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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2026

Public sitting

held on Wednesday 6 May 2026, at 10 a.m., at the Peace Palace,

President Iwasawa presiding,

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

VERBATIM RECORD

ANNÉE 2026

Audience publique

tenue le mercredi 6 mai 2026, à 10 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

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

COMPTE RENDU

Present:		
	President	Iwasawa
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Xue
		Nolte
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
		Hmoud
		Okowa
	Judges *ad hoc*	Wolfrum
		Couvreur
	Registrar	Gautier

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

M. Gautier, greffier

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

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

as Agent;

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

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comme membres de la délégation.

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

The Court meets today to hear the first round of oral argument of Venezuela on the merits in the case concerning the *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*.

I now invite the Agent of Venezuela, His Excellency Mr Samuel Moncada, to address the Court. You have the floor, Sir.

Mr MONCADA:

OPENING REMARKS

1. Mr President, Members of the Court, for nearly a century Venezuela has consistently maintained that matters relating to its territorial integrity cannot be submitted to third-party dispute resolution mechanisms. This stance is not circumstantial or strategic, but structural. It is integral to its international conduct, domestic legal system and conception of how its most essential interests should be protected.

2. That position has not changed. Venezuela has never consented to submit this dispute to the jurisdiction of any court or arbitral tribunal.

3. This has been unequivocally reaffirmed domestically. In the consultative referendum held on 3 December 2023, the Venezuelan people clearly expressed their rejection of submitting this dispute to the Court's jurisdiction. This confirms it. It reflects a consistent course of action in terms of sovereign will.

4. Venezuela is here today because it cannot remain silent in the face of a process that Guyana intends to use to unilaterally redefine the nature of the territorial dispute and the obligations binding Venezuela and Guyana under the Geneva Agreement.

5. Venezuela is here today to respond to Guyana's erroneous and misleading narrative, and to set straight the true legal framework of the territorial dispute and the limits imposed by international law and the Geneva Agreement on Guyana's attempt to transform the dispute and its obligations fraudulently.

6. Mr President, Members of the Court, Venezuela has a long tradition of historical rights over Guayana Esequiba, derived from the presence of the Spanish Empire and the Venezuelan Republic over the centuries. Indeed, the Esequibo River is named after the Spanish explorer Juan de Esquivel.

The Netherlands arrived in the territory while it was still part of the Spanish Empire, gaining independence in 1648 through the Treaty of Münster — the same treaty in which Spain recognized the Netherlands' claim to the territory east of the Esequibo River.

7. The Spanish Empire was clear about its possessions in Guayana Esequiba and defended them against the Dutch in an ongoing effort to expel illegal intruders, thereby demonstrating its control over the territory.

8. Venezuela has presented an exhaustive list of maps demonstrating the existence of Dutch possessions to the east of the Esequibo River and Spanish ones to the west. Furthermore, the British themselves have confirmed this reality.

9. In 1835, only one man — Robert Schomburgk, a German paid by the British Empire to justify its territorial greed in the quest for gold — appeared to draw an arbitrary line on Venezuelan territory that they attempted to impose as a border. Venezuela never recognized this criminal act, which was not perpetrated by a naturalist explorer, but by an agent of the British Empire. In the years that followed, the British entered our territory, following Schomburgk's line, and then, in 1897 and 1899, they sought to legitimize the theft.

10. Venezuela's struggle for territorial integrity and independence has been continuous. Our territorial rights over Guayana Esequiba were systematically eroded during the nineteenth century by the British Empire, which sought to appropriate half of our territory.

11. There are many examples of provocations that occurred from the 1850s to the 1890s. During this period, British consuls sent communications to London, conspiring to seize the territory, incite civil conflict and purchase Venezuelan territory, ultimately resorting to military action.

12. Despite attempts at direct negotiations, peaceful negotiations, diplomatic negotiations, proposals for arbitration and international mediation, the voracious British Empire — the largest in the world in the nineteenth century — could not satisfy its greed. It was only the intervention of the United States of America, in 1895, that forced the British to accept arbitration.

13. Although Venezuela entrusted the fate of its territory to the supposed goodwill of the United States, unfortunately, that country was not acting as a mediator to help Venezuela, but rather to impose its will across the entire continent and force the British Empire to recognize the new Power.

14. This was essentially a revival of the Monroe Doctrine. Not the 1823 doctrine, which was originally a defensive measure, but the 1895 version, which aimed to impose US sovereignty over the entire hemisphere.

15. For experts on the subject, the Treaty of Washington of 1897 and the fraudulent Paris Award of 1899 became key milestones marking the moment when the United States began to replace the British Empire and the European Powers across the entire continent. President Cleveland himself acknowledged this in 1904 when he highlighted the benefits of the 1899 Award:

> "I hope there are but few of my fellow citizens who, looking back, do not recognise the good that this episode in our history did for our nation. It established the Monroe Doctrine on a lasting foundation in the eyes of the world, improving our standing in terms of the respect and regard of the peoples of all nations, particularly Great Britain".

16. The fraudulent award will be addressed by our experts and was imposed by the two most powerful nations in the world. This marked the high point of infamous "gunboat diplomacy" and the imposition of treaties by force in Asia, Africa and Latin America.

17. In 1902, Venezuela itself was blockaded and bombarded by the United Kingdom, Germany and Italy, right halfway between the 1899 Award and the 1905 delimitation. In 1904, the United States threatened to invade Venezuela in a classic example of the "big stick" policy. Only those ignorant of Venezuela's history, or those who denigrate it, would claim that our country should have acted under the illusion of perfect equality among States at that time. The reality is far more bitter.

18. All of these experiences endured by our people have taught us to strive for peace without expecting favours from the great Powers or miraculous results from rigged international arbitrations. This has led to our tradition of not recognizing the jurisdiction of arbitral tribunals or courts of any kind in matters relating to our territorial integrity.

19. Venezuela does not accept the jurisdiction of the International Court of Justice, which was erroneously imposed in the 2020 Judgment, and respectfully rejects its jurisdiction to hear and decide this dispute.

20. Mr President, the decolonization process that took place after World War II created an appropriate international framework in which both independent republics that had been stripped of their territories by empires, and colonized nations, could initiate claims for compensation or restitution for damages suffered at the hands of the great Powers. The United Nations and its

Decolonization Committee provided a platform through which many countries could negotiate with the colonial Powers within the framework of international law and without the threat of force, with the aim of restoring their historical territorial rights.

21. Venezuela has been at the forefront of the struggle for the decolonization of peoples and territories worldwide, including its own. Therefore, it is impossible to deceive world public opinion by portraying Venezuela as a country that poses an existential threat to its neighbours.

22. Venezuela has supported all decolonization processes around the world, including that of Guyana.

23. In 1962, our Foreign Minister, Marcos Falcón Briceño, raised Venezuela's claim to the Esequibo region of Guyana for the first time, specifically before the United Nations Decolonization Committee. This led to negotiations resulting in the 1966 Geneva Agreement, which remained in effect between Venezuela and Guyana until energy interests prompted a change in the Guyanese Government's position in 2015.

24. The Geneva Agreement is therefore a quintessential instrument of decolonization. As Guyana gained independence, Venezuela began to lay the groundwork for the return of its territory that had been colonized by the British Empire.

25. The Geneva Agreement is a peace treaty that encourages the parties to find a practical and satisfactory solution to their differences through direct negotiation. This is the opposite of a court-imposed decision, where one party inevitably wins at the expense of the other's defeat.

26. By committing to the Geneva Agreement, the parties agreed to overcome the disastrous legacy of colonialism within a framework of friendly and mutually beneficial relations.

27. Mr President, Members of the Court, allow me to be precise. Despite Guyana's repeated assertions, the 1966 Geneva Agreement remains the legal framework governing the matter. The agreement expressly recognizes the existence of a territorial dispute concerning the Guayana Esequiba. The territory is the subject of a dispute between the Parties. Consequently, Guyana's characterization of an alleged threat to its territorial integrity or sovereign territory constitutes a flagrant misinterpretation and deliberately misleading presentation of the facts and law. Guyana has no established title under threat; rather, there is an unresolved territorial dispute which is expressly

recognized as such in the Geneva Agreement and which must be resolved in a manner that is mutually acceptable to both Parties.

28. Last Monday, Guyana sought to reverse the clear terms of the Geneva Agreement, disregarding it along with more than six decades of bilateral practice, including sustained negotiations and the good offices process conducted under the auspices of the United Nations Secretary-General.

29. Are we to understand, then, that throughout those decades, the Secretary-General — acting within the framework agreed upon by the parties — was promoting the "effective destruction" of Guyana or the dismemberment of its territory when he stated that "the objective of his good offices, as provided for in Article IV of the Geneva Agreement, was to ensure a 'mutually satisfactory solution to the dispute', and that, in an effort to achieve this objective, 'creative options' should be explored"?

30. Or is Guyana suggesting that its own highest authorities, including Prime Minister Forbes Burnham, who actively participated in the processes established under the Geneva Agreement, were engaged in conduct intended to undermine the territorial integrity of their own country when he stated that "with goodwill on both sides, perhaps we can arrive at a mutually acceptable solution, in which honour is preserved"?

31. I hope this is not what they intended to convey last Monday; however, that is the inevitable implication of their statements. Such propositions are, of course, untenable. They are not only incompatible with the text and purpose of the Geneva Agreement, but also irreconcilable with the consistent practice of both Parties over decades. The legal reality is clear: the Agreement acknowledges the existence of a dispute and establishes a framework for its negotiated resolution. It has never supported the narrative now being advanced by Guyana. Professor Zimmermann will elaborate on this point this morning.

32. We reiterate: it is impossible for the Geneva Agreement, in its implementation, to pose an existential threat to either party. Claiming otherwise constitutes propaganda and deserves to be publicly denounced.

33. In fact, Venezuela's good faith and neighbourly spirit are evident in the joint development proposals that benefit Guyana greatly. For example, in 2009 Venezuela and Guyana entered into a

rice-for-oil swap agreement, which was renewed until 2015. Under this agreement, Venezuela purchased rice from Guyana at a price above market value and sold its oil at a price below market value. Experts from the Inter-American Development Bank concluded that the cost of Guyana's oil imports was reduced, as was its total public debt, thanks to the generous long-term financing terms provided for in the Petrocaribe Agreement.

34. Contrary to claims made in this chamber, Venezuela has never been an obstacle to Guyana's development. On the contrary, Guyana has benefited from Venezuela's solidarity policies, which have also been offered to several other countries in the Caribbean region. Venezuela cannot be accused of not being a good neighbour.

35. In 1982, Guyana's Prime Minister, Forbes Burnham — a great historical leader of that country and a signatory to the 1966 Geneva Agreement — proposed a definitive solution to the territorial dispute: a mutually beneficial economic development plan involving the construction of a hydroelectric project financed by Venezuela, the output of which would be utilized by both countries. Burnham stated:

> "I would see an advantage in a long-term contract for the supply of power to Venezuela, coupled with a political arrangement which would remove from our relation the nagging problem of the border.
>
> In other words, I would propose that simultaneously with the agreements for mutual cooperation with respect to the Upper Mazaruni Hydroelectric Project and the supply of power to Venezuela, there should be signed, an Accord which would lay at rest the border question."

36. This evidence, ignored by those seeking to slander Venezuela, allows us to affirm two fundamental facts. Firstly, Venezuela is not the imperial, annexationist monster that they wish to portray before this tribunal. The Prime Minister of Guyana did not fear Venezuela. On the contrary, he had the vision to propose a project that would benefit both countries, in the spirit of the Geneva Agreement.

37. Secondly, Prime Minister Burnham's proposal demonstrates that it is false to claim that the sole purpose of the Agreement is to declare the 1899 Award null and void. In fact, the Geneva Agreement provides a range of peaceful, mutually beneficial options that could be pursued if both parties were willing to comply with the agreement in good faith.

38. Although Guyana presents itself as the legitimate heir to the Dutch and British territories, the reality is that it is the beneficiary of colonial dispossession formalized through fraudulent arbitration. The Geneva Agreement aims to correct this century-old injustice.

39. In conclusion, it is necessary to reaffirm the following points:

(i) Our historical experience has taught us that delegating vital matters of the Republic to international judicial bodies has been detrimental to our sovereignty and territorial integrity. Consequently, Venezuela has never agreed to submit this dispute to the Court's jurisdiction.

(ii) Venezuela's historical rights are inalienable, and the country is determined to defend them peacefully.

(iii) The Geneva Agreement arose from the dispossession suffered by Venezuela in 1899 and aims to resolve the dispute through direct, peaceful and diplomatic means.

(iv) Any decision by the Court that affects the operation of the Geneva Agreement would hinder progress towards a mutually acceptable solution for the parties to the Agreement. The only option is to allow the Agreement to fulfil its purpose and objective without impediments.

(v) Venezuela is committed to continuing to act in good faith in direct negotiations with Guyana to reach a mutually beneficial agreement.

40. Mr President, Members of the Court, in closing, we wish to send a message to our people, who are listening attentively to Venezuela's voice: for generations, our people have made enormous sacrifices to defend their independence, sovereignty and territorial integrity.

41. We have come to fulfil the mandate of defending our historic rights with serenity, respect and firmness. We do so with the confidence that comes from our knowledge of our history and the justice of our cause. We have come to The Hague with the same attitude with which we negotiated and concluded the Geneva Agreement — the only instrument that will enable us to find a solution that satisfies everyone.

42. This is a task for the entire nation. Let us walk firmly in the same direction, united and mindful of our civic duties. We will then achieve our goals without the impositions that undermined our sovereignty in 1899. There is no alternative for us and our neighbours but a future of peace, diplomacy and prosperity. Together, we will achieve this goal.

43. Mr President, Members of the Court, during the morning session, Venezuela will present its arguments regarding the sole legal instrument that defines the rights and obligations of the Parties: the 1966 Geneva Agreement, which Guyana deliberately ignored during Monday's hearing.

44. Professor Makane Mbengue will demonstrate how Guyana is seeking to divert attention from the true subject of the dispute by focusing on the 1899 Arbitral Award. Next, Professor Andreas Zimmermann will examine the interpretation and legal effects of the Geneva Agreement. Professor Antonio Remiro Brotóns will conclude the morning session by establishing the link between the object and purpose of the 1966 Geneva Agreement and the historical circumstances that led to its conclusion.

45. In the afternoon session, Venezuela will respond to Guyana's arguments regarding the alleged validity of the 1899 Award. Venezuela will reiterate that its participation does not imply recognition of the Court's jurisdiction; rather, it is the exercise of Venezuela's sovereign right to defence.

46. Professor Danae Azaria will open the session, followed by Professors Paolo Palchetti, Christian Tams and Jean-Marc Thouvenin. They will address Venezuela's historical position regarding the invalidity of the Award and the absence of any tacit or explicit waiver of its right to claim its nullity.

47. Mr President, Members of the Court, thank you for your attention. I request that Professor Mbengue be invited to the podium.

The PRESIDENT: I thank the Agent of Venezuela for his statement. I now give the floor to Professor Makane Moïse Mbengue. Sir, you have the floor.

Mr MBENGE:

SUBJECT-MATTER, DECOLONIZATION AND NOVATION

1. Mr President, distinguished Members of the Court, it is an honour to appear before you once again on behalf of the Bolivarian Republic of Venezuela.

2. As stated by Professor Moncada, I will now offer some remarks that will be essential to situate the position of Venezuela and, in particular, to describe the object of the controversy

addressed by the Geneva Agreement, on which your jurisdiction is claimed to be based. This is a matter that, deplorably, has been much blurred by Guyana earlier this week.

3. Once the fog is lifted, what remains is clear: Guyana's case is built around an issue, the validity of the 1899 Award; that is not — to use the international law terminology or the Court's terminology — the "real issue"[1] or the "subject-matter"[2] of this controversy. It never has been. From the very first line of its Application, all Guyana asks is that you rubber stamp a discredited award — a piece of paper that both States have long chosen to set aside in favour of a mutually satisfactory solution.

4. This flaw in Guyana's case proceeds from one strategic choice: that of disregarding the Geneva Agreement and refusing to address its proper interpretation, an interpretation that is essential to understand that the Court has no role in the long-standing dispute over the territory of Guayana Esequiba.

5. Mr President, Members of the Court, the "real issue" we are concerned with today is clearly delineated by Guyana and Venezuela when they agreed to conclude the Geneva Agreement. That real issue is the pursuit of a mutually satisfactory solution to the controversy generated by the 1899 Award, a solution that consigns this artefact of British imperialism to the past, where it belongs, and that charts a way forward.

6. This is the *only* proper meaning of the Geneva Agreement. It is also, so far, the only interpretation on the record, for the simple reason that Guyana has offered none. Professor d'Argent's remarks on Monday offered yet another illustration: there was no elucidation of how the Agreement governs the controversy between Guyana and Venezuela. Instead, Professor d'Argent claimed that everything on this subject has already been said at earlier, incidental, stages of these proceedings.

7. This approach is in line with Guyana's consistent attempts, from the time of its Application, to divert the attention from the Geneva Agreement and the "real issue" it addresses.

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[1] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 262, para. 29. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 87, para. 42.

[2] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 575, para. 24.

8. My role is to bring the argument back to the legal framework that Guyana has tried to avoid. And to do this, I shall discuss three points.

9. *First*, I will highlight the fundamental importance of the "real issue" addressed by the Geneva Agreement, showing that it is the pursuit of a mutually satisfactory solution. *Second*, I shall turn to what Guyana has been most determined to ignore: the roots of the Geneva Agreement in the decolonization movement. *Third*, I will explain how the Geneva Agreement effected a novation, replacing an old and flawed framework with a new one.

The "real issue"

10. Let me turn to the fundamental importance of the "real issue". Mr President, distinguished Members of the Court, on Monday we were taken by Professor Pellet through the practices of nineteenth-century arbitration[3]. Professor Sands then took us into the worlds of Gabriel García Márquez, of Verdi, of theatre and magical realism[4]. We were offered narratives.

11. What was absent was any engagement with the instrument that actually governs this controversy: the 1966 Geneva Agreement. Not a word on its object and purpose. Not a sentence on the obligation it imposes to seek a mutually satisfactory solution. Barely a mention of the decolonization movement that produced it.

12. That silence is revealing. However vivid the storytelling, it cannot answer the question that lies at the heart of this case: what did Venezuela and Guyana agree to do in 1966?

13. That is the "real issue". So, let us discuss it.

14. I shall proceed in four steps. I will first establish that it is necessary to identify the "real issue" *in case* (I). I will then demonstrate that the Court *did not* identify the "real issue" in its earlier Judgments (II), leaving that question unresolved. This will allow me to emphasize that the "real issue" is, and always was, the pursuit of a mutually satisfactory solution between Guyana and Venezuela (III). I shall conclude by addressing Guyana's glaring failure to engage with this issue, not only in its written submissions, but also on Monday in its oral pleadings (IV).

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[3] CR 2026/25, p. 12 *et seq.* (Pellet).

[4] *Ibid.*, p. 45, para. 2 (Sands).

I. The need to identify the "real issue"

15. Mr President, it is settled law that the Court must decide by itself the scope and profile of the case before it — and that applies even when, as in this case, the Court was not supposed to affirm that it *does* have jurisdiction[5]. The Court is indeed required, in the Court's own words, "to isolate the real issue in [a] case"[6] — to isolate the real issue in a case. As the Court itself acknowledged, the determination of the "real issue" is a "matter . . . of substance, not form"[7].

16. Crucially, determining the "real issue" or subject-matter of a controversy should be done "on an objective basis"[8]. I quote once again the Court.

17. This is meant to defuse a known risk: that an applicant will present their case in the most favourable light and stretch the boundaries of what a given controversy is about[9]. Identifying the "real issue" objectively, and by contrast, lessens the risk that an applicant mislead the Court in asserting that jurisdiction exists where there is none and attempts to focus on issues that are not part of the "real issue" agreed to — as, regrettably, happened here.

18. In other words, the "objective basis" standard can lead to the conclusion that the controversy is different from what an applicant strategically alleges.

19. Thus, and as a matter of law, the Court cannot and should not be constrained by the allegations that Guyana has chosen to make[10]. In particular, it must carefully ascertain whether Guyana's requests remain within the bounds of what the parties to the Geneva Agreement have

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[5] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015 (II),* p. 602, para. 26; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 87, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 575, para. 24. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 27, para. 51.

[6] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 262, para. 29. See also para. 30, where the Court referred to "the true subject of the dispute".

[7] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 308-309, para. 48.

[8] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015 (II),* p. 602, para. 26. *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 448, para. 30.

[9] *Legality of Use of Force (Yugoslavia* v. *Netherlands), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 556, para. 44. See also *Chevron Corporation and Texaco Petroleum Company* v. *The Republic of Ecuador (II)*, PCA Case No. 2009-23, Second Partial Award on Track II, 30 August 2018, para. 7.87.

[10] As exemplified by *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 208, para. 75.

sought to resolve. Guyana's claims cannot exceed, as they do, the framework established by the Geneva Agreement, nor can the Court decide those matters.

20. In summary, and as underlined in *Azerbaijan* v. *Armenia*, the Court must "determine on an objective basis the subject-matter of the dispute between the parties, by isolating the real issue in the case"[11].

II. The Court did not identify the "real issue" of the controversy in this case

21. Mr President, Members of the Court, it is striking that the language I just quoted — a fixture of every contentious case in the Court's recent history — is absent from the Court's previous decisions in the present case. There is no *equivalent* language either. In other words, the Court has, so far, never attempted to identify the "real issue" in this case.

22. While the Court used the term "subject-matter" in the 2020 Judgment, it was in terms disconnected from the careful identification of the real subject-matter of the present proceedings; some Members of the Court have actually rightly taken note that the Court has missed that step[12].

23. Fortunately, the consequences of that lacuna are strictly limited. On Monday, Professor d'Argent tried to shift the focus to *res judicata*. But *res judicata* attaches only to a prior Judgment's *dispositif*, and it extends only to what was actually decided expressly, or by necessary implication. That is, as the Court confirmed in its 2023 Judgment, the relevant standard for *res judicata*[13].

24. In this respect, Venezuela has said before, and says again today, that the Court should not have upheld its jurisdiction over Guyana's claims. But even taking the 2020 Judgment on its own terms, what the Court decided is jurisdiction, and jurisdiction alone. It did not address the

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[11] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Preliminary Objections, Judgment, I.C.J. Reports 2024 (III),* p. 1143, para. 71, quoting *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 87, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 575, para. 24.

[12] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Preliminary Objection, Judgment, I.C.J. Reports 2023 (I)*, declaration of Judge *ad hoc* Wolfrum, p. 302, para. 8. See also *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, dissenting opinion of Judge Bennouna, p. 507, para. 13, opining that the Court "should have been all the more attentive in examining its jurisdiction and in interpreting the Geneva Agreement, as this is a dispute with a high political and emotional impact".

[13] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, pp. 282-283, para. 70.

subject-matter of the controversy. It made no determination whatsoever, expressly or by necessary implication, on what this case is actually about. The Court never reached any conclusion on this point. This failure needs now to be remedied.

25. And to that end, the key distinction between the scope of the Court's jurisdiction and the subject-matter of the controversy needs to be stressed. The two are not the same thing — jurisdiction and subject-matter. So, even on the most generous reading of the 2020 Judgment, the question of what this Court may decide remains entirely open. A finding of jurisdiction is not a licence to entertain whatever Guyana places before the Court.

26. Take the Court's position that the validity of the 1899 Award falls within the *ratione materiae* scope of its jurisdiction[14] — a point Venezuela contests but accepts, here, only for the purpose of argument. Even on that basis, it certainly does not follow that the Court should resolve or even address, the validity of the Award. The 1899 Award and its many flaws and inequities might be relevant; it may offer context. It is, after all, the wound the Geneva Agreement was designed to heal. But it certainly does not follow that the Award should be permitted to stand in the way of a genuine resolution of the controversy between Guyana and Venezuela. Jurisdiction to entertain a question is not an obligation to answer it, and certainly not an obligation to answer it when doing so would actively defeat the very object and purpose of the underlying instrument governing the controversy over Guayana Esequiba.

27. The "real issue" before the Court is not, never was, and never will be the validity of the 1899 Award. And in fact, the Court anticipated this in 2020 when holding that a finding of invalidity alone would not settle the controversy[15].

28. Yet, the opposite follows with equal force: affirming the validity of the Award would also leave the underlying controversy unresolved. Worse, it would leave the States' relationship irremediably poisoned and reduce the Geneva Agreement to nothing — a dead letter, its promise of a fresh start extinguished by a judicial endorsement of the colonial status quo.

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[14] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court*, *Judgment, I.C.J. Reports 2020*, pp. 490-492, paras. 128-135.

[15] *Ibid.*, p. 479, para. 86.

29. To avoid such a situation, one which would go against the basic tenets of the law of treaties, the Court needs to be cognizant of the "real issue" in this case, a point to which I turn now.

III. The "real issue" in this case

30. What then, Mr President, is the "real issue" in this case?

31. The answer is plain: it is the pursuit of an amicable, practical, and mutually satisfactory resolution of the controversy born of the unjust 1899 Award. This is what the Geneva Agreement requires, what its parties have consented to, and what the Court risks setting aside if it follows the path Guyana has strategically charted.

32. Professor Zimmermann will explain later this morning why a proper interpretation of the Geneva Agreement leads to this conclusion, and this conclusion only. Text, context, and subsequent practice all point to the same direction.

33. For now, I shall address what the identification of the "real issue" necessarily entails.

34. First, while Venezuela has provided[16], and it will further provide, ample grounds to impugn the Award, that question is, ultimately, beside the point. A judgment that merely reaffirms the Award's outcome would repudiate everything that the Geneva Agreement is and stands for. It would reduce the Geneva Agreement to an empty shell and elevate a discredited colonial artefact above an international agreement concluded under the aegis — as I shall later recount — of the decolonization movement.

35. For this is key: the Agreement was explicitly designed to move beyond a binary, adjudicative resolution and towards a negotiated, politically acceptable settlement. In practical terms, this means that a ruling from the Court that simply affirms the Award would revive a framework the two States mutually abandoned six decades ago[17].

36. Second, the "real issue" in this case, the fact that Guyana and Venezuela committed to pursuing a mutually satisfactory solution, casts Guyana's claims in a new light. And what becomes patent is that Guyana's proposed approach is not just legally deficient: it is also deeply

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[16] CMV, Chaps. 5-6; RV, Chaps. V-VI.

[17] RV, para. 4.47.

unconscionable[18], because it seeks to perpetrate and entrench a repugnant set of asymmetries — asymmetry of burdens, asymmetry of positions and asymmetry of outcomes:

- An asymmetry of burdens: the Geneva Agreement stems from its parties' inability to agree as to the validity of the 1899 Award, which is why they opted to give a new impetus to their negotiations through a Mixed Commission. A Mixed Commission of a diplomatic kind, not of a legal kind, proving that Guyana and Venezuela sought, and are still seeking, a practical and amicable settlement of the controversy, not a legal winner-take-all outcome. Guyana's strategy, by contrast, places the burden of proof fully on Venezuela.
- An asymmetry of positions: as noted by the Court[19] and individual judges[20], even if Venezuela demonstrates the Award's invalidity, that would not settle the case: further, thornier issues would remain to be litigated, issues that Guyana would prefer to ignore, since it benefits from the status quo. This is precisely why, in 1966, Guyana and Venezuela understood — with a clarity Guyana now seeks to obscure — that a practical, and mutually satisfactory negotiated solution was the only way forward.
- Finally, an asymmetry of outcomes: under Guyana's reading of the Geneva Agreement, the final settlement of the controversy can take one of two forms: either Guyana is fully victorious and gains 100 per cent of its claims as to Guayana Esequiba's territory; or the parties will settle on a middle ground — meaning that, on Guyana's reading, no outcome under the Geneva Agreement could ever vindicate Venezuela's full and rightful sovereignty over the controversial territory.

37. Preventing such outcomes was, and is, the raison d'être of the Geneva Agreement. Because, *if it is not*, why was it ever concluded? In its pleadings so far, Guyana never offered any rationale for that Agreement to even exist. Clearly, given the conflicting views held at the time, its object and purpose was not to uphold the status quo. And it was not either, as Professor Oral suggested on Monday, to create a new "right" to challenge the Award. That has never been Venezuela's position. Once the Geneva Agreement was concluded, there was nothing left to challenge.

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[18] RV, para. 4.48.

[19] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court*, *Judgment, I.C.J. Reports 2020*, p. 479, para. 86.

[20] *Ibid*., declaration of Judge Tomka, p. 497, para. 7; *ibid*., dissenting opinion of Judge Bennouna, p. 506, para. 10.

38. The point of the Agreement was, and is, to find a way forward — "*satisfactory solutions*" — that both Guyana and Venezuela could accept. That is what the text says, the text of the Geneva Agreement, something Guyana might recall if it ever located its copy of the Geneva Agreement.

39. Guyana's position is understandable: it is, after all, the lucky heir to a deeply revolting award in which it played no part. But Guyana is also the heir to an agreement that left that Award behind in the hope of finding a just solution to a territorial controversy. It cannot claim the benefits of the Geneva Agreement while repudiating its obligations: *pacta sunt servanda*.

IV. Guyana's approach and its flaws

40. Mr President, distinguished Members of the Court, as I have shown, identifying the real issue, or subject-matter, of the controversy is critical. It should also be apparent that the Court has not yet done so. It follows that identifying the "real issue" in this case should lead to a clear and inevitable conclusion: that the objective is, and always has been, to reach a mutually satisfactory resolution of the controversy, one that leaves behind the injustices created by the corrupt 1899 Award.

41. And yet, if one looked solely at Guyana's pleadings, one would have no inkling that there is such a thing as the Geneva Agreement, and that it plays a role in the controversy. In its Application, the Agreement is treated as a mere procedural conduit — a vehicle for getting to this Court[21].

42. It was only on Monday, during these hearings, that Guyana finally recalled the existence of the Geneva Agreement — to a limited extent. Yet, the feeble arguments brought to the fore by Professor d'Argent on this point have failed to remedy Guyana's failure to engage with Venezuela's position. Professor d'Argent's submissions confirmed two things. First, Guyana treats the interpretation of the Geneva Agreement as a merely incidental issue, allegedly irrelevant at this stage of the proceedings. Second, and consequently, Guyana refuses to engage with the question of the true "subject-matter" or real issue of the controversy.

43. In fact, in its oral pleadings, Guyana fundamentally misread Venezuela's Rejoinder, and thus missed the mark. Guyana made it all about a challenge to this Court's jurisdiction or to the

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[21] Application of Guyana (AG), paras. 14-25.

earlier judgments. To be sure, Venezuela holds, and will always hold, as Professor Moncada recalled, that the Court should never have upheld its jurisdiction over Guyana's claims.

44. But this is not the argument that required an answer from Guyana, in line with Article 60 (1) of the Rules of the Court and Practice Direction VI: the argument is that the Court omitted to identify the "real issue" in this case, in contrast with every other case, and that this omission should be remedied.

45. Professor d'Argent's comments were premised on a single idea: that once the Court upholds jurisdiction on an issue it binds itself, absolutely and irrevocably, to address and decide it. In his view, in the view of Professor d'Argent, jurisdiction is not a threshold but a command: once crossed, the Court must proceed to the merits exactly as the Applicant has framed them, irrespective of the real issue of the controversy and of the limits inherent to the judicial function.

46. That is not, however, how international adjudication works. Jurisdiction opens the door; it does not relieve a court of the duty to ask where it should go. Still less does it compel the Court to decide an issue that, once properly identified, falls outside the controversy at stake. And even were one to accept, *arguendo*, the Court's 2020 finding that Article IV of the Geneva Agreement confers jurisdiction, then that same instrument would also define the limits of what the Court is authorized to do. The Court cannot derive its competence from the Geneva Agreement and then exercise that competence in a manner that defeats the Agreement and its very object and purpose.

47. In other words, regardless of Venezuela's steadfast position that the Court does not hold jurisdiction, the key argument — an argument that remains unanswered by Guyana — is that identifying the "real issue" in this case is, one, essential, two, still to be done, and three, once properly undertaken, decisive in showing that the Court has no role to play in this controversy.

48. All this is why Guyana's contentions about revision are irrelevant: there is no *fait nouveau* — only a *fait ancien*, the Geneva Agreement itself, despite Guyana's efforts to divert attention from it.

49. And this is also why Venezuela, in its Rejoinder, quoted from the *Northern Cameroons* case: to stress that there are limits inherent in the judicial character of the Court's function. Allow me to quote the relevant paragraph:

"[E]ven if the Court, when seised, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore." [22]

50. On Monday, Professor d'Argent sought to evade this point by focusing on another paragraph of *Northern Cameroons* and by distinguishing the case on its facts. But Venezuela does not rely on *Northern Cameroons* for a factual analogy. It relies on it for the broader and far more fundamental principle that there are circumstances in which the Court *must stay its hand* in order to preserve its judicial integrity.

51. Those circumstances are present here. In the Geneva Agreement, Guyana and Venezuela have agreed between themselves that what they seek is an amicable resolution of the controversy by way of negotiations. This is a goal that only they — they, Guyana and Venezuela, not the Court — can achieve, only then, through good faith engagement[23]. A ruling on the validity of the 1899 Award would not be conducive to such a resolution. It would do the opposite and freeze the territorial controversy. This deadlock is precisely what the Geneva Agreement was designed to move beyond.

52. On Monday, Guyana tried to scare the Court into thinking that you might "ouvrir la porte à la remise en cause des sentences non motivées rendues tout au long du XIXe siècle"[24] — the classic, and tired, "open the floodgates" argument. But this is entirely beside the point: other nineteenth-century awards were not superseded by a dedicated international instrument, such as the Geneva Agreement.

53. And so, apart from these short and misguided comments, the brunt of Guyana's oral submissions pertained to what Venezuela, in the Counter-Memorial, had described as its "monomaniacal focus on the validity of the 1899 Award" [25].

54. This focus remains a mystery. Yet, the point remains: the Court could, or can, only give effect to — and not redraft — the Geneva Agreement, an instrument that aims at a mutually

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[22] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963,* p. 29.

[23] See e.g. *Haya de la Torre (Colombia* v. *Peru), Judgment, I.C.J. Reports 1951*, p. 79: "these courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court's judicial function to make such a choice."

[24] CR 2026/25, p. 23, para. 23 (Pellet).

[25] CMV, p. 20.

satisfactory resolution of the controversy. There is no scenario in which upholding the 1899 Award, as Guyana is asking you to do, achieves that goal.

The decolonization imperative

55. Mr President, Members of the Court, after having clarified what the real issue is, allow me now to turn to a different, but equally fundamental, dimension of this case, a dimension that Guyana has once again carefully preferred to ignore.

56. I refer, of course, to the Geneva Agreement's roots in the decolonization movement. On Monday, Professor d'Argent claimed not to understand why Venezuela had addressed this subject in its Rejoinder.

57. Well, let me repeat: this focus on decolonization is needed because the Geneva Agreement's roots in this framework are critical to properly assess what the parties to it had sought to accomplish through this instrument, and the direction the controversy should take in the future.

58. As recently put by a Member of this Court, "colonialism is a blemish on the history of humanity and indeed, on the reputation of international law" [26]. And yet, "international law continues to respect, normatively, many of the legacies of colonialism" [27].

59. One could not find a better illustration of the unfortunate legacies of colonialism than this controversy between Guyana and Venezuela.

60. Yet, today Guyana asks this Court to do what 1966 forbade: to lend the *imprimatur* of international justice to a wrong an empire sought to impose, a wrong Venezuela never accepted, and a wrong that the Geneva Agreement was concluded to extinguish.

61. Decolonization, this felicitous period of human history that saw the liberation of countless peoples, is therefore a critical consideration in this case. In what follows, I shall recount the historical background (I), before demonstrating that the Geneva Agreement is a fruit of that period (II), and should be interpreted accordingly.

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[26] *Land and Maritime Delimitation and Sovereignty Over Islands (Gabon/Equatorial Guinea), Judgment of 19 May 2025*, separate opinion of Judge Tladi, para. 2.

[27] *Ibid*.

I. The historical background

62. Let me come back to the 1960s. As the decade starts, the United Nations adopts Resolution 1514, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples", which specifically condemns colonialism[28]. This "defining moment" [29], to quote the Court, represented a culmination for the principle of self-determination of all peoples, which had been embodied in the United Nations Charter[30].

63. That principle of self-determination had always been embraced by Venezuela, including, and in fact particularly, with respect to Guyana: Venezuela has long called for its independence, based on its "long-standing anti-colonial position dating back to its own struggle for sovereignty and independence"[31].

64. Venezuela's stance was in step with that of its neighbours. For Latin America, the decolonization movement could not have come early enough. The few territories that remained in colonial hands were a blemish on a South American continent liberated from the Spanish and Portuguese empires a century prior.

65. But the decolonization imperative was not, and is not, merely a question of colonial Powers grabbing their luggage, their gunboats, and sailing away in the sunset. Instead, genuine decolonization also requires the rectification of historical injustices, including the restitution of territory or compensation for lost resources, and the dismantling of the structures of colonial domination[32].

66. Hence the statement from Venezuela's Minister of Foreign Affairs, when he presented the Geneva Agreement to Congress: "At the twilight of the colonialist era, hope was rekindled that one day the injustice we had been victims of would be redressed."[33]

67. Venezuela has kept that hope — and keeps it to this day.

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[28] UNGA Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples.

[29] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)*, *Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 99, para. 86.

[30] Charter of the United Nations, Arts. 1 (2) and 55.

[31] President Don Rómulo Betancourt and the Venezuelan Claim, VI, Presidential Message, 7 March 1964, in *Claim to Guyana Essequibo — Documents 1962-1981*, Caracas 1981, p. 8 (available at Peace Palace Library).

[32] RV, paras. 3.6 *et seq*.

[33] Presentation to the National Congress by Mr Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, Annex 2, p. 1.

II. The Geneva Agreement as a means to resolve the imposed inequity of imperialism

68. Mr President, against that historical background, I want to restate how the negotiations of this instrument — the Geneva Agreement — were guided by the spirit of the age and the ideals of decolonization.

69. Indeed, the conclusion of the Geneva Agreement demonstrates a shared recognition among all parties that the 1899 Award embodies the perversion of the nascent international justice mechanisms for imperial goals. This shared recognition is apparent from the attitude of the United Kingdom, Venezuela, and Guyana in 1966, and when they executed the Port-of-Spain Protocol. If we look at the three main parties — Guyana, Venezuela and the United Kingdom — and at their motivations, what do we see?

— First, for the United Kingdom[34], in the face of increasing pressure to grant independence to its colonies, it was essential to establish a mechanism to address pre-existing disputes and ensure a smoother transition to independence. Not only was this consistent with the decolonization goals, but one should not lose track of the alternative scenario, namely, that the United Kingdom could have simply insisted on the colonial borders — and left it at that. That such a route was not taken with the Geneva Agreement means only that the colonial injustice was simply too stark.

— As for British Guiana[35], its 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 a State about to secure its independence, Guyana had all the capacity necessary to assess the Award, and its participation in the Geneva Agreement suggests recognition that a new path for resolution was needed. It is a tragedy that Guyana has now forgotten this and changed its stance — a genuine volte-face.

— Finally, looking at Venezuela[36], we see a country free at last from the colonial shackles in the first quarter of the nineteenth century and from the gun-boat diplomacy that defined the following decades. Under these new circumstances, Venezuela could finally challenge the 1899 Award, and it did so in keeping with the principles of the United Nations Charter: through peaceful means and negotiations.

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[34] RV, para. 3.25 *(a)*.

[35] RV, para. 3.25 *(b)*.

[36] RV, para. 3.25 *(c)*.

70. This explains why Venezuela later described the Geneva Agreement, as "a formal agreement by which the three parties involved committed themselves to a political search for peaceful solutions to a dispute inherited from colonialism"[37]. It was, and is, a crucial step in the process of Latin American decolonization [38].

71. No interpretation of the Geneva Agreement, I insist, no interpretation of the Geneva Agreement can *faire l'impasse* on this history. Insisting — as Guyana now does — that the Geneva Agreement endorsed the status quo and the behaviour of the British Empire is incompatible with the Agreement's time and context. To quote Judge *ad hoc* Abi-Saab in the *Frontier Dispute* case, this would "find . . . in contemporary international law [a] retroactive legitimation whatever of colonialism as an institution" [39].

72. This does not have to be: the Agreement offers a path to remedy the wrongs of the colonial past and achieve a mutually satisfactory solution — a path that remains open. It is Guyana that has stepped off it.

The Geneva Agreement as novation

73. Mr President, I have now demonstrated that the real issue in this case is the pursuit of a mutually satisfactory solution, and that the decolonization context explains why the parties to the Geneva Agreement sought to leave the 1899 Award behind. I turn now to my final point: how they did so.

74. Venezuela's position is the following: the 1966 Geneva Agreement operates as a novation of the 1899 Award. It extinguished that Award as a source of binding legal entitlement and replaced it with a new framework built on negotiation, mutual satisfaction, and equal sovereignty. It is that framework — *and that framework alone* —, the Geneva Agreement, that governs Venezuela's and Guyana's rights and obligations today.

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[37] Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN doc. A/C.1/36/12, p. 6.

[38] See e.g. *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Preliminary Objection, Judgment, I.C.J. Reports 2023 (I)*, partly separate and partly dissenting opinion of Judge *ad hoc* Couvreur, para. 37: "[T]he only reasonable reading of the Geneva Agreement in this regard is that the United Kingdom, as a former colonial Power, sought to facilitate the settlement of the dispute relating to the territory that it had transferred to the newly independent Guyana."

[39] *Frontier Dispute (Burkina Faso/Republic of Mali)*, *Judgment, I.C.J. Reports 1986*, separate opinion of Judge *ad hoc* Abi-Saab, para. 4.

75. To establish this, I shall first address the doctrinal foundations of novation in international law (I). I shall then demonstrate that the Geneva Agreement satisfies every criterion the doctrine requires (II). Finally, I shall address the legal consequences that flow from novation, and which the Court is bound to respect (III), before concluding.

I. Novation under international law

76. Mr President, novation is one of the most venerable institutions of law. It is rooted in Roman law, and it describes the extinction of a prior obligation by the substitution of a new one[40].

77. Its status under international law is established, as Venezuela documented in its Rejoinder. One example I want to emphasize is the one of the *Abyei Arbitration* of 2009, where a tribunal constituted under the auspices of the Permanent Court of Arbitration expressly recognized that, even after an earlier determination, the parties concerned could consent to a new dispute resolution process. The Tribunal held that such consent would have the effect of "reopening questions that had been accepted as 'final and binding,' thus novating the issues for decision" [41]. This is exactly what the Geneva Agreement purported to achieve, and what it did in fact achieve.

78. The practical consequences are plain: novation *extinguishes* the original framework entirely, leaving in its place only the new one; any pre-existing obligations become moot, and cannot be revived.

79. Now, as a matter of international law, novation may occur if three requirements are satisfied.

— *First*, there must be a pre-existing legal obligation.

— *Second*, there must be a new obligation having a substantively different content.

— *Third*, there must be a clear and unambiguous intention on the part of all relevant parties to substitute the new obligation for the old one.

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[40] In the Digest, "*Novatio est prioris debiti in aliam obligationem vel civilem vel naturalem transfusio atque translatio, hoc est cum ex praecedenti causa ita nova constituatur, ut prior perematur. novatio enim a novo nomen accepit et a nova obligation*" (Digest, 46.2.1.1).

[41] *The Government of Sudan / The Sudan People's Liberation Movement/Army, Abyei Arbitration*, Award, 22 July 2009, para. 450.

II. The Geneva Agreement satisfies all criteria for a novation

80. Mr President, these three requirements are satisfied in this case. Let me start with the first one.

1. *The pre-existing obligation*

81. To begin with, the prior framework was the 1899 Arbitral Award. That Award purported, per the Treaty of Washington, to constitute "a full, perfect, and final settlement"[42] of the boundary between Venezuela and British Guiana.

82. In its written pleadings, and consistent with its long-standing position, Venezuela has demonstrated that the Award was procured by fraud. But even assuming, *arguendo*, that the Award were valid, Venezuela and Guyana subsequently agreed to replace it, and that agreement is what now governs their relationship in relation to that matter.

83. The Award therefore generated the pre-existing obligation that both States sought to replace. The first requirement is satisfied.

84. In challenging this evidence on Monday morning, however, Professor d'Argent offered the Court a syllogism. Major premise: novation requires an obligation to replace. Minor premise: a null award produces no obligation. Conclusion: Venezuela, which says the Award is null, cannot invoke novation. He said that Venezuela's case, and I quote, "*est donc affecté d'une contradiction interne indépassable*"[43].

85. Mr President, the syllogism is elegant. But it is wrong.

86. First, novation only requires a pre-existing legal framework, whatever its validity, to be treated as the object of substitution. The parties to the Geneva Agreement plainly understood themselves to be replacing *something*: the framework that had governed, although with much protest from Venezuela, the boundary question since 1899. Whether that framework was valid, voidable or void in Venezuela's eyes is, respectfully, beside the point.

87. Second, and most tellingly, Guyana's entire case rests on the proposition that the Award produced obligations binding on the parties to this day. Indeed, Professor d'Argent himself, only minutes before mounting his novation objection, invoked the Permanent Court's language to insist

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[42] Treaty of Washington, Article XIII.

[43] 2026/24, p. 32, para. 27 (d'Argent).

that the Award established "a situation at law once and for all and with binding force as between the parties"[44]. But Guyana cannot have it both ways. It cannot rely on the Award's binding force to defeat Venezuela's claim of nullity and then strip the Award of that very binding force to defeat Venezuela's argument of novation. One of those positions must yield.

88. In truth, Mr President, the doctrine of novation does not invite the syllogism Professor d'Argent has proposed. It asks a simpler, more pragmatic question, properly suited to relations between sovereign States: did the parties, by clear and unambiguous agreement, decide to replace one framework with another? In 1966, Venezuela, Guyana and the United Kingdom answered that question in the affirmative.

2. *The new, substantively different obligation*

89. Second, the Geneva Agreement created obligations that have no parallel in the 1899 Award or in any prior instrument. Let me identify five key elements of novelty to prove that there is a new, substantively different obligation.

— *First*, the governing standard was transformed with the Geneva Agreement. Under the 1899 Award, the boundary was fixed — there was nothing to negotiate, nothing to satisfy. Under Article I of the Geneva Agreement, both Venezuela and Guyana became bound to seek "satisfactory solutions for the practical settlement of the controversy" [45].

— *Second element of novelty:* at the procedural level, the Geneva Agreement created a new structured process for resolving the controversy. Article II established a Mixed Commission with a substantive mandate, while Article IV built upon that foundation to channel the negotiations through a progressive sequence of largely diplomatic means. These are the means in which Venezuela and Guyana placed their hopes in 1966, and the means in which Venezuela continues to place its hopes today.

— *Third element of novelty*: Article V's provisions, whereby no acts or activities during the Agreement could create claims to sovereignty or prescription, confirm that the parties understood

[44] *Ibid*., p. 28.

[45] See also the Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN doc. A/C.1/36/12, p. 6, describing the Geneva Agreement as follows: "The Geneva Agreement therefore constitutes the legal statute for Venezuela's territorial claim and it is the product of the freely expressed will of Venezuela and Guyana."

themselves to be operating in a new legal space, where rights remained open and had to be resolved through negotiation.

— *Fourth element of novelty*, and most significantly, the parties to the Geneva Agreement replaced finality with indeterminacy. They chose to subject the boundary to a fresh process of mutual determination.

— *Fifth element of novelty*, one should consider what *did not happen* with the Geneva Agreement, which would have been for the United Kingdom to just ignore Venezuela's allegations of fraud, wash its hands of the whole affair, and let the newly independent Guyana inherit the original framework. Instead, what we have is an international instrument that positively provides — in its Article VIII — that Guyana shall become a party to the new framework upon independence[46].

90. As such, the second criterion for novation, the creation of a substantively different obligation, is satisfied too.

3. *Unambiguous intent to novate*

91. Let me now come, Mr President, to the third criterion, an unambiguous intent to novate. The intention to novate emerges from every available source of evidence.

— It emerges from the *text* of the Agreement. Article I refers to the "controversy" as something unresolved. It creates an obligation to seek "satisfactory solutions", not to implement an existing one. The entire architecture of the Geneva Agreement presupposes that the status of the boundary is open, not closed.

— The intention to novate emerges from Venezuela's *subsequent practice*.

— The intention to novate emerges from *Guyana's own practice*. For more than five decades, Guyana did not invoke the 1899 Award before any international forum. Instead, it engaged in negotiations, in good offices processes, and in other mechanisms established by the Geneva

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[46] See *Yearbook of the International Law Commission*, 1974, Vol. II, Part One, p. 195 (expressly citing the Geneva Agreement as a noteworthy example of a bilateral treaty concluded just before independence, and noting both the preamble's reference to consultation with British Guiana and the provision in Article VIII requiring the successor State to formally accept participation).

Agreement[47]. That sustained practice from Guyana reflects precisely the understanding that the Award had been superseded.

— The intention to novate emerges, finally, from the *practice of the United Kingdom*, which consistently maintained in its diplomatic practice that former colonies could not simply inherit all obligations of colonial-era treaties by automatic succession, as illustrated by several examples reviewed in Venezuela's Rejoinder[48].

92. Therefore, even the final criterion for novation, unambiguous intent, is clearly satisfied.

III. The consequences of novation

93. Mr President, once novation is established, its consequences are unavoidable and absolute.

1. *The Court's alleged jurisdiction — quod non — must be tested against the Geneva Agreement*

94. To begin with, Venezuela has consistently argued — without fail — that the Court lacks jurisdiction over this controversy. The Court nevertheless upheld its jurisdiction in its 2020 Judgment. Venezuela respectfully maintains that it should not have done so and reserves its position on the matter.

95. But even leaving that aside, the novation effected through the Geneva Agreement precludes — precludes — the Court from adjudicating the territorial controversy — the real issue before it — on the basis Guyana has presented. To do so would be to give effect to the 1899 Award through the back door of jurisdiction, having abandoned it through the front door of the merits. International law does not permit that operation.

2. *Acquiescence is legally irrelevant after novation*

96. Second, Guyana has argued, and continues to argue, as it did on Monday during Professor Oral's pleadings, that Venezuela acquiesced in the 1899 Award and is estopped from

[47] See, *inter alia*, Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, Annex 1 (recording that the parties exchanged ideas and proposals aimed at a practical settlement of the controversy and that, as neither side accepted the conclusions of the experts appointed by the other, the exchange of views on the experts' reports would not be discussed).

[48] RV, paras. 4.27-4.28.

challenging it. Venezuela contests both the facts and the law of that argument[49], and Professor Thouvenin will address the matter in detail.

97. But the fact is that a novation occurred. And that means that any acquiescence argument is moot: a novation creates a clean slate — a clean slate[50]. Rights and defences that accrued under the old framework cannot survive the transition to the new one unless they are expressly preserved in the new instrument — and they were not.

98. Guyana's acquiescence argument, therefore, cannot succeed even on its own terms. It addresses the wrong legal framework.

3. *The asymmetry of Guyana's approach betrays the Agreement*

99. Mr President, there is a final point to address before I conclude. There is a final point to address because it goes to the fundamental character of the Geneva Agreement, which mandates its parties to seek a mutually satisfactory solution. That bilateral obligation is the cornerstone of the entire framework.

100. Yet Guyana's case is structurally incapable of honouring it: if the Court upholds the Award, Guyana obtains everything — everything. This is not a "satisfactory solution". If the Court does not uphold the Award, and Guyana refuses to come back to the negotiating table, neither State advances and the controversy is left to fester. That would not be honouring the Geneva Agreement either.

Conclusion

101. Mr President, distinguished Members of the Court, I come to my conclusion.

102. The Court knows very well that the legacy of colonialism makes for hard cases. But it also knows that this legacy cannot and should not be ignored, in keeping with the goals and principles of the decolonization movement.

103. There is a direct precedent for this in the *Chagos Islands* Advisory Opinion. In the *Chagos* Advisory Opinion, the Court rightly found that the 1965 Lancaster House Agreement, which had detached the Chagos Archipelago from Mauritius, was incompatible with the principle of

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[49] See also CMV, Chap. 7.

[50] See RV, para. 4.44.

self-determination[51]. The Court reached that conclusion notwithstanding the fact that Mauritian representatives had participated in the negotiation of the Lancaster House Agreement, because the conditions of colonial coercion under which it had been concluded vitiated any pretence of genuine consent[52].

104. It might be said that the 1899 Award is different — that it was the product of arbitration, a legal process, and that, in that process, Venezuela was a participant. But the *form* of the colonial wrong is irrelevant. Whether dispossession is achieved by direct governmental decree — as in *Chagos* — or through a tribunal corrupted by imperial influence, the result is the same: territory is wrested from a State through the exercise of colonial Power, dressed in legal clothing to lend it an air of legitimacy it does not deserve.

105. In truth, the 1899 Award is the more egregious case. What happened in Paris was the weaponization of the nascent machinery of international arbitration, an institution built to deliver justice between equals, and its perversion into an instrument of imperial expropriation. The result, as generations of scholars have documented, and as Venezuela will demonstrate this afternoon, bore the hallmarks of colonial imposition rather than legal adjudication.

106. When Guyana's Co-Agent told this Court in 2020 that "international law spoke" on 3 October 1899[53], he invited the Court to treat that moment as an early triumph of the rule of law, yet glossed over what kind of "international law" that was. It was the law of empire, administered by empire's appointees, for empire's benefit.

107. If the Court found the Lancaster House Agreement incompatible with self-determination despite the participation of Mauritian representatives, how much less can an 1897 Treaty — concluded entirely over the heads of the colonized peoples on both sides — how this Treaty — or a deeply revolting arbitral award, the poisoned fruit of a poisoned tree, claim enduring legitimacy? How? How?

108. The Geneva Agreement was the two States' answer to this history. Where the 1899 Award imposed a boundary dictated by imperial compromise, the Agreement substituted a framework built

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[51] See RV, para. 3.17.

[52] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 137, para. 172.

[53] CR 2020/5, p. 16, para. 5 (Ramphal).

on negotiation in line with the principles of the United Nations Charter. It charted a different path — one of negotiation, mutual satisfaction, genuine consent between sovereign equals. That path must not be foreclosed.

109. That, Mr President, is the "real issue" in this case.

110. This concludes my presentation. I thank you for your kind attention and patience and kindly ask you to invite Professor Zimmermann to the podium, but I guess it will happen shortly after the break. Thank you.

The PRESIDENT: I thank Professor Mbengue. Before I give the floor to the next speaker, the Court will indeed observe a break of 15 minutes. The hearing is suspended.

The Court adjourned from 11.25 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now give the floor to Professor Andreas Zimmermann to address the Court. You have the floor, Sir.

Mr ZIMMERMANN:

IMPACT OF THE GENEVA AGREEMENT AND ITS ARTICLE IV

A. Introduction

1. Merci M. le président, membres de la Cour, it is, as always, an honour to appear before the Court.

2. I will now address in detail the content and, notably, the impact of the Geneva Agreement in the current proceedings. I will show that it is the Geneva Agreement — legally binding on both Guyana and Venezuela — which provides the agreed, and indeed only, way forward to reach a mutually acceptable satisfactory solution for the controversy between Guyana and Venezuela for the Court.

3. Before doing so, I cannot but note, however, that, to my regret, counsel for Guyana had almost nothing of *substance* to say on the content of the Geneva Agreement. Neither *M. le professeur* d'Argent, nor indeed Professor Oral, did therefore act in accordance with Article 60 of the Court's Rules and Practice Direction VI.

4. Rather, *M. le professeur* d'Argent merely claimed that Venezuela was trying to "rewrite the Geneva Agreement"[54] — a striking accusation to make, given that he himself did not quote a single substantive provision of the Agreement in support of his own reading — and claiming that its sole effect is to allow for a discussion on the validity of the 1899 Award[55].

5. Professor Oral in turn, either misunderstanding or misrepresenting Venezuela's line of argument, simply stated that the Geneva Agreement did not grant Venezuela a "new right to challenge the 1899 Award"[56].

6. This, I might say, blatant refusal, by Guyana, to engage meaningfully with the content of the Geneva Agreement is, to say the least, telling for two reasons.

7. For Guyana, the Geneva Agreement seems to consist of nothing but the alleged compromissory clause of Article IV, paragraph 2. Of the eight speakers Guyana fielded, only one addressed the Geneva Agreement and his treatment then glossed over its substantive content entirely. Accordingly, Guyana brought the case on the basis of the Geneva Agreement, but then simultaneously refuses to engage with the legal obligations that follow from it for Guyana.

8. Guyana has thus, consistently, and up to last Monday, completely disregarded the *substantive* parameters contained in the Geneva Agreement that ought to lead to a peaceful solution of the controversy which Guyana brought before the Court in the first place. But let me state at the outset: Guyana cannot have its cake and eat it too.

9. Or to use the words of *M. le professeur* d'Argent, it is Guyana's, not Venezuela's, it is Guyana's commitment to the Geneva Agreement, that is merely "fictitious and purely formal"[57]. And that, Mr President, Members of the Court, is the fundamental difference between the two cases: Venezuela's case rests on the *substance* of the Geneva Agreement; Guyana's rests on a single procedural clause within it — but without support, as I will show, by its substance.

10. What is more, Guyana, by not engaging in the substantive interpretation of the Geneva Agreement, implicitly acknowledged that it has nothing to say on the manifold arguments related to

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[54] CR 2026/24, p. 27, para. 14 (d'Argent).

[55] CR 2026/24, p. 27, para. 15 (d'Argent).

[56] CR 2026/25, p. 42, para. 57 (Oral).

[57] *Cf.* CR 2026/24, p. 26, para. 10 (d'Argent).

the impact of the Geneva Agreement on how to solve the boundary dispute — arguments that Venezuela had already brought forward in its written pleadings, and which I will now further develop.

11. As I will demonstrate, a bona fide interpretation of the Geneva Agreement can only lead to one result: namely, that by concluding the Geneva Agreement, the parties wanted to set aside the issue of the invalidity of the 1899 Award. Instead, they wanted to establish a process leading to a mutually acceptable solution for the *substance* of their boundary dispute, where the boundary lies — and to do so *not* on the basis of the 1899 Award, but irrespective of it. And it is this overarching goal that the parties wanted to reach by concluding the Agreement.

12. Professor Mbengue has already led you through the circumstances leading to the conclusion of the Geneva Agreement, and notably, its roots in the process of decolonization. What is more, he has also demonstrated that the parties, by concluding the Geneva Agreement, provided for a novation of the pre-existing legal framework, starting on a new path to a mutually acceptable solution to their overall boundary controversy.

13. My task now is to demonstrate that this goal of the Geneva Agreement, namely to bring about a resolution of the territorial controversy as a whole, is the only conclusion allowed by a thorough engagement with the Agreement's drafting history, its wording, its object and purpose, as well as by the subsequent agreed practice of Guyana and Venezuela in relation to the Geneva Agreement — an engagement with the content of the Geneva Agreement Guyana wanted to avoid at all costs, seems to me.

14. And to that end, let me start by addressing the drafting history of the Geneva Agreement.

B. Drafting history

15. Already prior to the conclusion of the Geneva Agreement, Venezuela and the United Kingdom had discussed practical solutions to the *overall* territorial dispute. At the outset of the negotiations in 1965, there had been a debate as to the scope and goal of these negotiations.

16. The United Kingdom's *initial* position had been that the talks ought to only encompass a documentary review of the process that had led to the 1899 Award. Venezuela, however, insisted

that the agenda be changed[58]. Accordingly, Venezuela proposed a new wording for the agenda of the forthcoming negotiations, as confirmed by agenda item 2: namely, that the negotiations ought to seek solutions for a practical settlement of the overall boundary controversy as such[59]. It is important to note that the United Kingdom ultimately agreed, as you can see, to the inclusion of this item, as had been proposed by Venezuela.

17. In line with this agreed agenda, the parties then met in London in December 1965. Already during these meetings, the parties considered various *substantive* solutions to the dispute that extended far beyond the question of the validity of the Award. Such propositions included, *inter alia*, an agreement which, similar to the Antarctic Treaty of 1959, would have kept the legal status of the disputed territory *in limbo,* or a possible joint administration of the disputed area[60]. Remarkably, the British record of the exchange confirms that such joint administration had been proposed by the United Kingdom itself, rather than by Venezuela[61].

18. Following these meetings, and in preparation for the negotiations that culminated in the conclusion of the Geneva Agreement, the British Ambassador confirmed that "neither Lord Walston nor any other Representative of Her Majesty's Government has stated that the Geneva Conference 'will *not* discuss the Venezuelan claim' over the Guayana Esequiba" [62].

19. The drafting history thus proves that the parties, by the end of the day, decided to leave the issue of the invalidity of the 1899 Award behind, turn the page and start a new chapter in the resolution of their boundary dispute. Accordingly, they explicitly decided to address the *overall* border controversy in their upcoming negotiations, and hence later also, as we will see, in the Geneva Agreement, the content of which I will now discuss in detail.

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[58] *Cf.* Radiogram of the Ministry of Foreign Affairs [of Venezuela] to the Director General of the Embassy in London, 15 October 1965; cf. Rejoinder of the Bolivarian Republic of Venezuela, 11 August 2025, paras. 2.90–92.

[59] *Ibid.*

[60] Record of Conversations held at the foreign office in London on the border dispute between Venezuela and British Guiana in London on 10 December 1965, p. 3-4; *cf.* MG (2018), Vol. II, Annex 28, p. 4; *cf.* CMV, para. 3.38.

[61] *Cf.* MG (2018), Annex 28, p. 4.

[62] Ministry of Foreign Affairs, Office of Information, Press and Publications, BULLETIN N° 350-C, p. 1 (emphasis added); *cf.* RV, para. 2.111.; emphasis added.

C. Interpretation of the Geneva Agreement

20. Members of the Court, let me start with the very wording, as usual, of the Geneva Agreement and, first, its very title[63].

I. Interpretation of the Geneva Agreement's title

21. The Agreement is referred to as the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom . . . *over the Frontier between Venezuela and British Guiana*" (emphasis added): over the frontier between the parties.

22. In other words, the Geneva Agreement was intentionally *not* titled "Agreement to Resolve the Controversy . . . *over the Validity of the Arbitral Award of 1899*" (emphasis added): that is not what the parties chose.

23. Had the parties indeed wanted to focus, in the Agreement, on the issue of the invalidity of the 1899 Award, they would have certainly chosen a title reflecting such a limited understanding. Yet, the parties intentionally opted for a significantly broader title over the frontier.

24. This is confirmed, *e contrario*, by a contemporaneous agreement concluded in 1957 between Honduras and Nicaragua, relating to the Arbitral Award handed down by the King of Spain in 1906, of which the Court is obviously aware. At first glance, the similarities are striking — and Guyana itself last Monday claimed once again that both cases raise very similar issues[64].

25. But — and this is an important "but" — this 1957 Agreement, concluded only a few years prior to the Geneva Agreement, specifically referred, as you can see, to "the disagreement existing . . . *with respect to the Arbitral Award* handed down by His Majesty the King of Spain on 23 December 1906".

26. It is beyond doubt that Venezuela and the United Kingdom, when negotiating the Geneva Agreement, were obviously fully aware of this earlier Agreement, which this very Court had not only dealt with in a weeks-long sitting in 1960 but had also rendered a judgment in this very year — just six years prior to the conclusion of the Geneva Agreement.

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[63] As to the relevance of the title of a treaty for its interpretation *cf., inter alia, Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I),* p. 7 et seq. (28), para. 57; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 3, para. 70; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 118, para. 39; *Certain Norwegian Loans (France* v. *Norway), Judgment, I.C.J. Reports 1957*, p. 24.

[64] CR 2026/25, p. 42, para. 55 (Oral).

27. Had Venezuela and the United Kingdom, when concluding the Geneva Agreement, indeed wanted to settle the question of the (in-)validity of the 1899 Award, rather than settle or find a path for the settlement of their bilateral frontier controversy as such, they would have certainly chosen the same language Honduras and Nicaragua — two other countries from the very same region — had used just some years ago. They had — Guyana, or the United Kingdom and Venezuela — they had that example available to them, and yet, they deliberately opted for a much broader formula.

28. Put otherwise, by concluding the Geneva Agreement, the United Kingdom and Venezuela aimed at settling the overall boundary controversy, rather than to decide "the disagreement existing between them with respect to the Arbitral Award", to use the different formula used by Honduras and Nicaragua.

II. Interpretation of the Geneva Agreement's preamble

29. And the same holds true when it comes to the Geneva Agreement's preamble[65].

30. The preamble of the Geneva Agreement provides, unequivocally, that the Agreement was specifically concluded to resolve "*any outstanding controversy* between the United Kingdom and British Guiana on the one hand and Venezuela on the other . . . " (emphasis added).

31. Let me reiterate: the Geneva Agreement's jointly approved aim was to resolve "*any* outstanding controversy". Had the parties wanted to concern themselves instead with the specific issue of the Arbitral Award, they would have said so, choosing a wording that would have reflected in the preamble this limited understanding.

32. What is more, this overall controversy was to be settled, again according to the Agreement's preamble, "*in a manner acceptable to both parties*".

33. Yet, to state the obvious, deciding the issue of the invalidity of the Award could never be acceptable to both parties as it would either unilaterally favour Guyana or Venezuela. Accordingly,

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[65] As to the relevance of the preamble in treaty interpretation *cf. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment of 31 January 2024, I.C.J. Reports 2024 (I)*, p. 118, para. 50*; Jadhav (India* v. *Pakistan), Judgment, I.C.J. Reports 2019 (II)*, p. 439, para. 74; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 118, para. 39; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 652 para. 51; *Rights of Nationals of the United States of America in Morocco (France* v. *United States of America), Judgment, I.C.J. Reports 1952*, pp. 176, 197.

the Geneva Agreement intends to reach a mutually acceptable negotiated agreement, since the parties, as has been shown by Professor Mbengue, and as was indeed confirmed by counsel for Guyana on Monday[66], were very much aware of the fact that no agreed conclusion could be reached as to the invalidity of the 1899 Award.

34. And this understanding has, in fact, also been shared by this Court, which stated that "the [Geneva] Agreement is entitled 'Agreement to Resolve the Controversy . . . over the Frontier between Venezuela and British Guiana' and [that] its preamble states that it was concluded 'to resolve' that controversy"[67].

35. According to the preamble, this attempt must be undertaken "[i]n conformity with the agenda that was agreed for the governmental conversations concerning the *controversy* between Venezuela and the United Kingdom *over the frontier* with British Guyana". This now brings me to Article I of the Geneva Agreement.

III. Interpretation of Article I of the Geneva Agreement

36. And there, multiple components stand out.

37. *First*, it is no coincidence that the parties refer to the "controversy" between Venezuela and the United Kingdom. As the Court is aware and has stated[68], it was already Article IV of the 1897 Washington Treaty, which had used the term "controversy" — when referring to the *original* boundary dispute that was to be submitted to the arbitral tribunal established under the said 1897 Washington Treaty.

38. To state the obvious, the *1897* Washington Treaty had been concluded *prior to* the *1899* Award. The Washington Treaty had thus been concluded well before any dispute as to the invalidity of said Award could have even arisen. Accordingly, the parties of the 1897 Washington Treaty — the same parties as those of the Geneva Agreement — by using the term "controversy" in 1897 could have only referred to the boundary issue as such. And this by necessary implication confirms that the "controversy" meant to be settled by the Geneva Agreement — the same controversy — is *not* the

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[66] *Cf.* CR 2026/24, p. 28, para. 15 (d'Argent).

[67] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 476, para. 73.

[68] *Ibid.*, p. 473, para. 64.

dispute relating to the invalidity of the 1899 Award. Rather, the "controversy", already addressed in 1897, to be settled is the overall bilateral boundary controversy *in toto*.

39. Had the parties, in concluding the Geneva Agreement, wanted to refer to the invalidity of the Arbitral Award in the Geneva Agreement it would have been expected, if not mandatory, to use the more common term of "dispute" or in Spanish "diferendo". Yet, the parties did not. They used the term "controversy" of the 1897 Washington Treaty.

40. And this conclusion is further supported, *second*, by the fact that the parties understood the controversy to be settled, as you can see, as one that *has arisen* as the result of the Venezuelan contention that the Award of 1899 is null and void.

41. This wording underscores that the parties thus aimed to leave the arbitral deadlock behind. Instead, they wanted to focus on solving the overall boundary question as such, and to do so by way of negotiations.

42. Had that not been the case, the parties could have formulated Article I as follows: "A Mixed Commission shall be established with the task of resolving the controversy between Venezuela and the United Kingdom *as to the validity of the Arbitral Award of 1899* about the frontier between British Guiana and Venezuela." They could have done so. But they did not formulate Article I in that manner.

43. *Third*, Article I of the Geneva Agreement entrusted the Mixed Commission "with the task of *seeking*" satisfactory solutions for the boundary controversy. Had the parties wanted the various settlement mechanisms established by the Geneva Agreement to simply *decide* upon the nullity of the 1899 Award, it would have been possible, and indeed most natural, for the parties to spell this out.

44. Instead, the reference to "*seeking* satisfactory solutions" implies that the mandate for the various mechanisms established by the Agreement was *not* to determine the Award's validity. After all, the very term of *seeking* a resolution to a controversy implies an open-ended, future-looking process, contrary to merely making a backward-looking finding on the current legal status of a, by then, 60-year-old Arbitral Award.

45. Fourth, the notion of "*satisfactory*" and mutually acceptable solutions used by the parties in Article I further implies that a negotiated result was to be reached that would align with the

interests of *both* sides. This necessarily presupposes a compromise and excludes any possibility of a judicial finding on the validity of the Award, as such finding could *per definitionem* not provide for a mutually satisfactory result.

46. That the Geneva Agreement's intention is *not* to reach a binary solution as to the validity versus the nullity of the Award is further confirmed by the fact that Article I refers to the goal to find "satisfactory solution*s*"/"solucion*es* satisfactoria*s*" to the controversy.

47. The parties thus deliberately referred to satisfactory *solutions* in the plural. Had the parties wanted to focus on the (in)validity of the Award, it would have been logical, and indeed mandatory, to instead refer to the goal of reaching a "satisfactory solution"/"solucion satisfactoria" in the singular.

48. This issue is closely related, *fifth*, to the requirement to seek a *practical* settlement of the dispute. But what constitutes then a practical settlement? It is this Court's own jurisprudence that provides guidance on the matter.

49. In the *Polish Postal Service in Danzig* Advisory Opinion, the PCIJ had to deal with a very similar case. It concerned the relationship between a 1922 decision of the High Commissioner of the League of Nations in Danzig and a subsequent agreement reached in 1923 between the Free City of Danzig and Poland.

50. As in the case at hand, a dispute arose between Poland and Danzig concerning this 1922 decision of the High Commissioner. Accordingly, Poland and Danzig concluded an agreement which was — just like the Geneva Agreement — meant to supersede said previous decision.

51. The agreement set out the parameters on how to solve the dispute between Poland and Danzig — irrespective of the nature of the previous decision by the High Commissioner.

52. The only — but fundamental! — difference between the Polish-Danzig Agreement on the one hand, and the Geneva Agreement on the other, is that the Polish-Danzig Agreement made it clear in its clause 3 that "[t]his *practical settlement* of the question *in no way changes the legal position*". (Emphasis added.)

53. Let me recall that the terminology "practical settlement" used then by Poland and Danzig is word by word identical with the terminology used in the Geneva Agreement. Yet, Poland and Danzig did think it necessary to include a savings clause — by adding the words: "in no way changes

the legal position" — into the 1923 Agreement. They, Poland and Danzig, did so in order to safeguard any possible legal effect of the decision of the Danzig High Commissioner. Had the parties not done so, their practical settlement would have superseded the 1922 decision of the High Commissioner for Danzig. The Geneva Agreement, however, unlike the Danzig and Poland Agreement, does *not* contain such a savings clause — and it lacks it on purpose.

54. Obviously, Venezuela and the United Kingdom could have also inserted a savings clause in the Geneva Agreement akin to clause 3 of the 1923 Agreement between Poland and Danzig. They could have thereby similarly provided that the practical settlement envisaged by the Geneva Agreement "in no way changes the legal position" as to the effects of the 1899 Award.

55. Put otherwise, by not including such a saving clause, Venezuela and the United Kingdom — unlike Poland and Danzig — decided to have the outcome of the 1899 arbitral proceedings on which they held irreconcilable views superseded by the search for a negotiated solution to be reached by the parties.

56. Thus, Venezuela and the United Kingdom opted for a practical settlement overriding *any* possible *res judicata* effect of the 1899 Award, assuming — for the sake of the argument — that there has ever been one in the first place given the nullity of the Award.

57. The parties of the Geneva Agreement thus deliberately opted for a new start, constituting, as Professor Mbengue has shown, a novation of their legal relationship.

58. The parties — in stark contrast to Poland and Danzig — were thus willing to replace the 1899 Award, on which they held fundamentally divergent and not compatible positions, with a new practical settlement, whatever legal status the 1899 Award might hold.

IV. Interpretation of Article II of the Geneva Agreement

59. Mr President, Members of the Court, let me now address Article II, paragraph 3 of the Geneva Agreement.

60. This provision foresees that "*any* individual matter under consideration" may be discussed by experts. This again implies that there exists a wide range of "matters" that form part of the overall controversy to be considered under the Geneva Agreement — rather than the one that Guyana wants you to believe.

61. Moreover, the fact that Article II Geneva Agreement refers to "experts to assist the Mixed Commission" hints at work to be done by cartographers, geologists or experts of a similar kind, that can assist in delimiting and demarcating a boundary anew as such. Any determination concerning the validity of an arbitral award as being a purely legal issue in nature does not require any such experts.

62. The necessity of further experts thus presupposes discussions that extend beyond the competences and knowledge of the members of the dispute settlement mechanism itself. This thereby once again confirms that the overall aim of the Geneva Agreement was *not*, and is not, to decide upon the invalidity of the 1899 Award.

V. Interpretation of Article IV of the Geneva Agreement

63. Members of the Court, Article IV of the Geneva Agreement reconfirms the interpretation I just discussed. It outlines the further dispute settlement process should the Mixed Commission fail to complete its task.

64. For one, Article IV, paragraph 1, refers to a "*full agreement* for the solution of the controversy". Should the Mixed Commission fail to do so, it shall refer "*any outstanding questions*" — it is again the plural that is being used — to the Governments of Guyana and Venezuela.

65. If, however, the controversy to be solved by the Geneva Agreement — as submitted by Guyana — had been meant to refer to the invalidity of the 1899 Award, there could have only been *one single* outstanding unresolved question by the end of the negotiations, namely the very issue of the Award's nullity or validity.

66. The fact that the parties made reference to "any outstanding questions" in the plural presupposes a multiplicity of issues on which the Mixed Commission might not agree on — and not the single issue of the invalidity of the Award.

67. The notion of "outstanding questions" accordingly obviously refers to the issue of resolving the overall boundary controversy as such, and how to delimit the boundary between the two countries in order to reach a mutually acceptable solution.

68. This result is then confirmed by Article IV, paragraph 2 of the Geneva Agreement on which your jurisdiction is allegedly based.

69. Article 33 of the United Nations Charter, mentioned in Article IV, paragraph 2, makes reference to negotiation, mediation and conciliation as possible means to solve a given dispute.

70. Negotiation, however, entails a process — as we were told in your jurisprudence — where either party may not insist upon their own respective position without contemplating any modification of it[69]. By making reference to negotiations, through the proxy of Article 33 of the United Nations Charter, the parties to the Geneva Agreement must have thus *necessarily* contemplated modifications to their respective positions — modifications to their positions.

71. The determination as to the invalidity of an arbitral award does, by its very nature, however, constitute a legal question *par excellence*. It can only be decided in a binary manner: either it is valid or it is not valid. The issue of the invalidity of the 1899 Award is therefore not, in and by itself, capable of settlement by negotiation. By indirectly referring to negotiation in Article IV, paragraph 2, the parties must have therefore necessarily envisaged a solution that sets aside the issue of the invalidity of the 1899 Award.

72. *Mutatis mutandis*, the same considerations apply to the implicit references to the concepts of mediation and good offices, which are also found in Article IV, paragraph 2 of the Agreement. The Geneva Agreement accordingly aims at a satisfactory and mutually acceptable solution to the overall territorial controversy.

73. Any determination on the invalidity of the 1899 Award would, however, necessarily — as I have shown — unilaterally favour one of the Parties. It, therefore, cannot thereby constitute a *mutually* acceptable solution, as prescribed by the Geneva Agreement. And any such determination either way would thus contravene the very object and purpose of the Geneva Agreement.

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[69] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3, para. 47; *cf.* also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 17, paras. 157–159; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 14, para. 146; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Order of 5 February 1997, I.C.J. Reports 1997*, p. 7, para. 77.

D. Subsequent practice

74. Mr President, Members of the Court, this understanding of the Geneva Agreement as a forward-looking, future-oriented practical instrument meant to solve the boundary issue at large, instead of as a backward-looking instrument freezing and perpetuating the bilateral conflict, is further supported by the subsequent practice of both Parties[70], starting with the work of the Mixed Commission.

I. Work of the Mixed Commission

75. It is particularly telling that within the framework of the Mixed Commission, Venezuela and Guyana substantively discussed how to reach a mutually acceptable overall solution to their boundary controversy.

76. Already in the Mixed Commission's first report, the then-Guyanese representative, Mr Shahabuddeen, stated that Guyana is "not insensible to *the real nature* of the claim being put forward by Venezuela" [71] [emphasis added].

77. This understanding by the representative of Guyana of the Geneva Agreement was not incidental. Rather, it was consistently confirmed throughout the Commission's work. Notably, the Mixed Commission established a Subcommission whose mandate was to "study possible areas of co-operation between Venezuela and Guyana for the financing and carrying out by them of plans of economic development"[72].

78. This confirms that, from the very outset, the Parties used the Geneva Agreement as a framework to address the border controversy as such. They took it simply for granted in their subsequent agreed practice that the mandate of the Mixed Commission was meant to actively seek a substantive solution to their overall territorial controversy. Guyana and Venezuela thereby jointly confirmed their shared understanding that the Geneva Agreement generally, and its Article IV in particular, were meant to bring about a solution to their overarching territorial controversy as to where the boundary lies.

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[70] For a detailed analysis see RV, p. 69 *et seq*.

[71] First Interim Report, Minutes of the 4th Meeting, 1st Session of the Mixed Commission, 4 July 1966; *cf.* RV, para. 2.128.

[72] Third Interim Report, 7th Session of the Mixed Commission, 27 and 28 December of 1967, p. 5; *cf.* RV, para. 2.131.

79. This is further confirmed by a separate memorandum, which Guyana added to the Final Report adopted by the Mixed Commission in 1970.

80. In it, Guyana once more drew attention to its proposal to provide for a special development programme for Guyana and Venezuela. Notably, this development programme proposed by Guyana would have included the disputed territory, and was to be implemented through multinational co-operation with the aim that "such programme should be accepted as the *solution to the substantive problem*"[73] [emphasis added].

81. This, once again, confirms two things: *First*, Guyana itself was seeking a substantive, territorial solution within the framework of the Geneva Agreement, rather than solving the issue of the nullity of the Award.

82. *Second*, Guyana was open to the idea of a shared development of the disputed territory. Guyana thereby accepted Venezuela's position that the scope of the Mixed Commission's mandate, as established by Article IV of the Geneva Agreement on which the Court bases its jurisdiction, relates to *substantive* issues and the territorial dispute as such.

II. 1970 Port of Spain Protocol

83. Members of the Court, in 1970 independent Guyana and Venezuela concluded the Port of Spain Protocol — an instrument which, I note in passing, Guyana did not even mention once during a full day of pleadings on Monday. 1970. With it — with the Port of Spain Protocol — the parties reconfirmed that, in line with the previous Geneva Agreement, they continued to seek a mutually acceptable negotiated solution to their boundary controversy, again using the very same terms as the Geneva Agreement to which I have already alluded to in detail. Guyana did not try to change the wording.

84. The parties did so in full conscience that the mandate of the Geneva Agreement had — at times — been contentious during the negotiations of the Mixed Commission. Still, the parties of the Port of Spain Protocol in 1970 deliberately decided to opt for the previous broad wording, which reflected Venezuela's position. Put otherwise, the parties, once again, did *not* refer to their

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[73] Final Report of the Mixed Commission, Separate Memorandum by Guyana of 17 June 1970, p. 4; *cf.* CMV, Annex 101.

controversy as being one related to the validity of the 1899 Award, but as one concerning their overall territorial controversy.

85. Besides, while Article III of the Port of Spain Protocol suspended the applicability of the Geneva Agreement, it also provided that, once the Port of Spain Protocol was to cease to be in force, the functioning of Article IV Geneva Agreement would resume "unless the Government of Guyana and the Government of Venezuela have first jointly declared in writing that they have reached *full agreement* for the solution of *the controversy referred to in the Geneva Agreement*" [emphasis added].

86. This reconfirms Guyana's acceptance of Venezuela's interpretation of the Geneva Agreement, namely that the parties' continued aim was to reach a *full*, *i.e.* overall agreement for the whole of the boundary controversy between them as such.

87. This understanding of what the Port of Spain Protocol and the underlying Geneva Agreement were all about, was explicitly supported by then-Guyanese Prime Minister Burnham. On the day of the signing of the Port of Spain Protocol, he construed that instrument as a means to resolve "*all* differences between us [meaning between Guyana and Venezuela]" [74]. All differences. In other words, it was Guyana's own position, when negotiating, drafting and adopting the Port of Spain Protocol, that the Protocol shall address the boundary dispute *in toto*.

88. And this understanding of the Port of Spain Protocol is also further confirmed by later subsequent practice.

89. *Inter alia*, it was Guyana, which in 1981, wrote to the United Nations Secretary-General confirming that: "the Protocol of Port-of-Spain provided the climate for exploratory conversations *of substance* which took place in 1978 between the . . . President of Venezuela . . . and Guyana's . . . Prime Minister"[75] [emphasis added].

90. Guyana thereby confirmed, once again, that *substantive discussions* as to the overall boundary issue were the very object of the Port of Spain Protocol, as had already been the case of the Geneva Agreement.

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[74] Statement by the Prime Minister, Hon. L.F.S. Burnham, in the National Assembly, Georgetown, 18 June 1970, paras. 12, 14 (emphasis added); *cf.* RV, para. 2.144.

[75] Letter dated 2 November 1981 from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/9, 9 November 1981, p. 11; *cf.* RV, para. 2.145.

III. Negotiations following the entry into force of the Port of Spain Protocol

91. Let me now bring the Court's attention to the most important substantive advances made by Guyana itself between 1970 and 1982.

92. In 1975, Venezuela President Pérez and the Guyanese Prime Minister Burnham not only discussed the border controversy at length, but also outlined possible pathways to a practical solution. This culminated in a proposal, in 1976, by Guyanese Prime Minister Burnham to solve the border issue through economic co-operation. More specifically, he was prepared to link economic assistance with a settlement of the border question. The Guyanese Prime Minister stated: "I would propose that . . . there should be signed, *an Accord which would lay at rest the border question*"[76] [emphasis added].

93. What is more is that during bilateral negotiations that took place in 1977 the Guyanese Foreign Minister was "proposing a correction to the last section of the border lines, specifically at Punta Playa. The rectification consisted of changing the north-west orientation of the current border line and drawing it north-east."[77]

94. This once again confirms that during the bilateral negotiations, undertaken within the framework of the Port of Spain Protocol and the Geneva Agreement, Guyana then was ready to find creative solutions and give up *de facto* control over territory, which the 1899 Award had purportedly allocated to British Guyana. Guyana thus, once again, perceived itself the Geneva Agreement as an instrument that was meant to solve the substantive boundary issue between itself and Venezuela — rather than as an instrument that was meant to address the issue of the invalidity of the Award.

95. Members of the Court, what becomes obvious from the sum of all of these negotiations is that the Parties, both Parties, did not concern themselves anymore with the issue of the invalidity of the 1899 Award. Instead, they, the Parties, were aiming to find a practical solution to the overall border dispute, as had already been mandated by Article IV of the Geneva Agreement for all methods of dispute settlement provided therein — all methods of dispute settlement provided for in Article IV.

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[76] Letter from Forbes Burnham to Carlos Andrés Pérez, 3 November 1976, *cf.* CMV, para. 3.74.

[77] Confidential Report by Morales Paúl, Delimitation Guyana-Venezuela, 1979; *cf.* CMV, para. 3.75.

IV. Subsequent practice post-1982

96. And even after the Port of Spain Protocol had expired in 1982 the Parties continued to try to reach an overall mutually acceptable satisfactory solution.

97. Notably, they continued to discuss possible boundary lines in exceptional detail[78]. These discussions again prove, as if there was still any need, that the Parties had completely moved away from discussions about the invalidity of the Award.

98. This approach is also reflected in three joint communiqués released by the two Parties. It becomes apparent from these three joint communiqués of 2004, 2010 and 2013 respectively, that the Parties deliberately abstained to refer in those documents to the issue of the invalidity of the Award. Conversely, in line with the Geneva Agreement, they focused — once again I might say — on practical and satisfactory solutions to be found for the territorial controversy as such.

99. Thus, when President of Venezuela Hugo Chávez visited Guyana in 2004 the two Parties once again referred to the "search for a peaceful and *practical settlement of the controversy*" undertaken within the framework of the United Nations Good Offices Process[79].

100. Similarly, in 2010, Guyana and Venezuela reaffirmed their confidence in the Good Offices Process of the Secretary-General, which allowed them to move forward towards finding a practical and satisfactory solution to the territorial controversy. Their joint communiqué provided that the two Parties "reaffirmed their confidence in the Good Offices Process as a mechanism that would assist the Parties to advance towards a *practical and satisfactory solution* for the *border controversy*"[80] [emphasis added].

101. And this joint perception was then again reiterated on the occasion of a visit of Venezuelan President Maduro in Georgetown in 2013[81].

102. Considering all of the above, Guyana's claim that the Geneva Agreement is concerned with the issue of the invalidity of the 1899 Award is ingenuine to say the least. As a matter of fact,

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[78] *Cf.* RV, paras. 2.155-2.157.

[79] Joint communiqué issued at the end of the State visit to Guyana of his Excellency Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, 19 and 20 February 2004, para. 4 (emphasis added); *cf.* RV, para. 2.178.

[80] Joint statement by Presidents Hugo Chávez Frías and Bharrat Jagdeo on the Occasion of the Official Visit of the President of the Co-operative Republic of Guyana to the Bolivarian Republic of Venezuela, Caracas 21 July 2010, para. 11 (emphasis added); *cf.* RV, para. 2.179.

[81] Joint Declaration issued on the conclusion of the State visit to Guyana by his Excellency Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 31 August 2013.

the subsequent *agreed* practice by *both* Parties confirms their *joint* understanding that the Geneva Agreement was meant, ever since its inception, to provide for a practical, satisfactory and mutually acceptable solution for the substance of their boundary dispute.

103. The Geneva Agreement therefore addresses, and aims at settling, the overall boundary dispute, leaving aside the question of the nullity of the 1899 Award.

V. Post-1982 good offices

104. This understanding of the mandate of the various dispute settlement mechanisms provided for in Article IV of the Geneva Agreement also aligns with the good offices process of the United Nations Secretary-General.

105. The focus of the good offices efforts by the Secretary-General, too, was *not* on the nullity of the Award, but rather on finding a solution to the larger boundary issue.

106. In 1993, the Secretary-General indicated that the aim of his good offices, as envisaged by Article IV, and on which this Court's jurisdiction is purportedly based, was to secure a "mutually satisfactory settlement of the controversy". In order to achieve this goal, he deemed it necessary that "creative options" must be explored[82].

107. Some of those creative options were then discussed by the Parties in 1995. *Inter alia*, Venezuela and Guyana considered the possibility of returning control over parts of the disputed territory to Venezuela. In this context, the Parties notably also explored a possible then "lease-back", by Venezuela, in favour of Guyana of some portions of the territory[83].

108. In the same vein, in a letter dated 18 August 1998 the Guyanese President herself reiterated that the purpose of the good offices process based on Article IV of the Geneva Agreement is to "explore *all* avenues that would lead to a settlement of the *border controversy*"[84] (emphasis added).

109. In this letter, she similarly referred to the controversy as being one "over the border with Venezuela", which aligns with a statement of Venezuelan Foreign Minister José Vincente Rangel,

[82] Secretary-General reaffirms offer of his good offices to help resolve controversy between Guyana and Venezuela, 24 September 1993, CMV, Annex 130; *cf.* CMV, para. 3.103.

[83] Report of the Meeting between Sir Alister McIntyre, Carlos Ayala and Harry Ramkarran in New York, 14-15 December 1995, p. 2; *cf.* CMV, para. 3.103.

[84] Letter to Mr Rashleigh Jackson by President Janet Jagan dated 18 August 1998; *cf.* RV, para. 2.166.

who soon thereafter confirmed the solution to be found in the good offices process, which must be "reasonable, fair and equitable" [85].

110. This broad interpretation of the mandate of the dispute settlement process provided for in Article IV of the Geneva Agreement was also shared by the Secretary-General himself. On several occasions, both the Secretary-General himself, as well as his Personal Representatives, stressed that the aim of his endeavours within the framework of the Geneva Agreement were to secure "a *mutually satisfactory* settlement of the *controversy*"[86] — this controversy being "the *border controversy* between Guyana and Venezuela" [87].

111. Can it thus really be assumed, as Guyana wants you to believe, that by "bringing about a practical solution to the controversy", the Secretary-General, in exercising his mandate under Article IV of the Geneva Agreement, meant to decide upon the validity, or rather the invalidity, of the 1899 Award?

112. Rather, it was the Secretary-General's consistent position that a decision focusing on the issue of the invalidity of the 1899 Award would *not* align with the very object and purpose of the Geneva Agreement.

113. Mr President, Members of the Court, in accordance with the Geneva Agreement, Guyana and Venezuela are under an obligation, a legally binding obligation, to find new paths to solving the issue of the Guyanese-Venezuelan frontier, given that the Geneva Agreement has, as I have demonstrated by now time and again, moved beyond the issue of the (in)validity of the 1899 Award.

E. Conclusion

114. Members of the Court, let me conclude: as I have shown — on the basis of well-established methods of treaty interpretation — the Geneva Agreement contains a binding legal obligation for *all actors addressed by its Article IV*, including the Court, to strive for a practical and mutually satisfactory solution for the border controversy.

115. A solution that merely focuses on the invalidity of the 1899 Award does not constitute such a practical and mutually satisfactory solution. Indeed, any such decision would contravene this

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[85] *Cf.* RV, para. 2.167.

[86] UN doc. SG/SM/5108, 24 September 1993.

[87] Letter by Norman Girvan to Nicolás Maduro Moros dated 6 October 2010 (emphasis added); *cf.* RV, para. 2.170.

very obligation arising under Article IV of the Geneva Agreement, given that such a binary resolution will always be necessarily one-sided and thus not *mutually* satisfactory. In line with the Geneva Agreement, all actors addressed by its Article IV must therefore look beyond the issue of the invalidity of the 1899 Award.

116. As discussed, this is not however only a matter of literal interpretation. In fact, this was the understanding, which the Parties shared from the very outset of the Geneva Agreement. What is more is that, since 1966 and thus from the very beginning of the workings of the Mixed Commission, throughout the ensuing bilateral negotiations and the conclusion of the Port of Spain Protocol, up to the United Nation's good offices, the Parties — both Parties — have *consistently* tried to find substantive solutions to the dispute over the frontier.

117. The practice by Venezuela and Guyana, as well as that of the various peaceful settlement mechanisms, acting on the basis of, and in accordance with, Article IV of the Geneva Agreement, all prove that the Parties shared this understanding — namely that the Geneva Agreement was meant to settle the controversy by negotiations.

118. Accordingly, the Court, too, can neither decide on the invalidity of the 1899 Award, since this would run counter to Article IV of the Geneva Agreement. Otherwise, Guyana would indeed — as I said at the outset — have its cake and eat it, too.

119. I thank you for your kind attention. And I would now kindly ask you, Mr President, to call Professor Breton to the podium.

The PRESIDENT: I thank Professor Zimmermann. Je donne maintenant la parole au professeur Antonio Remiro Brotóns. Vous avez la parole, Monsieur.

M. REMIRO BROTÓNS :

AUJOURD'HUI, HIER ET DEMAIN

1. Monsieur le président, Mesdames et Messieurs les juges, il me revient de conclure cette séance du matin du premier tour de plaidoiries du Venezuela. Mon propos est d'établir le lien entre ce que les professeurs Mbengue et Zimmermann viennent de présenter au sujet de l'accord de Genève

et les circonstances historiques qui y ont conduit, circonstances qui seront examinées en profondeur par d'autres collègues lors de la séance de l'après-midi.

A. Un nouveau cadre normatif pour résoudre le différend territorial

2. Monsieur le président, Mesdames et Messieurs les juges, l'accord de Genève du 17 février 1966 repose sur l'affirmation du Venezuela selon laquelle la sentence arbitrale du 3 octobre 1899 est nulle et non avenue. D'où le Guyana en tire l'argument que, si l'accord découle d'une assertion que le Guyana ne partage pas, il suffira à la Cour de se prononcer sur le bien-fondé d'une position ou de l'autre pour régler le différend[88].

3. L'inconvénient de cette démarche réside dans le fait que les parties à l'accord ont convenu d'une autre approche. Les parties auraient-elles pu négocier la résolution du différend concernant la validité de la sentence arbitrale de 1899 en saisissant la Cour ? Évidemment, elles pourraient le faire. Cependant elles ne l'ont pas fait.

4. La négociation de l'accord a permis d'éviter de mettre de côté, d'écarter, cette question. Les parties n'ont pas souhaité se concentrer sur un différend où il y aurait des gagnants et des perdants. Il était crucial de préserver le voisinage, le bon voisinage, et il était tout aussi essentiel d'assurer l'indépendance rapide de la Guyane britannique ainsi que les intérêts commerciaux significatifs du Royaume-Uni au Venezuela, en convenant au préalable d'une méthode pour résoudre le différend frontalier, le différend territorial.

5. L'affirmation vénézuélienne concernant la nullité de la sentence arbitrale de 1899 a constitué, certes, le point de départ de l'accord de Genève, mais son objet n'était pas de déterminer si elle était fondée ou non ; l'objet et le but de l'accord consistent à résoudre le différend frontalier qui oppose la République, d'abord à l'Empire britannique, puis à son ancienne colonie de la Guyane, qui est devenue la République coopérative de Guyana le 17 mai 1966.

6. Mais comment résoudre ce différend, le différend frontalier ? La réponse fournie par l'accord est très explicite : par une recherche obstinée, de bonne foi, d'un arrangement pratique, satisfaisant pour les deux parties, un accord équitable dans lequel chacun en sortirait gagnant.

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[88] CR 2026/24, p. 28, par. 16 (D'Argent).

7. La signature du premier ministre de la Guyane britannique, Forbes Burnham, se trouve en bas de l'accord de Genève, aux côtés de celles d'Ignacio Iribarren Borges, ministre des affaires étrangères du Venezuela, et de Michael Stewart, secrétaire d'État aux affaires étrangères du Royaume-Uni.

8. Trois mois plus tard, après avoir acquis son indépendance, le Guyana est devenu partie à l'accord et, en tant que tel, est obligé de le respecter et de l'honorer. Il l'a fait à plusieurs reprises, en proposant des arrangements territoriaux qui n'ont pas abouti. Cependant, dans l'ensemble, sa politique, loin de coopérer de bonne foi pour parvenir à l'arrangement pratique et satisfaisant que prévoit l'accord de Genève, a consisté à gagner du temps, à s'implanter physiquement sur le territoire en litige, à transformer unilatéralement son administration en souveraineté, et à détourner l'objet et la finalité de l'accord.

9. Monsieur le président, Mesdames et Messieurs les juges, l'accord de Genève, un traité dont la nature juridique est incontestée, établit un nouveau cadre normatif pour la résolution du différend relatif à la Guayana Esequiba. L'accord, dont le Guyana s'enfuit désormais comme Nosferatu fuyait la lumière du soleil, représente un exemple typique, un archétype, de novation dans le cadre d'un processus de décolonisation.

10. Le titre de l'accord (« tendant à régler le différend… relatif à la frontière »), son préambule, ses articles, l'interprétation canonique de ses termes, ainsi que les travaux préparatoires et la pratique ultérieure, au cours de laquelle des propositions de fond ont été avancées par le Guyana, démontrent de manière irréfutable que les parties ont souhaité écarter le litige sur la validité de la sentence arbitrale de 1899 pour se concentrer uniquement sur la recherche d'un règlement pratique et satisfaisant du différend territorial.

B. L'inhumation de la sentence arbitrale de 1899 au cimetière de la justice historique

11. Monsieur le président, Mesdames et Messieurs les juges, avec l'accord de Genève, la question de la validité de la sentence du 3 octobre 1899, qui a fait couler des rivières d'encre — et non de sang, heureusement jamais versé —, a été transférée du domaine du droit positif à celui de la justice historique.

12. Depuis plus d'un siècle, le Venezuela s'efforce de démontrer la très grave injustice dont il a été la victime en raison de la collusion entre deux empires, celui de la Grande-Bretagne et celui, émergent, des États-Unis — l'Amérique, pour les États-Unis —, tout en préservant le *statu quo* du Royaume-Uni sur l'hémisphère.

13. Le Venezuela continuera à se battre tant que cette injustice ne sera pas réparée. La transition du soupçon, des indices plausibles d'invalidité, aux faits établis a été facilitée par la publication en 1949 du mémorandum Mallet-Prevost de 1944, l'ouverture partielle des archives britanniques et les livres de mémoires et journaux intimes, comme celui de Fiodor Martens, accessibles bien plus tard.

14. Maintenant, Mesdames et Messieurs les juges, l'arrêt de cette Cour du 18 décembre 2020 a ravivé la question, comme le prophète Élie a ressuscité le fils de la veuve de Sarepta[89]. Un miracle ? Pas du tout. *Errare humanum est* (se tromper est humain).

15. Le Venezuela, afin de mieux défendre ses intérêts, a été contraint de présenter non seulement les solides raisons de nullité de la sentence arbitrale, mais également les défauts du traité de Washington de 1897, qui a conduit à la procédure d'arbitrage et dont les dispositions essentielles ont été négligées par les arbitres.

16. La narrative guyanaise ne manque pas d'histoires qui mériteraient, bien sûr, le *Booker Prize*, mais qui ne devraient pas être intégrées dans cette malheureuse procédure.

17. En réalité, le Venezuela, voyant ses espoirs anéantis, a été contraint d'accepter un traité rempli d'accords secrets entre le Royaume-Uni et les États-Unis ; l'erreur dans laquelle il a été induit de manière frauduleuse a radicalement vicié le traité de Washington de 1897 et, en conséquence inévitable, la sentence arbitrale de 1899.

18. Arbitrage n'est pas synonyme d'arbitraire. Même à la fin du XIXe siècle, il y avait des règles. L'arbitrage prévu par le traité de Washington était un arbitrage de droit. Cet après-midi, mes collègues vous parleront des vices qui, par une sorte de métastase, ont conduit à une sentence pourrie. Maintenant, je voudrais souligner seulement un point : les arbitres, étant obligés à statuer

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[89] Premier livre des Rois, 17: 18-24.

conformément au droit, se sont prêtés à un marchandage politique, orchestré par le président du tribunal, au profit du Royaume-Uni.

19. Si la doctrine distingue conceptuellement l'arbitrage de droit et l'arbitrage d'équité, la procédure relative à la Guayana Esequiba a constitué une contribution sociologique à l'arbitrage d'*iniquité*.

20. La sentence arbitrale de 1899 a consacré les intérêts fallacieux de l'Empire britannique, en connivence avec les États-Unis, dans le cadre de cette relation privilégiée et particulière dans laquelle ils aiment se complaire, et qui a trouvé dans ce fait l'un de ses jalons fondateurs. En d'autres termes, la sentence fut une expression supplémentaire du colonialisme, de l'imposition des intérêts des puissances dominantes sur les droits des pays qui avaient le malheur de se trouver sur leur chemin.

C. Il y a des circonstances où il est sage de garder le silence

21. Monsieur le président, Mesdames et Messieurs les juges, selon le Guyana, même en supposant que le traité et/ou la sentence arbitrale aient été nuls, le comportement ultérieur du Venezuela aurait constitué une acquiescence remédiant à tout défaut de ces instruments[90].

22. Rien n'est plus éloigné de la réalité. La présumée résignation du Venezuela durant les premières décennies du XXe siècle, loin de cristalliser l'acquiescement, et encore moins une renonciation à ses droits, témoignait de la conscience de la dangereuse proximité d'un empire empreint de supériorité, prêt à recourir à la force pour intensifier la spoliation territoriale à laquelle il avait déjà soumis la République. Il était sage, dans ces circonstances, de garder le silence pour éviter de nouveaux excès territoriaux de la part du Royaume-Uni.

23. En effet, le Venezuela était tellement traumatisé par le bombardement et le blocus de ses ports en 1902 et 1903 pour exiger le paiement de dettes dérisoires que les propositions britanniques visant à modifier les lignes politiques de la sentence arbitrale en faveur d'autres plus naturelles furent rapidement rejetées par crainte qu'elles ne constituent un cheval de Troie pour de nouvelles cessions territoriales.

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[90] CR 2026/25, p. 29-41 (Oral).

24. Mais il ne s'agit plus de cela, un point qui, par ailleurs, n'a pas été invoqué par le Royaume-Uni lors de la négociation de l'accord de Genève. Il s'agit désormais du respect intégral de cet accord, du respect de son objet et de son but.

25. Même dans l'hypothèse — que nous rejetons — où le traité de 1897 et la sentence de 1899 seraient valides au regard des canons obsolètes du droit international d'une époque périmée, ou bien, à défaut, où leurs vices auraient été — par hypothèse — corrigés par le comportement ultérieur du Venezuela, ces faits seraient sans pertinence pour résoudre aujourd'hui le litige territorial régi exclusivement par l'accord du 17 février 1966.

D. La décolonisation, berceau de l'accord

26. Monsieur le président, Mesdames et Messieurs les juges, la création des Nations Unies en 1945, le processus de décolonisation et le déclin de l'Empire britannique ont provoqué un changement fondamental de circonstances.

27. Les États dépouillés par la cupidité de l'Empire britannique et d'autres puissances coloniales, qui avaient dû accepter leur situation désastreuse, pouvaient désormais, libérés de la contrainte structurelle à laquelle ils avaient été soumis, traduite dans ce qu'on appelait avec suffisance le « droit international des pays civilisé*s* », faire entendre leur voix et revendiquer la restitution des territoires usurpés.

28. Au moment où le *statu quo* colonial a été profondément perturbé par l'impératif de la décolonisation, les revendications des pays spoliés, dont les droits avaient été réprimés pendant des décennies, ont été relancées.

29. La décolonisation ne se limite pas à l'autodétermination des peuples soumis au joug colonial ; elle inclut également la restitution à leurs souverains légitimes des territoires usurpés par les puissances coloniales, même si ceux-ci ont été validés par des traités ou des sentences arbitrales. C'est ce que reconnaît la Grande Charte de la décolonisation, la résolution 1514-XV du 14 décembre 1960.

30. L'accord de Genève s'inscrit dans le cadre — et est le résultat — du processus de décolonisation. L'histoire de sa négociation est une histoire de succès. En signant l'accord, les parties ont remplacé le cadre juridique dans lequel s'inscrivait la sentence arbitrale de 1899 — et son

corollaire, l'accord de délimitation de 1905 — par un autre dans lequel, assumant l'impératif de la décolonisation, elles s'engageaient à rechercher une solution pacifique à leur différend territorial par le biais d'un arrangement pratique et satisfaisant pour les deux parties, compte tenu de toutes les circonstances de l'espèce.

E. Le premier commandement : le respect de l'objet et le but de l'accord

31. Monsieur le président, Mesdames et Messieurs les juges, cette affaire aurait dû se conclure en 2020 par un arrêt dans lequel la Cour aurait déclaré son incompétence ; elle ne l'a pas fait et nous en sommes arrivés à cette situation. Que ferons-nous du fils ressuscité de la veuve de Sarepta ?

32. Si la Cour a établi de façon erronée sa compétence — contestée par le Venezuela — sur la base de l'article IV, paragraphe 2, de l'accord de Genève, on peut désormais attendre qu'elle respecte l'objet et le but de l'accord.

33. *Errare humanum est* (se tromper est humain), certes ; mais *in errore perseverare diabolicum* (persévérer dans l'erreur est diabolique), poursuit l'adage latin, si juste qu'on lui attribue plusieurs paternités, de Cicéron à Sénèque, d'Augustin d'Hippone à Jérôme de Stridon. Il ne s'agit pas ici de corriger, mais d'écrire droit sur des lignes tordues.

34. Si la Cour souhaite se débarrasser de cette affaire, en déclarant que la validité de la sentence arbitrale de 1899 entraîne la confirmation de la ligne frontalière qui y est reflétée, comme le souhaite le Guyana, elle réduira l'accord de Genève à une coquille vide, et constituera, 127 ans plus tard, le dernier maillon du blanchiment judiciaire d'une spoliation territoriale subie par le Venezuela aux mains de l'Empire britannique.

35. Et cela ne mettra pas fin à la controverse. Au contraire, cela peut l'aggraver en éloignant davantage les Parties. Ce ne sera qu'une étape de plus dans une histoire sans fin, à laquelle seules les Parties peuvent mettre un terme d'un commun accord. Et personne ne devrait avoir intérêt à alimenter la confrontation.

F. Le bon voisinage

36. Monsieur le président, Mesdames et Messieurs les juges, le Guyana et le Venezuela ont tous deux souffert sous l'Empire britannique. Il est déplorable qu'aujourd'hui, depuis dix ans, au lieu d'honorer ses engagements selon l'accord de Genève, le Guyana, en mélangeant amnésie et avidité,

cherche à prendre la place d'usurpateur du Royaume-Uni. Ou même qu'il ait l'audace de jouer la victime face au Venezuela.

37. La décolonisation ne peut être exploitée pour renforcer et prolonger les injustices coloniales. Une appropriation coloniale du Royaume-Uni ne peut se traduire, dans le cadre normatif de la décolonisation, par un titre juridique du Guyana vis-à-vis du Venezuela.

38. Le Venezuela a soutenu l'indépendance du Guyana, a été un ardent défenseur de son émancipation du joug colonial et l'a reconnu le jour même de son indépendance — le 17 mai 1966 —, mais avec une réserve explicite : le Guyana ne pouvait se soustraire à ses obligations en vertu de l'accord de Genève. Le Venezuela a admis que l'indépendance du Guyana précède le règlement du différend territorial, confiant que le nouvel État respecterait ses engagements.

39. Monsieur le président, Mesdames et Messieurs les juges, cette présentation met un terme à la séance du matin du premier tour de plaidoiries du Venezuela. Je vous remercie pour votre attention.

Le PRÉSIDENT : Je remercie le professeur Remiro Brotóns. This concludes this morning's sitting. The oral proceedings will resume this afternoon, at 3 p.m.

The sitting is closed.

The Court rose at 12.50 p.m.

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