as an example of a reasoned decision acknowledging that some members of the tribunal refused to sign the award precisely because it included reasons”⁴⁰⁰. The same objection applies to the award rendered in The Alaska Boundary Case. This award cannot plausibly be regarded – and was not, in fact, regarded by contemporary commentators⁴⁰¹ - as an unreasoned award, since it was accompanied by the opinions of each arbitrator, spanning over more than forty pages and explaining the reasons of their decision⁴⁰².

5.100. As previously noted, Venezuela advanced in its Counter-Memorial two independent and parallel arguments to show that the absence of reasons renders the 1899 Arbitral Award invalid. Guyana’s Reply fails to meaningfully challenge the first and ignores the second altogether.

5.101. In its Counter-memorial, Venezuela has shown that, depending on the circumstances, the lack or the inadequacy of reasons in support of an award creates a presumption that the arbitrators did not comply with the conditions established by the *compromis* and justifies the conclusion that the award is invalid for excess of

³⁹⁷ GR, p. 189.

³⁹⁸ VCM, para. 6.70.

³⁹⁹ GR, pp. 184-186 and 191-192.

⁴⁰⁰ J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 748.

⁴⁰¹ L. Rolland, in *Revue générale de droit international public*, t. 11, 1904, p. 210.

⁴⁰² *The Alaska Boundary Case (Great Britain, United States of America)*, Award of the Alaska Boundary Tribunal, 20 October 1903, *UNRIIAA*, Vol. XV, pp. 496-535.

power.⁴⁰³ Referring to the question of the validity of the 1899 Arbitral Award, Paul Reuter observed that “[l]a question de savoir si l’absence de motivation était en elle-même contraire aux règles applicables à cet arbitrage est moins importante que celle de savoir si la sentence a été fondée sur des procédés entièrement étrangers aux normes posées par le compromis du 1897 et au demeurant incompatibles avec les méthodes arbitrales”⁴⁰⁴.

5.102. In its Counter-memorial Venezuela has already shown that the Tribunal exceeded its powers by deviating, on multiple issues, from the terms assigned to it by the arbitration treaty⁴⁰⁵. The next section of this Chapter will further develop on this. Any interpretation in this regard can only be based on the simple fact of the absence of reasons for reaching the same conclusion, namely that the 1899 Arbitral Award is invalid for excess of power.

5.103. The idea that lack of reasoning may prove an excess of power was already recognized at the time the Award was rendered⁴⁰⁶. Balasko qualifies this situation as excess *de pouvoir par omission*, since, by omitting to give the reasons for their decisions, the arbitrators make it impossible to determine whether they applied the rules which the *compromis* required them to apply in reaching their decision⁴⁰⁷.

5.104. The 1899 Arbitral Award falls squarely within this category of excess *de pouvoir par omission*. In this case the *compromis* fixed rigid instructions to the arbitrators. Articles III and IV of 1897 Arbitration Treaty established in detailed way the rules that they were required to apply and the order in which the different

⁴⁰³ VCM, paras. 6.72-6.85

⁴⁰⁴ 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*, Springer, Dordrecht, p. 247.

⁴⁰⁵ VCM, paras. 6.86-6.190.

⁴⁰⁶ See VCM, para. 6.73.

⁴⁰⁷ Balasko, *Causes de nullité de la sentence arbitrale en droit international public*, Paris, 1938, p. 273.

issues were to be addressed in order to decide the territorial dispute between Venezuela and Great Britain. The Award, however, provides no indication of whether these terms were observed. As a result, it is impossible to ascertain whether the Tribunal acted within its mandate – rendering the Award invalid for excess of power.

5.105. This conclusion is all the more compelling in the light of contemporaneous evidence showing that the president of the Tribunal, Martens, was well aware of the implications of being required to issue a reasoned decision. At the Hague Peace Conference, he took a strong position against the recognition of such obligation, presenting it as “a hindrance from a practical point of view”⁴⁰⁸, “an obstacle in the way of an absolutely just decision”⁴⁰⁹. As other scholars have noted⁴¹⁰, it is difficult not to see that the position of Martens reflected his concerns as regards the decision that the Tribunal presided by him would have rendered a few months after. Given the strict conditions imposed by the 1897 Treaty, a reasoned award represented in his eyes “a hindrance from a practical point of view”, for his objective was to reach “an absolutely just solution”, irrespective of whether such solution was the result of a rigorous application of the terms of the *compromis*.

5.106. In conclusion, Guyana’s response to Venezuela’s arguments on the invalidating the 1899 Arbitral Award consists largely of repetition and omission. It fails to rebut Venezuela’s central argument that, under the international law applicable at the time, absence of reasons constituted a ground for invalidity. Worse still, Guyana offers no reply at all to Venezuela’s equally valid argument that, in

⁴⁰⁸ J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 748.

⁴⁰⁹ *Ibid.*, p. 615

⁴¹⁰ 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 Andrássy*, Springer, Dordrecht, p. 246.

the circumstances surrounding the flawed Arbitral Award, the absence of reasons provides compelling evidence that the Tribunal exceeded its powers.

E. THE AWARD IS INVALID BECAUSE THE TRIBUNAL MANIFESTLY EXCEEDED ITS POWER

5.107. The Geneva Agreement paved the way for a negotiated, mutually acceptable solution to the dispute for a further reason. The 1899 Arbitral Award could not be the final word, because the Tribunal that issued it had manifestly exceeded its powers.

5.108. On pp. 270-310 of its Counter-Memorial, Venezuela detailed multiple, often glaring instances of excess of jurisdiction committed by the Tribunal. Guyana's response to this detailed account is selective, superficial, and scattered. Its main engagement with these serious allegations is confined to just over four pages in a section tellingly titled "An Alleged Excess of Power",⁴¹¹ where Guyana comments briefly on two of Venezuela's claims; some further responses are found scattered over chapter 3 of Guyana's Reply.

5.109. Tellingly, Guyana now concedes a key point it had previously downplayed: that in "[i]n the performance of the task entrusted to it, the tribunal 'must conform to the terms by which the Parties have defined this task'",⁴¹² and that a manifest failure to conform to these terms renders an award invalid for excess of power. This is a useful clarification, which establishes a common baseline against which the 1899 Arbitral Award is to be assessed.

5.110. As regards the Tribunal's approach, Guyana's Reply in relevant aspects concedes central points made in Venezuela's argument, and where it chooses to

⁴¹¹ GR, pp. 85-90.

⁴¹² *See e.g.* GR, p. 84, para. 3.39.

engage, fails to rebut them. Put simply, Guyana's Reply does not meaningfully challenge Venezuela's argument set out in the Counter-Memorial. In fact, Guyana occasionally seeks to use in its favour the fact that the Tribunal had not rendered a reasoned Award - and thus could obviously not be faulted.⁴¹³ Yet this is disingenuous, ignoring the fact that the absence of reasons (as noted above⁴¹⁴), is a factor supporting the view that a Tribunal had failed to comply with the conditions established by the *compromis*.

5.111. In light of Guyana's Reply, Venezuela affirms its position articulated in the Counter-Memorial, namely that no less than five excesses of power committed by the Tribunal render the Award invalid, namely

- first, the Tribunal's failure to respond to one of the questions put to it in Article III;
- second, its failure to apply the Rules it was tasked to apply under Article IV, or ignored the meaning of the rule without giving any reasoning whatsoever;
- third, its decision to overstep the limits of powers, as defined in Articles I and III, and instead decide on matters falling outside of the Washington Treaty;
- fourth, its failure to act impartially, in violation of Article V; and ultimately,
- fifth, its failure to render an award based on international law.

5.112. Venezuela addresses each of these points in turn.

⁴¹³ GR, pp. 85-90.

⁴¹⁴ See *supra* paras. 5.85-5.106.

1. The Tribunal failed to respond to one of the questions put to it in Article III

5.113. On pp. 275-282 of the Counter-Memorial, Venezuela has shown that the Tribunal failed to “conform to the terms [of Article III of the Treaty of Washington] by which the Parties have defined this task”.⁴¹⁵

5.114. Under Article III, the parties required the Tribunal to perform two tasks and answer two questions:

“The Tribunal shall investigate and ascertain 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 British Guyana, and shall determine the boundary line between the Colony of British Guiana and the United States of Venezuela”.

5.115. While the tribunal answered the second question, by drawing a boundary, it failed entirely to address the first, namely, which territories were lawfully claimed by Spain or the Netherlands in 1814. This is an omission that would later be described as a “serious dereliction of [its] duties ... and no doubt ... a valid ground for a nullity claim”.⁴¹⁶

5.116. Guyana does not dispute the principle that a Tribunal’s failure to comply with the obligations stipulated in its *compromis* constitutes a ground of nullity of arbitral awards. Yet, it attempts to explain away the Tribunal’s ‘dereliction of duty’ by asserting that all the Tribunal had to do was to determine the boundary line. This,

⁴¹⁵ VCM, paras. 6.97-6.108.

⁴¹⁶ Wetter III, 345

however, is to use Guyana's own words, 'plainly at odds with the text'⁴¹⁷ and with the Washington Treaty.

5.117. As Venezuela made clear in its Counter-Memorial, the ascertainment of title and the determination of a boundary line are distinct legal questions. As Jennings and Watts explain in *Oppenheim's International Law*, disputes over title concern 'the fact and mode of acquisition of territorial title', whereas boundary disputes concern 'the proper interpretation of some instrument, award or adjudication, or course of historical development, that is claimed to have established the boundary of the territory in question'.⁴¹⁸ While the two issues may arise, and often do arise, in the same case, they are distinct and involve different legal assessments. Guyana does not – because it cannot – dispute this fundamental distinction.

5.118. The British-Venezuelan dispute plainly raised questions over title and required the identification of a boundary line. Article III of the Washington Treaty thus required the Tribunal to answer both. It did so by imposing on the Tribunal two duties, each formulated with the mandatory verb 'shall': the Tribunal 'shall' investigate and ascertain title and 'shall' determine the boundary line. But Guyana chooses to see only the latter, arguing that the Tribunal was asked to make only one determination: the boundary. This is totally incorrect. The Tribunal was also required to 'ascertain' which State had title over it. Unable to ignore this express duty, Guyana attempts to downplay it by reading words into Article III: in Guyana's retelling, the Tribunal was 'directed' to ascertain title only 'as a step towards determining the boundary'.⁴¹⁹ But these words appear nowhere in the text of Article III, or in any other provision of the Washington Treaty for that matter.

⁴¹⁷ See GR, p. 81 at para. 3.32.

⁴¹⁸ Jennings & Watts, *Oppenheim's International Law* (9th ed, OUP 1996), Vol. I (Peace), 668-669.

⁴¹⁹ GR, p 82 para. 3.33.

5.119. Guyana deploys the same cherry-picking approach to its interpretation of Article IV.⁴²⁰ Both paragraphs permitted the tribunal to rely on events subsequent to 1814 to establish title (the 50-year prescription rule) or determine and adjust the boundary line (possession by subjects of the other party). By implication, Guyana claims, there was no need to determine title-holding, only to investigate and ascertain it as a step towards determining the boundary. Guyana conveniently overlooks the rest of the text of Article IV, which expressly refers to the ‘matters submitted’ to the tribunal – in the plural.

5.120. Moreover, Guyana’s argument ends up subordinating the ascertainment of title to the boundary determination: it turns the question of title into a mere procedural step in the determination of the boundary line. It is absurd to pretend that this is what the parties intended in the Washington Treaty. The dispute between Venezuela and Guyana was above all else about title: what mattered to them is which of the two States could lay a valid claim over the Essequibo region.

5.121. The record of the proceedings confirms that the parties understood that the Tribunal was tasked with answering the two distinct questions. President Harrison’s argument made clear that the Tribunal’s duty was not just to find the boundary line between the two parties, but it was also to ascertain title to the territory. This was a duty that the Tribunal could not ‘put off’.⁴²¹ Lord Russell’s letter also confirms that the Tribunal was very conscious of this. Guyana chooses to ignore this evidence, preferring instead to accuse Venezuela of ‘newly-minting’ this construction of the Washington Treaty in 2024.⁴²²

5.122. Guyana finally contends that the Tribunal allegedly complied with the requirements of Article III: it investigated and ascertained title and then determined

⁴²⁰ GR, p 82 paras. 3.33-34.

⁴²¹ See VCM, p. 276, para. 6.102.

⁴²² See GR, p. 82, para. 3.32.

the boundary. Yet, neither the Award nor Guyana provide the outcome of this supposed ascertainment. The Tribunal merely asserted that it ‘investigated and ascertained’, without explaining the result that its investigation and ascertainment had produced. The letters by President Harrison and Lord Russell referred to in the Reply offer Guyana no comfort. In his letter, Lord Russell notes that arbitrators had taken different views about the question of discovery, but does not suggest that the Tribunal had formulated a decision on the question of title.⁴²³ Harrison’s letter, in turn, focused on the question of possession – namely on a matter that was significant to the application of Article IV(c) on adjustments in the determination of the boundary, and not to the establishment of the title as such.⁴²⁴

5.123. Nothing in the history of this dispute, the Treaty of Washington, or the proceedings, suggest that the Tribunal could simply bypass the question of title to territory. Its failure to do so constitutes a dereliction of its duties as specified in the compromis: a failure to comply with its obligations, which resulted in the nullity of the award.

2. The Tribunal failed to apply the applicable law rules specified in Article IV

5.124. On pp. 282-288 of the Counter-Memorial, Venezuela has shown that the Tribunal failed to apply the applicable law rules specified in Article IV of the Treaty of Washington.

5.125. As Venezuela demonstrated, a tribunal can commit an excess of power by ‘misinterpreting the express provisions of the [Arbitration] Agreement in respect of the way in which [the arbitrators] are to reach their decisions, notably with regard

⁴²³ See GR, pp. 76-77, citing Letter from Lord Russell to Lord Salisbury (7 October 1899), in VCM, Volume II, Annex 67.

⁴²⁴ See GR, pp. 77-78, citing the Letter from Mr. Harrison to Mr. Miller (7 October 1899), in VCM, Volume III, Annex 26.

to the legislation or principles of law to be applied'.⁴²⁵ This is a central aspect of the 'terms by which the Parties have defined [the tribunal's] task', and to which the Tribunal must 'conform'.⁴²⁶ It requires tribunals not merely to 'postulate' that they had abided by the terms, but to 'demonstrate' that they had been guided by them.⁴²⁷ As Venezuela has also shown, it gains particular significance in the present dispute because in Article IV of the Treaty of Washington, the Parties formulated highly precise rules ('des règles fort précises') that were to govern the Tribunal's decision-making process.⁴²⁸

5.126. Guyana does not dispute any of these propositions. Instead, its Reply restricts itself to two points. First, Guyana takes issue with one aspect of Venezuela's reading of Article IV, asserting that the rules and principles mentioned in the provision did not have to be applied in a particular order.⁴²⁹ Second, Guyana asserts that the Tribunal did in fact apply the Rules set out in Article IV(a) and Article IV(b) by adopting a boundary line that largely followed the Schomburgk line - all the while noting that, in an unreasoned award, the Tribunal naturally could not explain that this was the case.⁴³⁰

5.127. These speculative responses only highlight the problem. Guyana's brief comments show how carelessly the Tribunal carried out its mandate, and the laxity with which it disregarded the terms imposed upon it by the Parties in Article IV. Moreover, Guyana's speculation about the relevance of the Schomburgk line may be accurate or not - but it does not come close to establishing that the Tribunal was

⁴²⁵ *Orinoco Steamship Company Case (Annulment)*, (1910) R.I.A.A., pp. 238-239.

⁴²⁶ *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment*, 1.C.J. Reports 1984, p. 246, para. 23.

⁴²⁷ See *Klöckner v. Cameroon*, Decision on Annulment, 3 May 1985, para. 79. 238-239.

⁴²⁸ 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*, Springer, Dordrecht 1968, p. 238.

⁴²⁹ GR, p. 84, para. 3.38.

⁴³⁰ GR, pp. 83-84, paras. 3.37 and 3.39.

willing to conform to the terms imposed upon it by Article IV. Even taking Guyana's speculation at face value, there is no evidence that the Tribunal was guided by (in the terms of Article IV) the 'Rules ... agreed upon by the High Contracting Parties [to the Treaty of Washington] as applicable to the case'.

5.128. Proceeding from the text of Article IV and the submissions in the matter, it is clear that the Parties expected the Tribunal to base its decisions on a consideration of the following questions:

- a. Had title been established via 'adverse holding or prescription during a period of fifty years', as envisaged in Rule (a) set out in Article IV? Could this have been done because of the 'exclusive political control of a district' or its 'actual settlement'?
- b. Did the tribunal recognise claims based on other 'principles of international law', and if so, could it be shown that these were 'not in contravention' to the rule on prescription and adverse holding, as required by Rule (b) of Article IV?
- c. Did the Tribunal, under Rule (c) of Article IV, have to 'give effect' to the 'occupation' of lands by 'subjects or citizens' of one party that were found to be on the other party's territory?
- d. Finally, to the extent that the Tribunal considered to move beyond applicable law clauses of Rules (a), (b), (c), did it consider that other 'principles of international law' that may have guided its decisions were 'not inconsistent with' Article IV?

5.129. It is plain from a reading of the Award that the Tribunal did not give express answers to any of these questions. As set out in the Counter-Memorial and highlighted above, this in itself is indicative: it is difficult to ignore the conclusion

that ‘se rendant compte de la difficulté d’expliquer sa décision sur la base [de l’Article IV], [le tribunal] s’en est volontairement abstenu’.⁴³¹

5.130. From Guyana’s Reply, it is equally plain that speculation about the reasons that may have informed the Award cannot mask the Tribunal’s failure to comply with its duty. Nothing in Guyana’s speculation comes close to explaining how a boundary largely following the Schomburgk line would have been based on the applicable law set out in Rules (a)-(c) of Article IV. To illustrate, was the Schomburgk line chosen because no party had made a case based on prescription and/or adverse holding in line with Rule (a)? Did the Schomburgk line reflect Great Britain’s title according to prescription based on that Rule? If it was based on another consideration in line with Rule (b), why was that other consideration ‘not in contravention with’ Rule (a) on prescription and adverse holding? Were the minimal concessions agreed as part of the Tribunal’s ‘deal’ based on Rule (c)?

5.131. Nothing in the Award, and nothing in Guyana’s two rounds of written pleadings, provides any evidence that the Tribunal considered, let alone took seriously, ‘the substance of its mandate’⁴³² under Article IV. For that reason, too, the Award is invalid.

3. The Tribunal acted inconsistently with the scope of its powers, by deciding matters falling outside of its competence

5.132. On pp. 288-295 of the Counter-Memorial, Venezuela has shown that the Tribunal acted inconsistently ‘with the scope of its powers ... by deciding matters falling outside of the Washington Treaty’.

⁴³¹ See VCM, p. 287, para. 6.131 (citing Pierantoni, “La nullité d’un arbitrage international” (1898) 30 *Revue de Droit International et de Législation Comparée*, p. 459). On the presumptions flowing from an absence of reasons see already *supra*, paras. 5.85-5.106.

⁴³² *Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports 1991*, p. 53, Diss.Op Weeramantry, p. 162.

5.133. As Venezuela demonstrated, the Tribunal went beyond its mandate in at least two instances. The Tribunal was required by Articles I and III of the Treaty to ascertain title over the Essequibo and determine the boundary between Venezuela and British Guiana. Having failed to answer one of these questions, it then went on to decide two further matters that were not within the scope of its powers. First, it determined the boundary between Brazil and British Guiana, a decision which contemporary commentators described as a ‘grossière erreur’.⁴³³ Second, it imposed a navigational regime for the rivers Amakuro and Barima, an imposition subsequently described as ‘a blind, unauthorised excursion into an area wholly outside the conception of the draftsmen of the Treaty, the parties and their counsel’,⁴³⁴ and one which brought significant benefit to Great Britain.⁴³⁵

5.134. These are both manifest excesses of power by the Tribunal, which rendered the award null and void.

5.135. Guyana does not deny that a Tribunal acting outside of its competence constitutes a ground of nullity of its awards. Nor could it: this is a very well-established ground of nullity, which was undoubtedly accepted at the time of the Award. But Guyana’s attempts to minimise the Tribunal’s transgressions are to no avail.

5.136. As regards the navigational regime for the rivers Amakuro and Barima, Guyana no longer advances its (plainly implausible) argument that Article III

⁴³³ Nys, ‘La revision de la sentence arbitrale’, 1910, RDILC, Vol. 12, No 596, p. 614.

⁴³⁴ Wetter III, pp. 345-346.

⁴³⁵ A British official minute published immediately after the Award felt that the right to free navigation made up for the loss Barima Point: *see* Letter to Mr. Charles Prestwood Lucas (Asst. Under-Secretary of C.O.), dated 3 October 1899, **Annex 22**. In his correspondence with Chamberlain, Great Britain’s lead counsel had intimated that he might ‘press strongly for free passage ... on the Barima’: *see* Letter from Richard Webster to Joseph Chamberlain, dated 15 July 1899, **Annex 20**.

provided a basis for the Tribunal's decision.⁴³⁶ Instead it now seems to rely on Article IV(c) of the Treaty.⁴³⁷ The imposition of this river regime, Guyana says, is 'entirely justifiable under Article IV(c)', which allowed adjustments to the boundary to account for settlements of either party who found themselves on the opposite side of the line. However, there is nothing in the text of this provision to support Guyana's argument: Article IV(c) expressly and unequivocally applies only 'in determining the boundary-line'. The Article contains not a single reference, even oblique, to the Tribunal's power to impose a navigation regime for the Amakuro and Barima rivers, or any other local rivers for that matter. What is more, there is nothing in the text of the Washington treaty, in the negotiations of this treaty, or in the proceedings before the Tribunal that in any way support Guyana's claim.

5.137. Guyana tries to get around this obvious obstacle to its argument by taking a statement from the Venezuelan written pleadings and interpreting it so widely that it would essentially give the Tribunal unlimited leeway to decide on any aspect of the 'relations' between the Venezuela and British Guiana. In its written pleading, Venezuela explained that Article IV(c):

"recognizes the fact that when the territories of each party shall have been ascertained by the defining of the true boundary line, it might be found that the subjects or citizens of one party were at the date of the treaty actually settled upon territory thus ascertained to belong to the other. The question would then arise how, with the greatest fairness both to the State in whose territory such settlers were found and to the settlers themselves, an adjustment should be made of the relations between the two; and it was accordingly provided in the Treaty that the

⁴³⁶ See GMM, paras. 8.50-8.51.

⁴³⁷ See GR, paras. 3.51-3.54.

Tribunal should itself finally adjust these relations, upon considerations of reason, justice, the principles of international law and the equities of the particular case. It is not stated by the Treaty what form of adjustment, if any, is to be adopted by the Arbitrators in carrying out the provisions of Rule (c). The whole matter is left to their judgment and discretion. It is clearly contemplated by the Rule that some provision shall be made to settle the relations of both parties.”⁴³⁸

5.138. According to Guyana, in this passage Venezuela would have granted the tribunal authority to decide at its own discretion ‘the relations’ between Venezuela and the UK, which ‘naturally extended beyond the question of which State had title to the particular territory’.⁴³⁹ From a fallacious argument Guyana concludes that, supposedly, it was ‘natural’ that the Tribunal should impose a river regime as an aspect of ‘the relations between the two’, since British subjects lived on both sides of the boundary, and used the Amakuro and Barima which crossed the boundary.

5.139. Yet there is nothing ‘natural’ about Guyana’s interpretation. Article IV(c) was not an open-ended invitation, but a provision which - as part of the parties’ agreement on detailed rules - contemplated potential adjustments to the boundary-line in light of specific factors, including settlers of either party finding themselves on the ‘wrong’ side of the border. It defined the purpose that such adjustment could only serve (‘determining the boundary-line’) and listed factors that could be drawn upon. To the extent that Venezuela’s above-quoted statement, taken out of context by Guyana, is drawn upon, it can only be drawn upon within the parameters of

⁴³⁸ *Boundary between the Colony of British Guiana and the United States of Venezuela*, Printed Argument on Behalf of the United States of Venezuela (1898), Vol. I. p. 56 (as cited in GR, pp. 88-90, para. 3.51).

⁴³⁹ GR, p. 88, para. 3.51.

Article IV(c). River navigation regimes simply did not come within these parameters.

5.140. Guyana further claims that Venezuela's Counter Memorial fails to explain why 'the tribunal could not consider itself authorized' to make adjustments in relation to the rivers.⁴⁴⁰ But this misstates the issue. The relevant question is not whether the tribunal 'considered itself' authorized, but whether Venezuela actually granted it that authority. An authorization to the Tribunal to decide matters beyond the compromis would need to be clear and unambiguous, and given by someone capable of binding the Venezuelan State in this way. The US appointed counsel, who represented Venezuela in this arbitration, lacked any such authority to extent the Tribunal's mandate.

5.141. Besides, Guyana's interpretation stretches the statement to an absurd extreme. Under Guyana's reading, the Venezuela's US-appointed counsel would have unilaterally authorised the Tribunal to rule on any aspects of 'the relations between' the UK and Venezuela, provided it was linked to settlements of one State in the territory of the other.

5.142. By this logic, Venezuela would have empowered the Tribunal to decide on questions concerning taxes, nationality, trade, jurisdiction, and so on, so long as the Tribunal deemed this relevant to the 'relations' between the two States. Such an expansive reading of a short paragraph in the Venezuelan written statement finds no support in the text itself, or in the proceedings as a whole, and is wholly untenable.

5.143. The upshot of all this is that the Tribunal was not authorized by the Treaty, and it was not so authorized by either of the parties. Guyana's interpretation of a statement made by Venezuela, taken out of its clear context (adjustments to the

⁴⁴⁰ GR, p. 89, para. 3.52.

boundary in line with Article IV(c)) in no way amounts to an authorization to impose a river regime. If the Tribunal had considered itself so authorized it ought to have clarified the basis of its purported authority. Yet it failed to do so - without a doubt, because it would have had no basis upon which to ground its alleged authority.

4. The Tribunal failed to act impartially as it was required to do under Article V of the Washington Treaty

5.144. On pp. 295-299 of the Counter-Memorial, Venezuela showed that the Tribunal failed to act impartially, as was it required to do under Article V of the Washington Treaty. Article V of the Treaty required that the Tribunal ‘proceed impartially and carefully to examine’ the questions posed to it by Article III, in light of the rules stipulated by Article IV. The documentary evidence shows that arbitrators and counsel – none of which were appointed by Venezuela itself, as it was denied all agency in these proceedings – engaged in extra-judicial communications with one another. This evidence is sufficient to raise a reasonable doubt as to the arbitrators’ impartiality, thus rendering the award null and void.

5.145. Guyana offers no response to this allegation. It simply accuses Venezuela of engaging in pure rhetoric, while itself evading the central issue: unable to deny the breach of Article V by the Tribunal, it engages in deflections. Where Venezuela raises evidence that justify doubting the Tribunal’s impartiality, Guyana responds that it was well-known that maps were doctored, that there is no evidence of fraud, or that if there was not impartiality it benefited Venezuela. But a breach of Article V does not depend on whether maps were forged, or whether fraud occurred, or even whether one party gained an advantage. Rather, a Tribunal may be justifiably perceived as not acting impartially, even in the absence of all these issues.

5.146. What is required of Tribunals is to act in such a way that no reasonable observer would doubt its impartiality. That standard is not in dispute. Nor is the

principle that a failure to meet it renders an award invalid. On these agreed criteria, the Tribunal's conduct falls short — and Guyana's Reply, which fails to deny or rebut the factual basis of Venezuela's claim, leaves the violation uncontested.

5.147. To illustrate, Guyana seeks to deny that any communications between British appointed arbitrators and counsel took place.⁴⁴¹ It argues that the various letters raised in Venezuela's Counter-Memorial do not prove that communications took place, and indeed that that these letters prove the absence of communications between them. It is not clear how letters in which British counsel casually mentioned they would convey the favoured British position to the British appointed arbitrators prove the 'absence of such communications'.⁴⁴² Guyana's argument is as flawed as claiming that a note saying 'I will call you later' proves that no call ever happened.

5.148. On the contrary, the only reasonable inferences that can be drawn from these letters are that communications did take place between British counsel and British arbitrators. Mr. Webster clearly stated his intention to write to 'our arbitrators' using the modal verb 'shall', a clear expression of commitment rather than mere possibility. The letters also refer to these communications in a very casual manner, as if they were entirely routine in such circumstances. The most likely inference, therefore, is that the specific communications mentioned, and possibly broader communications, took place between British counsel and arbitrators. If a person says to another 'I shall call you tomorrow', any reasonable observer would be more justified in thinking that the call had been placed than that it was not placed. The same applies here. Whether the specific communications mentioned by Mr. Webster did indeed take place is beside the point. What matters is that this evidence

⁴⁴¹ GR, pp. 92-93, para. 3.61-3.62.

⁴⁴² GR, p. 93, para. 3.62.

raises – as it unquestionably does – a justifiable doubt as to the impartiality of the Tribunal.

5.149. Guyana tries to downplay the relevance of communications between British counsel and British arbitrators by arguing that at the time it was normal for arbitrators to ‘represent’ their own country in proceedings.⁴⁴³ But this candid admission is no answer to the charge of partiality – it rather concedes the point. The Washington Treaty imposed a clear and express duty on the Tribunal to act impartially, and by implication its arbitrators were required not to represent their States of nationality or champion their State of nationality’s interests. As set out in the Counter-Memorial, this duty was particularly important to Venezuela for it had been denied all agency in these proceedings, including by being denied to have Venezuelan arbitrators on the Tribunal, a point which, as General Harrison explicitly noted in direct opposition to Professor de Martens’ approach accepted by Guyana, “distinctly excludes the idea of representation, for when that idea is allowed, the representation is direct and equal”.⁴⁴⁴ Guyana’s admission not only ignores the parties’ expectations of the arbitral process, but further substantiates Venezuela’s justifiable doubts as to the impartiality of the arbitrators: despite the express and clear duty in Article V of the Treaty, there seems to have been no hope – from the very start – that the Tribunal would conduct itself in a manner that was consistent with the duty of impartiality.

5.150. Seeking to refute justified perceptions of partiality, Guyana notes that US American arbitrators communicated with Venezuelan counsel, and that for this reason, Venezuela is ‘not in a position to complain’.⁴⁴⁵ But Guyana’s focus on these

⁴⁴³ See GR, p. 66, para. 3.6 (where Guyana approvingly cites Professor de Martens’ view that “arbitrators are not only judges; they are also representatives of their Governments.”)

⁴⁴⁴ See *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela, Proceedings*, Verbatim Record, p. 2984, and further VCM, pp. 224-227.

⁴⁴⁵ GR, pp. 93-94, paras. 3.64-3.67.

communications, and their alleged advantageous effect for Venezuela, are but attempts at deflection. The fact that Venezuela retained sovereignty over the mouth of the Orinoco River is a meagre outcome that pales in comparison with the benefit Great Britain derived from this arbitration: more territory than it had ever claimed, plus rights of navigation on Venezuelan territory,⁴⁴⁶ an outcome that an American observer closely involved in the arbitration felt “takes my breath away”.⁴⁴⁷ All of this is, in any event, beside the point for present purposes: the question is not whether any extra-judicial communications resulted in advantages for one party or another. It is that the mere existence of these communications taints the proceeding by raising doubts as to the impartiality of the arbitrators’ conduct.

5.151. As is clear from these considerations, Guyana’s response does not dispel the evidence presented by Venezuela regarding the lack of impartiality. On the contrary, by openly conceding that arbitrators were considered at the time as ‘representatives’ of their State of nationality, it has further substantiated Venezuela’s well-grounded doubts about the conduct of the Tribunal. The Tribunal failed to live up to the duty imposed on it by Article V of the Treaty, and accordingly its award is invalid.

5. The Tribunal failed to comply with its duty to render a decision based on law

5.152. Of all the Tribunal’s failings, none is more serious than its failure to render a decision based on law. On pp. 299-308 of its Counter-Memorial, Venezuela showed that the Tribunal failed to comply with its duty to do so. This is the most

⁴⁴⁶ To illustrate, in a British official minute published immediately after the Award the loss of ‘Barima Point [was considered] worthless as we are given the free navigation of the Barima and Amakura Rivers. ... On the other hand the award appears to make the north bank of the Cuyuni where the boundary follows that river, the boundary thereby giving us the river whereas we have I think hitherto never claimed more than a share of the river as far as midstream’: *see* Letter to Mr. Charles Prestwood Lucas (Asst. Under-Secretary of C.O.), dated 3 October 1899, **Annex 22**.

⁴⁴⁷ *See* Letter from George L. Burr to White, dated 30 September 1899, **Annex 21**.

fundamental of the Tribunal's excesses of power: it is a defect that affects the core of the dispute settlement function of arbitration. It also made a mockery of the parties' desire for a 'judicial' decision guided by international law, which were reflected in the specific guidance set out in Article IV and upon which Venezuela, lacking arbitrators of its nationality on the bench, depended in particular.⁴⁴⁸ Former President Harrison put the point powerfully to the Tribunal in a quote which is worth re-stating in full:

“[T]he purpose of this Treaty Arbitration was to bring in just this judicial element, and to exclude the representative element which has appeared in many former arbitrations [...] There is no Venezuelan here. This latter provision distinctly excludes the idea of representation, for when that idea is allowed, the representation is direct and equal. Venezuela, then, Mr President, comes to this tribunal as to a great court. She gives to each member of it her fullest confidence, and submits her case 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.”⁴⁴⁹

5.153. Guyana's Reply does not deny that the Washington Treaty required the Tribunal to decide on the basis of law, and that the failure to decide on the basis of law is an excess of power entailing the invalidity of the Award. Guyana does, however, attempt to normalize the Tribunal's conduct, portraying the outcome as the result of 'compromise achieved to obtain unanimity',⁴⁵⁰ and seeking to recast the conduct of the Tribunal's members as a normal part of decision-making taking place in arbitral or judicial institutions. Guyana notes that 'no one needs to explain

⁴⁴⁸ *Verbatim Records*, p. 2983, quoted in VCM, 302 (para. 6.165).

⁴⁴⁹ *Verbatim Records*, p. 2984, quoted in VCM, 302 (para. 6.165).

⁴⁵⁰ GR, p. 80, para. 3.28.

to the Court that consensus-building is a common practice enabling judicial bodies to reach a majority, in order to render a decision'.⁴⁵¹

5.154. Venezuela is well aware that decision-making in judicial or arbitral tribunals may require compromise. But as Venezuela made clear in the Counter-Memorial,⁴⁵² this may not be read so extensively as to empower international courts and tribunals to dispense with the duty to render an award based on law. Compromise, in other words, is to be reached within the parameters of the law, not at the expense of law: it is (in the words of Hersch Lauterpacht) 'circumscribed by the duty to apply the existing law'.⁴⁵³ The conduct of the members of the Tribunal failed to uphold this fundamental duty.

5.155. Guyana argues that the Tribunal's decision was grounded in law because it was reached at the end of legal proceedings,⁴⁵⁴ because the arbitrators adopted a law-based reasoning, albeit with some compromise;⁴⁵⁵ and because President Martens' perceived it to be a 'moral duty' to achieve a unanimous award.⁴⁵⁶ But this argument fails. It does not respond to Venezuela's central contention: that the Tribunal departed from the legal framework established by the parties and issued a decision rooted not in law, but in compromise at the expense of legal reasoning. To the detailed evidence supporting this conclusion, set out in Venezuela's Counter-Memorial, Guyana offers no meaningful reply.

5.156. Rather than repeating the evidence, Venezuela limits itself to recalling four essential building blocks of its argument, which are not disputed:

⁴⁵¹ GR, p. 75, para. 3.19.

⁴⁵² See VCM, para. 6.161.

⁴⁵³ See Hersch Lauterpacht, *The Development of International Law by the International Court of Justice* (1958), 399.

⁴⁵⁴ GR, p. 76, para. 3.20.

⁴⁵⁵ GR, pp. 76-79, paras. 3.21-3.25.

⁴⁵⁶ GR, pp. 79-80, paras. 3.26-3.28.

- First, following the hearings, which had addressed complex legal and factual matters, the Tribunal issued its Award in less than a week.
- Second, in this Award, the Tribunal - while asserting that it had heard the parties' arguments - did not offer any trace of legal reasoning that could help understand how it arrived at its decision. The Award plainly contradicts Guyana's assertion that the decision was based on law.
- Third, the uncontroverted record shows that, in reaching its decisions, the members of the Tribunal eventually accepted a line identified by the President which was (as a commentator would later note) not based 'on a process of legal reasoning'.⁴⁵⁷ As detailed in Venezuela's Counter-Memorial, drawing on the contemporary evidence provided by observers directly exposed to the threats (such as Lord Russell), President de Martens in separate meetings outside the Tribunal's formal deliberations, threatened the British and American arbitrators: unless they accepted his compromise line, he would support the opposing side's territorial claims in full.
- Fourth, the record further shows that, faced with this pressure, the members of the Tribunal eventually abandoned whatever legal conclusions they had previously reached, out of fear that President de Martens would side with the other side. Just as President de Martens made no attempt to justify his line by reference to legal principle, so none of the arbitrators pretended they had been persuaded by anything

⁴⁵⁷ Wetter III, p. 348. For details of the methods by which President Martens secured acceptance of his proposed line see VCM, paras. 5.116-5.123.

except pressure and threat. Legal reasoning was absent; political coercion prevailed.⁴⁵⁸

- Fifth, in his obsessive quest to achieve for the first time in the contemporary history of arbitration a unanimous decision, the President of the Tribunal, Professor De Martens, in addition to exerting undue pressure on the other arbitrators, ended up violating not only the very nature of the arbitration governed by the Washington Treaty as an arbitration at law, but also the requirement to state the grounds for the award, as set out both in general rules of international law and implicitly in the Washington Treaty itself.⁴⁵⁹

5.157. Guyana's Reply seeks to deflect from this uncontested evidence, but its attempts at deflection only throw the Tribunal's political bargaining into starker relief.

5.158. To illustrate, Guyana argues that the proceedings preceding the Award had been conducted in a 'legal' manner. Quite to the contrary, contrasted to the parties' insistence on legal principle and depth of legal argument,⁴⁶⁰ the non-legal character of the Tribunal's decision-making is particularly plain.

5.159. Guyana also asserts that, based on Lord Russell's correspondence, the members of the Tribunal formed at some point their own legal assessment of the parties' opposing arguments. From the evidence set out in Venezuela's Counter-Memorial, it is clear that whatever legal assessment might have been formed at

⁴⁵⁸ See Judge Brewer's Opinion in the New York Times, dated 5 October 1899, **Annex 38**.

⁴⁵⁹ See Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899, AVPR, opis 787, delo 9, ed.k hr. 1-7, VCM, Annex 149, p. 394.

⁴⁶⁰ As Guyana notes in its Memorial, the parties engaged in three rounds of written proceedings, with more than 2600 documents submitted to the tribunal, and 56 days of hearings, totaling more than 3200 pages in verbatim transcripts: see GM, pp 69-70 and 217-218. Article X reflected the parties' expectations that an Award would be rendered "if possible ..., within three months from the close of the argument".

some point, was cast aside as the Tribunal bowed to President de Martens' threats and endorsed a compromise line.

5.160. Finally, Guyana's attempt to explain President de Martens' conduct as a reflection of his sense of 'moral duty'⁴⁶¹ is beside the point. Clearly, the Washington Treaty imposed no duty on the Tribunal to decide unanimously, but envisaged decisions by majority.⁴⁶² President de Martens' views on his role may have been held sincerely - but the fact that he was guided by them 'above else'⁴⁶³ (i.e. above the requirements of the Washington Treaty defining his role) merely shows how little care he paid to the terms in which the parties had defined his role.

5.161. Stepping back from the details, it comes as no surprise that contemporary observers - on the Venezuelan and British sides - would highlight the absence of any legal basis of the Award, which was described as a 'farce', an 'iniquitous' result.⁴⁶⁴ It comes as no surprise either that Lord Russell's private secretary, JR Block, would describe the outcome as 'Martens' deal' and said that this 'deal gave us victory.'⁴⁶⁵

5.162. At a meeting of the American Society of International Law, the decision was referred to as one of 'expediency and compromise'.⁴⁶⁶ Subsequent commentators such as Arthur Nussbaum presented the Paris Award as a 'clear

⁴⁶¹ *Private Diary Entries of Prof Fyodor Fyodorovich Martens* (4 June 1899-3 October 1899), p. 11, quoted at GR, p. 79, para. 3.26 (emphasis in original).

⁴⁶² See Article V of the Washington Treaty. According to Article X, the decision of the Tribunal 'shall be made in writing and date and shall be signed by the Arbitrators who may assent to it'.

⁴⁶³ Letter from Lord Russell to Lord Salisbury, 7 October 1899 (emphasis in original), cited in GR, p. 79, para 3.25.

⁴⁶⁴ See the references in VCM, p. 233, paras. 5.124-5.125.

⁴⁶⁵ Cited in *Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts*, 1967, VCM, Annex 150.

⁴⁶⁶ Foster, Anderson, Mcveagh, and Aymar, 'Arbitration as a judicial remedy: An examination of concrete cases actually submitted and decided by arbitration: how far they are of a judicial character and how far they have been governed by diplomatic convenience' (1909) 3 *ASIL Proceedings* 25, 28 (Foster).

example of de Martens's "expediency" doctrine', in which '[t]he idea of international law, foundation of international arbitration, is cast aside',⁴⁶⁷ while Paul Reuter saw in it a 'marchandage purement politique'.⁴⁶⁸

5.163. While Venezuela is well aware that 'that consensus-building is a common practice enabling judicial bodies to reach a majority, in order to render a decision',⁴⁶⁹ it is not willing to believe that the approach adopted by the Arbitral Tribunal in its deliberations preceding the Award could be seen as a 'common practice' - not by the World Court nor by an arbitral tribunal worthy of its name. The verdict in the Award was not a compromise based on law, as Guyana claims, but a compromise achieved decisively at the expense of law. This is its fundamental defect.

6. Interim conclusions

5.164. The excesses of power besetting the Award of 3 October 1899 are manifold and grave. Venezuela's analysis in the Counter-Memorial illustrates how completely the Tribunal distanced itself from the terms of its mandate, and how carelessly it went about its business. Guyana's Reply accepts that awards can be invalidated where tribunals rendering them manifestly exceeded their power. It offers responses on some points, seeking to gloss over some of the excesses while accepting others. But Guyana's Reply does not - and cannot - meaningfully challenge the main impression resulting from any renewed engagement with the Award: that the Tribunal palpably disregarded its central task - ignoring questions put to it, failing to adhere to applicable law provisions, deciding matters not submitted to it, creating plain doubts as to its impartiality, and engaging in political

⁴⁶⁷ A. Nussbaum, 'Frederic de Martens Representative Tsarist Writer on International Law' (1952) 22 *Nordic Journal of International Law* 51, 59.

⁴⁶⁸ 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*, Springer, Dordrecht 1968, p. 238.

⁴⁶⁹ GR, p. 75, para. 3.19.

maneuvers to bring about a ‘deal’ not supported by any reasons. The Award of 3 October 1899 is the product of a Tribunal ‘going rogue’. It cannot stand.

5.165. Additionally, as already demonstrated in the Counter-Memorial, there is a wealth of documentary evidence that, from the beginning of the negotiations, the United States and the United Kingdom cooperated closely in the case against Venezuela, within the framework of a broader diplomatic understanding that implied, on the part of the United Kingdom, the effective recognition of the Monroe Doctrine. In this context, first the US negotiators objected to the appointment of a Venezuelan judge, and then the US-appointed judges accepted the so-called “De Martens’ agreement,” in a decision clearly aligned with the political interests that both governments shared at the time.

5.166. This outcome was described by President Grover Cleveland in 1900 at Princeton University as a major diplomatic triumph. Although this passage has already been quoted in the Counter-Memorial, it is worth recalling here for its explanatory and significant nature:

“I hope there are but few of our fellow-citizens who, in retrospect, do not now acknowledge the good that has come to our nation through this episode in our history. It has established the Monroe Doctrine on lasting foundations before the eyes of the world; it has given us a better place in the respect and consideration of the people of all nations, and especially of Great Britain; it has again confirmed our confidence in the overwhelming prevalence among our citizens of disinterested devotion to American honor; and last, but by no means least, it has taught us where to look in the ranks of our countrymen for the best patriotism.”⁴⁷⁰

⁴⁷⁰ See VCM, para. 517, footnote 417.

5.167. For the US representatives, the Venezuelan case —or the applicable legal principles— was ultimately of little importance. As Cleveland himself candidly acknowledged:

“In these circumstances neither the character of the people claiming the soil as against Great Britain, nor the value of the lands in dispute, was of the least consequence to us; nor did it in the least concern us which of the two contestants had the best title to any part of the disputed territory.”⁴⁷¹

F. CONCLUSION, AND A REFLECTION ON THE ILLEGITIMATE GENESIS OF THE ARBITRAL AWARD IN THE SHADOW OF COLONIALISM.

5.168. In light of the preceding considerations, it is clear why, in the 1966 Geneva Agreement, Venezuela and Great Britain sought to lay the foundations for an amicable and mutually acceptable solution of their territorial controversy. The Award of 3 October 1899 plainly could not be the basis for any mutually acceptable solution: based on an invalid treaty imposed upon Venezuela, the Award was not an exercise in arbitral justice worthy of its name. The Tribunal’s decision not to state the reasons upon which its decision was based sought to conceal an ugly truth: that, in rendering the Award, the Tribunal manifestly exceeded its powers - by omission, by transgression, and above all, by replacing legal considerations with a compromise that ignored both parties’ desire for a judicial decision.

5.169. Against that background, the parties had ample reason to replace the 1899 Arbitral Award with a framework that would foster a negotiated and equitable

⁴⁷¹ *Ibid.*

settlement of the dispute. This they did in the 1966 Geneva Agreement, upon which - despite Guyana's attempts to the contrary, this territorial controversy centres.

5.170. In Chapter III Venezuela has addressed the crucial intersection of the Arbitral Award with the principles of decolonisation under international law, arguing that the award, a product of colonial power dynamics, must be understood within the context of redressing colonial wrongs and the right to self-determination. Now, it is appropriate to close this Chapter with a final reflection on the illegitimate genesis of the Arbitral Award in the shadow of Colonialism.

5.171. The 1899 Arbitral Award cannot be examined in a vacuum. It must be viewed as a historical artefact of the colonial era, a period marked by the subjugation of weaker states and the imposition of unjust arrangements by dominant powers, especially in Latin America, and especially by the United Kingdom. Venezuela's recount of how the Essequibo controversy came to be offered multiple examples of its colonial roots.⁴⁷²

5.172. While there are many reasons to consider the 1899 Arbitral Award invalid – and these reasons are elaborated at length in the Counter-Memorial and in this Chapter – one must therefore not lose sight of the fact that it is tainted by the profound imbalance of power between Great Britain, a global colonial hegemon controlling vast swathes of territory across the globe, and Venezuela, a newly independent state grappling with the challenges of consolidating its sovereignty and establishing its international standing after its secession from the Gran Colombia. This resulted in several crucial asymmetries.

5.173. As demonstrated in the Counter-Memorial, the negotiation and signing of the Treaty of Washington, the legal instrument establishing the arbitration, were subject to the coercive pressures exerted by Great Britain's superior position. Many

⁴⁷² VCM, paras. 4.138 *et seq.*, and the documents cited.

scholars have stressed – and rightly deplored – the “colonial” dynamic that led to the Treaty.⁴⁷³ This asymmetry in bargaining power casts doubt on the voluntariness and fairness of the consent provided by Venezuela, thus undermining the legitimacy of the resulting agreement and subsequent award.

5.174. The Tribunal’s composition itself reflected this inherent power imbalance. While ostensibly constituted to appear impartial, the presence of two British representatives, tasked with advocating for British interests and implementing the colonial agenda, cast a long shadow over the proceedings. In fact, the entire bench reflected the principles of imperialism at the time, with the American representatives supposedly standing on behalf of Venezuela (although, by necessity, they did not possess the same level of vested interest in Venezuela’s sovereignty as Venezuela itself⁴⁷⁴), and the Chair proposed by Great Britain rested with an arbitrator from the Tsarist Russia – who used the case as a stepping stone for his own benefit and fame, acting in his own interest and that of his nation.⁴⁷⁵ As put by the USA’s Ambassador to the United Kingdom at the time: “Venezuela

⁴⁷³ See, e.g., 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 Andrássy*, Springer, Dordrecht, p. 246, discussing “une situation quasi-coloniale”. A similar view was expressed by H. Gros Espiell, “Estudio preliminar”, *Academia Nacional de la Historia* (1981), p. 21 (“The conditions under which Venezuela agreed to be represented by two American judges, without the existence of a protectorate or any other similar institution, are very rare in arbitration proceedings and reveal a quasi-colonial sovereignty.” [“Las condiciones en las que Venezuela consintió en hacerse representar por dos jueces norteamericanos, sin que existiera un protectorado o cualquier otra institución análoga, se encuentra muy raramente en un procedimiento arbitral y ponen de manifiesto una soberanía cuasi colonial”]); C. Sosa Rodríguez, “El Acta de Washington y El Laudo de París”, in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales, 1983, p. 146 (“Venezuela is treated as if it were a colony or a country under mandate.” [“Venezuela es tratada como si fuera una colonia o un país bajo mandato”])).

⁴⁷⁴ As explained in VCM, paras. 2.13 *et seq.*, the USA very much acted in light of their own interests in this controversy, which did not match Venezuela’s interests.

⁴⁷⁵ This was perceived by contemporaries. See August Mason, 1928, p. 3, recounting the sentiment of General Harrison: “It can hardly be supposed that he (Mr. Martens) was entirely free from a sense of Russian interests”.

does not appear to have any [...] participation, nor any voice, in the tribunal of settlement”.⁴⁷⁶

5.175. This inherent imbalance rendered the arbitral proceedings vulnerable to undue influence and pressure, subtle or overt, all in the pursuit of favouring British interests. As has been cogently demonstrated by Venezuela,⁴⁷⁷ this is exactly what happened: the Arbitration’s outcome was the result of a manipulation designed to entrench Britain’s colonial power, a “spoliation to which (Venezuela was) subjected through the acts of imperial and colonial Powers”.⁴⁷⁸

5.176. It is a well-established principle of international law that territorial sovereignty cannot be lawfully altered through secret political arrangements between third-party States. Any such division of the territory of a sovereign State, undertaken without its consent, constitutes a grave violation of the principle of territorial integrity and the prohibition of the use of force or coercion to settle territorial disputes. Nevertheless, and much to Guyana’s likely discomfort, there exists compelling evidence that such a political arrangement did occur, due to the collusion between the United States and Great Britain based on Monroe Doctrine.⁴⁷⁹

5.177. The Award must therefore be viewed as a product of this environment, a direct outcome of colonial influence⁴⁸⁰. Moreover, the imposition of an agreement on a weaker state by a colonial power, an agreement that directly served the

⁴⁷⁶ Letter from Thomas Bayard to Richard Olney, 15 January 1896, VCM, Annex 56.

⁴⁷⁷ VCM, paras. 5.97-5.110.

⁴⁷⁸ Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN Doc. A.C.1/136/12, p. 2.

⁴⁷⁹ See Letter from Mr. Slater to Mr. Edmonds, dated 28 May 1964, **Annex 24**, pp. 4-5, describing how Dr. Martens had been pressured by Russia to favour the United Kingdom.

⁴⁸⁰ See also 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. 24, situating the tribunal and its work “in the midst of the imperial and colonialist era”.

interests of the colonial power, is a direct contradiction of the principle of sovereign equality, a cornerstone of the post-colonial international order. Article 2(1) of the UN Charter emphasizes sovereign equality, requiring that all member states are equal before the law, regardless of their size or power. The VCLT further underscores this by highlighting the conditions under which treaties are considered void, including coercion.⁴⁸¹ These principles should be applied when considering the 1899 Arbitral Award, which emerged from a fundamentally unequal bargaining process dominated by colonial-era coercion.

5.178. In this context, it is necessary to stress that the colonial power, Great Britain, had specific economic, strategic, and political interests to be served by the Award. These interests included control over the mineral-rich territory and consolidating its regional dominance. The Award, therefore, must be viewed as a tool to advance these interests, rather than a genuine attempt to achieve a resolution based on international law.

5.179. Conversely, Venezuela, as the weaker party, lacked the institutional resources and international influence necessary to counteract these strategic designs.⁴⁸²

5.180. Thus, it is inescapable to consider the circumstances under which the Award was created and to assess its compatibility (or incompatibility) with the modern principles of self-determination, sovereign equality, and the fundamental right to be free from colonial domination. The principle of decolonisation, which emerged

⁴⁸¹ Vienna Convention on the Law of Treaties, Arts. 2(1)(a), (b), 51 & 52.

⁴⁸² The asymmetry of powers between newly independent states and colonial empires is a relevant consideration, in this case as in others dealing with decolonisation: *see, e.g. Land and Maritime Delimitation and Sovereignty Over Islands (Gabon/Equatorial Guinea)*, Judgment, 19 May 2025, Declaration of Judge Xue, para. 22.

as a central tenet of international law in the aftermath of World War II, provides the necessary framework to confirm the invalidity of the 1899 Arbitral Award.

CHAPTER VI: VENEZUELA'S POST-AWARD CONDUCT

A. INTRODUCTION

6.1. Chapter 4 of Guyana's Reply elaborates around its claim that Venezuela's "post-award conduct" would somehow support Guyana's claim. The legal consequences Guyana draws from this alleged "conduct", namely that this "cures" the flaws of the 1899 Arbitral Award, are set out in Chapter 9 of Guyana's Memorial. Guyana contends that "Venezuela's Counter Memorial largely does not take issue with the legal conclusions identified by Guyana, or contest or even address most of the factual and legal considerations on which they are based".⁴⁸³

6.2. As a matter of fact, Chapter 7 of Venezuela's Counter Memorial deals with Guyana's theory according to which Venezuela's conduct allegedly cured the effects of the Award. Since Guyana's Reply restates this theory, Venezuela will respond to this contention.

6.3. This Chapter is structured in three parts.

6.4. First, Venezuela will recall that the relationship between Guyana and Venezuela regarding the resolution of the territorial dispute is governed by the Geneva Agreement, and that under this Agreement any argument of Guyana about Venezuela's post-1899 Arbitral Award conduct is futile and devoid of usefulness (B).

6.5. Second, Venezuela will address in detail Guyana's curing theory (C).

6.6. Third, Venezuela will demonstrate that the 1905 demarcation based on the 1899 Award cannot save the invalid Award or the boundary line it unlawfully established (D).

⁴⁸³ GR, para. 4.4.

B. GUYANA’S TWISTED AND USELESS ARGUMENT REGARDING VENEZUELA’S CONDUCT AFTER THE AWARD

6.7. In its Reply, Guyana devotes no more than six paragraphs to the Geneva Agreement. At least two problems are raised by Guyana’s arguments.

6.8. The first is that they are based on a fraudulent interpretation of the Geneva Agreement. Contrary to what Guyana contends, the Geneva Agreement does not set up a framework or procedure to decide on the (in)validity of the 1899 Arbitral Award. As has been amply demonstrated in Chapter II, this is not its object and purpose, is inconsistent with its text, including its title, its *travaux préparatoires* and subsequent practice. The legal effect of the Geneva Agreement, a novation instrument, is to engage Guyana and Venezuela in the search for a satisfactory and mutually acceptable solution for the practical settlement of the territorial controversy. The very point of departure of the process of resolution of the controversy in a manner satisfactory to both parties, the “given” from which the Geneva Agreement intends the Parties to build upon, is Venezuela’s contention that the 1899 Arbitral Award is null and void. Guyana, to the contrary, suggests rejecting this contention, based on Venezuela’s alleged acquiescence. But it cannot be correct since it would obviously be neither “satisfactory” nor a “practical settlement” of the frontier controversy. Therefore, the only “post-1899 Award” conduct that is relevant is the adoption of the Geneva Agreement. It follows that Guyana’s insistence on what Venezuela did or did not do between 1899 and the Geneva Agreement is simply useless.

6.9. The second is that the UK never raised a preclusion argument against Venezuela based on its alleged conduct during the negotiation of the Geneva Agreement.⁴⁸⁴ It follows that Guyana has lost any right to raise it.⁴⁸⁵

⁴⁸⁴ See VCM, para. 7.50.

⁴⁸⁵ See VCM, paras. 7.55-7.56.

6.10. Guyana's response on this point is that "the suggestion that the United Kingdom and Guyana somehow represented to Venezuela that its decades-long acceptance and acquiescence in the Award would "not be opposed" to it is nonsense."⁴⁸⁶ But none of the five documents on which Guyana relies supports this contention.

6.11. First, Guyana relies on its own acts or activities opposing to Venezuela its post-1899 Award conduct dating back to 1980⁴⁸⁷, 1983⁴⁸⁸, and 2014⁴⁸⁹. But Article V, para. 2 of the Geneva Agreement provides that:

"No acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana"

6.12. The Geneva Agreement is in force since 1966. Visibly, Guyana tries once again to escape its obligation under this Agreement, in denying Venezuela's claim on the basis of its own post-1966 acts and statements. This further evidence that Guyana pays no respect to its international legal obligations under the Geneva Agreement is unacceptable.

6.13. Second, Guyana invokes a U.S. memorandum, internal to the U.S. administration, which Guyana does not argue that it was known to Venezuela. In any event, a US Memorandum internal to the US administration is plainly irrelevant to Guyana's assertion.⁴⁹⁰

⁴⁸⁶ GR, para. 4.100.

⁴⁸⁷ GR, para. 4.94- 4.96.

⁴⁸⁸ GR, para. 4.90.

⁴⁸⁹ GR, para. 4.97.

⁴⁹⁰ GR, para. 4. 98.

6.14. Third, Guyana quotes from a British speech at the UN dating back to 1962, where the UK's representative indicated that Venezuela did not challenge the Award until recently. According to Guyana, in doing so the UK allegedly claimed that supposed acquiescence precluded Venezuela's nullity claim.⁴⁹¹ This is wrong. The UK's representative actually complained about the alleged lapse of time before Venezuela formally challenged the Award, but did not draw any legal argument from this complaint. In the same statement he concluded:

“I am therefore authorized to say that my Government, with the full concurrence of the Government of British Guiana, are prepared to discuss with the Venezuelan Government, through diplomatic channels, arrangements for a tripartite Venezuela -British Guiana- United Kingdom examination of the voluminous documentary material relevant to this question. For our part, we would naturally expect to examine any Venezuelan records and documents too. In making this offer I must make it very clear that it is in no sense an offer to engage in substantive talks about revision of the frontier. That we cannot do, for we consider that there is no justification for it. This offer on the part of my Government simply reflects our anxiety, having regard to our friendly ties with Venezuela, to dispel any doubts which the Venezuelan Government may still have about the validity or propriety of the arbitral Award.”⁴⁹²

6.15. As a matter of fact, what the UK did in 1962 was formally agree to enter into contradictory discussion with Venezuela regarding “the voluminous documentary material relevant to” Venezuela's contention that the Award is

⁴⁹¹ GR, para. 4.91-4.93.

⁴⁹² Statement made by the Representative of the United Kingdom at the 349th meeting of the Special Political Committee (13 November 1962), p. 2; Guyana's Memorial (Jurisdiction and/or Admissibility), Vol. II, Annex 24.

invalid. At no point did the UK claim that this contradictory debate regarding the evidence that the Award is invalid was moot because its flaws would somehow have been “cured” by Venezuelan conduct since then. It follows that, contrary to what Guyana argues, the 1962 statement cannot be seen as a British claim of “Venezuela’s prolonged acceptance and acquiescence”.⁴⁹³ To the contrary, it is a British acceptance of a contradictory debate based on the “voluminous documentary material” related to the Award.

6.16. With respect to the period after 1962, during the *travaux préparatoires* of the Geneva Agreement adopted in 1966, Guyana cites no UK statement in its Reply that raises a “curing” or “acquiescence by conduct” theory against Venezuela. To the contrary, the UK opened some of its archives regarding the Award to the Venezuelan experts so that, according to the UK, they could ensure the alleged lawfulness of the 1899 Arbitral Award. The UK would not have done so if the only point was about Venezuela’s post-Award conduct that would have somehow “cured” the flaws of the Award, whatever they be. Venezuela was therefore plainly entitled to consider that the UK had no intention to rely on this claim in the context of the implementation of the Geneva Agreement.

6.17. Yet, Guyana goes on to argue that “[t]he mere absence of a positive statement regarding the effects of Venezuela’s acquiescence would not constitute “a statement or representation made by one party to another” regarding Venezuela’s entitlement to contend that the 1899 Arbitral Award is a nullity; still less would Venezuela be capable of establishing any “reliance upon it by [Venezuela] to [its] detriment or to the advantage of the party making it.”⁴⁹⁴

6.18. Again, this is plainly wrong. As shown above, the UK did agree in 1962 to enter into a contradictory discussion on the basis of the “voluminous documentary

⁴⁹³ GR, para. 4.89.

⁴⁹⁴ GR, para. 4.99.

material”, without any mention of an “acquiescence” claim. Such formal agreement is a clear representation, made explicitly by the UK, that the contradictory discussion between the Parties about the nullity of the 1899 Arbitral Award would not be precluded by an argument based on Venezuela’s post-Award conduct. Venezuela relied on this representation, -which in fact constituted a formal offer-, during the *travaux préparatoires* of the Geneva Agreement. The outcome of the examination of the voluminous documentation evidencing the nullity of the 1899 Arbitral Award was obviously one of the reasons why the Agreement, as a novation instrument, was finally agreed to by the Parties.

6.19. Guyana is therefore estopped from opposing Venezuela in any way on the basis of its alleged post-Award conduct, and this resolves the question of the alleged “post Award conduct”. However, for the sake of argument, Venezuela will show in the next paragraphs that even if Guyana was not estopped and could oppose to Venezuela its alleged “post-Award conduct”, Guyana’s “curing theory” would not support its claim.

C. GUYANA’S “CURING THEORY” IS GROUNDLESS

6.20. Guyana states that:

“Guyana does not contend that Venezuela is prohibited by its past conduct from advancing a contention of nullity in these proceedings. Rather, it contends that Venezuela’s past conduct cures any flaw which might otherwise have formed the basis for invalidating the Award.”⁴⁹⁵

6.21. According to this absurd argument by Guyana, the Geneva Agreement secured Venezuela’s right to contend that the Award is null and void, but that right

⁴⁹⁵ GR, para. 4.87.

had supposedly already been substantively extinguished, because the original flaws had allegedly long been “cured” long ago.

6.22. As explained in the previous Chapters, the Geneva Agreement process shows that this is incorrect. Its object and purpose were for the Parties to search for a practical solution acceptable by both of them. Guyana’s “curing theory” is certainly not even close to such a solution.

6.23. Besides this obvious point, Venezuela takes note that Guyana’s “curing theory” is based on three authorities. First, the King of Spain judgment, decided in 1960. This case directly inspired Article 45 of the Vienna Convention on the Law of Treaties, adopted in 1969, on which Guyana also relies as a second authority. The third authority mentioned by Guyana is article 45 of the 2001 ILC’s Articles on international responsibility of States for wrongful acts.⁴⁹⁶

6.24. In the next paragraphs Venezuela will show that these authorities are irrelevant to this case.

- First, it will be shown that Article 45(b) of the Vienna Convention on the Law of Treaties does not reflect customary international law and is not opposable to Venezuela **(1)**.
- Secondly, Venezuela will show that Article 45 of the ILC ARSIWA is equally irrelevant **(2)**.
- Thirdly, Venezuela will demonstrate that the King of Spain Case is irrelevant and cannot be compared to this subject matter **(3)**.
- Fourthly, Venezuela will show that even if Guyana’s “awareness theory” based on the King of Spain Judgment were relevant, in any event Venezuela could not make a claim regarding the flawed

⁴⁹⁶ GMM, para. 8.12.

deliberation of the 1899 Arbitral Award until it had evidence in hand (4).

- Fifthly, it will be shown that the Mallet-Prevost Memorandum is the first eyewitness testimony of the unlawful process leading to the 1899 Award (5).

- Venezuela will finally demonstrate that it raised its contention that the 1899 Award is null and void in due time (6), disregarding the fact that there is not preclusion for invoking the nullity of an award due to fraud.

1. Article 45(b) of the Vienna Convention on the Law of Treaties does not reflect customary international law and is not opposable to Venezuela

6.25. Article 45 (b) of the Vienna Convention on the Law of Treaties (VCLT) has been adopted by the Vienna Conference on the Law of Treaties after the conclusion of the Geneva Agreement. This provision is about the “[l]oss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty” by way of acquiescence. It is directly inspired by the King of Spain case.⁴⁹⁷ The Vienna Conference was therefore the perfect opportunity for sovereign States to express their opinion on the principle on which the Court had relied in the King of Spain case. They did, and the fact that the provision attracted strong controversy during the Vienna Conference,⁴⁹⁸ and was specifically rejected by many States, including Venezuela, indicates that it did not – and indeed, to this day, does not - reflect customary international law.

6.26. The strongest advocates of this debated provision were the representatives of the UK and Guyana. The strongest objection came from Venezuela, accompanied by Cuba, Argentina, Spain, and Bolivia. The representative of

⁴⁹⁷ M. Cohen, S. Heathcote, *Commentary of article 45*, in O. Corten, P. Klein, *The Vienna Convention on the Law of Treaties, a Commentary*, Vol. I, Oxford, 2011, para. 5.

⁴⁹⁸ *Ibid*, para. 19.

Switzerland naively said that he could not see any connection with the principle involved in this text and the struggle against colonialism.⁴⁹⁹ But the connection was obvious for former colonised countries, in particular Latin-American States, as well as for Spain.

6.27. During the second Session of the Vienna Conference, Venezuela specifically argued against paragraph b) of this article dealing with acquiescence. Many States agreed with Venezuela, in particular Latin-American States. When Venezuela requested a separate vote on this paragraph, this was opposed by Sir Francis Vallat, the UK representative, and by the Guyanese representative, both arguing against a separate vote. The vote on the question whether a separate vote was to be held recorded 21 States in favour, including 12 Latin American States and Spain. Most Latin American States “regarded Article 45 as being “extremely dangerous”, since the principle of acquiescence would ‘bind [young developing nations] more closely to their former colonial masters’”.⁵⁰⁰ The only Latin-American States to reject the principle of a separate vote were Guyana, Jamaica, and Barbados. Together with other States, they prevailed, and the text of Article 45 as a whole was subsequently adopted by a majority of the participants to the Vienna Conference. “This outcome was criticized as being an ‘antidemocratic gesture’”.⁵⁰¹

6.28. Venezuela, like others, voted against the adoption of this paragraph, and neither signed nor ratified the Vienna Convention – which is not in force for Venezuela. Venezuela has consistently and firmly opposed the view that the rule contained in Article 45 (b), of the VCLT may have been or have become part of general international law, at least in respect of Venezuela.

⁴⁹⁹ *Ibid.*

⁵⁰⁰ M.E. Villiger, “Article 45: Loss Of A Right To Invoke A Ground For Invalidating, Terminating, Withdrawing From or Suspending The Operation Of A Treaty”, in M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Brill | Nijhoff, 2009, p. 575.

⁵⁰¹ *Ibid.*

6.29. Venezuela's firm rejection of the outcome of the work of Sir Humphrey Waldock, the ILC special rapporteur on the topic, and to Sir Francis Vallat, during the Conference, has been summed up as follows:

“The Venezuelan representative Mr Carmona affirmed that the Article only served to ‘erect barriers against the revision of illegal instruments and thus to close the door to any honourable solution of situations which were patently unjust because they had been imposed by the strong party upon the weak’ (Official Records, Summary Records, 2nd session, pp 78–9). Nor is it surprising that Guyana and the United Kingdom were amongst those which most strongly favoured the provision [...] (cf the statements of Sir John Carter (Guyana) and of Sir Francis Vallat (United Kingdom), *ibid*, pp 80–3).”⁵⁰²

6.30. It may be added that Sir Humphrey Waldock and Sir Francis Vallat were well-acquainted with the UK's position regarding the British Guiana/Venezuela's longstanding controversy. So much that they both became in early April 1970 the London-based legal advisers of Guyana on the international law aspects of the border controversy with Venezuela.⁵⁰³ One would struggle to find a more glaring conflict of interest.

6.31. In sum, Guyana now seeks the retroactive application to Venezuela of a rule of “acquiescence by conduct” rule which is neither treaty law in relation to Venezuela, nor customary international law, and that Guyana itself, together with the UK, actively promoted. This cannot be accepted.

⁵⁰² M. Cohen, S. Heathcote, *Commentary of article 45*, in O. Corten, P. Klein, *The Vienna Convention on the Law of Treaties, a Commentary*, Vol. I, Oxford, 2011, fn 17.

⁵⁰³ Odeen Ishmael, *The Trail of Diplomacy: The Guyana-Venezuela Border Issue*, Xlibris, 2013, Ch. 28.

6.32. But in any event, the condition that must be fulfilled for a conduct to be considered as manifesting acquiescence is that this behaviour occurred “after becoming aware of the facts”.⁵⁰⁴ That means, as has been rightly recalled, that “[c]learly, Article 45 cannot operate if facts existed of which the State in question was, in good faith, not or only partly aware”, meaning if the State was not “fully aware”.⁵⁰⁵ As demonstrated without contradiction by Rosenne and Ago during the ILC work on what was to become Article 45 of the VCLT, the notion of “fact” does not mean a suspicion or hearsay, but must be a fact of such a nature as to be a decisive factor.⁵⁰⁶ As will be developed below, and contrary to what Guyana now claims, Venezuela did not have in its hands sufficient evidence to challenge the 1899 Arbitral Award until the second half of the 20th century. Speculations, suspicions or rumours are not legally relevant facts to be taken into account for qualifying a conduct as acquiescence or recognition.

2. Article 45 of the ILC ARSIWA is irrelevant

6.33. Article 45 of the ILC Articles on the International Responsibility of States for Wrongful Acts (ARSIWA) is “analogous to article 45 of the 1969 Vienna Convention concerning loss of the right to invoke a ground for invalidating or terminating a treaty.”⁵⁰⁷

⁵⁰⁴ Vienna Convention on the Law of Treaties, Article 45, chapeau.

⁵⁰⁵ M.E. Villiger, “Article 45: Loss Of A Right To Invoke A Ground For Invalidating, Terminating, Withdrawing From or Suspending The Operation Of A Treaty”, in M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*.

⁵⁰⁶ Rosenne made the point that “In the opening sentence of the article, the term “fact” could hardly be taken as meaning any fact, however insignificant or remotely related to the matter under discussion; it should be understood in the sense in which it was used in article 61 of the Statute of the International Court, where it had to be of such a nature as to be a decisive factor.” ILC, Discussions in Plenary, 701st meeting, 17 June 1963, Law of treaties, ILCYB (1963) Vol. I, p. 183, at para. 40. Ago expressed the same view in stating that “Clearly, it must not be divorced from its context; it must be a “fact” sufficiently serious to give one party the right to avoid or denounce the treaty.” *Ibid.*, p. 186, para. 50.

⁵⁰⁷ ARSIWA with commentaries, Commentary of Article 45, p. 121, para. 1.

6.34. It is therefore equally irrelevant. And even if it were not inspired by the irrelevant Article 45, b) of the Vienna Convention on the law of treaties, Article 45 of ARSIWA would still be manifestly irrelevant here since there is no question of responsibility to be discussed.

3. The King of Spain Case is irrelevant and cannot be compared to the current matter

6.35. The core basis of Guyana's "curing" theory is the King of Spain case.⁵⁰⁸ But, as demonstrated above, the position taken by the Court in this case can neither be seen as mirroring customary international law, nor can it be opposed to Venezuela. Thus, this case cannot be considered a "precedent" *vis-à-vis* Venezuela.

6.36. Furthermore, the King of Spain case is very different from the current matter and should be distinguished on multiple grounds.

6.37. The first difference is, of course, that in the King of Spain case there was nothing like the Geneva Agreement. Nicaragua and Honduras did not engage in a process for searching for a practical solution to the territorial controversy that is acceptable to both Parties. In fact, the King of Spain case referred to a situation where Honduras and Nicaragua needed a demarcation of their common boundary. It was not a territorial dispute, but a boundary dispute, that is, a difference of appreciation of where the boundary inherited from colonisation was lying. This was very different from the Venezuela/United Kingdom territorial dispute, opposing a young, decolonised State to the British colonising Empire endeavouring to swallow as much Venezuela's territory and resources as it could.

6.38. The second difference is that in the King of Spain case, the treaty upon which the arbitral award had been rendered contained an Article VII providing: "The arbitral decision, whatever it be, rendered by a majority vote, shall be held as

⁵⁰⁸ GMM, para. 9.15.

a perfect, binding and perpetual treaty between the High Contracting Parties, and shall not be subject to appeal”.⁵⁰⁹ The mention “whatever it be” has no equivalent in the 1897 Washington Treaty.

6.39. Thirdly, in the King of Spain case Nicaragua was considered by the Court as having been satisfied of the Award, because of compelling evidence. The following were mentioned:

- The President of Nicaragua had sent to the President of Honduras a telegram stating: “Through a cable of today’s date I have taken cognizance of the arbitral award made by the King of Spain in the matter of the delimitation of the frontier. Having regard to this decision, it appears that you have won the day, upon which I congratulate you. A strip of land more or less is of no importance when it is a question of good relations between two sister nations. The irksome question of the delimitation of the frontier has been resolved in such a satisfactory manner thanks to friendly arbitration. I hope that in the future no obstacle will disturb the good relations between our respective countries.”⁵¹⁰
- The Foreign Minister of Nicaragua had addressed a note to the Spanish *Chargé d’affaires* in Central America expressing the appreciation of Nicaragua: “for the graciousness of the King of Spain who, by his arbitral award, has terminated our frontier dispute with the neighbouring state of Honduras”.⁵¹¹
- The President of Nicaragua had addressed a message to the National Legislative Assembly of Nicaragua stating that: “My government has

⁵⁰⁹ *Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960, I.C.J. Reports 1960*, p. 208.

⁵¹⁰ *Ibid.* p. 210.

⁵¹¹ *Ibid.*, p. 211.

noted with satisfaction that this important dispute has been terminated by the highly civilized method of arbitration and, [...] it accepts this decision with pleasure”.⁵¹²

- The Court noted that the Foreign Minister of Nicaragua did produce a report to the National legislative assembly of Nicaragua stating, *inter alia*, that: “we must rejoice at the friendly solution we have been able to find in the settlement of so delicate a question, whatever lines of demarcation have today been laid down for our frontiers with Honduras.”⁵¹³ The National Legislative Assembly took note of the report and approved it.

6.40. Venezuela notes in passing that in the *King of Spain* judgment the Court seemed to give some weight to internal statements exchanged between authorities of the same State. But this kind of internal statement can of course not be relevant for determining a State’s conduct that other States could oppose to it. They can give some context for the proper interpretation of an international conduct, but they cannot, in and by themselves, create any international legal effect.

6.41. This being pointed out, Venezuela recalls that in its Counter Memorial it demonstrated that Venezuela had never been “satisfied” with the Award,⁵¹⁴ contrary to what Guyana tried to argue, relying on a series of misrepresented and out of context statements. Guyana complains in its Reply that “Venezuela completely ignores these statements of its own highest officials, and many others like them.”⁵¹⁵ This is a very unfortunate accusation, unsurprising since Guyana’s writings are replete with this kind of unhelpful contentions. Venezuela duly

⁵¹² *Ibid.*

⁵¹³ *Ibid.*, p. 212.

⁵¹⁴ VCM, paras. 7.6-7.16.

⁵¹⁵ GR, para. 4.11.

addressed in its Counter Memorial all the statements or alleged statements put forward by Guyana in its Memorial, namely those of:

- Venezuela's agent, José María de Rojas, relied on by Guyana in its Memorial;⁵¹⁶
- Its highest official, its President, relied on by Guyana in its Memorial, although the document is neither annexed to the Memorial, nor to the Reply;⁵¹⁷
- Venezuela's counsel, a statement of whom is relied upon by Guyana in its Memorial, although the document supposedly containing this statement is neither annexed to the Memorial, nor to the Reply.⁵¹⁸

6.42. Guyana insists with these statements and some others in its Reply, yet the fact remains that, unlike in the King of Spain case, the statements on which Guyana relies do not support its claim that Venezuela's post-Award conduct are evidence that Venezuela was satisfied with the 1899 Arbitral Award. To the contrary, these statements – many of which stem from authors external to Venezuela or that cannot bind it under international law, and/or are sourced from documents that have not been made available– demonstrate the opposite: that Venezuela had, from the outset, been deeply dissatisfied with the arbitral decision.

6.43. Guyana relies in its Memorial⁵¹⁹ and in its Reply⁵²⁰ on an internal Letter, from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 Oct. 1899).⁵²¹ Yet, this letter's content is far from suggesting any Venezuela's willingness to be bound by the Award or some "post-

⁵¹⁶ GMM, paras. 4.4-4.6, and VCM, para. 7.8.

⁵¹⁷ See GMM, para. 4.7, and VCM, para. 7.11.

⁵¹⁸ See GMM, para. 4.8, and VCM, para. 7.12.

⁵¹⁹ GMM, paras. 4.4-4.6, 9.8.

⁵²⁰ GR, para. 4.10.

⁵²¹ GMM, Vol. II, Annex 3;

award conduct” suggesting satisfaction. In it, after having recalled that together with M. Rojas, the agent of Venezuela to the 1899 Tribunal, the Venezuelan Ambassador had communicated a brief commentary right after the Award was rendered stating that “Arbiters and Counsel for Venezuela were brilliant”, the author writes that:

“Whatever the area may be, the right of Venezuela to a great part of the territory which has been left under the dominion of Great Britain was absolutely clear, as was demonstrated to satiety by its Counsel before the Tribunal. The 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. [...] for us the sentence is hardly satisfactory as regards that to which our right was clear”.⁵²²

6.44. This does not support Guyana’s contention. In any event, a letter internal to the administration of a State, between an ambassador and a minister, cannot have the legal effect of a unilateral act, or be qualified as an international “conduct”, whatever its content.

6.45. Guyana also relies in its Memorial⁵²³ and Reply⁵²⁴ on a press article published by an unknown author in a paper apparently called “Nouvelles de l’Étranger : Venezuela, Le temps, 11 octobre 1899”. However, this document is not part of the documentation annexed by Guyana to its written pleadings. According to Guyana, in this non-annexed document Venezuela’s President is quoted as saying that the “award was a source of satisfaction for the country, as international

⁵²² GMM, Vol. II, Annex 3.

⁵²³ GMM, paras. 4.7, 9.8.

⁵²⁴ GR, para. 4.10.

justice has returned a part of its territory that had been usurped and vindicated its right”.⁵²⁵ It is difficult to understand how this could support Guyana’s contention. Saying that the Award partially satisfied Venezuela in returning a part of its territory points out, by contrast, that the Award is not satisfactory in that it does not return to Venezuela all its territory. Thus, even if it could be seen as evidence, which it cannot, it would not support Guyana’s claim and, to the contrary, demonstrates that Venezuela was from the beginning contending that its territory had been unlawfully stolen from it.

6.46. Guyana relies in the Memorial⁵²⁶ and in the Reply⁵²⁷ on another press article published by an unknown author in *The Times*, dated 4 October 1899. Again, it is neither annexed to the Memorial nor the Reply. In this non-annexed document, Guyana contends that there is a quote from Venezuela’s counsel in the Arbitration saying “[n]o 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. This point has been awarded to Venezuela ...”. Such statement is not a “post-award conduct”. It simply describes one limited aspect of the award which was corresponding to Venezuela’s rights and which it had argued as such. It says nothing of the rest of the Award. Nevertheless, the reality is that the United Kingdom ultimately lost nothing. As revealed in a letter from Webster to Chamberlain, “[i]f I get the chance and think the tribunal is against us as to Point Barima, I shall press strongly for free passage for commercial vessels in the Barima”. In other words, the United Kingdom had already anticipated that, should it fail to secure sovereignty over Punta Barima, it would still obtain navigational rights, particularly access to the Orinoco River. And indeed, it got everything it needed. In colonial times, rivers functioned as vital arteries of

⁵²⁵ GR, para. 4.10.

⁵²⁶ GMM, paras. 4.8, 9.8.

⁵²⁷ GR, para. 4.10.

commerce and control – equivalent to highways- essential for projecting influence, transporting goods, and asserting territorial reach. The mouth of the Orinoco, in particular, was regarded as a key gateway to the South American interior. Thus, access to the Orinoco River was not merely incidental, but a central strategic objective underlying the United Kingdom’s territorial ambitions in the controversy with Venezuela. It was driven by clear economic, geopolitical, and imperial motivations at the high of European competition in Latin America.

6.47. Guyana also evokes a report internal to Venezuela’s Ministry of Foreign affairs, dated May 1900.⁵²⁸ As such, this report does not contain any “declaration”, and does not qualify as “Venezuela’s conduct” that could somehow evidence international acceptance of or satisfaction vis-à-vis the Award. Its author merely says that it would be difficult for Venezuela to challenge the Award despite its many apparent defects, and that it did not do so as Venezuela felt obliged to respect this Award as it was.

6.48. Guyana next mentions an alleged letter from the Venezuela’s Foreign Minister to the British Ambassador to Venezuela dated 1941.⁵²⁹ In fact, the document annexed is not a “letter”. It is a short memo in which it is reported that Venezuela was abiding by the Award, in strict conformity with what was then the posture of Venezuela – at a time when the Mallet-Prevost Memorandum was not yet known.

6.49. In the same vein, Venezuela puts forward a speech by the Venezuelan Ambassador to the United States to the Pan-American Society of the United States (1944).⁵³⁰ This speech is exemplary of what was Venezuela’s view at the time, that

⁵²⁸ GMM, para. 9.8; quoting MMG, Vol IV, Annex 66.

⁵²⁹ GMM, Vol. III, annex 56.

⁵³⁰ GMM, para. 9.8, quoting from Guyana’s Memorial (Jurisdiction and/or Admissibility), Vol. II, Annex 9.

is, after the Award was rendered, and before the Mallet-Prevost Memorandum came to light. The Ambassador stated that:

“The award was made in 1899 and by an unparalleled miscarriage of justice, England was given 60.000 square miles of Venezuelan territory. We have accepted the verdict of the arbitration for which we have so persistently asked; but in the heart of every Venezuelan there is the undying hope that one day the spirit of equity will prevail in the world and that this will bring us the reparation which morally and justly is due to us”.⁵³¹

6.50. This speech was, as recalled above, pronounced before the Mallet-Prevost Memorandum was rendered public. Until then, Venezuela was certainly not satisfied with the 1899 Award – how could it be satisfied to have been stolen such a big part of its territory? - but did not yet have sufficient evidence to challenge it.

6.51. Guyana goes on with a 1962 communication between a Minister Counsellor of Venezuelan Embassy, on the one hand, and a United States “Director, EST” together with an “Officer in Charge of Venezuela Affairs”, reported in a U.S. Department of State, Memorandum of Conversation, No.741D.00/1-1562 (15 Jan. 1962).⁵³² In this communication, the Venezuelan civil servant, certainly not a Venezuelan authority, recalls some of the flaws of the Award, stating, according to the author of the Memorandum, that it was “inequitable and questionable”. It seems that the Spanish word used was “viciado”, which means “flawed”. Not only this exchange cannot be considered an official statement opposable to Venezuela, but it reveals is that Venezuela was not accepting the outcome of the Award as unquestionable.

⁵³¹ *Ibid.*

⁵³² *Ibid.*, Annex 16.

6.52. In sum, it is clear, contrary to what Guyana argues, that Venezuela was never satisfied with the 1899 Arbitral Award, and never suggested so. The UK could never have believed so, and Guyana does not provide any evidence to the contrary. It follows that, in addition to the fact that the King of Spain judgment cannot be considered as mirroring a customary international law rule opposable to Venezuela, a comparison of the current matter with the King of Spain case is wholly inapposite.

4. Even if the “awareness theory” based on the King of Spain case was relevant, in any event Venezuela could not make a claim regarding the flawed deliberation of the 1899 Award until it had evidence in hand

6.53. In its Reply, Guyana argues that Venezuela was allegedly aware of the flaws affecting the validity of the 1899 Arbitral Award since its deliberation, and concludes that because Venezuela did not formally challenge the Award for decades despite such alleged knowledge, and to the contrary implemented it on the ground, it would follow that the flaws affecting its validity would be now “cured”. Guyana contends that the Mallet-Prevost Memorandum did not change anything, because it did “reiterate what Venezuela has said it already knew and believed from the time the Award was issued, and at all times thereafter”.⁵³³

6.54. Leaving aside that the nullity due to fraud cannot be “cured”, the truth is that before 1949, Venezuela could not challenge the shameful 1899 Arbitral Award that had rendered two of the five arbitrators “quite (pretty) sick of arbitration”⁵³⁴, and this for two reasons: on the one hand, Venezuela did not have eyewitness testimony of the manner the 1899 Arbitral Award had been unlawfully deliberated; on the other hand, Venezuela was in a state of structural coercion, which precluded it from formally claiming justice. Venezuela was only able to do so when the United Nations began to engage the decolonisation process. Venezuela will deal in the

⁵³³ GR, para. 4.74.

⁵³⁴ VCM, para. 5.130, 6.83, 7.9.

following paragraphs with the first of these two reasons, while the second will be addressed in sub-section 6.

6.55. It is important at the outset to underline that in the King of Spain case the Court itself made clear that making claims is senseless where such claims are not based on evidence. In this case Nicaragua was claiming *inter alia* that the King of Spain had not been appointed properly as an arbitrator. But at the time of Nicaragua's claim, the available records did not support such contention. The Court held that:

“In support of the first contention, Nicaragua has argued that the requirements of Articles III and V of the Gámez-Bonilla Treaty were not complied with in the designation of the King of Spain as arbitrator. “.. an allegation that such was not in fact the case must be established by positive proof. No such proof has been placed before the Court.”⁵³⁵

6.56. It follows that, assuming that the “curing theory” put forward by Nicaragua is relevant – *quod non*, “awareness” or “knowledge” cannot be a correct trigger to acquiescence or recognition of an unlawful situation. No State can be deemed agreeing with an injustice because it did not challenge it until evidence of such injustice emerged. The correct trigger is evidence, not “awareness” or unsubstantiated “knowledge”.

6.57. Neither in its Memorial nor in its Reply has Guyana put forward anything that could support the contention that before the publication of the Mallet-Prevost Memorandum Venezuela had concrete evidence of the irregularities committed during the deliberation of the Award.

⁵³⁵ *Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960, I.C.J. Reports 1960*, p. 205.

6.58. Guyana relies on a letter from Rojas, the Agent of Venezuela to the Tribunal, to the Foreign Minister of Venezuela, dated 4 October 1899,⁵³⁶ as supposed evidence that Venezuela was aware of the manner the Award had been “negotiated” between the arbitrators.⁵³⁷ In this letter, Rojas broadly explained what he thought he knew about the deliberation. He wrote:

“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”.⁵³⁸

6.59. Despite Roja’s view that he had learned anything “through truthful channels”, hearsay, of course, cannot be sufficient evidence to challenge an arbitral Award.

6.60. Guyana also relies on the alleged fact that the Minister of Foreign Affairs of Venezuela told on 22 October 1900 the 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 or reason”.⁵³⁹ But, first, the quoted document does not support the very existence of the said fact. Indeed, it does not mention any interaction between the Minister of Foreign Affairs and another official, but between “the Chancellery” and an official. Secondly, what the Chancellery suggested about the Award was not based on specific knowledge,

⁵³⁶ VCM, Vol. 3, Annex 65.

⁵³⁷ GR, para. 4.31.

⁵³⁸ Letter from Rojas, the Agent of Venezuela to the Tribunal, to the Foreign Minister of Venezuela, dated 4 October 1899, VCM, Vol. III, Annex 65.

⁵³⁹ GR, para. 4.32, quoting from a Report on the Boundary Question with British Guiana submitted to the national Government by Venezuelan Experts, 1967, p. 21, para. 28 (VCM, Vol. III, Annex 150).

let alone proof, of how the arbitration had been rendered, but “after analysing the nature of the Award”.⁵⁴⁰

6.61. In the same vein, in its Reply Guyana argues that Venezuela was allegedly aware of the grounds for its current allegations that the Tribunal had failed to apply international law, or the rules set out in the 1897 Treaty.⁵⁴¹ But what Venezuela was aware of was that there is no apparent legal reasoning at all in the Award to explain its content, itself questionable on its face. That does not necessary prove that the arbitrators did not elaborate a legal reasoning to render their decision; they might have followed such reasoning, without mentioning it in the Award. At the time there were no evidence of the contrary; only inferences.

6.62. In sum, the point is not that Venezuela believed in or knew stories or had impressions about what was behind the 1899 Arbitral Award. Any reader of the Award could have suspected its flaws, as did Venezuela. The point, however, is that Venezuela had no evidence authorizing it to challenge the Award, until it took cognizance of the Mallet-Prevost Memorandum, the first testimony of a direct eyewitness of the facts, and subsequent documents found in the British archives.

5. The Mallet-Prevost Memorandum is the first eyewitness testimony of the unlawful process leading to the 1899 Award

6.63. The origin of the Mallet-Prevost Memorandum is well-known. Mallet-Prevost died on December 10, 1948. His Memorandum had been dictated on February 1944. The Memorandum was rendered public in 1949 by Mr. Otto Schoenrich in his article published in Vol. 43, No. 3, of the American Journal of International Law, that described it as a:

⁵⁴⁰ Report on the Boundary Question with British Guiana submitted to the national Government by Venezuelan Experts, 1967, VCM, Vol. III, Annex 150, p. 21, para. 28.

⁵⁴¹ GR, paras. 4.26, 4.27.

“Memorandum Left with Judge Schoenrich. Not to be made Public Except at His Discretion after My Death”.

6.64. In his Memorandum, Mallet-Prevost explained that during a first period of pleadings, Lord Collins, one of the arbitrators designated by the UK, appeared to him very visibly interested with the details of the case, appearing to be willing to “getting into the full facts of the case [...] the numerous questions which he asked were critical of the British contentions and gave impression that he was leaning toward the side of Venezuela”. But Mallet-Prevost then went on to say that after a holidays break in London, when the hearings resumed, “the change in Lord Collins was noticeable”; “his whole attitude was entirely different”. He continued by stating that “[i]t looked to us (by which I mean to the counsel for Venezuela) as though something must have happened in London to bring about the change”.

6.65. These are impressions. But they were so strong that Mallet-Prevost was still remembering them decades after. Regarding Lord Collins, it may be added that in the Dictionary of Irish Biography,⁵⁴² it is said about him that in the course of his career:

“Largely due to his association with Lord Esher, the master of the rolls, he was appointed a judge of the queen’s bench in April 1891 and was knighted. Excelling in business litigation cases, he displayed a sound knowledge of the laws relating to traffic and locomotion. As a result, he was appointed as the judicial member and chairman of the railway and canal commission (1894). In 1897 he became lord justice of appeal and was appointed to the privy council. He disapproved of the workman’s compensation act of the same year and refused to enlarge the statute. Several of his judgments relating to this act were reversed

⁵⁴² Available at <https://www.dib.ie/biography/collins-sir-richard-henn-a1862>.

by the lords, and he was criticised for his attempts at obstruction. Nevertheless, he was chosen as the British representative for the Venezuelan arbitration tribunal in Paris in the summer of 1899, successfully defending the interests of the Foreign Office in this boundary dispute. He became master of the rolls in 1901.”

6.66. Concerning Lord Russel, the other British arbitrator appointed to take the place of Lord Herschell after he passed away, the letter of 15 March 1899 of Lord Salisbury proposing to him to be appointed by the British Queen as arbitrator was clear on his mandate: it was to carry out a “patriotic sacrifice”.⁵⁴³

6.67. The notion that one supposedly “independent” arbitrator in an arbitration between UK and Venezuela acted to carry out a “patriotic sacrifice”, while the other “successfully defend[ed] the interests of the Foreign Office in this boundary dispute”, gives credible background to what Mallet-Prevost observed in 1899.⁵⁴⁴

6.68. Mallet-Prevost also testified that the two American arbitrators did invite him, when he was counsel for Venezuela, to a meeting at their hotel to disclose what was going on with the deliberation and ask guidance as to how they should behave. One of them said, at the beginning of the meeting: “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 decided to disclose to you confidentially just what has passed”. And then, as testified by Mallet-Prevost, the arbitrator explains how de Martens had blackmailed him and the other American arbitrator to force them to support the line they had decided to reject as legally unfounded. The arbitrator, after lamenting about this situation, guaranteed to Mallet-Prevost that the American

⁵⁴³ R. Barry O’Brien, *The Life of Lord Russel of Killowen*, London, 1901, p. 307.

⁵⁴⁴ *See*, by contrast, the unsubstantiated claims provided by Guyana, GMM, para. 8.80.

judges would take whichever position during the deliberation of the Award that the counsel to Venezuela would ask them to adopt.

6.69. This revelation, by a direct eyewitness of the facts, is the proof of *ex-parte* substantial discussion about the deliberation of the Award, resulting from a direct request made by arbitrators to the counsel of one party, for being provided with voting guidance. Article V of the Washington Treaty expressly stated that the Arbitrators “shall proceed impartially”. The Mallet-Prevost Memorandum is evidence that arbitrators did not proceed impartially. There is nothing impartial for the American arbitrators asking one party how they should vote during the deliberation. Just as there is nothing impartial for Lord Collins to arbitrate in “defending the interests of the Foreign Office”, as observed in Collins biography, or for Lord Russel to carry out a “patriotic sacrifice”.

6.70. Guyana seems to argue that because this conduct is attributable to American arbitrators appointed by Venezuela, Venezuela cannot rely on it to claim the nullity of the 1899 Arbitral Award. But Venezuela has not been the initiator of this *ex parte* communication. The initiative came from the American arbitrators, not from Venezuela. The counsel involved did not include Venezuela’s Agent to the Tribunal, namely Mr. J. M. de Rojas, but Benjamin Harrison and S. Mallet-Prevost, counsel. There is no evidence that Venezuela instructed them to have *ex parte* discussions with arbitrators.

6.71. But there is more. Indeed, the Mallet-Prevost Memorandum reveals, in the first direct testimony of a direct eyewitness, what until then was only assumed: that the 1899 Award had nothing to do with an award based on the application of international law. As rightly said by the Foreign Minister Falcon Briceño in a Statement of 12 November 1962, during a meeting of the Special Political

Committee of the UN General Assembly,⁵⁴⁵ the “inner history” of the 1899 Award came to light through the Memorandum.

6.72. Until then, Venezuela’s officials had strong doubts and bitterness. They had heard stories about the lack of any legal foundation of the deliberation, and they could not understand – indeed, nobody could - the legal reasoning behind the apparent arbitrary line unanimously drawn by the arbitrators. But they had simply no evidence on which to rely to challenge the Award. Until the Mallet-Prevost Memorandum was released, Venezuela had never had in hands anything close to the written testimony of a direct witness of how the arbitration process had been deliberately transformed into a “farce”, unrelated to anything close to the resolution of a dispute by an independent and impartial third party on the basis of international law.

6. Venezuela raised its claim of nullity of the 1899 Arbitral Award when it had a well-founded opportunity to do so

6.73. As explained above, Venezuela was not able to justify its claim that the 1899 Arbitral Award is null and void before having in hands evidence to this effect. The first solid element which arose in this regard was the Mallet-Prevost Memorandum. Until then, Venezuela had no other choice than to endure the Award against its will, to protect its territory from further unlawful annexation. This is because Venezuela was in a situation of structural coercion, facing the risk of Great Britain seizing more of its territory.⁵⁴⁶

6.74. As Venezuela has explained, Great Britain was initially not even willing to accept the principle of a judicial resolution of the territorial dispute. Great Britain

⁵⁴⁵ Question of Boundaries between Venezuela and the Territory of British Guiana: 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, VCM, Annex 143.

⁵⁴⁶ As already quoted above, Olney admitted that the attitude of Great Britain “in effect deprives Venezuela of her free reason and puts her under virtual duress”, *see* GR para. 2.27 -2.29.

perfectly knew it had no right to claim Venezuelan territory; thus, it knew that a judicial resolution, based on international law, would certainly not have met its interests. As has been rightly said by an independent observer of the time:

“To support its claims, Great Britain demonstrated flexible and unscrupulous tenacity. It used everything to its advantage, even its own ministerial crises. Its goal never wavered: it wanted to extend the boundaries of British Guiana as far as possible. Its usual method of discussion has always been the same: to delay negotiations in order to argue later that its colonists had made steady progress in the disputed territory; to respond to the rights of the other party with the argument of *fait accompli*; and to always consider the last claim made as a minimum achievement, to be used to support a new claim.”⁵⁴⁷

(...)

“[Venezuela] [y]oung and still weak, he did not shy away from what appeared to be an unequal fight. Great Britain is a formidable opponent.”⁵⁴⁸

(...).

“But Venezuela is not only defending its interests, it is protesting on behalf of its rights, and these rights are so numerous and have been so

⁵⁴⁷ G. Pariset, *Historique sommaire du conflit Anglo-Vénézuélien en Guyane, des origines au traité d'arbitrage, 1493-1897*, Berger-Levrault et Co., Paris, Nancy, 1898, p. 74. (“Pour soutenir ses prétentions, la Grande-Bretagne a fait preuve d’une ténacité souple et sans scrupules. Tout lui a servi : même ses propres crises ministérielles. Son but n’a jamais varié: elle voulait étendre aussi loin que possible les limites de la Guyane britannique. Son procédé usuel de discussion a toujours été le même: temporiser dans les négociations, afin d’arguer ensuite des progrès constants de ses colons dans le Contesté ; répondre aux droits de la partie adverse par l’argument du *fait accompli*; considérer toujours la prétention formulée en dernier lieu comme un minimum acquis, devant servir à étayer une prétention nouvelle.”).

⁵⁴⁸ *Ibid.*, p. 79 (“Jeune et faible encore, il n’a pas reculé devant une lutte d’apparence inégale. La Grande-Bretagne est un adversaire redoutable”).

outrageously trampled upon that it is perhaps no exaggeration to say that the Venezuelan cause is now the cause of justice.”⁵⁴⁹

6.75. Knowing that it had no right to claim Venezuelan territory, Great Britain preferred to rely on its capacity to unilaterally dictate its will to Venezuela, which was then a “weaker adversary”.⁵⁵⁰ As has already been demonstrated, it was only because of the U.S.A.’s initial pressure that Great Britain had reluctantly accepted to enter an arbitration process.⁵⁵¹

6.76. Venezuela had expected to obtain from the arbitration process two important bulwarks against Great Britain’s expansionist stance: justice, that is, a resolution of the territorial dispute created by Great Britain based on international law, and protection. But, as Venezuela has evidenced, the arbitration process has been carried out in such a manner as to ensure a parody of justice, giving Great Britain most of the territory it unlawfully coveted.⁵⁵² Venezuela sadly did not obtain justice through the 1899 Arbitral Award. Yet, it still needed the protection of its territorial rights.

6.77. Of course, the 1899 Arbitral Award did not change the fact that Great Britain was a powerful empire, and that its neighbour was far weaker. As a matter of fact, the relation between the two countries kept being comparable to “une situation quasi-coloniale”,⁵⁵³ where an expanding colonial power proves a

⁵⁴⁹ *Ibid.* (“Mais le Vénézuéla ne défend pas seulement ses intérêts, il proteste au nom de ses droits, et ces droits sont en somme si nombreux, ils ont été si outrageusement foulés aux pieds, qu’il n’est peut-être pas exagéré de dire que la cause vénézuélienne est maintenant la cause du droit.”).

⁵⁵⁰ President Cleveland’s annual message to Congress, December 3, 1894; *Blue Book* 6, pp. 280-282 (available at: <https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4>).

⁵⁵¹ VCM, paras. 4.148- 4.165.

⁵⁵² VCM, Chapter 5.

⁵⁵³ 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*, Springer, Dordrecht, p. 246. A similar view was expressed by other authors. See H. Gros Espiell, “Estudio preliminar”, *Academia Nacional de la Historia* (1981), p. 21 (“The conditions under which Venezuela agreed to be represented by two American judges, without the existence of

structural threat to its neighbours. Thus, Venezuela was not only not in a position to challenge the 1899 Arbitral Award,⁵⁵⁴ but it was to the contrary constrained to tolerate it despite its repudiation to avoid further losses. Therefore, it is of no support to Guyana's alleged "recognition and acceptance" thesis that after 1899 "Venezuela engaged in a wide range of official acts which expressly affirmed the Award".⁵⁵⁵ These were all instances where Venezuela was forced to endure the award, despite its opposition, to mitigate the risk to see Great Britain enlarge even further the territory of its colony to the expenses of Venezuela.

6.78. As a first alleged evidence of Venezuela's "recognition" and "acceptance" of the Award, Guyana relies on the fact that the "Recommendations of the Boundary Commissioners for the Adoption of the Watersheds between the Caroni and Mazaruni River Systems as the Boundary between the Source of the Wenamu River and Mount Roraima in place of the Direct Line Mentioned in the Award ..." had been denied by Venezuela, which preferred to keep strict adherence to the line described in the Award.⁵⁵⁶ But contrary to what Guyana seems to suggest in mentioning that this Recommendation was "considered beneficial to Venezuela",⁵⁵⁷ Venezuela's rejection of the proposed modification was "because it amounts to a veritable cession of territory",⁵⁵⁸ as compared to the 1899 line. Indeed.

a protectorate or any other similar institution, are very rare in arbitration proceedings and reveal a quasi-colonial sovereignty." ["Las condiciones en las que Venezuela consintió en hacerse representar por dos jueces norteamericanos, sin que existiera un protectorado o cualquier otra institución análoga, se encuentra muy raramente en un procedimiento arbitral y ponen de manifiesto una soberanía cuasi colonial"]]; C. Sosa Rodríguez, "El Acta de Washington y El Laudo de París", in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales, 1983, p. 146 ("Venezuela is treated as if it were a colony or a country under mandate." ["Venezuela es tratada como si fuera una colonia o un país bajo mandato"])).

⁵⁵⁴ VCM, paras. 10, 7.20-7.74.

⁵⁵⁵ GR, para. 4.54. See also GMM, paras. 4.23-4.32; GR, paras. 4.55-4.57.

⁵⁵⁶ GMM, para. 4.23-4.27; GR, paras 4.55-4.56.

⁵⁵⁷ GMM, para. 4.24.

⁵⁵⁸ GMM, para. 4.26, quoting *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.

This is expressly written in the Boundary Commissioners Recommendations: “[a] boundary line following the watershed from Wenamu head to Roraima if adopted in place of a direct line between the same points would result in a gain to British Guiana of an area of 222.6 square miles of 576.506 square kilometres”.⁵⁵⁹ For Venezuela, sticking to the line described in the Award was clearly a protection against further territorial losses.

6.79. It was also manifestly to protect itself against further annexation of its territory by its powerful neighbour that Venezuela had insisted that the pillars marking the boundary should be located on the line described by the Award,⁵⁶⁰ and had referred to this line in other occasions.⁵⁶¹

6.80. Guyana contends that the negotiation of the boundary with Brazil is supposedly an act of recognition and acceptance of the 1899 Arbitral Award, because it was made “in conformity with the 1899 Award and the 1905 Agreement”.

6.81. As explained by Venezuela in its Counter Memorial, there is no reference to the 1899 Award or to the 1905 demarcation in the Agreement between Venezuela and Brazil.⁵⁶²

6.82. Guyana recognizes this fact.⁵⁶³ However, it also contends that because the agreement with Brazil refers to “mount Roraima where the frontiers of Brazil, Venezuela and British Guiana meet”, it was referring to “the precise location where the 1899 Award had determined the borders of British Guiana and Venezuela”.⁵⁶⁴

⁵⁵⁹ GMM, Vol. IV, Annex 69.

⁵⁶⁰ GMM, paras. 4.28-4.29.

⁵⁶¹ GR, para. 4.56.

⁵⁶² VCM, para. 7.66.

⁵⁶³ GR, para. 4.63.

⁵⁶⁴ GR, para. 4.63.

Guyana concludes that this “clearly reflects Venezuela’s acceptance ... of the validity of the boundary established by the 1899 Award”.⁵⁶⁵

6.83. Yet, as recalled by Venezuela in its Counter Memorial, the negotiation of the border between Great Britain and Brazil only confirmed that the 1899 Arbitral Award was not based on international law, as evidenced not only by the fact that it attributed to Great Britain a territory belonging to Venezuela, but also because it went as far as to allocate territories to British Guiana that, at the time, were disputed between the United Kingdom and Brazil.⁵⁶⁶ Moreover, at the time Venezuela had no evidence that the 1899 Arbitral Award was null and void. As explained above, the evidence begun to emerge years later, with the Mallet-Prevost Memorandum. Until then, Venezuela was forced to endure against its will the line described by the 1899 Arbitral Award as a sort of legal shield against further British annexation of Venezuelan territory.

6.84. This transpires again in Venezuela’s position mentioned by Guyana in its Reply, quoting from a British document, by which it rejected a revision of the line described by the Award proposed by Great Britain.⁵⁶⁷ Indeed, in his rejection letter dated 31 October 1931, the Venezuelan Minister for Foreign Affairs wrote “I have most carefully considered the proposal A similar modification was proposed as long ago as 1904”.⁵⁶⁸ He was referring to the “Recommendations of the Boundary Commissioners for the Adoption of the Watersheds between the Caroni and Mazaruni River Systems as the Boundary between the Source of the Wenamu River and Mount Roraima in place of the Direct Line Mentioned in the Award ...”, which

⁵⁶⁵ *Ibid.*

⁵⁶⁶ VCM, paras. 6.139-6.142; 7.67-7.72.

⁵⁶⁷ GR, para. 4.59.

⁵⁶⁸ GMM, Vol. III, Annex 53.

was indeed rejected in 1904 because it would have “result[ed] in a gain to British Guiana”.⁵⁶⁹

6.85. It is clear that at this moment in time, in the 1920’s, Venezuela was not only not in a position to challenge legally the 1899 Arbitral Award, it could not do so on the ground either, because it was still fully aware that it was in a position of structural coercion vis-a-vis vis Great Britain, which had showed with the 1902-1903 blockade that it was ready to use force against Venezuela. In addition, in the 1920’s Venezuela’s economy was largely dependent of oil exploitation, which was controlled by British oil companies like Shell.

6.86. Despite this critical context, Guyana contends in its Reply that “Venezuela does not allege that it was forced to engage in acts such as those described above as a result of “structural coercion”. According to Guyana, Venezuela’s alleged silence in its Counter-Memorial confirms that these official acts were all done in the exercise of its sovereign free will, and reflected Venezuela’s supposed acceptance of the 1899 Award and the resulting boundary.”⁵⁷⁰ This is plainly incorrect. Venezuela has expressly argued that it was in a situation of structural coercion during all the period covering the facts alleged by Guyana as evidence of acceptance and recognition of the Award.⁵⁷¹

6.87. Guyana seems to suggest that the first half of the 20th Century was just normal, that Venezuela, a young, decolonized country, on the one hand, and the British Empire and the United States of America, on the other hand, were put on an equal footing and that Venezuela was in a position to freely challenge the unjust 1899 Arbitral Award whenever it wished. This completely unfounded argument is probably put forward because Guyana is aware that, in the words of the Court,

⁵⁶⁹ GMM, Vol. IV, Annex 69; and *supra*, para. 6.78.

⁵⁷⁰ GR, para. 4.57.

⁵⁷¹ VCM, paras 7.2, 7.20-7.22, 7.58.

‘acquiescence [...] presupposes freedom of will’.⁵⁷² But contrary to what Guyana contends, the reality of the situation of structural coercion in which Venezuela was at the time cannot be seriously disputed. None of the arguments advanced by Guyana in its Reply supports the contrary.

6.88. First, Great Britain, Venezuela’s immediate neighbour that used to have recourse to all sort of tricks to annex Venezuela’s territory, was an extraordinarily powerful empire compared to Venezuela. This reality was clearly understood by Venezuela. For example, Counsel for Venezuela in the Venezuelan Preferential Case stated that there were:

“vast inequality of strength between Great Britain and Venezuela [...]. [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 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; and the propriety of great forbearance in pressing doubtful claims by so powerful a nation against a nation so incapable of resistance ought, it would seem, to have been

⁵⁷² *Frontier Dispute (Burkina Faso/Mali)*, ICJ Reports 1986, p. 597, para. 80.

always recognized even before the high-sounding proclamation of the peace conference.”⁵⁷³

6.89. Second, Great Britain had made very clear, both before and after the 1899 Award, that it was ready to engage its strength against Venezuela, should it decide that it was conform to its interests.

6.90. Guyana argues that Venezuela’s contention is “impossible to reconcile with the assertive and sometimes threatening nature of Venezuela’s communications to Great Britain regarding the boundary controversy in the period immediately preceding the issuance of the Award”, referring to two events.⁵⁷⁴ But the events Guyana refers to are facts occurred in 1887 and 1893,⁵⁷⁵ that is, before Venezuela was effectively coerced to accept the otherwise unacceptable 1897 Treaty of Washington.⁵⁷⁶ It is by 1896 that it became clear to Venezuela that Great Britain was ready to use force against is to promote its interests.

6.91. Concerning the period following the 1899 Arbitral Award, Guyana tries to mislead the Court in claiming that “Venezuela ... has not adduced a single document to corroborate its claim that “structural coercion” made it impossible for Venezuela to dispute or even openly doubt the validity of the 1899 Award.”⁵⁷⁷

6.92. To the contrary, the evidence is overwhelming. For instance, in a report of May 4, 1900, provided by Guyana itself, Venezuelan Counsellor Dr Rafael Seijas wrote:

⁵⁷³ *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, Spain, Sweden and Norway, signed at Washington May 7, 1903 (1905) p. 1130.*

⁵⁷⁴ GR, para. 4.38, referring to events mentioned in VCM, paras. 4.176-4.178.

⁵⁷⁵ GR, para. 4.38, fn 312 and 313.

⁵⁷⁶ VCM, paras. 5.68-5.76.

⁵⁷⁷ GR, para.4.38.

“Now as 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 to extend its encroachment”.⁵⁷⁸

6.93. Strikingly, this report shows that Venezuela could not even refuse to discuss the demarcation, which was finally agreed on 1905. In the 1967 Report of the “Boundary Question With British Guiana Submitted to the National Government by the Venezuelan Experts”, it is confirmed that:

“27.- A note from the British Minister in Caracas to his Government of December 5, 1899, records that the Venezuelan Government wished to delay the demarcation of the frontier. In July 1900, the British Minister notified the Venezuela Government that if it did not dispatch the Demarcation Commission before October 3 the British Government would begin the demarcation alone. On October 8, that Minister notified the Venezuelan Chancellery that the Governor of British Guiana had been given instructions to commence demarcation. On October 19, the British Commissioners had already set up the Punta Playa boundary post. Under such an open pressure as this, Venezuela had no other alternative than to proceed to send its Demarcation Commission”.

(...)

29.- If Venezuela concurred with Great Britain in the demarcation of the so-called border of the “Award”, it was for the tremendous pressure

⁵⁷⁸ GMM, Vol. IV, Annex 66.

of the circumstances and to prevent greater evils. The work of this Commission, evidently of a purely technical character, did not imply the assent to the so-called sentence of the Arbitral Tribunal”.⁵⁷⁹

6.94. Clearly, for Venezuela, at the time, protection against further territorial losses could only come from sticking to the line of the Award, as unfounded as it was. It was the only protection it could rely on “to prevent greater evils”. This explains why Venezuela, against its will, had to stick to this line until evidence of the Award’s flaw emerged.

6.95. Guyana further argues that Venezuela was not “intimidated by Great Britain since, to the contrary, it carried out bellicose actions against it.”⁵⁸⁰ Those “bellicose actions”, according to Guyana, included “use of force against British assets and British subjects”.⁵⁸¹

6.96. Again, Guyana tries to mislead. None of the incidents on which Guyana relies for substantiating this argument evidence a confrontation with Great Britain based on a rejection of the law. None of the incidents mentioned by Guyana⁵⁸² are “bellicose actions” against Great Britain; all of them are based on what Venezuela thought were its rights to defend itself against insurrectionists.

6.97. The first incident featured a Venezuelan warship carrying out police enforcement action against four private ships, three of them being of Venezuelan nationality. The Venezuelan consul, M. J. Arraiz, explained that the Venezuelan gunboat was chasing several boats leaving Venezuela with revolutionists onboard, forcing them to put into the island of Patos.⁵⁸³ He also argued that the Venezuelan

⁵⁷⁹ VCM, Vol. III, p. 422, Annex 150.

⁵⁸⁰ GR, paras. 4.39-4.40.

⁵⁸¹ GR, para. 4.39.

⁵⁸² GR, para. 4.39.

⁵⁸³ GR, Vol. III, Annex 29, p. 279.

soldiers never landed, and that “he was sorry that there should be any dispute between the two Governments”.⁵⁸⁴ This can hardly be seen as a bellicose action. The Venezuelan counsel argued, in relation to this incident, that Great Britain put forward during the Venezuelan Arbitration of 1903, that “the whole incident is of an unimportant character”, and “does not call for war by a power fresh from signing The Hague Convention for mediation and arbitration”.⁵⁸⁵ The second incident, dated 27 February 1901, is of the same nature. A Venezuelan warship carried out what was thought to be a police enforcement activity against Venezuelan insurrectionary forces having seized a boat and used it against the will of its owner.⁵⁸⁶ The third and fourth incidents mentioned by Guyana,⁵⁸⁷ dated December 1901 and May 1902, are of the same nature. Nothing close to what now Guyana portrays as “bellicose actions” against Great Britain. They all involve private individuals suspected to be related to insurrectionary forces or to be involved in traffic in arms or smuggling, at a time when Venezuela was facing a civil war, which turned out to be the so-called “Liberating revolution”. This certainly cannot substantiate Guyana’s claim that Venezuela was allegedly in a position to challenge the 1899 Arbitral Award, let alone trespass the boundary line that it described.

6.98. Guyana further argues that, during the exchanges related to these incidents, Venezuela claimed that the island of Patos was under Venezuelan sovereignty. But this was certainly no a new claim “disputing British title to the island of Patos”, since the title over this island had long been in dispute.⁵⁸⁸

⁵⁸⁴ *Ibid.*

⁵⁸⁵ See Argument of Venezuela, *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, p. 192.

⁵⁸⁶ GR, Vol. III, Annex 30, p. 285.

⁵⁸⁷ GR, para. 4.39.

⁵⁸⁸ See Argument of Venezuela in, *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, pp. 159, 190, 196; see also Basdevant, “L’action Coercitive Anglo-germano-italienne Contre Le Vénézuéla (1902-1903)”,

6.99. Yet, the case of the island of Patos is instructive. Indeed, Jules Basdevant wrote that the dispute regarding this island had lead Great Britain to “substituer pour la première fois les mesures effectives aux controverses diplomatiques”.⁵⁸⁹ Great Britain’s reaction to what it saw as a threat to its alleged title over the island of Patos, never recognized by Venezuela, was so strong that it informed Venezuela that it would have been risking even more losses of its territory if it had decided to challenge the 1899 Arbitral Award without concrete evidence as to its nullity.

6.100. Moreover, Venezuela’s conduct upon which Guyana relies to suggest that Venezuela could have challenged the 1899 Arbitral Award has been unilaterally avenged by force by Great Britain through the naval blockade of 1902-1903.

6.101. Of course, the naval blockade of 1902-1903 demonstrates that Venezuela was vulnerable at the time, and subject to a structural coercion.⁵⁹⁰ As was written, “on December 1902 [...] it was already evident that Venezuela must bow to force”.⁵⁹¹ The coercion against Venezuela has been explained as follows by Yepes:

“L’action coercitive de l’Angleterre, de l’Allemagne et de l’Italie contre le Venezuela en 1902 a eu pour prétexte des réclamations en faveur de leurs nationaux.

(...) Les Etats réclaments — avec cette mentalité de pays colonisateur dont l’Europe a fait preuve pendant longtemps à l’égard de l’Amérique latine — ne comprenaient pas les choses de la même façon que le Venezuela. Ils [...] adressèrent un ultimatum au Venezuela. Après un délai de vingt-quatre heures, les mesures de violence commencèrent.

Revue Générale de droit international public, Paris, 1904, pp. 362-458, pp. 368-369, (<https://gallica.bnf.fr/ark:/12148/bpt6k6461282p/f379.item.r=jules%20basdevant.langFR>).

⁵⁸⁹ *Ibid.*, p. 371.

⁵⁹⁰ VCM, para. 5.136.

⁵⁹¹ See *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, p. 205.

Elles consistaient dans le bombardement de Puerto Cabello, dans le blocus soi-disant pacifique des côtes vénézuéliennes et dans la saisie des navires de guerre vénézuéliens, dont deux furent coulés.

[...] C'est à l'occasion de cette coalition contre le Venezuela que le ministre argentin, M. Drago, proclama la doctrine qui porte son nom. D'après cette doctrine, «la dette publique ne peut donner lieu à une intervention armée, moins encore à une occupation matérielle du sol des nations américaines par une Puissance européenne».⁵⁹²

6.102. Guyana does not deny it but argues that the blockade “lasted just three months”.⁵⁹³ But Guyana overlooks that it ended only when Venezuela was forcibly reduced. Indeed, as a condition to raise the blockade, Great Britain imposed to Venezuela the signature of a “Protocol Between Great Britain and Venezuela Relating to the Settlement of the British Claims and Other Matters (1903)”,⁵⁹⁴ by which Venezuela was forced to recognize “in principle the justice of the claims which have been preferred by His Majesty’s Government on behalf of British subjects” (Article 1), and committed to “satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about £ 5,500, arising

⁵⁹² J. Yepes, «Les problèmes fondamentaux du droit des gens en Amérique », *Recueil des cours de l'Académie de droit international de La Haye*, Vol. 47, 1934, pp. 61-62 (“The coercive action taken by England, Germany and Italy against Venezuela in 1902 was justified on the grounds of claims made on behalf of their nationals. [...] The claimant states — with the colonial mentality that Europe had long displayed towards Latin America — did not see things the same way as Venezuela. They [...] issued an ultimatum to Venezuela. After a twenty-four-hour deadline, violent measures began. These consisted of the bombing of Puerto Cabello, the so-called peaceful blockade of the Venezuelan coast and the seizure of Venezuelan warships, two of which were sunk. [...] It was during this coalition against Venezuela that the Argentine minister, Mr Drago, proclaimed the doctrine that bears his name. According to this doctrine, “public debt cannot give rise to armed intervention, let alone the physical occupation of the soil of American nations by a European power”).

⁵⁹³ GR, para. 4.41.

⁵⁹⁴ In reality, the Protocol was concluded by M. Bowen, an American citizen, not a Venezuelan citizen, in contradiction with the Venezuelan constitution; see J. Basdevant, “L'action Coercitive Anglo-germano-italienne Contre Le Vénézuéla (1902-1903)”, p. 439.

out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects” (Art 2).⁵⁹⁵ As has been rightly written, this Protocol is based on “la satisfaction immediate et sans contestation des reclamations dites du premier rang” ... Pour celles-ci, l’arbitrage est complètement écarté pour laisser place à une solution purement et simplement imposée par la force” ... Il est évident, cependant, que rien n’établit le bien fondé de toutes ces réclamations de premier rang”.⁵⁹⁶

6.103. Indisputably, this episode constitutes strong evidence that, during the colonial era, when the British empire was in its full strength, Venezuela lacked the means and conditions to resist its acts of aggression. The end of the naval blockade certainly did not change this state of fact, which deterred Venezuela to challenge the 1899 Arbitral Award until it had both evidence in hand and confidence that Great Britain would not use force against it.

6.104. To attempt—unsuccessfully—to prove otherwise, Guyana puts forward that Venezuela did lodge a formal protest against an aspect of the award rendered by the Arbitral Tribunal in the 1903 Venezuela Preferential Case before the Permanent Court of Arbitration.⁵⁹⁷ Guyana’s argument is that since Venezuela did protest at this time, it was allegedly also capable of protesting against the 1899 Arbitral Award. Yet, the said protest was made by Mr. Herbert W. Bowen, the American diplomat who had negotiated for Venezuela and acted as agent in the Venezuela Preferential case. Since the Award had interpreted his words or intent during certain negotiation preceding the case in a manner that directly damaged Venezuela’s case,

⁵⁹⁵ It is recalled that Venezuela did disagree with the “justice” of these claims and accepted to recognize them as funded as the sole result of the blockade.

⁵⁹⁶ J. Basdevant, “L’action Coercitive Anglo-germano-italienne Contre Le Vénézuéla (1902-1903)”, p. 435 (“the immediate and uncontested satisfaction of so-called first-ranking claims” ... For these, arbitration is completely ruled out in favour of a solution that is purely and simply imposed by force” ... It is clear, however, that there is no evidence to support the validity of all these first-ranking claims”).

⁵⁹⁷ GR, para. 4.42.

he felt committed to protest, in his own name rather as in the name of Venezuela. To appreciate the personal nature of Bowen's protest it suffices to compare the title of his protest, in the proceedings of the 1903 Venezuelan Arbitration - i.e., "Protest of Mr. Herbert W. Bowen, Agent for Venezuela, against the Award" - to either the title of the protest lodged by Japan (i.e., "Protest of Japan .."), or to the title of letters sent to the Administrative Council of the PCA, such as "Letter of counsel for the United States to the Administrative Council", and "Letter of French agent to the Administrative Council".⁵⁹⁸

6.105. Secondly, as recalled by Guyana itself, the protest made by Bowen against a paragraph of the Award was expressly based on "positive proof that the said conclusion of the arbitration is erroneous".⁵⁹⁹ It is only with "positive proof" in hands that Bowen considered possible to challenge the award. By contrast, as has been explained above, Venezuela had no positive proof for challenging the 1899 Arbitral Award at the time, and in the situation of structural coercion in which it was vis-à-vis Great Britain, it was simply impossible for it to challenge the 1899 Arbitral Award, however unjust it was.

6.106. Guyana further suggests that even if during the blockade Venezuela could not question the 1899 Arbitral Award, after the latter was lifted there was supposedly no more justification for the absence of challenge to the Award for more than half a century after it ended.⁶⁰⁰ But Guyana overlooks that, notwithstanding the fact that Venezuela could not bring evidence regarding the nullity of the Award before the second half of the XXth Century, it had been coerced and defeated by Great Britain twice, once when it had no other choice than to sign the 1897 Washington Treaty despite its many flaws, the second time during the blockade.

⁵⁹⁸ *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, p. 3.

⁵⁹⁹ GR, para. 4.42.

⁶⁰⁰ GR, para. 441.

From there, Venezuela was obviously not in a position to challenge the 1899 Arbitral Award, until it had evidence and sufficient strength to push forward its claim. This moment came exactly in the second half of the XXth Century,

6.107. Guyana also puts forward that the structural coercion afflicting Venezuela at the time is allegedly contradicted by the statement made by Dr Marcos Falcón Briceño on 12 November 1962 before the United Nations, in which, according to Guyana,

“Dr Falcón Briceño told the United Nations that as soon as the 1899 Award was delivered Venezuela “‘certainly ... knew that we had been robbed’ but that the absence of any protest against the Award at the time was the result of Venezuela’s internal political instability. He acknowledged that “this is our fault, not the fault of Great Britain””.⁶⁰¹

6.108. Once again Guyana, sticking to its manipulative tactics, grossly misinterprets Dr Marcos Falcón’s statement. It reads:

“Replying to my own query, namely, why is the matter being raised now, it was because earlier we were not acquainted with the inner history of this award. We did not know exactly how things had taken place. Certainly, we knew that we had been robbed, but the Venezuela of 1899 and the Venezuela of many years thereafter was a country which was poverty-stricken, which had been ravaged by civil war. While the arbitral award was being handed down in Venezuela on 3 October, in Venezuela a revolution was taking place which was very near Caracas, the capital of our country. At these moments – in 1899, I think I can say for this is an historical fact – Venezuela was virtually without a government. Naturally, that is our fault, not the fault of Great

⁶⁰¹ GR, para. 4.43.

Britain, but I am trying to depict the atmosphere which prevailed at the time these various events were taking place”.⁶⁰²

6.109. Reading this complete statement, it is clear that when the Venezuelan Minister said “this is our fault, not the fault of Great Britain”, he was simply saying that the specific fact that Venezuela was virtually without Government was not the fault of Great Britain.

6.110. It stays clear that without a functional government for a long period of time, contrary to Great Britain, which was in full strength, and without evidence that the Award was null, Venezuela had no possibility to legally challenge the Award, let alone to ignore on the ground the boundary line it describes. Great Britain’s threats of force against Venezuela before the 1897 Treaty and after the 1899 Award, including the naval blockade in 1902-1903, meant that Venezuela knew full well that if it protested in favour of its interests and against the interests of Great Britain, especially on a matter as sensitive as its boundaries with Great Britain, new threat of force or, even worst, force without prior threat would ensue, at a time when the military power disparities between Great Britain and Venezuela were gigantic. The naval blockade by Great Britain instilled a well-founded fear in Venezuela, which remained the critical factor that determined its conduct for decades.

6.111. Guyana contends in its Memorial that “between 1944 and 1962, when Venezuela began to question the equitableness of the 1899 Award, [it] avoid[ed] formulation of any legal ground for a Venezuelan claim”.⁶⁰³ Guyana repeats the same in its Reply.⁶⁰⁴

⁶⁰² VCM, Vol. III, Annex 143, p. 333.

⁶⁰³ GMM, para. 9.11.

⁶⁰⁴ GR, para. 4.77.

6.112. Venezuela only became aware of the Mallet-Prévost Memorandum when it was made public by Mr. Otto Schoenrich, after the death of its author. It was at this juncture, and based on this impetus, that Venezuela began research in the British archives, which also became partially accessible only during the 1950s. This was a diligent effort to find conclusive evidence from the official documents of the British Government that may support lack of impartiality. The research in the British archives required effort and time to access, to collect the relevant information and properly to appreciate it. This was a period of time when there was no online access of academic journals, and the publicity of articles in academic journals would not have been widely and quickly disseminated around the world, in the way that can happen in today's world of academic publications websites, blogs and social media.

6.113. The process of acquisition of evidence by Venezuela from the moment it was aware of the Mallet-Prevost Memorandum has been described by the Venezuelan expert, Padre Ojer, during a session of the Venezuelan and British experts in charge of studying the evidence that the 1899 Arbitral Award was null:

“In 1949, Venezuela came to know of Mallet-Prevost's Memorandum. This document—as we know—reveals the inner workings of the Paris farce. Clearly, the Memorandum caused a major stir in the country, as is well known to anyone familiar with the Venezuelan press of the time. And a curious fact is that its publication coincided with the 50-year period required for the British archives to be opened, and it also coincided with the opening of private archives. Venezuelan historians immediately began studying these documents. These studies by Venezuelan researchers were conducted between 1950 and 1955. I would like to emphasize those two facts—the coincidence of both events—because they explain why Venezuela waited to formalize its

denunciation of the Award and to make its “approach” to the British Government to discuss the documents related to the Award.”⁶⁰⁵

(...)

“Once Venezuela had obtained the extensive documentation supporting its traditional position regarding the 1899 Award, it reaffirmed that position in February 1962 through its Ambassador to the United Nations, Dr. Carlos Sosa Rodríguez, who is now President of the General Assembly of the United Nations.”⁶⁰⁶

6.114. The British Archives, in the form of microfilms, revealed to Venezuela, as reported by a Venezuelan expert in a Memorandum dated 3 September 1963:

1) The history immediately preceding the award, which highlights the various factors that led to the Venezuelan defeat, and particularly serious irregularities in the arbitration process.

2) The verification of the bad faith and fraud of Great Britain in the presentation of documents on the Schomburgk line, a fundamental piece of evidence, although undeservedly so, presented to the court.

The flaws in the award, the reason for its injustice, the corruption of the English arbitrators and the bribery exercised by the president of the Court, to obtain the ruling.⁶⁰⁷

6.115. Taking into account this process, in the conditions of the 1950s, and the capacity of Venezuela as a developing State at this moment in time, it would not be

⁶⁰⁵ Expert’s conversations on the boundary issue Venezuela-British Guiana, Minutes of the Twelfth Session, dated 2 April 1964, **Annex 30**, pp. 24-25.

⁶⁰⁶ *Ibid.*, p. 27.

⁶⁰⁷ *See* VCM, Annex 150.

reasonable to expect Venezuela to have protested against the Award's nullity before the 1960s.

6.116. Secondly, as a matter of fact, despite the real challenges Venezuela faced on the ground, it challenged the Award in 1904, 1944, 1945, 1951 and 1954, in ways that were sufficiently soft so as to avoid the grave danger of Great Britain's use of force again. Venezuela increasingly felt more confident it could safely challenge the Award during the period of decolonisation and the conclusion of the UN Charter. As such, it is when it had sufficient evidence of the nullity of the Award, and it was as the decolonisation process was being consolidated, that Venezuela raised its nullity claim.

6.117. It follows that Venezuela did raise its nullity claim in due time, when it became in a proper situation to do so: with sufficient evidence, and when the situation of structural coercion created by its imperial neighbour faded away due to the decolonisation process.

D. THE 1905 DEMARCATION BASED ON THE 1899 AWARD CANNOT SAVE THE INVALID AWARD OR THE BOUNDARY LINE IT UNLAWFULLY ESTABLISHED

6.118. Venezuela has explained in its Counter Memorial, and this is obvious, that the 1905 demarcation which merely marked on the ground the line of the 1899 Arbitral Award could certainly not somehow survive the nullity of the Award.⁶⁰⁸

6.119. In its Reply, Guyana contends that "1905 Agreement was not "merely a technical exercise".⁶⁰⁹ However, Guyana contradicts itself with what it states in its own Memorial, which is replete with assertions such as the following:

⁶⁰⁸ VCM, paras. 7. 60-7.64.

⁶⁰⁹ GR, para. 4.48

- “Soon after the 1899 Award was delivered by the Tribunal, the parties established a Joint Boundary Commission and appointed its members, who proceeded to physically demarcate the boundary.”⁶¹⁰
- “Great care was taken to achieve an accurate demarcation, in strict compliance with the 1899 Arbitral Award.”⁶¹¹
- “the demarcation of the boundary had been completed in conformity with the 1899 Arbitral Award”.⁶¹²
- “On 10 January 1905, the Agreement Between the British and Venezuelan Boundary Commissioners with Regard to the Map of the Boundary (“the 1905 Boundary Agreement” or “the 1905 Agreement”) was signed, demarcating the entire boundary between British Guiana and Venezuela in compliance with the 1899 Arbitral Award.”⁶¹³

6.120. The demarcation was obviously nothing more than a lengthy technical exercise aiming at transposing the 1899 Arbitral Award delimitation on the ground.

6.121. This is confirmed by a document setting out some agreed coordinates signed by the Commissioners on 24 November 1900. It reads: “The undersigned, members of the Commission appointed by her Majesty the Queen of Great Britain and Ireland to delineate technically the boundary line between the United States of Venezuela and the Colony of British Guiana of the one part and, of the other part of the Commission named for the same object by the United States of Venezuela”.⁶¹⁴

6.122. For its part, the text of the 1905 agreement makes it clear that its sole object is to describe, in an agreed document, “the result of [the] work [of the demarcation

⁶¹⁰ GMM, para. 4.10.

⁶¹¹ GMM, para. 4.14.

⁶¹² GMM, para. 4.18.

⁶¹³ GMM, para. 4.20.

⁶¹⁴ See Commission of Her Majesty the Queen of Great Britain and Ireland to delineate technically the boundary line, dated 24 November 1900, **Annex 29**.

commission] in the demarcation of the boundary between the territories ... as laid down by the Arbitral Award”.⁶¹⁵ It does not establish a boundary. Its sole ambit is to describe, in an agreed manner, the location on the ground of what the Award establishes. In legal terms, it simply commits the Parties to accept a certain interpretation, on the ground, of the line established by the 1899 Award.⁶¹⁶

6.123. Guyana contends that this 1905 agreement would somehow supposedly survive the nullity of the Award, because it is a binding Treaty.⁶¹⁷ But even if it were the case, this agreement would not suddenly be transformed into a boundary treaty. It would still be a mere agreed description on the ground of what is written in the 1899 Arbitral Award. As such, it could not determine the boundary, as if it was a boundary treaty.

6.124. In addition, the text of the 1905 agreement states: “whereas both Government ought to possess authentic documents of like tenure which set forth their respective rights in the territory that has been demarcated, they agree and declare: 1st that they regard this document as having a perfectly official character with respect to the acts and rights of both Governments in the territory demarcated; that they accept the points mentioned below as correct ...”.

6.125. It follows that the “official character” of the demarcation, as well as the acceptance of the basepoints mentioned, are triggered by the possession by the Parties of documents setting forth their respective rights on either side of the line determined by the 1899 Arbitral Award. Since, as contended by Venezuela, the 1899 Award is null and void, then Guyana, and before it the UK, never possessed any document setting forth their rights on the eastern side of the alleged boundary

⁶¹⁵ AG, Annex III.

⁶¹⁶ This is plainly wrong. It simply describes on the ground a line in compliance with the 1899 Award.

⁶¹⁷ GR, paras. 4.50-4.53.

unlawfully determined by this Award. As a consequence, the description made in the 1905 agreement does not have “official character”, and indeed any relevance.

E. CONCLUSION

6.126. As has been demonstrated, Guyana’s claim based on alleged acquiescence and presumed recognition is groundless and unfounded. First, as a novation instrument, the Geneva Agreement does exclude any reliance on past conduct. Second, the concept of acquiescence/recognition upon which Guyana relies cannot be opposed to Venezuela, vis-à-vis which it never acquired an international customary law nature. Third, even if acquiescence, as a legal principle, could be opposed to Venezuela, it would not apply since Venezuela did challenge the 1899 Arbitral Award appropriately, when it had sufficient evidence in hand and when the structural coercion it was submitted to during the colonial era faded away. The 1905 demarcation agreement, whose object and purpose are solely to interpret, on the ground, the line described in the 1899 Arbitral Award cannot survive the nullity of this Award. For these reasons, Guyana’s claim is both baseless and devoid of meaning.

CONCLUSIONS

1. Venezuela has demonstrated, once again, that there are solid legal and factual reasons for its irrevocable historical position of not submitting to third parties (including the International Court of Justice) any matters related to its vital interests, such as its independence and territorial integrity.
2. This position, which arose after the fraud committed with the 1899 Arbitral Award, seeks to protect the most sacred interests of the nation and is expressly contained in the 1966 Geneva Agreement. It was also reiterated to the Secretary-General of the United Nations before his unprecedented decision to choose the International Court of Justice as the means to settle the dispute.
3. This historical position is an inalienable part of the legal order of the Bolivarian Republic of Venezuela and was ratified emphatically and irrevocably by the Venezuelan people in the consultative referendum held on 3 December 2023.
4. Since 2018, Venezuela has consistently opposed the Court's purported jurisdiction to hear the fraudulent unilateral claim initiated by Guyana, to which Venezuela has not consented, abiding by the Geneva Agreement, which in no way constitutes a basis for jurisdiction to hear such a claim.
5. Notwithstanding the above, the Court, in its questionable 2020 decision, asserted its jurisdiction to hear Guyana's unilateral claim, thereby precluding the parties from resolving the dispute amicably and "in a manner acceptable to both Parties," and further contributing to the violation of a bilateral international treaty: the Geneva Agreement.
6. Guyana has not ceased in its effort to drag and instrumentalise the Court into its delusional actions, which included blatant attempts to interfere in Venezuela's internal affairs and the recourse to fraudulent proceedings before the

Court, seeking to cover up the illegal and belligerent conduct it has engaged in to usurp Venezuela's rights.

7. Since 2015, Guyana has consistently sought to increase and consolidate its military alliances with the United States and NATO in order to threaten Venezuela with the use of force. There is no doubt that this is a re-edition of the structural colonialist coercion of the 19th and 20th centuries and an attempt to force Venezuela to relinquish its legitimate rights over the territory that has belonged to it since its birth.

8. Since 2015, Guyana has intensified its strategic approach of ill intent and bad faith aimed at disregarding and violating its obligations under the Geneva Agreement in order to satisfy the energy demands of transnational hydrocarbon companies.

9. Once the matter was wrongfully submitted to the Court, Guyana invoked the Geneva Agreement in a self-serving and selective manner, disregarding its indivisibility, in an attempt to artificially draw from the Agreement a consent to the Court's jurisdiction that has never been granted.

10. With its limited and meagre arguments, Guyana failed to refute any of the compelling truths exposed by Venezuela. In the face of opposition, it fled. In the face of truth, it hid. And in the face of defeat, it lied without any sense of decorum.

11. Venezuela has irrefutably demonstrated that every word and every provision of the Geneva Agreement, as well as the *travaux préparatoires* and subsequent practice, was agreed upon by the Parties in order to bury the dispute over the validity of the 1899 award, on which they held divergent and irreconcilable positions, and to focus exclusively on finding a mutually practical, satisfactory and acceptable solution to the territorial dispute.

12. Guyana, for its part, not only avoids interpreting the Geneva Agreement, falsifies its purpose, and maliciously induces an inappropriate judicial response to a dispute that is completely unrelated to it, but also deliberately disregards the fact that the Agreement falls within the framework of international law on decolonisation as a remedy for one of the most emblematic injustices of colonialism.

13. Decolonisation does not merely promote the self-determination of colonial peoples; it also safeguards the territorial claims of sovereign States that have been stripped of part of their territory by the greed of colonial empires. The immediate consequence of this process of decolonisation is the restitution of those territories, thereby rendering null and void the colonial instruments designed to gloss over the abuses of the colonial powers, such as the Washington Treaty of 1897 and the Award of 1899. Decolonisation cannot allow itself to consolidate and perpetuate such grievances.

14. Colonial spoliation by the United Kingdom cannot translate into a legal title for Guyana. Venezuela's legitimate claim to recover Guayana Esequiba forms part of the decolonisation process and crystallised in the Geneva Agreement, which obliges the Parties to seek in good faith a practical arrangement to heal a wound caused by colonialism. As long as imperial colonial spoliation persists, the decolonisation process cannot be considered complete.

15. The Geneva Agreement entailed the novation of the legal framework imposed by the colonial powers through structural coercion. By signing the Geneva Agreement, the Parties superseded the fraudulent legal framework that included the 1899 award—and its corollary, the 1905 demarcation agreement—with another in which, acknowledging the imperative of decolonisation, they undertook to seek, through a specific procedure, a peaceful, practical and satisfactory solution to their

territorial dispute. The Geneva Agreement is decolonisation law, and it must be interpreted within that framework.

16. The Geneva Agreement permanently repealed the fraudulent 1899 Award and any consequences that might have been intended from it. The award was, in any case, incompatible with the fundamental principles of decolonisation, which is why it was doomed to expire and disappear.

17. As a result of the novation, any legal analysis of the dispute must focus on the obligations —both procedural and substantive— the Parties undertook under the Geneva Agreement, and not on the validity or invalidity of the 1899 award or the subsequent conduct of the Parties, which are irrelevant to any consequence arising from the Agreement.

18. Any attempt to seek a judicial decision limited to nullifying or validating the 1899 award is incompatible with international law. Such a decision would be tainted by the interests of a major colonial power in an international treaty freely entered into and legitimised by the imperative of decolonisation, which would only resurrect the *status quo ante*, bringing back the disgraceful decades of colonialism.

19. In the unlikely event that the Court could hear this illegitimate action by Guyana, it has only one option: to respect the validity and independent existence of the Geneva Agreement on which it bases its alleged jurisdiction. No one is permitted to interfere in the settlement of the dispute without the consent of the Parties.

20. The only possible solution under international law is found in the Geneva Agreement, and it is none other than to achieve a practical and satisfactory settlement for both parties to the territorial dispute between them, which is incompatible with and excludes a judicial resolution. The Geneva Agreement

established a procedure to achieve a substantive goal: a practical arrangement mutually acceptable to the parties to their territorial dispute.

21. The main motivation behind Guyana's stubborn behaviour lies in its bitterness at not having received a title that legitimises the vulgar spoliation of which it has become the heir. Guyana still seems to be ashamed of such complicity. Venezuela, for its part, has an incontrovertible right, derived from its historical titles, over the territory of Guayana Esequiba.

22. The null and void award of 1899 was a nefarious attempt to legitimise the spurious interests of the British Empire in collusion with the United States, as part of the privileged and special relationship that found in this event one of the founding milestones of the Monroe Doctrine in the Americas.

23. In other words, the award was yet another expression of colonialism, of the imposition, through structural coercion, of the interests of the dominant powers, in this case the United Kingdom, on more modest States which they sought to dominate as they did their colonies.

24. In any case, following the signing of the Geneva Agreement, the question of whether or not the 1899 award is valid has been superseded and is no longer relevant to the territorial dispute. Its relevance is purely historical. Venezuela, in defence of its territorial integrity and inalienable rights, has demonstrated to the world, and in particular to Guyana and the Court, the grotesque theft of which it was a victim.

25. Venezuela has demonstrated that the Washington Treaty of 1897, which supposedly forms the legal basis for the 1899 Award, is blatantly fraudulent. That treaty, tainted by error and fraud, was conceived behind Venezuela's back and imposed on it through the threat of force. It is an unequal and colonialist treaty, deeply unjust and the original source of the nullity of the 1899 Award.

26. Venezuela was excluded from the negotiation of the 1897 Treaty by the United States and the United Kingdom, an infamous duo that shamelessly colluded behind the Monroe Doctrine, seeking to split the world between them under rules that ensured their exclusive benefit and expansionism.

27. During the negotiation of that bogus treaty, Venezuelan arbitrators were excluded and a fraudulently devised 50-year statute of limitations rule was incorporated. This is overwhelming proof of the audacity of these powers in carrying out the vile plunder of which they sought to make Venezuela a victim. The error into which Venezuela was maliciously induced radically vitiated the 1897 treaty and, as an inevitable consequence, the 1899 award.

28. Venezuela has proven beyond doubt and irrefutably that the 1899 Award is null and void. It is an unfounded Award, in which the arbitrators were blatantly biased and unquestionably abused their power, both by action and omission. All the evidence and legal grounds presented conclusively refute Guyana's malicious narrative.

29. The lack of reasoning in the award is a cause for nullity, either as an independent cause or as a manifestation of an abuse of power by omission on the part of the arbitrators.

30. The excess of power under the Award took many other forms: it set the border without ruling on legal titles; it overlooked the rules that should have guided its decisions; it failed to act impartially, serving the interests of the country that had appointed the arbitrators and going against Venezuela's interests; and, finally, it ruled on the matter on the basis of a political compromise, outside the framework of international law.

31. Guyana's attempt to characterise Venezuela's conduct prior to the signing of the Geneva Agreement as a form of acquiescence is entirely futile. The Geneva

Agreement repealed all previous obligations between the parties, replacing them with new obligations that substantially transformed the legal relationship between them. In any case, such conduct was not invoked by the United Kingdom during the negotiations that led to the Geneva Agreement and, even if considered in itself, did not remedy the proven defects of the award.

32. Before the Mallet-Prevost Memorandum was made public and the British Archives were partially opened, Venezuela lacked the necessary evidence to transform the plausible grounds for nullity of the 1899 award into proven facts. Suspecting, knowing, and inferring are not the same as proving.

33. Furthermore, under structural coercion, Venezuela faced the paradox that, despite the flaws in the award, it was under constant threat of further abuses and territorial expansionism by the United Kingdom. Against such a backdrop, the alleged omission or silence regarding the flaws in the award, or even its invocation, did not imply acquiescence. When the United Nations and the decolonisation process came along, things changed, favouring the recognition of Venezuela's rights.

34. The 1905 border demarcation agreement was nothing more than the mere technical enforcement on the ground of the border line described by the null and void 1899 award. The nullity of the award inevitably renders the 1905 agreement null and void; any claim to the contrary is pure fantasy.

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35. In light of the foregoing, the International Court of Justice has no role or function to play in resolving the territorial dispute between Venezuela and Guyana over the territory of Guayana Esequiba. The Geneva Agreement is the only valid, current instrument that offers the only solution to this dispute: Venezuela and

Guyana are obliged to reach a practical arrangement that is mutually acceptable. That is the genuine and complete object and purpose of the Geneva Agreement.

36. The submission of this document does not imply recognition of the Court's jurisdiction over the territorial dispute concerning Guayana Esequiba, nor of any decision it may adopt in this regard, whatever it may be. Likewise, the practical use of the terms "Memorial", "Counter-Memorial", "Reply" or "Rejoinder" serves solely a methodological purpose, namely, to facilitate the smooth reading of this document..

37. Throughout this document, Venezuela's historical rights, its just claim to the territory of Guayana Esequiba, and its unwavering commitment to the Geneva Agreement have been demonstrated.

Samuel Reinaldo Moncada Acosta

Agent of the Bolivarian Republic of Venezuela

CERTIFICATION

I certify that the annexes are true copies of the documents reproduced therein and that the translations into English are accurate translations of the documents annexed.

11 August 2025

Samuel Reinaldo Moncada Acosta
Agent of the Bolivarian Republic of Venezuela

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