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CR 2026/28

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2026

Public sitting

held on Friday 8 May 2026, at 3 p.m., at the Peace Palace,

President Iwasawa presiding,

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

VERBATIM RECORD

ANNÉE 2026

Audience publique

tenue le vendredi 8 mai 2026, à 15 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

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

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

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

M. Gautier, greffier

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

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comme membres de la délégation.

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

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

I now invite Mr Paul Reichler to address the Court. You have the floor, Sir.

Mr REICHLER:

A TALE OF TWO TREATIES

1. Mr President, Members of the Court, good afternoon. I am pleased to begin Guyana's second round of oral pleadings. I will address you on two treaties that have been placed in issue: the 1897 Treaty of Washington and the 1966 Geneva Agreement.

2. There is a connection between these two treaties. They represent the beginning and the end of a mythological narrative that Venezuela has propagated to depict itself as the noble and virtuous victim of British colonialism and American hegemony, which purportedly came together at the end of the nineteenth century to rob it of its Holy Land — the "Guayana Esequiba" — by bullying, defrauding and coercing it into signing an abusive arbitration agreement, forcing it to accept a manifestly unjust Arbitral Award, and then keeping it in a state of fear and ignorance for 60 years to prevent it from protesting the injustice of that Award. But, in 1962, the myth takes a happier turn: when heroic Venezuela, inspired by the new era of decolonization, summons up its courage, shakes off the chains of imperialism, and champions the cause of Guyana's independence, for which it is rewarded with a new Agreement, in 1966 at Geneva, whereby consent is given to end the historic injustice of the heinous Arbitral Award by setting it aside and casting it into the dustbin of history![1]

3. In this self-serving and fictitious narrative, the roles of victim and aggressor are reversed. Venezuela, which misconstrues both the 1897 Treaty and the 1966 Agreement, and belatedly and groundlessly rejects the 1899 Award, is, in historical reality, the aggressor, having obstructed and delayed Guyana's independence and threatened it ever since, and more recently, in defiance of the Court's Orders, having adopted legislation to annex over 70 per cent of Guyana's territory[2]. Yet, it

[1] CR 2026/26, pp. 14-18, paras. 17, 20-26, 38 (Moncada); CR 2026/26, pp. 32, 39-41, paras. 69, 103-108 (Mbengue); CR 2026/26, pp. 63-67, paras. 12-13, 17, 20, 21-25, 30, 36-38 (Brotóns).

[2] Organic Law for the Defence of the Guayana Esequiba, Official Gazette of the Bolivarian Republic of Venezuela, Extraordinary No. 6.798 (3 April 2024), Art. 9. RG, Vol. III, Annex 1; CR 2026/25, p. 62, para. 14 (Craven).

tries to portray *itself* as the victim of colonialism perpetrated by the British over a century ago and perpetuated by Guyana as the beneficiary of British imperial expansion into Venezuela's own territory[3]. This is nothing more than a cynical inversion of history, but it underlines and explains Venezuela's entire case. It is invoked to justify Venezuela's efforts to deprive Guyana of the vast majority of its sovereign territory while, at the same time, dressing itself up as a champion of decolonization. It is difficult to resist the temptation to call this out for what it so plainly is: a brazen case of pandering to the audience, in this case the Court, by falsely depicting the dispute between the Parties as one rooted in Venezuela's purported service to the cause of decolonization.

4. The dispute at the heart of this case is nothing of the sort. Not remotely. All the myths unravel when confronted by the evidence — the contemporaneous documentary evidence — which Venezuela so conspicuously and conveniently ignored on Wednesday. We presented that evidence, methodically, comprehensively and visually — on your screens and in your folders — on Monday. Venezuela had a chance to respond. They did not. They had a chance to submit contemporaneous evidence of their own. They did not. The evidence we presented on Monday, not by mere assertion, or by footnote, but by physical documentation shown and made available to you, presently stands unchallenged, except by unsupported assertion. And it completely disembodies each of Venezuela's myths, one by one.

5. Let me begin with the mother of all their myths: that the territory between the Essequibo and Orinoco Rivers once belonged to Venezuela, as successor to Spain. Venezuela's representatives, including its counsel, repeatedly and vociferously referred to the territory as Venezuela's, expressing outrage that any of it might be awarded to Great Britain, and the fact that much of it was, as evidence of a corrupt arbitration agreement and a corrupt Award[4]. Leaving aside the fact that it was Venezuela that insisted on arbitration of the competing claims of title to precisely this territory (and got its wish), there is no evidence in the record of this case that Venezuela (or Spain before it) ever occupied any part of it. Venezuela has presented none in this case. Likewise, Venezuela presented no evidence in

[3] CR 2026/26, p. 18, para. 38 (Moncada) ("Although Guyana presents itself as the legitimate heir to the Dutch and British territories, the reality is that it is the beneficiary of colonial dispossession formalized through fraudulent arbitration"); CR 2026/26, pp. 66-67, para. 36 (Brotóns).

[4] CR 2026/26, pp. 12-14, 18, paras. 6-12, 39 (ii) (Moncada); CR 2026/26, p. 27, para. 40 (Mbengue); CR 2026/26, p. 66, para. 34 (Brotóns); CR 2026/27, p. 24, para. 7 (Palchetti); CR 2026/27, p. 65, para. 61 (Thouvenin).

the 1899 Arbitration that it or Spain ever actually occupied any of the territory that was ultimately awarded to Great Britain. You can read the transcripts of those proceedings searching in vain for any such evidence. Whatever attempts Spain might have made to establish settlements or religious missions in the seventeenth and eighteenth centuries were short-lived. This is the map Venezuela submitted in its Counter-Memorial depicting the Spanish settlements, mainly religious missions, in the disputed territory. On top of it, we have superimposed the boundary fixed by the 1899 Award. As you can see, none of the settlements were in the territory awarded to Great Britain. Venezuela's pretensions to the territory to the east are, and have always been, unfounded.

6. In contrast, the evidence shows continuous occupation of the territory by the Dutch and then the British. You will recall for example, that we showed you on Monday contemporaneous cartographic evidence of Dutch settlements extending all the way from the Essequibo to the Orinoco, especially along the coast, as well as up the Pomeroon River[5]; and we identified for you more than 30 locations in this region that still bear their original Dutch names[6]. Venezuela had no answer for this. They conspicuously avoided mention of it. It stands completely unchallenged.

7. Here is the map produced by President Cleveland's US-Venezuela Boundary Commission showing European settlements as of 1814, the year Britain supplanted the Netherlands[7]. Dutch settlements are depicted in red, Spanish settlements in green, on the original, which we now highlight to make clearer. With the boundary fixed by the 1899 Award now superimposed, you can see that it corresponds to who occupied which part of the territory as of 1814. According to the US-Venezuela Boundary Commission, there was no Spanish occupation east of this boundary line. The map was published by the Boundary Commission in February 1897 — that is the same month in which the 1897 Treaty was signed. This is the title page. As you can now see, this was produced under the auspices of, among others, Justice David Brewer, later an arbitrator, and Mr Severo Mallet-Prevost, then serving as Secretary to the Commission. They knew that it was no injustice for the arbitral tribunal, in 1899, to award the territory east of the agreed boundary line to the British.

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[5] Judges' folders, tab 4, slides CG 1-1, 1-3; CR 2026/24, pp. 40-41, paras. 2-5 (Greenidge).

[6] Judges' folders, tab 4, slide CG 1-4; CR 2026/26, p. 41, para. 5 (Greenidge).

[7] US-Venezuela Boundary Commission Map (1897) (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~203939~3001734:Grand-View-of-European-Occupation%252C-).

8. Mr President, we know that the question before the Court concerns the legal validity of the 1899 Award, not whether the tribunal got the boundary right. That is only to be addressed by the Court, according to its 2020 Judgment, if it determines that the Award is invalid. But we have called this evidence to your attention, on Monday and again today, because it exposes the myth that underlines all of Venezuela's contentions about the 1897 Treaty, the 1899 Award and the 1966 Agreement.

9. I turn to the 1897 Treaty, and our response to the arguments challenging its validity made by Professors Azaria and Palchetti, and repeated by Professor Thouvenin, which are fully based on Venezuelan mythology.

10. Each of these three counsel gave us a large overdose of passionate rhetoric, including invective against Britain and the United States, denouncing demonic British imperialism and hegemonic America[8]. Their speeches could have been delivered by La Pasionaria. To be sure, it's exhilarating to raise your fist and chant revolutionary slogans against perfidious Albion and rapacious Uncle Sam. I know the feeling well. I marched in every anti-war demonstration since Vietnam.

11. But loyally reciting a client's narrative is not evidence, and it is certainly not contemporaneous evidence. Where is the contemporaneous evidence from the late nineteenth century to support the argument that Great Britain and the United States defrauded or structurally coerced Venezuela to sign the 1897 Treaty, which is said to have been negotiated behind its back and contrary to its interests. Venezuela had the chance to present it in its written pleadings and did not. They had the chance again on Wednesday. And again, they did not.

12. In fact, the evidence is entirely to the contrary. On Monday, I took you through it. I did not indulge in mere assertion like Venezuela's counsel did, leaving you to review only the scant footnotes, when they were supplied, to check for accuracy. I showed the evidence to you, displaying 27 different contemporaneous documents on your screens and including them in your folders so that you could assess them for yourselves[9]. Neither the authenticity nor the accuracy of this evidence has been challenged by Venezuela — neither in its written pleadings nor on Wednesday. Not a word of

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[8] CR 2026/27, pp. 13, 15, 16, 18-21, paras. 7, 18, 22, 33-48 (Azaria); CR 2026/27, pp. 24-25, paras. 7-11 (Palchetti); CR 2026/27, pp. 68-69, paras. 75-80 (Thouvenin).

[9] Judges' folders, tab 5.3, slides PR 1-1-1.36.

contradiction. So here are some of the conclusions that can now be drawn from them — conclusions that Venezuela has not contested with contrary evidence. I will footnote to the evidentiary sources here, because I already showed them to you on Monday:

— By Venezuela's own admission, it wanted to go to arbitration with the British to determine title to the disputed territory and it repeatedly urged the United States to use its influence to compel the British to agree to that arbitration[10].

— The United States agreed to assist Venezuela, took up Venezuela's cause and ultimately forced the British to agree to Venezuela's demand for arbitration, even threatening to go to war if Britain refused[11].

— Venezuela, far from complaining about so-called US hegemony, appealed to the United States expressly to invoke the Monroe Doctrine against Great Britain, which it did, and Venezuela profusely expressed its gratitude to the United States for obtaining Britain's agreement to arbitrate. You will recall the words to that effect by senior Venezuelan officials, including the President of Venezuela, Joaquín Crespo[12].

— When it came to negotiating the arbitration agreement, the uncontested evidence showed that Venezuela preferred to have the United States negotiate on its behalf, because it believed that the United States had more influence with the British and would obtain a better deal for Venezuela than if Venezuela negotiated directly[13].

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[10] CR 2026/24, p. 49, paras. 8-9 (Reichler); Letter from Venezuela's Foreign Minister, Mr Simón Camacho, to United States Secretary of State, Mr Frederic Frelinghuysen (15 Jan. 1883). RG, Vol. III, Annex 2.

[11] CR 2026/24, p. 49, para. 10 (Reichler); Letter from Mr Olney to Mr Bayard (20 July 1895), in United States Department of State, Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress on 2 December 1895, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527; Letter from Venezuelan Chargé d'affaires in the United States of America, Fr. Antonio Silva, to Diplomatic Agent of Venezuela in New York, Col. George Gibbons (18 Sept. 1888), available at http://www.guyananews.org/Western/1888-1891.pdf, p. 910. See also CR 2026/24, pp. 51-52, paras. 15-19 (Reichler).

[12] *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, p. 99. RG, Vol. III, Annex 13; CR 2026/24, p. 52, para. 22 (Reichler).

[13] Letter from Venezuela's Foreign Minister, Mr Simón Camacho, to United States Secretary of State, Mr Frederic Frelinghuysen (15 Jan. 1883). RG, Vol. III, Annex 2 ("To carry this controversy to a practical ground and possible termination, there is, in the opinion of the President of Venezuela, only one and at the same time very simple way — arbitration. And for arbitration, there is only one Government who could propose it with real effect and Decide the question of boundaries to the satisfaction of Venezuela — the United States of America."); CR 2026/24, p. 49, para. 9 (Reichler).

— The US Secretary of State, Richard Olney, liaised closely and frequently with Venezuela's two representatives during the negotiations; received them at his home; consulted with them; shared drafts with them; welcomed their proposals; adopted and made them his own; and persuaded his British counterpart, Lord Pauncefote, to accept them, including those that Venezuela regarded as the most critical. The Venezuelan representatives expressed their full satisfaction with the draft agreement that Secretary Olney negotiated and they recommended that the Venezuelan Government accept it[14].

— Venezuela then accepted the agreement freely and without compulsion, as serving its best interests. This is fully documented and uncontested. Here again, you will recall the words of President Crespo affirming that Venezuela accepted the agreement, free of coercion: "The settlement plan was presented to Venezuela for its consideration, with no coercive intent and in full respect of the sovereignty and independence of the Republic" — and he again expressed his profound gratitude to the United States for helping Venezuela accomplish its objectives[15].

13. How can Venezuela's counsel, in 2026, complain that Venezuela was coerced, structurally or otherwise, in the face of this declaration by Venezuela's President, in 1897, that Venezuela freely signed the Treaty in the absence of any coercion? No doubt they are following instructions from their client in advancing Venezuela's current mythology, not the position Venezuela held contemporaneously in 1897. As you know, the myth of invalidity of the Treaty was spawned in 1962, some 65 years after the fact, at the time Venezuela first began to denounce the 1899 Arbitral Award. But this is not the reality that Venezuela recognized in 1897. It is directly opposite and *in tension with* the contemporaneous position of the Venezuelan Government, including its President.

14. The best that Professor Azaria could do to support her argument that the 1897 Treaty was imposed on Venezuela was to call your attention to a single contemporaneous document — just

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[14] CR 2026/24, pp. 54-63, paras. 27-61 (Reichler); Letter from Mr Olney to Mr Storrow (12 Sept. 1896). RG, Vol. III, Annex 8; Letter from Mr Storrow to Mr Olney (17 Sept. 1896). RG, Vol. III, Annex 9; Letter from Mr Storrow to Mr Olney (26 Oct. 1896). RG, Vol. III, Annex 10; Letter from Mr Storrow to Mr Olney (26 Oct. 1896). RG, Vol. III, Annex 10; Letter from Mr Storrow to Mr Olney (28 Oct. 1896). RG, Vol. III, Annex 11; Letter from Mr Olney to Sir Julian Pauncefote (29 Oct. 1896). RG, Vol. III, Annex 12; Letter from Pauncefote to Salisbury (29 Oct. 1896), p. 2. CMV, Vol. III, Annex 169; Letter from Mr Olney to Mr Brewer (10 Nov. 1896). RG, Vol. III, Annex 5; Letter from Mr Storrow to Mr Olney (29 Nov. 1896). RG, Vol. III, Annex 15; Telegram of Minister Andrade to Mr Olney (7 Dec. 1896). RG, Vol. III, Annex 19.

[15] CR 2026/24, pp. 64-65, para. 66 (Reichler); *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, p. 99. RG, Vol. III, Annex 13.

one — but one from which I had also read on Monday[16]. It was a December 1896 telegram from Secretary Olney to Mr Storrow — Venezuela's representative — sent after Venezuela had informed the Secretary of its acceptance of the draft treaty in November. At the end of this telegram, Mr Olney referred to Venezuela as "offensive" for seeking, at that late date, to amend the clause on appointment of arbitrators, after, in his view, Venezuela had already agreed to sign the Treaty[17].

15. What Professor Azaria did not tell you is that Secretary Olney, at Venezuela's prior request, communicated the new Venezuelan proposal on appointment of arbitrators to Lord Pauncefote, who rejected it[18], and he informed the Venezuelans that if they persisted in seeking this amendment, they would have to deal with Lord Pauncefote directly[19]. As I showed you on Monday, that is exactly what Venezuela's Minister in Washington, Mr Andrade, did, on 28 December, when he and Lord Pauncefote arrived at an agreement on the issue which Venezuela deemed acceptable[20]. It then proceeded to sign the Treaty on that basis. This is not the smoking gun of America's betrayal of Venezuela that Professor Azaria pretends it to be. There is neither gun nor smoke here. Nor anything else to support Venezuela's case. Professor Azaria has no other evidence to show you, and nothing else to say about the evidence that we showed you on Monday.

16. Professor Palchetti, for his part, energetically embraced the Venezuelan myth that the 1897 Treaty was negotiated by Britain and the US "behind Venezuela's back"[21]. The evidence we showed you on Monday, which stands uncontradicted, exposes the complete falsity of this myth. Professor Palchetti's focus was on what he considered evidence of a malicious Anglo-American conspiracy to defeat Venezuela in the arbitration. The evidence, according to Professor Palchetti, consisted of an exchange of confidential notes between Secretary Olney and Lord Pauncefote that he

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[16] CR 2026/27, p. 17, para. 29 (Azaria); Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

[17] Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

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

[19] Telegram from Richard Olney to James Storrow (12 Dec. 1896). RV, Vol. II, Annex 15.

[20] CR 2026/24, p. 63, para. 61 (Reichler); Letter from Minister Andrade to Minister Ezequiel Rojas (9 Jan. 1897). RG, Vol. III, Annex 21.

[21] CR 2026/27, p. 24, para. 7 (Palchetti); CR 2026/27, p. 68, para. 77 (Thouvenin); CMV, para. 2.15.

falsely told you were kept hidden from Venezuela[22]. When I say falsely, I do not accuse my friend of prevarication, but of not being sufficiently familiar with the evidence.

17. Or of hiding it from you. It was very noticeable that Professor Palchetti did not show you the so-called confidential notes or even quote from them. He showed you only later correspondence referring to them. In contrast, I brought the notes to your attention on Monday. I displayed on our slides PR 1.17 and PR 1.20 at tab 3 of our folders the note from Secretary Olney to Lord Pauncefote[23], and referred you to Annex 169 of Venezuela's Counter-Memorial for Lord Pauncefote's report on his communication to Mr Olney[24]. As I showed and explained, through this exchange an agreement was reached between the two negotiators on the length of the prescription period, which was 50 years, as Venezuela wished; and on the preservation of the 1850 Agreement, also as Venezuela wished.

18. Significantly, in view of Professor Palchetti's false charge that the notes were kept from Venezuela, I had also displayed for you, at slides 1.12 to 1.20, Secretary Olney's correspondence with Mr Storrow at the time these notes were written, showing that Mr Olney disclosed Lord Pauncefote's proposals, and his own, to Mr Storrow and Mr Andrade, that Mr Olney consulted with them (including in his own home) prior to writing to Lord Pauncefote, and that Mr Olney's proposals were consistent with those previously submitted to him by Mr Storrow. The correspondence leaves no doubt that both Mr Storrow and Mr Andrade were privy to the so-called confidential notes, and to the agreements on prescription and the 1850 Agreement that were reached therein.

19. Professor Palchetti referred you to the transcript of the arbitration hearings more than a year later, in which former President Harrison, Venezuela's lead counsel, seems to have been surprised by the existence of these notes[25]. If he was unaware of them, it is Venezuela's fault. Its two representatives in Washington plainly knew of the notes and their contents at the time they were exchanged. Mr Harrison himself speculated that Mr Storrow would have known of them. He further

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[22] CR 2026/27, pp. 29-31, paras. 27-34 (Palchetti).

[23] Letter from Mr Olney to Sir Julian Pauncefote (29 October 1896). RG, Vol. III, Annex 12.

[24] Letter from Pauncefote to Salisbury, 29 October 1896**.** CMV, Vol. III, Annex 169.

[25] CR 2026/27, p. 33, para. 41 (Palchetti).

speculated that perhaps Mr Storrow decided not to share them with his client[26]. But that is speculation, not evidence, and it is wrong, because Mr Andrade, Venezuela's Minister in Washington, was made aware of them at the same time as Mr Storrow.

20. Professor Palchetti seems to have contempt for Mr Storrow. Why so? What did Mr Storrow ever do to him? Obviously, nothing. But the animus toward him fits well with Professor Palchetti's imaginative conspiracy theory about US malevolence. According to Professor Palchetti, Mr Storrow was a double agent, the Kim Philby of his day, who secretly served US interests contrary to Venezuela's[27]. There is no evidence of this. It is another Venezuelan myth, another concoction. Mr Storrow deserves better. He was one of the most renowned American lawyers of his day. He earned Venezuela's trust by serving as its counsel before President Cleveland's Boundary Commission, leading to their invitation to him to represent their interests in the negotiation of the arbitration agreement with Great Britain. Foreign Minister Rojas initially expressed some hesitation about hiring him[28], but there is no record of disappointment in his efforts or accomplishments on Venezuela's behalf, or any doubt about his loyalty. Upon Mr Storrow's sudden and untimely death, he was eulogized by the President of Venezuela[29].

21. The fact that Mr Storrow enjoyed Secretary Olney's confidence and had regular access to him — having attended law school together — was a benefit to Venezuela, not a detriment. And this is reflected in the contemporaneous correspondence between them, which you have seen, which resulted in Mr Olney successfully negotiating for the outcomes proposed by Mr Storrow and Mr Andrade on the two issues Venezuela says it regarded as the most critical: the length of the prescription period and the preservation of the 1850 Agreement[30].

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[26] Letter from Benjamin Harrison to Mallet-Prevost, 9 March 1899, RV, Annex 16.

[27] CR 2026/27, p. 31, paras. 34-35 (Palchetti).

[28] Letter from Pedro Ezequiel Rojas to José Andrade, dated 18 May 1896, RV, Vol. II, Annex 6.

[29] El Libro Amarillo de los Estados Unidos de Venezuela, 1898, RG, Vol. III, Annex 16. (Venezuela praising Mr Storrow on the occasion of his sudden death in 1897: "In April [1897], Mr James J. Storrow, lead counsel for the Republic before the Investigative Commission in Washington, passed away suddenly and unexpectedly. We would have counted on him for the work required to present our titles and even to support our right before the Tribunal itself. His death caused, *in addition to the natural sentiment, a very great annoyance to the Executive Branch. The work written by him for the purpose of demonstrating the validity of our demand to the Commission appointed on 1 January 1896, by President Cleveland to ascertain the true dividing line of Guayana was an advanced guarantee of his skill and competence. [The Government was] [d]eprived in an unexpected and painful way of that skillful collaboration . . .* " (emphasis added) (translation of Guyana).

[30] CR 2026/24, p. 53, para. 24 (Reichler).

22. Mr President, what this unchallenged contemporaneous evidence shows about the events leading to the negotiation of the 1897 Agreement, and the actual negotiation of it, is that there is no truth in the "poor Venezuela" narrative — a fledgling republic unjustly robbed of its territory by the superpowers of the day, the nefarious British and treacherous Americans — the narrative that Venezuela and its counsel are trying so hard to sell to you. In Texas, they would simply say: "That dog don't hunt".

23. Mr President, it is not often in my career that I have stood up and defended the lawfulness of US foreign policy. But we are talking about the 1890s. My country was not then claiming Greenland, or Canada as the 51st state.

24. I turn now to 1966 and the Geneva Agreement, in which the United States fortunately played no part. Venezuela claims that the Geneva Agreement set aside and replaced the 1899 Arbitral Award — so that the validity of the Award is not at issue in this case, and therefore is not for the Court to rule on. They refer to this as a "novation" [31]. In fact, it is a novelty. Venezuela made the argument for the first time in its Rejoinder, filed last August[32]. Apparently, it took them 59 years after signing the Agreement, and seven years after the initiation of this case, to come up with this interpretation. But, as the saying goes, there is no one as zealous as a recent convert, and all of Venezuela's counsel, all eight of them who spoke on Wednesday, expressly made or endorsed this argument[33]. It seemed to us, from their rote-like and repetitive incantation of fealty, that this was the price they had to pay for admission to the podium.

25. We say this argument is as off base as it is novel. We base our response to it on the text of the 1966 Agreement itself. My friend, my very good friend, Professor Zimmermann, gave you Venezuela's interpretation of the text. But he was not nearly as thorough, or as accurate, as he was in his indispensable treatise on the Statute of the Court. Astonishingly, *astonishingly*, in his article-by-article review of the Agreement, he completely skipped over Article V. Given his

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[31] CR 2026/26, p. 15, para. 26 (Moncada); CR 2026/26, p. 33, para. 73 (Mbengue); CR 2026/26, pp. 43, 50, paras. 12, 57 (Zimmermann); CR 2026/26, p. 62, para. 9 (Brotóns).

[32] RV, Chapter IV.

[33] CR 2026/26, p. 33, para. 73 (Mbengue); CR 2026/26, pp. 43, 50, paras. 12, 57 (Zimmermann); CR 2026/26, p. 62, para. 9 (Brotóns); CR 2026/27, pp. 12, 22-23, paras. 2-3, 55 (Azaria); CR 2026/27, p. 23, para. 3 (Palchetti); CR 2026/27, pp. 36-37, 49, paras. 2, 44 (Tams); CR 2026/27, pp. 51-52, paras. 6-8 (Thouvenin).

customary meticulousness, this was surely not an oversight. So why did he decide to avoid discussion, or even mention, of Article V? Let's look at the text.

26. Paragraph 1 states that

> "nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty"[34].

27. Paragraph 2 states:

> "No acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela."[35]

28. Well, I think we have found the answers to our question. Professor Zimmermann told us that the Geneva Agreement has no savings clause. He contrasted it with the Polish-Danzig Agreement, where such a clause exists. On this basis, he argued that all rights and obligations claimed by the parties under prior legal instruments, including the 1899 Arbitral Award, were set aside and replaced by new rights and obligations under this 1966 Agreement[36]. But that is directly contradicted by paragraph 1, which bears all the hallmarks of a savings clause. It is undeniable from the text that this preserves all assertions of rights and obligations under the 1899 Arbitral Award.

29. Professor Zimmermann also told us that the conduct of the parties after the signing of the Agreement — in particular, their participation in negotiations via the Mixed Commission — demonstrates their understanding that the rights and obligations under the 1899 Award had been set aside and replaced[37]. But that is contradicted by paragraph 2, which expressly provides that no future conduct pursuant to the Agreement can be understood to constitute a waiver of pre-existing rights,

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[34] Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, *United Nations, Treaty Series (UNTS)*, Vol. 561 (17 Feb. 1966), Art. V (1); AG, Annex 4.

[35] Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, *UNTS*, Vol. 561 (17 Feb. 1966), Art. VI (2); AG, Annex 4.

[36] CR 2026/27, pp. 49-50, paras. 53-58 (Zimmermann).

[37] CR 2026/26, pp. 53-54, paras. 75-82 (Zimmermann).

unless the waiver is express and pursuant to an agreement between the parties. There is no evidence of any express waiver or any such agreement.

30. Beyond Professor Zimmermann's remarkable excision of Article V from the 1966 Agreement, there is his tortuous reading of Article I. The reference in the text to "controversy" in that Article, he tells us, can only refer to the "controversy" over title to territory, rather than any "controversy" over the validity of the 1899 Arbitral Award, because, he tells us, the same word — "controversy" — was used in the 1897 Treaty, two years before the Award was issued[38]. It sounds like a sophisticated analysis, but it is just a piece of sophistry, because it ignores the actual text of Article I — part of which, in my friend's reading, suffers the same ignominious excision from the Agreement as the whole of Article V. It is on your screens now:

> "[T]he controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void."[39]

31. The controversy identified in Article I is plainly not the same controversy as the one mentioned in the 1897 Treaty. It is the "controversy that has arisen as a result of Venezuela's contention that the Arbitral Award of 1899 . . . is null and void". This text, especially when read in light of the text of Article V, thoroughly defeats Venezuela's novation argument. If there is a controversy over Venezuela's contention that the Award is null and void, as Article I says, it can only mean that the other parties to the Agreement — namely Great Britain and British Guiana, ultimately Guyana — disagree with Venezuela's contention; that is, they do not agree that the Award is null and void. To the contrary, they maintain, as they always have, that it is valid. So, if they maintain that the Award is valid and they claim rights under it — as they do — and Article V expressly preserves all rights and obligations claimed under instruments that predate the 1966 Agreement, how can it possibly be maintained that Great Britain and British Guiana, later Guyana, agreed, by signing this Agreement, to abandon their rights and claims under the 1899 Award? The answer is obvious — their claim is frivolous. Venezuela's argument that the

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[38] CR 2026/26, pp. 47-48, paras. 37-38 (Zimmermann).

[39] Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, 561 UNT.S. 323 (17 Feb. 1966), Art. I. AG, Annex 4.

1966 Agreement somehow set aside and replaced the 1899 Award cannot be reconciled with the text of that Agreement, especially if one reads the text that Professor Zimmermann would have you ignore.

32. I can cite unimpeachable authority for this — Guyana's reading of the Geneva Agreement — and a rejection of Venezuela's: the Court itself. I refer specifically to paragraph 64 of its December 2020 Judgment on Jurisdiction:

> "The Court further notes that, in the conclusion and implementation of the Geneva Agreement [I apologize for reading the entire quote, but I do not think it would be appropriate for me to skip over any of the Court's language], the parties have expressed divergent views as to the validity of the 1899 Award rendered by the tribunal and the implications of this question for their frontier. Thus, Article I of the Geneva Agreement defines the mandate of the Mixed Commission as seeking satisfactory solutions for the practical settlement of 'the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void'. That contention by Venezuela was consistently opposed by the United Kingdom in the period from 1962 until the adoption of the Geneva Agreement on 17 February 1966, and subsequently by Guyana after it became a party to the Geneva Agreement upon its independence, in accordance with Article VIII thereof."[40]

33. In regard to Article V, the Court determined, in paragraph 65:

> "By referring to the preservation of their respective rights and claims to such territorial sovereignty, the parties appear to have placed particular emphasis on the fact that the 'controversy' referred to in the Geneva Agreement primarily relates to the dispute which has arisen as a result of Venezuela's contention that the 1899 Award is null and void and its implications for the boundary line between Guyana and Venezuela."[41]

34. In sum, the text of the Geneva Agreement, as understood and explained by the Court, cannot be reconciled with Venezuela's novel reinterpretation of the Agreement as a novation dispensing with the 1899 Arbitral Award. Professor d'Argent will have more to say about this subject, and the effects of the 2020 Judgment.

35. Before concluding, Mr President, I want to respond to Venezuela's presentation of itself as the South American continent's foremost crusader against colonialism and promoter of Guyana's decolonization[42]. This is another Venezuelan myth that cannot be reconciled with the facts. The historical record shows that Venezuela was an obstacle to Guyana's independence, not a facilitator.

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[40] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 473, para. 64.

[41] *Ibid*., p. 474, para. 65.

[42] CR 2026/26, pp. 15-18, paras. 21-22, 33-38 (Moncada); CR 2026/26, p. 67, para. 38 (Brotóns).

It strains to link its belated assertion of the invalidity of the 1899 Arbitral Award to the iconic resolution on decolonization adopted by the General Assembly in 1960. There is no such link. Venezuela has presented no evidence of one.

36. A more historically accurate explanation of the timing of Venezuela's denunciation of the Arbitral Award, in 1962, is that British Guiana was then entering the final stage of its own decolonization process, and Venezuela sensed an opportunity to exploit the new republic's weakness, after the lowering of the Union Jack and the departure of British troops, by resurrecting its bogus claim to the vast majority of Guyana's sovereign territory. Here is what Venezuela itself told the Court in its Memorandum on Jurisdiction submitted on 28 November 2019. Well, I had hoped to show it to you, but I will read it to you:

> "The beginning of the process of decolonization of British Guiana within the framework of the United Nations prompted the Venezuelan Government to formalize a claim in this regard, to prevent the independence of the British colony, supported by Venezuela, from becoming an . . . obstacle for its claim, based on a historical justice backed by the many causes of nullity of the aforementioned award."[43]

37. Venezuela's interests were not benign; they were self-serving and predatory. They were to acquire the Essequibo at a time when newly born Guyana would be powerless to maintain it. Venezuela's counsel speak of "asymmetry"[44]. The only asymmetry is between Venezuela and Guyana. There was none in the 1890s — when Venezuela enjoyed the full support of the United States in its contest with Great Britain, as the contemporaneous documents demonstrate — I should say, the uncontested contemporaneous documents demonstrate — balancing the power equation. This historical reality contrasts completely with Venezuela's mythical account of international relations during that period.

38. Mr President, I have presented Guyana's rebuttal on the 1897 Treaty and the 1966 Agreement. There is, of course, a third binding agreement that is of great importance in this case: the 1905 Boundary Treaty between Venezuela and Great Britain. My esteemed colleagues, Professor Sands and Professor Oral, will have more to say on the significance of that treaty.

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[43] Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Co-operative Republic of Guyana (29 Mar. 2019) (MV 2019), Annex, p. 5, available at https://www.icj-cij.org/sites/default/files/case-related/171/171-20191128-WRI-01-01-EN.pdf.

[44] CR 2026/26, p. 26, para. 36 (Mbengue).

39. Mr President, Members of the Court, I thank you again for your kind courtesy and patient attention — this afternoon and during these proceedings — and I ask that you call Professor d'Argent to the podium.

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

M. D'ARGENT : Merci, Monsieur le président.

NOVATION, OBJET DU DIFFÉREND ET COMPÉTENCE

1. Monsieur le président, Mesdames et Messieurs les juges, dans la foulée de la présentation de M[e] Reichler qui vient de rappeler le véritable sens de l'accord de Genève, je répondrai brièvement aux arguments du Venezuela selon lesquels cet accord aurait opéré une novation juridique entre Parties et que, apparemment en conséquence de celle-ci, « the real issue in this case », pour reprendre les mots martelés par mon collègue et ami le professeur Mbengue, n'aurait pas été identifié par la Cour dans son arrêt de 2020, de telle manière que la compétence qu'elle a déclaré posséder et pouvoir exercer serait sans objet.

2. Monsieur le président, comme l'a déjà souligné M[e] Reichler, l'argument de la novation présenté par le Venezuela dans sa duplique est nouveau. On peut même dire que cet argument emporte une véritable novation des arguments du Venezuela. Alors le jeu de mots est certes facile, mais il n'en est pas moins exact.

3. Lorsqu'il s'est pour la première fois expliqué au sujet de l'accord de Genève, le Venezuela a en effet notamment soutenu, comme la Cour l'a relevé dans l'arrêt de 2020, que « dans la mesure où l'accord de Genève vise en son article I la "recherche de solutions satisfaisantes pour le règlement pratique du différend", cela exclut [selon le Venezuela] le recours au règlement judiciaire *à moins que les Parties ne consentent à y recourir par voie de compromis* »[45]. Et on s'en doute, en écrivant cela, la Cour ne s'est pas trompée. Voici en effet ce que le Venezuela écrivait dans son « mémorandum » du 28 novembre 2019 : « Venezuela does not exclude arbitral and judicial means as ultima ratio, once the failure of all political means available have been established by both Parties

[45] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 478, par. 81 (les italiques sont de moi).

along with the UN Secretary-General and his Personal Representative. » Le Venezuela ajoutait certes que « due to its very nature, the juridical means are not the most adequate … to satisfy the object and purpose of the Agreement » mais il soutenait toutefois que

> « arbitration or judicial settlement can only ensure that the dispute is "amicably resolved in a manner acceptable to both parties" (preamble to the Geneva Agreement), if both Parties accept those means and negotiate a special agreement spelling out its purpose and the body or institution entrusted with the mission »[46].

4. Alors on sait que la Cour a au contraire jugé que la décision du Secrétaire général de désigner la Cour ne devait pas faire l'objet d'un consentement supplémentaire de la part des Parties. Mais la position alors défendue par le Venezuela n'était pas de considérer que l'accord de Genève excluait par novation que le différend tel qu'identifié par son article premier puisse être soumis à un règlement juridictionnel pour le motif qu'il en appelait à trouver une solution négociée mutuellement acceptable par les Parties ; selon le Venezuela, cet élément qu'il rattachait au préambule aurait plutôt limité le pouvoir du Secrétaire général en exigeant que les Parties confirment d'un commun accord sa décision quant au choix de la Cour.

5. De plus, Mesdames et Messieurs les juges, en 2022, lors de la phase incidente ayant porté sur l'exception déduite par le Venezuela du principe de l'Or monétaire, la possibilité pour la Cour de statuer sur la validité de la sentence en était la prémisse indispensable et les conseils du Venezuela l'ont très fortement et très justement souligné. Ainsi, selon le professeur Zimmermann — plaidant en 2022 —, l'arrêt de 2020 « revealed that, in the case at hand, the Court has to necessarily decide upon the validity or invalidity of the 1899 Award »[47]. Toujours lors des audiences de 2022, le professeur Tams souligna le même jour :

> « [T]hree matters *are* clear, and they all point to the central role of the United Kingdom…
>
> — First, this case is primarily about the validity of a disputed arbitral award … because … the United Kingdom … acted fraudulently.
>
> — Second, the Award whose validity is primarily at stake was rendered on the basis of a disputed arbitration agreement »[48].

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[46] Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29th, 2018, par. 84-86.

[47] CR 2022/21, p. 28, par. 41 (Zimmermann).

[48] CR 2022/21, p. 45, par. 10-12 (Tams).

6. Et le troisième point relevé par mon collègue le professeur Tams était le fait que le différend relatif à la validité de la sentence avait été porté devant la Cour sur la base de l'accord de Genève. Or, comme il le releva très justement, cet accord était « [a] treaty to which the United Kingdom remains a party until today »[49]. Et ce fut précisément pour cette raison, comme l'avait soutenu le Guyana, que la Cour considéra que le principe de l'Or monétaire « n'entr[ait] pas en jeu en l'espèce »[50].

7. Lors du second tour de plaidoiries en 2022, mon ami le professeur Tams insista encore sur le fait que « [t]he Parties' claims, to reiterate, go to the validity of the Award »[51], confirmant ainsi que la question de la nullité de la sentence est au cœur des prétentions des *deux* Parties. Les paragraphes 76 et 77 de votre arrêt de 2023 ont dûment reflété et résumé la position du Venezuela à cet égard.

8. Cette position en 2022 confirmait donc pleinement ce que la Cour avait déjà relevé dans l'arrêt de 2020, à savoir — je l'ai déjà rappelé lundi —, que

> « la question de la validité de la sentence de 1899 se trouvait au cœur du différend à résoudre conformément au paragraphe 2 de l'article IV de cet instrument, en vue de parvenir à un règlement définitif de la question de la frontière terrestre ».

9. Monsieur le président, le Venezuela est non seulement amnésique de ses propres positions juridiques dans la présente instance et les contredit, mais il voudrait également que la Cour considère les propos tenus par son ministre des affaires étrangères devant le Congrès national en 1966 comme une « déclaration politique … clairement erronée et sans portée juridique ». Ce sont les mots du professeur Thouvenin[52]. Alors je salue le culot de mon collègue au soutien de son client, mais mesurons un instant l'énormité de ce propos : le Venezuela dit que son négociateur et signataire de l'accord de Genève ne l'avait pas compris. Il est proprement sidérant de traiter comme cela, d'un revers de la main, des documents contemporains contextuels et essentiels — décidément, comme M[e] Reichler l'a déjà souligné, la critique historique n'est pas le fort du Venezuela, lequel excelle plutôt dans le mythe et la légende.

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[49] CR 2022/21, p. 45, par. 13 (Tams).

[50] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), exception préliminaire, arrêt, C.I.J. Recueil 2023 (I)*, p. 292, par. 107.

[51] CR 2022/23, p. 14, par. 23 (Tams).

[52] CR 2026/27, p. 52, par. 9 (Thouvenin).

10. Les propos, très clairs, du ministre Iribarren Borges rendent évidemment la thèse du Venezuela intenable, ainsi que la Cour l'a relevé en 2020 au paragraphe 134 de votre arrêt dont j'ai déjà donné lecture lundi. Il n'y a aucun fondement à l'assertion du Venezuela selon laquelle l'accord de Genève ne couvrirait pas la question de la validité de la sentence et que cette question ne ferait pas partie du différend visé par cet accord et donc, en vertu de celui-ci soumis à la Cour. Le Venezuela a déjà présenté cet argument — soumis cette prétention — à la Cour[53] en 2020 et la Cour l'a expressément rejetée[54]. Cela est chose jugée.

11. S'agissant de l'argument de novation longuement développé par le professeur Mbengue, ce que M[e] Reichler vient de rappeler au sujet de l'interprétation de l'accord de Genève, en particulier au sujet de son article premier et de son article V, ce que je viens d'indiquer et ce que j'ai également dit lundi en m'appuyant sur votre arrêt de 2020, tout cela devrait suffire, me semble-t-il. Tout dans cet argument de novation est bancal, et pas seulement le fait qu'il est affecté d'une contradiction interne comme je l'avais souligné. Le professeur Mbengue essaie de s'en tirer par une pirouette : selon lui, « novation only requires a pre-existing legal framework, whatever its validity », pourvu que le nouvel instrument « [is] replacing something … [w]hether … valid, voidable or void »[55].

12. Mais quel est ce « pre-existing legal framework », ce « something » qui aurait été remplacé ? La sentence ? Le traité de Washington de 1897 lui donnant force obligatoire ? Le traité de 1905 ayant traduit la sentence dans un accord bilatéral ? La frontière résultant de ce traité, laquelle bénéficie d'une permanence distincte et qui constitue « l'assiette et les limites territoriales qui … sont laissées par l'État colonisateur »[56] ? Mon collègue le professeur Mbengue n'a rien dit à ce sujet. Il y a assurément un régime frontalier — « a legal framework » — fait de tous ces actes juridiques. Il y a aussi un différend frontalier né de la prétention de nullité de la sentence ; et comme la Cour l'a souligné fort justement et fort logiquement, ce n'est « pas possible de régler définitivement le

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

[54] *Ibid.*, p. 491-492, par. 134.

[55] CR 2026/26, p. 35, par. 86 (Mbengue).

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

différend frontalier qui oppose les Parties sans statuer d'abord sur la validité de la sentence »[57]. Quoi qu'en dise le Venezuela, la question de la validité de la sentence fait donc partie du différend à résoudre. Bien entendu, le Guyana accepte qu'au moment de son indépendance, et par l'effet de l'accord de Genève, il a hérité d'un différend territorial créé par son voisin, mais cet accord n'a en rien changé les termes de ce différend ni mis de côté les actes juridiques qui le sous-tendent.

13. En effet, où est-il dit dans l'accord de Genève qu'il remplace les actes juridiques constituant le régime juridique frontalier ? Comment ce traité remplace-t-il non seulement la sentence arbitrale, ce qu'il ne fait pas, mais aussi deux traités et une frontière ? Le Venezuela va-t-il nous sortir un argument fondé sur les articles 30 et 59 de la convention de Vienne sur le droit des traités tout en ignorant l'article V, paragraphe 1, de l'accord de Genève que M[e] Reichler vient de rappeler et qui en est une pierre angulaire ? M[e] Reichler a également montré combien l'assertion du professeur Mbengue selon laquelle « [f]or more than five decades, Guyana did not invoke the 1899 Award »[58], combien cette affirmation manquait totalement en fait. Il n'y a pas, il n'y a pas eu de « clean slate »[59] entre les Parties.

14. Mon contradicteur et ami a soutenu encore que l'accord de Genève « is what now governs [the Parties'] relationship in relation to that matter »[60]. Je ne sais pas très bien ce que « that matter » signifie dans son esprit, mais le Guyana accepte bien entendu que l'accord de Genève régit la relation des Parties au sujet de son objet, lequel à nouveau est le différend né de la prétention vénézuélienne de nullité de la sentence et les implications juridiques de cette question de validité pour le tracé de la frontière, ainsi que le paragraphe 66 de votre arrêt de 2020, que je ne vais pas relire, a dit pour droit[61]. C'est bien parce que l'accord de Genève régit la relation entre les Parties au sujet de ce différend que nous sommes, Mesdames et Messieurs les juges, devant la Cour. Cela aussi a été jugé avec force de chose jugée.

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[57] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 490, par. 130.

[58] CR 2026/26, p. 37, par. 91 (Mbengue).

[59] CR 2026/26, p. 39, par. 97 (Mbengue).

[60] CR 2026/26, p. 35, par. 82 (Mbengue).

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

15. Par ailleurs, la Cour a considéré « que le droit du Guyana à la souveraineté sur le territoire en question est plausible »[62]. Certes, cette détermination contenue dans une ordonnance en indication de mesure conservatoire, fût-elle confirmée sur ce point[63], n'a pas force de chose jugée. Mais comment aurait-elle pu être faite par la Cour si l'accord de Genève avait l'effet novatoire vanté par le Venezuela ?

16. M[e] Reichler vous a également donné lecture il y a un instant du deuxième paragraphe de l'article V de l'accord de Genève. Il est vrai qu'en l'absence d'une telle disposition, le temps écoulé depuis 1966 pourrait avoir une tout autre signification juridique. Contrairement à ce qu'a soutenu le professeur Mbengue[64], cette disposition n'emporte en rien une novation de la situation juridique qui existait au jour de l'accord de Genève, laquelle, au contraire, a totalement été préservée par le paragraphe 1 de l'article V. Le professeur Mbengue a dit que « [r]ights and defences that accrued under the old framework cannot survive the transition to the new one unless they are expressly preserved in the new instrument — and they were not »[65]. Ah bon, « they were not » ? J'invite mon ami et ses collègues à relire l'article V, paragraphe 1, de l'accord de Genève. Cette disposition rend le comportement du Venezuela survenu entre 1899 et 1966 directement pertinent pour le règlement définitif du différend frontalier. Et ma collègue, la professeure Oral y reviendra.

17. Selon les conseils du Venezuela, l'obligation « de rechercher des solutions satisfaisantes pour le règlement pratique du différend » visée à l'article I de l'accord de Genève signifierait qu'une novation — vous le savez, c'est cet argument — a été opérée et que la question de la validité de la sentence a été conjointement abandonnée. Il n'en est évidemment absolument rien. Il n'en est rien selon le texte de l'accord et l'on sait, faut-il le répéter, que votre arrêt de 2020 a dit pour droit que la question de la validité de la sentence fait partie du différend dont la solution est régie par l'accord. Il était en effet parfaitement imaginable en 1966 qu'après un nouvel examen du dossier, les Parties conviennent par accord de remplacer la sentence et son régime juridique par une nouvelle

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[62] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), mesures conservatoires, ordonnance du 1er décembre 2023, C.I.J. Recueil 2023 (II)*, p. 663, par. 23.

[63] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), demande tendant à la modification de l'ordonnance du 1er décembre 2023 indiquant des mesures conservatoires, ordonnance du 1er mai 2025*, par. 34.

[64] CR 2026/26, p. 36, par. 89 (Mbengue).

[65] CR 2026/26, p. 39, par. 97 (Mbengue).

délimitation territoriale. En cela, l'accord de Genève offrait la possibilité de convenir d'un nouveau régime frontalier, mais cet accord n'opère ni ne constitue aucune novation juridique de lui-même.

18. Et dire cela, Mesdames et Messieurs les juges, dire cela, ce n'est en rien accepter l'assertion erronée selon laquelle l'accord de Genève aurait « replaced finality with indeterminacy »[66]. En effet, comme la Cour l'a relevé, puisque le préambule de l'accord de Genève indique qu'il a été conclu « pour résoudre » le différend né de la prétention de nullité de la sentence, son objet et son but « consistent à garantir le règlement définitif du différend entre les Parties »[67]. Voilà l'objet et le but de l'accord de Genève dont on nous a reproché de n'avoir rien dit[68] mais que le Venezuela feint d'ignorer, et voilà encore une fois la raison pour laquelle nous sommes devant vous aujourd'hui. La prétendue novation ouvrant la porte vers une éternelle négociation est une construction clairement incompatible avec l'objet et le but de l'accord de Genève. Et c'est bien parce que l'objet et but de l'accord est de « garantir le règlement définitif du différend » que, après soixante ans de discussions sans résultat et compte tenu des termes de l'article IV, le Secrétaire général était en droit de décider que la Cour serait la prochaine étape pour régler ce différend.

19. Le Venezuela a beau désormais affirmer que le ministre Iribarren Borges ne savait pas ce dont il parlait lorsqu'il présenta l'accord de Genève au Congrès national, je rappelle que ce ministre, en 1966, indiqua : « Finally, according to the terms of Article 4 [of the Geneva Agreement], in the event that no satisfactory solution for Venezuela is reached, the so-called 1899 Award shall be revised through arbitration or judicial recourse. »[69] Et c'est exactement ce que la Cour a décidé, non seulement en disant qu'elle avait compétence pour statuer sur la validité de la sentence, mais aussi, en cas de nullité — M[e] Reichler l'a rappelé —, qu'elle pouvait connaître de la « question connexe du règlement définitif du différend concernant la frontière terrestre entre [les Parties] »[70]. Il est donc totalement erroné de soutenir que « [i]f the Court does not uphold the Award, and Guyana refuses to

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[66] CR 2026/26, p. 37, par. 89 (Mbengue).

[67] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 476, par. 73.

[68] CR 2026/26, p. 21, par. 11 (Mbengue).

[69] RV, vol. II, annexe 2, p. 35.

[70] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 493, par. 138.

come back to the negotiations table, neither State advances and the controversy is left to fester »[71]. Mes chers collègues, ce n'est pas seulement l'accord de Genève qu'il faut relire, mais aussi l'arrêt de 2020, tant honni par le Venezuela.

20. Enfin, cet arrêt aurait-il omis d'identifier « the real issue in this case » ? Absolument pas. Et, ainsi qu'il ressort notamment de l'arrêt de 2024 dans l'affaire *Azerbaïdjan c. Arménie* dont le Venezuela se prévaut[72], la détermination objective par la Cour de « ce sur quoi porte le différend entre les parties en circonscrivant le véritable problème en cause et en précisant l'objet des griefs du demandeur »[73] concerne la compétence *ratione materiae* de la Cour. Et la Cour a statué en 2020, avec effet de force jugée, non seulement sur l'objet du différend[74], mais aussi sur l'étendue de sa compétence, tant matérielle[75] que temporelle[76].

21. Mais vous savez tout cela, Mesdames et Messieurs les juges, vous savez tout cela et je pense avoir abusé de votre patience. Je vous remercie d'autant plus pour votre bienveillante attention.

22. Puis-je vous demander, Monsieur le président, d'appeler à la barre mon cher collègue, le professeur Pellet ?

Le PRÉSIDENT : Je remercie le professeur d'Argent. J'invite maintenant le professeur Alain Pellet à s'adresser à la Cour. Monsieur, vous avez la parole.

M. PELLET :

LES SIX PÉCHÉS CAPITAUX DE LA SENTENCE MARTENS

1. Monsieur le président, Mesdames et Messieurs les juges, comme le professeur Pierre d'Argent vient de le rappeler excellemment en citant vos propres décisions, l'objet de cette instance est d'apprécier la validité ou non de la sentence de 1899 :

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[71] CR 2026/26, p. 39, par. 100 (Mbengue).

[72] CR 2026/26, p. 23, par. 20 (Mbengue).

[73] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), exceptions préliminaires, arrêt, C.I.J. Recueil 2024 (III)*, p. 1143, par. 71.

[74] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 474, par. 66, et p. 492, par. 135.

[75] *Ibid.*, p. 492, par. 135.

[76] *Ibid.*, p. 492, par. 136.

> « [L]e différend que les parties sont convenues de régler au moyen du mécanisme établi en vertu de l'accord de Genève concerne la question de la validité de la sentence de 1899 ainsi que ses implications juridiques pour le tracé de la frontière entre le Guyana et le Venezuela. »[77]

2. Voilà, Monsieur le président, qui me paraît largement suffisant pour revenir au sujet, le vrai sujet de notre audience, sans qu'il soit besoin de s'attarder davantage sur la cinquième tentative du Venezuela visant à vous en dissuader.

3. La liste des infamies, constitutives d'autant d'excès de pouvoir, que le Venezuela impute à la sentence, est longue :

— elle serait injuste ;

— elle n'est pas motivée ;

— les juges se seraient prononcés *infra petita* (« excès de pouvoir négatif »[78]) ; et,

— en même temps *ultra petita* ;

— les modalités d'adoption de la sentence seraient constitutives de dol ;

— et elle serait fondée sur une ou des erreurs…

Six péchés capitaux, donc !

4. Au vu de cette liste impressionnante, la sentence de 1899 était-elle valide ? Réponse laconique : oui, sans aucun doute ! Mais je donnerai tout de même une réponse un peu plus détaillée, même si elle peut être relativement brève, en distinguant :

— les griefs intrinsèques que le Venezuela adresse au contenu de la sentence (**I.**) ;

— de ceux, extrinsèques, qui tiennent à la manière dont elle a été adoptée (**II.**).

I. Les moyens portant sur le contenu de la sentence

5. Monsieur le président, parmi les griefs que je viens d'énumérer, trois concernent directement le contenu même de la sentence : le Venezuela la considère comme injuste ; elle n'est pas motivée (c'est décidément un point central) ; et le tribunal s'est écarté de son mandat, à la fois « en trop » et « en moins ».

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[77] *Ibid.*, p. 474, par. 66.

[78] CR 2026/27, p. 37, par. 6 (Tams).

A. Une sentence injuste ?

6. Bien qu'il paraisse au centre des griefs du Venezuela, je ne vais pas m'attarder pas sur le caractère injuste ou inéquitable qu'il impute à la sentence : « [T]his is what this case is about: whether to validate an unjust decision »[79], a dit le professeur Palchetti. D'une certaine manière ce reproche éclipse en partie tous les autres : cette sentence aurait amputé le Venezuela d'une grande partie de « son » territoire. Mais c'est mettre la charrue avant les bœufs ; c'est postuler que ce qui devait être prouvé est un fait acquis. En 1897, la Grande-Bretagne et le Venezuela avaient un différend frontalier ; les deux pays ont demandé à un tribunal arbitral de le régler ; en l'absence de règlement, aucun des deux ne pouvait affirmer juridiquement quelle était l'étendue de « son » territoire : il était — ou ils étaient — en litige. La sentence a levé l'incertitude et ce n'est qu'après son intervention que chaque partie a pu se prévaloir de son titre territorial et/ou frontalier — j'en redirai un mot. La sentence n'a amputé le territoire de personne, elle a déterminé les limites de chacun d'eux, rétablissant les bonnes relations entre les parties et écartant les menaces de conflit armé qui pesaient sur la région et qui inquiétaient fort le Venezuela.

7. Monsieur le président, on a, dit-on, 24 heures pour maudire ses juges[80]. Le Venezuela a pris son temps : non seulement il n'a pas maudit Martens et ses collègues dans la période qui a suivi la lecture de la sentence, mais encore, il s'en est largement félicité, comme la professeure Oral l'a amplement montré lundi après-midi[81]. Les soixante et quelques années qu'il lui a fallu pour réaliser que la sentence, en l'absence de tout fait nouveau — comme le professeur Sands l'établira dans quelques instants —, serait grossièrement injuste font justice de cette allégation.

8. Il n'est peut-être pas inutile d'ajouter que l'on peut tout à fait (et sans doute, à mon avis, que l'on *doit*) partager les sentiments anticolonialistes qui semblent animer les vertueuses indignations de nos contradicteurs[82] sans pour autant tomber dans des travers révisionnistes, déstabilisateurs de l'ordre juridique international. Mais il est bon, en la matière, de toujours garder à

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[79] CR 2026/27, p. 26, par. 12 (Palchetti).

[80] P.-A Caron de Beaumarchais, *Le barbier de Séville ou la précaution inutile*, Paris, Ruault, p. 28 (https://theatre-classique.fr/pages/pdf/BEAUMARCHAIS_BARBIERDESEVILLE.pdf).

[81] CR 2026/25, p. 30-33, par. 5-15 (Oral).

[82] Voir, par exemple, CR 2026/26, p. 18, par. 38 (Moncada) ; p. 39, par. 102 (Mbengue) ; p. 67, par. 37-38 (Remiro Brotóns).

l'esprit les propos pleins de clairvoyance de la chambre de la Cour dans *Burkina Faso/République du Mali* :

> « [E]n réalité le maintien du *statu quo* territorial en Afrique apparaît souvent comme une solution de sagesse visant à préserver les acquis des peuples qui ont lutté pour leur indépendance et à éviter la rupture d'un équilibre qui ferait perdre au continent africain le bénéfice de tant de sacrifices. C'est le besoin vital de stabilité pour survivre, se développer et consolider progressivement leur indépendance dans tous les domaines qui a amené les États africains à consentir au respect des frontières coloniales, et à en tenir compte dans l'interprétation du principe de l'autodétermination des peuples. »[83]

Ce qui vaut pour l'Afrique me semble s'appliquer également et *a fortiori* à l'Amérique latine, qui avait montré la voie à cet égard.

9. De toute manière, même si j'avoue n'être pas toujours tout à fait au clair en ce qui concerne les conclusions du Venezuela, il faut noter que, s'il demande que la sentence soit déclarée invalide car elle serait injuste, il s'agit d'un appel en équité sur lequel vous ne sauriez vous prononcer, faute pour les Parties de s'être accordées pour demander à la Cour de statuer *ex aequo et bono*, ce qui n'est pas le cas.

B. L'absence de motivation et ses conséquences

10. En ce qui concerne l'absence de motivation, rien de bien nouveau — et pour cause : les avocats du Venezuela se sont bornés mercredi pour l'essentiel à renvoyer à leurs écritures antérieures[84]. Et ils répugnent à admettre le principe selon lequel — pour la motivation comme pour tous les autres chefs d'invalidité allégués par eux — le droit qu'il faut prendre en considération est celui en vigueur à la date critique pertinente : c'est-à-dire en 1897 ou en 1899 pour ce qui est des règles applicables à l'adoption de la sentence.

11. C'est l'effet du droit intertemporel. Un principe qui n'inspire guère nos contradicteurs. Un seul, le professeur Palchetti, l'évoque du bout des lèvres et tout ce qu'il trouve à en dire se réduit à peu près à ceci : « Guyana's emphasis on intertemporal law is only an attempt to mask the grave irregularities committed by the Arbitral Tribunal. It is primarily defensive and fails at that task. »[85] Il ajoute tout de même que la Cour, dans l'affaire de la *Sentence du roi d'Espagne de 1906*, aurait

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[83] *Différend frontalier (Burkina Faso/République du Mali), arrêt, C.I.J. Recueil 1986*, p. 567, par. 25.

[84] Voir notamment CR 2026/27, p. 35, par. 52 (Palchetti).

[85] *Ibid.*, p. 27, par. 17 (Palchetti).

« accepté que l'absence de motivation constituait un motif de nullité à l'époque en question »[86]. Et le professeur Palchetti de répéter : « In the *Arbitral Award Made by the King of Spain* case, Honduras and Nicaragua accepted that lack of reasons was a ground of invalidity at the relevant time. The Court —*jura novit curia* — decided the issue of lack of reason on that very basis. »[87] En réalité, la Cour n'accepte rien de tel dans son arrêt de 1960 : elle n'examine pas la question sous cet angle et elle se borne à relever que le grief concernant l'absence de motivation « est sans fondement »[88]. La professeure Oral y reviendra brièvement tout à l'heure.

12. Pour le reste, la manière dont le professeur Tams a traité l'absence de motivation est extrêmement révélatrice : il l'a fait par prétérition ; il la mentionne comme un exemple d'excès de pouvoir pour aussitôt l'oublier[89].

13. Cela étant, Monsieur le président, je tiens à préciser que nous ne méconnaissons nullement les mérites de l'obligation de motiver. Assurément, comme l'a écrit le Venezuela au paragraphe 6.68 de son contre-mémoire, « [l]e fait qu'une sentence soit dûment motivée est la meilleure garantie qu'elle a été rendue conformément aux instructions données par les parties dans le compromis ». Toutefois, force est de constater que ces avantages ont peiné à s'imposer comme un principe général de droit positif à l'encontre de la non-motivation. En 1899, ce principe émergeait ; il a fallu attendre la conclusion des conventions de La Haye et leur application en pratique pour qu'il devienne une pratique générale acceptée comme étant le droit.

14. Pour reprendre les termes de la CDI, « [p]our déterminer une telle règle [coutumière], il faut examiner avec attention les éléments de preuves disponibles et établir que ces deux éléments (pratique et *opinio juris*) sont présents en toutes circonstances »[90].

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[86] *Ibid*., p. 34, par. 51 (Palchetti).

[87] CR 2026/27, p. 34, par. 51 (Palchetti).

[88] *Sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906 (Honduras c. Nicaragua), arrêt, C.I.J. Recueil 1960*, p. 216.

[89] CR 2026/27, p. 44, par. 28 (Tams).

[90] Draft conclusions on identification of customary international law and commentaries thereto, Yearbook of the International Law Commission, *YILC*, 2018, Vol. II, Part 2, p. 95, Conclusion 3, Commentary, par. 2.

C. Le tribunal s'est prononcé hors des limites de ses compétences

15. Monsieur le président, j'ai au moins un point d'accord avec le professeur Tams : « [I]t is clear how excess of power is to be assessed. It needs to be asked whether a tribunal respected the terms of its mandate. »[91] Et, comme la Cour l'a elle-même souligné, le tribunal « doit s'en tenir aux termes par lesquels les Parties ont défini [cette tâche] »[92]. Encore faut-il « confronter soigneusement la sentence, ou tout autre acte contesté du tribunal, et les dispositions pertinentes du compromis. Pour qu'il puisse être retenu, l'excès de pouvoir doit être manifeste et grave et non pas douteux et peu important. »[93]

16. Cela est vrai, que le tribunal soit accusé de s'être prononcé en deçà ou au-delà de sa compétence. Deux accusations que le Venezuela n'hésite pas à formuler cumulativement dans notre affaire.

1. Infra petita

17. Se référant au texte de l'article III du compromis, le professeur Tams affirme que

> « there is no doubt that the tribunal determined the boundary line; it complied with the second task. But not the first. The Award is silent on titles: the tribunal does not tell the parties what it had investigated and ascertained. And on the face of it, this seems a fairly glaring negative excess of power. »[94]

Comme pour la plupart des griefs articulés par le Venezuela, on retombe ici sur la question de la motivation et, s'ils ne disent pas expressément quels sont les titres qu'ils ont pris en considération, les arbitres précisent qu'ils

> « ont recherché et établi jusqu'où s'étendaient les territoires qui appartenaient respectivement aux Pays-Bas Unis et au Royaume d'Espagne, ou étaient susceptibles d'être licitement revendiqués par ceux-ci, au moment de l'acquisition par la Grande-Bretagne de la colonie de la Guyane britannique ».

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[91] CR 2026/27, p. 37, par. 7 (Tams)

[92] *Sentence arbitrale du 31 juillet 1989 (Guinée-Bissau c. Sénégal), arrêt, C.I.J. Recueil 1991*, p. 70, par. 49.

[93] CDI, Commentaire sur le projet de convention sur la procédure arbitrale adopté par la Commission du droit international à sa cinquième session : document préparé par le Secrétariat, A/CN.4/92, p.109. Note de bas de page omise**.**

[94] CR 2026/27, p. 38, par. 10 (Tams).

18. C'est d'ailleurs très clairement ce qu'ils ont fait, ainsi que cela ressort des pièces de procédure[95] et des débats lors des audiences[96], et tout particulièrement des questions posées aux parties par les arbitres[97] en 1898 et 1899.

19. Mais surtout, en l'espèce, comme je l'ai dit lundi, ce moyen est pour le moins artificiel[98] : le Venezuela reconnaît que le tribunal a fixé la frontière entre la Guyane britannique et lui-même[99]. Ce faisant, il a dès lors déterminé, implicitement, l'extension des deux territoires : « [L]'effet d'une décision judiciaire, qu'elle soit rendue dans un conflit d'attribution territoriale ou dans un conflit de délimitation, est nécessairement d'établir une frontière »[100]. Je reconnais que l'inverse ne serait pas une réponse convaincante : si au lieu de se prononcer sur les frontières, le tribunal s'était borné à indiquer sur quels titres il se fondait, il aurait statué *infra petita* ; mais ce n'est pas le cas, ayant décidé sur les limites respectives des deux territoires, il s'est, du même coup, par implication mais nécessairement, prononcé sur les titres appartenant à chacune des parties.

2. Ultra petita

20. Monsieur le président, le grief de prononcé *ultra petita* a, pour sa part, fondu de moitié entre la duplique et l'audience de mercredi — c'est dire le sérieux avec lequel il avait été formulé… Disparue, la critique de la sentence pour s'être prononcée sur les droits du Brésil. Dont acte.

21. Demeure cependant l'affirmation selon laquelle « [w]hile the tribunal ignored the first of its two tasks, it decided a further issue — which was never submitted to it. In the final section of the Award, the tribunal set out a régime for free navigation on two rivers, the rivers Amakuru and Barima. »[101]

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[95] British Guiana Boundary, Case presented on behalf of Her Majesty's Government, 1898, p. 141-164 ; The Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris, 1898, vol. I, p. 35-200 ; British Guiana Boundary, The Counter-case presented on behalf of Her Majesty's Government , p. 28-127 ; The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris, 1898, vol. I.

[96] Thirty-Sixth Day's Proceedings, August 30th 1899, pp. 2243-2256 ; Fourty-Second Day's Proceedings September 7th 1899, pp. 2513-2519 ; Forty-Sixth Day's Proceedings, September 14th 1899, p. 2790.

[97] Voir CR 2026/25, p. 22-23, par. 32, notes 43-48 (Pellet).

[98] CR 2026/25, p. 21, par. 27 (Pellet).

[99] Voir CDI, Commentaire sur le projet de convention sur la procédure arbitrale adopté par la Commission du droit international à sa cinquième session : document préparé par le Secrétariat, A/CN.4/92, p.109.

[100] *Différend frontalier (Burkina Faso/République du Mali), arrêt, C.I.J. Recueil 1986*, p. 563, par. 17.

[101] CR 2026/27, p. 41, par. 17 (Tams).

22. Le professeur Tams, qui a porté vaillamment cette affirmation avant-hier, propose une analyse de l'article IV du traité de Washington qu'il veut limiter à une pure disposition concernant le droit applicable — ce qu'il est en partie mais pas exclusivement. Le texte de l'article IV est projeté intégralement sur vos écrans. Le paragraphe introductif prolonge l'article III en précisant la tâche du tribunal qui consiste à la fois à établir les faits et à appliquer les règles convenues. Celles-ci sont énoncées ensuite en trois alinéas dont le premier est « mixte », si je peux dire : il énonce une règle — portant sur la prescription — puis précise la fonction du tribunal. L'alinéa *b)* est essentiellement centré sur le droit applicable tout en laissant une certaine marge d'appréciation aux arbitres. Quant à l'alinéa *c)*, j'avais montré longuement lundi qu'il est une règle de fond (« primaire » si l'on veut) et expliqué que je rejoignais entièrement l'interprétation que les représentants du Venezuela lui-même en avaient donné lors de leurs plaidoiries… de 1898[102].

23. Bien que les Parties ne semblent pas avoir expressément mentionné l'aménagement du régime des deux rivières, l'interprétation fortement argumentée de Benjamin Harrison, ancien président des États-Unis et principal conseil du Venezuela, conduit de façon convaincante à considérer qu'un tel aménagement entre bien dans les prévisions de l'article IV *c)*. Par conséquent, les arbitres n'ont, assurément, commis aucun excès de pouvoir en estimant que « la raison, la justice, les principes de droit international et les considérations d'équité propres à l'affaire » exigeaient de permettre aux « sujets et citoyens » des deux parties de naviguer librement sur ces deux cours d'eau, principales voies d'accès direct à la mer *via* le fleuve Orénoque. À ce que je crois comprendre, ce régime continue à fonctionner de façon satisfaisante jusqu'à ce jour, sans susciter de réclamations de l'une ou l'autre des Parties.

II. Les moyens portant sur l'adoption de la sentence

24. Mesdames et Messieurs les juges, la sentence de 1899 n'est certes pas motivée, à tout de même une nuance près : les arbitres, unanimes, ont signé un texte indiquant qu'ils ont respecté à la lettre le texte du compromis, qui est repris *verbatim* dans la sentence. De ce fait, ils ont tous les cinq reconnu qu'ils avaient « de façon impartiale et attentive examiné les questions qui leur ont été soumises » et qu'ils

[102] CR 2026/25, p. 27, par. 47 (Pellet).

> « ont recherché et établi jusqu'où s'étendaient les territoires qui appartenaient respectivement aux Pays-Bas Unis et au Royaume d'Espagne, ou étaient susceptibles d'être licitement revendiqués par ceux-ci au moment de l'acquisition par la Grande-Bretagne de la colonie de la Guyane britannique » (citation de la sentence elle-même).

Cinq signatures — de juristes parmi les plus célèbres de leur temps, parfaitement conscients de ce qu'ils faisaient —, cinq parjures ? La question est ouverte.

25. Et tous ces juristes éminents, qualifiés et respectés, ont prêté la main à une sentence « discréditée », « invalide », « injuste », « frauduleuse », « profondément révoltante », qualifiée aussi de « farce » (« de farce de mauvais goût »), de « mystification », de « chiffon de papier », de « monstruosité », de « vestige » — « colonial » et de « l'impérialisme britannique » — et de « fruit d'une extorsion », consacrant « les intérêts fallacieux de l'Empire britannique, en connivence avec les États-Unis »… Par elle-même, l'invraisemblance de cette collusion entre les membres du tribunal discrédite quelque peu les indignations complotistes de nos contradicteurs et leurs allégations de dol et d'erreur qu'ils ont d'ailleurs un peu de mal à distinguer des tares dont ils accablent, en amont, le traité de Washington et dont M[e] Reichler a fait justice.

26. Il reste que c'est contre Martens lui-même que les conseils du Venezuela décochent leurs flèches les plus acérées. Ainsi, le professeur Tams a dit mercredi s'être appuyé sur des

> « [a]ccounts that come from key protagonists — from the arbitrators and counsel — their diaries, their letters. And these accounts, of which Venezuela became aware after the publication of the Mallet-Prevost memorandum, converge on the central point: the boundary line described in the Award was put forward by President Martens, without any legal basis. »[103]

27. Ceci appelle au moins deux séries de remarques :

1) Il est totalement faux — comme Paul Reichler l'a montré en introduisant nos plaidoiries — que le Venezuela n'a pris conscience de la machination prêtée à Martens qu'une fois publié le mémorandum Mallet-Prevost : les circonstances de l'adoption de la sentence ont été parfaitement connues dès son adoption. Et je remarque en passant que l'article de La Chanonie, présenté comme « un observateur contemporain … qui avait participé aux débats à Paris », donne de ces circonstances un compte rendu assez proche, malgré des nuances, de celui de Mallet-Prevost. Mais je comprends pourquoi le Venezuela a décidé de conserver la plus grande discrétion à son

[103] CR 2026/27, p. 45, par. 31 (Tams).

sujet après l'avoir pourtant introduit au dossier la semaine dernière[104] : par son existence même, il met en danger la fable (ou le conte…) qu'il tente de vous vendre. Seul le professeur Palchetti s'aventure à y faire allusion — et seulement pour indiquer que La Chanonie vilipende l'arbitrage de 1899 pour sa contribution à « la spoliation des petits États »[105].

2) S'il est exact que Martens a joué un grand rôle dans l'adoption finale de la sentence, ce faisant, il n'a fait qu'exercer pleinement et en conscience sa fonction de président du tribunal.

28. Dans le détail, on peut avoir des divergences sur la manière dont les choses se sont passées — peut-être parce que le grand âge brouille les idées (ce qui m'attristerait un peu) mais sans doute également parce que la mémoire des témoins, en particulier lorsqu'ils sont aussi des acteurs des faits de la cause, est sélective. Mais c'est surtout l'interprétation de ces faits, raisonnablement établis en l'espèce, qui divise les Parties.

29. Selon le Venezuela,

> « President Martens threatened the British and American arbitrators to accept his line, in separate meetings outside the tribunal's formal deliberations … because [he] made clear that unless the two groups he approached — the British and American arbitrators — came round to his view, he would endorse the respective other side's claims in full »[106].

C'est une façon d'écrire l'histoire — si l'on accepte l'idée qu'en cherchant à sauver une sentence arbitrale (devant être adoptée à la majorité) au sujet de laquelle deux groupes d'arbitres ont des vues opposées et irréconciliables, le président du tribunal sort de son rôle et « menace » ses collègues…

30. Pour comprendre comment — et dans quel esprit — les choses se sont passées, il me semble légitime de lire ce qu'en écrit le principal protagoniste, Martens lui-même. Lors de ma première intervention lundi après-midi, je m'étais permis de vous inviter, Mesdames et Messieurs de la Cour, à lire le passage de son journal que nous avions inclus dans le dossier des juges[107]. Visiblement, nos collègues — et néanmoins amis — de l'autre côté de la barre, n'ont pas pris cette peine. Le bref extrait projeté à l'écran ne pallie pas cette lacune mais il est tout de même riche d'enseignement :

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[104] Voir le courriel n° 166194 de la Cour en date du 1er mai 2026 et ses annexes.

[105] CR 2026/27, p. 25, par. 10 (Palchetti).

[106] CR 2026/27, p. 45, par. 31 (Tams).

[107] CR 2026/25, p. 23-24, par. 35. Voir aussi dossier des juges, onglets nos 6.2-6.3.

> « When the disputes between the four arbitrators on the general basis of the forthcoming award ended last Friday, I had to deliver my speech. I explained my point of view on all the main issues, denied the horrible right of the discovery and occupation of the Spanish and the Americans, proved that there was no definition of those borders in the Treaty of Versailles and said that the territory between Essequibo and Orinoco can most likely be recognized as a condominium of the Spanish and the Dutch. While presenting my main point of view, I frankly said that I could not acknowledge that the British have the right in respect of Barima Point (B.P.) at the mouth of the Orinoco River. This is what Lord Russell and Collins took note of. »[108]

31. Ce n'est, Monsieur le président, qu'une toute petite partie de la relation que fait Martens des conditions d'adoption de la sentence. Elle n'en est pas moins fort parlante :

— d'abord, elle ne laisse aucun doute sur le fait que le président du tribunal s'était, dans un premier temps, fait sa propre opinion sur les questions qui divisaient ses coarbitres ;

— elle montre ensuite que cette opinion était fondée sur des éléments exclusivement juridiques concernant le titre originaire et celui résultant de la pratique, avec l'idée — que l'on peut trouver un peu singulière — d'un possible « condominium hispano-néerlandais » ainsi que l'absence de droit britannique sur l'embouchure de l'Orénoque ;

— au plan procédural (ou méthodologique), la relation de Martens témoigne du souci de transparence de Martens à l'égard de ses collègues : il expose ses convictions et, comme le montrent ses notes, il le fait après s'être enquis des leurs.

32. Le début de l'extrait de son journal, qui est toujours à l'écran, fait justice aussi de l'affirmation selon laquelle Martens aurait orchestré le résultat de l'arbitrage non pas « in tribunal deliberations, but in a series of meetings, private meetings, insisting that the other arbitrators accept his deal »[109]. Il s'agit bien là d'une réunion plénière et qui fait suite à plusieurs autres réunions plénières durant lesquelles les quatre arbitres avaient exprimé des vues inconciliables comme on peut le déduire d'ailleurs très exactement du début de l'extrait projeté : « When the disputes between the four arbitrators on the general basis of the forthcoming award ended last Friday, I had to deliver my speech. »

33. Dans le paragraphe suivant de son journal, qui n'est pas projeté mais que vous pouvez lire dans vos dossiers, Martens écrit :

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[108] Private Diary Entries of Prof Fyodor Fyodorovich Martens (4 June 1899-3 Oct. 1899). MG, vol. III (annexe 33).

[109] *Ibid.*

> « That was the end of the Friday session. There was another session on Saturday, but to no avail, and the relationship between the British and American arbitrators became increasingly strained. On Sunday morning there was another session and again in vain. Then I decided to get down to this issue in a diplomatic manner. »

Ceci ne reflète pas l'attitude menaçante d'un président de tribunal soucieux de faire triompher son point de vue préconçu (comme cela arrive pourtant quelquefois) mais bien celle d'un esprit ouvert, soucieux d'arriver à une solution — de préférence consensuelle. Il en est résulté une série de rencontres entre Martens et les autres membres de son tribunal en tête-à-tête ou avec l'un des deux « groupes » d'arbitres.

34. L'existence du blocage que décrit Martens est confirmée par le juge Brewer, nommé arbitre par le Venezuela. Comme il l'explique dans l'interview qu'il a donnée au *New York Times* deux jours après le prononcé de la sentence — qui est reproduite à l'onglet n° 6.2 de vos dossiers du premier tour —, les discussions entre les arbitres les avaient conduits à camper sur leurs désaccords, de sorte que s'ils avaient chacun eu à tracer la frontière, toutes auraient été différentes[110]. La nouvelle « méthode » Brewer a permis de sortir de l'impasse au prix sans doute d'une grande discrétion sur la motivation — mais les juristes avisés qui constituaient le tribunal savaient que, pour souhaitable qu'elle pût être, la motivation n'était pas — pas encore… — obligatoire.

35. Que le consensus ait pu être atteint par ailleurs grâce à des réunions privées entre les arbitres en vue de discuter de l'affaire n'est pas davantage répréhensible, et ne sert nullement la démonstration d'un grand complot dont Martens aurait été l'instigateur. Me référant à la savoureuse description que donne le président Bedjaoui de « [l]a "fabrication" des arrêts de la Cour internationale de Justice »[111], je suppose, Mesdames et Messieurs les juges, que cette pratique ne vous est pas complètement étrangère — bien que les circonstances dans lesquelles vous délibérez soient fort différentes de celles d'un tribunal arbitral de cinq membres, constitué il y a près de 130 ans.

36. Une chose, que nos contradicteurs semblent parfois oublier et qui cependant est commune à votre Cour, en vertu de l'article 55 du Statut, et au tribunal constitué en 1897 (en vertu de l'article V

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[110] « Judge Brewer's Opinion, Venezuela's Arbitrator Tells How the Verdict Was Reached », *The New York Times*, 5 octobre 1899.

[111] M. Bedjaoui, « La "fabrication" des arrêts de la Cour internationale de Justice », *in Le droit international au service de la paix, de la justice et du développement – Mélanges Michel Virally*, Pedone, Paris, 1991, not. p. 97.

du traité de Washington) : la règle de la majorité. Elle impose parfois des sacrifices et des compromis aux juges ou aux arbitres responsables, seuls de nature à permettre l'adoption d'une décision.

37. C'est grâce à l'obstination, toute diplomatique et pédagogique, de Martens (n'était-il pas à la fois professeur et diplomate ?) et à la bonne volonté de ses collègues que la sentence a finalement pu être adoptée, à la satisfaction immédiate (plus ou moins enthousiaste, d'un côté comme de l'autre), satisfaction longtemps maintenue, des deux parties. Elle a, conformément à l'article XIII du traité de Washington, l'autorité de la chose jugée.

38. Nos contradicteurs reprochent à Martens d'avoir tenté avec succès d'imposer un accord à l'ensemble des arbitres. Mais que se serait-il passé s'il n'avait pas agi ainsi ? Les autres arbitres étaient irrémédiablement divisés à raison de deux contre deux. Martens aurait pu conserver son opinion indépendante avec laquelle il a très probablement transigé pour obtenir l'unanimité à laquelle il aspirait, sans se rallier à l'un ou l'autre camp. Résultat ? Aucune sentence n'aurait été rendue faute de majorité. Ou bien, il aurait pu se rallier à l'un des deux camps ce qui, comme le concèdent nos adversaires, aurait été pire pour le Venezuela que la sentence rendue. Le fait qu'il ait plutôt choisi de rechercher un compromis acceptable pour les cinq arbitres et de parvenir à une sentence unanime n'est nullement une honte : il est tout à son honneur.

39. Ce satisfecit des parties n'a malheureusement pas duré indéfiniment : le Venezuela a rompu le consensus. Mon collègue et ami Philippe Sands va revenir sur les conditions de cette rupture si vous voulez bien, Monsieur le président, l'appeler à cette barre.

40. Mesdames et Messieurs les juges, je vous remercie très vivement une nouvelle fois pour votre attention patiente et renouvelée.

Le PRÉSIDENT : Je remercie le professeur Pellet. Before I give the floor to the next speaker, the Court will observe a break of 10 minutes. The hearing is suspended.

The Court adjourned from 4.40 p.m. to 4.55 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite Professor Philippe Sands to the podium. You have the floor, Sir.

Mr SANDS:

THE MALLET-PREVOST MEMORANDUM, ARBITRATION AND COLONIALISM

1. Thank you, Mr President, Members of the Court, I will respond to the arguments made by Venezuela on three related issues: first, the significance of the Mallet-Prevost memorandum, second, the propriety of the arbitral process and the 1899 Award, and third, the claim that the Award, the 1905 Boundary Agreement and subsequent practice reflect a legacy of colonial wrongdoing.

2. I begin with the significance of the Mallet-Prevost memorandum. On Wednesday counsel for Venezuela made various arguments about that document. Professor Remiro Brotóns said its publication "facilit[ait]" the claim that 1899 Award was invalid, from plausibility to fact, he said[112]. For Professor Tams, only "after the publication of the Mallet-Prevost memorandum" did Venezuela became aware that "the boundary line described in the Award was put forward by President Martens, without any legal basis"[113]. For Professor Thouvenin, the memorandum quite simply "changed everything"[114], offering proof that the Award was produced by "extorsion". It is the "missing link", he said, which shows the compromise had nothing to do with a legal decision and was "the result of blackmail"[115].

3. Fighting words! For these counsel, the Mallet-Prevost memorandum has a clear purpose: it offers a rationale — the rationale — to explain why Venezuela accepted the Award for 63 years, never challenges its validity and then, suddenly and abruptly, changes its position in 1962. The argument is tosh — it is a fiction — and it suffers from fatal problems.

4. First, it does not and cannot explain the silence from 1949 to 1962 when Venezuela first repudiated the Award. Thirteen years of silence and nothingness. That is, by any reasonable standard, a very significant period.

5. Second, counsel's plea is factually inaccurate: Venezuela already had all the information it now says was newly available in 1949, with the publication of the Award and the press reports and interviews that followed. Professor Oral will add to what I have to say.

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[112] CR 2026/26, p. 63, para. 13 (Brotóns).

[113] CR 2026/27, p. 45, para. 31 (Tams).

[114] CR 2026/27, p. 62, para. 53 (Thouvenin).

[115] CR 2026/27, p. 63, para. 55 (Thouvenin).

6. The Award was handed down six days after the hearings ended (incidentally, in the early phase of the world of arbitration this is not an unusually short period: I refer you to the *Pious Fund of the Californias* case (*United States* v. *Mexico*): 13 days[116]; the *River Saint Croix* case (*United Kingdom* v. *United States*): 10 days[117]; and the *Halifax Fisheries Commission* case (*United States* v. *United Kingdom*): 2 days[118]. With the Award of 3 October 1899, Venezuela knew then that it did not contain any reasoning, that it instituted a navigational régime on two rivers and that it delimited the Parties' respective territories without stating their titles, two more Tamsian sins. Mallet-Prevost's memorandum offered nothing new in this regard.

7. Within two days of the Award being handed down, it was the subject of active discussion in the press. On 5 October 1899 the *New York Times* ran an article entitled "Judge Brewer's Opinion . . . Final Award a Compromise". He is quoted as follows:

> "Until the last moment I believed a decision would be quite impossible, and it was by the greatest conciliation and mutual concessions that a compromise was arrived at. If any of us had been asked to give an award, each would have given one differing in extent and character. The consequence of this was that we had to adjust our differing views, and finally to draw a line running between what each thought [was] right."[119]

Please read the article in full, it is in your judges' folder at tab 6.3. Judge Brewer was explicitly asked whether political considerations influenced the Award, and he appeared to accept that they did. He made it clear that "each judge conceded something in turn".

8. Similarly, a day earlier, on 4 October 1899, *The Times* of London ran an even lengthier article, and that included an interview with General Harrison and Mr Mallet-Prevost. In their interview, they emphasized the positive aspects of the Award: that it gave Venezuela "the entire control of the Orinoco river" and "another long tract to the east of the Schomburgk line, some

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[116] Hearings concluded on 1 October 1902: see Foreign Relations of the United States, 1902, Appendix II, United States vs. Mexico, *In the matter of the case of the Pious Fund of the Californias*, Document 104. Available at https://history.state.gov/historicaldocuments/frus1902app2/d104. Award issued on 14 October 1902: see Foreign Relations of the United States, 1902, Appendix II, United States vs. Mexico, *In the matter of the case of the Pious Fund of the Californias*, Document 116. Available at https://history.state.gov/historicaldocuments/frus1902app2/d116.

[117] "[T]he three commissioners heard final arguments of the two agents until September 22, 1798, when they adjourned until October 15, 1798, at which time they received copies of the complete general map of the survey. From that date they met daily until the 25th of the month, when they completed their task and signed a unanimous award.": see Richard B. Lillich, "The Jay Treaty Commissions" (1963), *St. John's Law Review*, Vol. 37 (2), p. 267, available at https://scholarship.law.stjohns.edu/lawreview/vol37/iss2/2/.

[118] Submissions in these proceedings ended on 21 November 1877 and the award was dated 23 November 1877: *see* Record of the proceedings of the Halifax Fisheries Commission, p. 440, available at https://babel.hathitrust.org/cgi/pt?id=aeu.ark:/13960/t5cc1c30n&seq=447.

[119] "Brewer's Opinion", *The New York Times* (5 Oct. 1899). VCM, Vol. III, Annex 171.

3,000 square miles in extent"; and that various other British claims were rejected. Venezuela's two counsel noted President Martens' closing address, in the interview they gave to the paper, in which he commented on "the unanimity of the present judgment" as "proof of the success of the arbitration". The article summarized the views of the two counsel, Harrison and Mallet-Prevost: "It did not, however, require much intelligence to penetrate behind [Martens'] superficial statement and see that the line drawn was a line of compromise and not a line of right". And they go on: "There was nothing in the history of the controversy nor, in fact, in the legal principle involved which could adequately explain why the line should be drawn as it was now found." In other words, the arbitration did not "result in an admission of legal rights"; it was based on "compromises really diplomatic in their character". They also understood — and publicly expressed the day after the Award — the pressures on the arbitrators: "if the arbitrators were unanimous[,] it must be because their failure to agree would have confirmed Great Britain in the possession of even more territory" [120].

9. These two newspaper articles were published within two days of the Award. It was public. It was available. It was plainly known to Venezuela[121]. No doubt Mr Mallet-Prevost and President Harrison will have said even more privately to their client. Did this information cause Venezuela to object to the Award? It did not. It negotiated and signed a treaty in 1905, to implement the Award. For the next 57 years, it faithfully gave effect to that Treaty (and the Award it implemented). Not a squeak of opposition, no claim of invalidity or taint for 62 years in the face of all that information.

10. In short, Venezuela's actions were taken in the full knowledge of the following: (i) the Award was handed down six days after the hearings closed; (ii) it contained no statement of reasoning; (iii) it was based on "diplomatic" "compromises"; (iv) it was not based on the application

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[120] "Declarations from Mallet-Prevost and General Harrison, Venezuelan's Agents before the 1899 Tribunal", *The Times* (4 Oct. 1899), p. 6. Available at https://www.thetimes.com/tto/archive/page/1899-10-04/6.html#start%3D1899-10-03%26end%3D1899-10-04%26terms%3Dmallet%26back%3D/tto/archive/find/mallet/w:1899-10-03~1899-10-04/1%26prev%3D/tto/archive/frame/goto/mallet/w:1899-10-03~1899-10-04/1.

[121] See Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts (1967), p. 21, para. 28:

> "In the 'Confidential Instructions' issued to the leader of the Venezuelan Boundary Commission, Sr. Felipe Aguerrevere on October 22, 1900, the Chancellery, after analysing the nature of the Award which it qualified as 'more the result of a compromise than of an essentially juridical examination', and with respect to the frontier imposed by the Arbitrators said: 'It is a line de facto, determined without any support or reason neither historical, geographical or political.' Consequently, and because the 'Award' had been overtly unjust towards Venezuela, the Venezuelan Commissioners were instructed to refer everything 'to the most severe procedure'." CMV, Vol. III, Annex 150.

as such of "legal principles" or "legal rights"; and (v) that the arbitrators were pressured into compromises: they had the opportunity to express different views, but they elected not to do so on the basis that unanimity would avoid a worse situation.

11. Is there evidence here of "*extorsion*", or "blackmail", as Professor Thouvenin would have you believe? No, there is not. He uses very strong words. The Oxford English Dictionary defines extortion as "the action or practice of extorting or wresting anything, *esp.* money, from a person by force or by undue exercise of authority or power; an act of illegal exaction". Is there evidence that Dr Martens threatened force or engaged in any undue exercise of authority? There is none — not a shred of evidence Even assuming the Mallet-Prevost memorandum to be accurate — and we have no idea whether it is — it does no more than describe a tribunal president's efforts to gain consensus, by warning that a majority award is likely to be less attractive, in one way or another. This is a constant feature of arbitral deliberation, still today. I have experienced it, and many of you in this room will have experienced it. The striving for consensus is an act of decency and wisdom. That Mr Martens achieved it is to his credit, not to his detriment. As *The Times* reported in October 1899: "if the arbitrators were unanimous[,] it must be because their failure to agree would have confirmed Great Britain in the possession of even more territory" [122]. And that was what Mr Martens wished to avoid.

12. Now, in a very short period after the Award, everyone knew what had passed. I would invite you to imagine that you are attending the meeting of the American Society of International Law in Washington D.C. to hear the address by John W. Foster, former President Harrison's Secretary of State. His address was on the subject of British and American arbitral practice. This is 1911. He explicitly addresses the 1899 Award and this is what he has to say about it:

> "The British and American members of the Court held to the positions taken by their respective governments, and the Russian umpire sought to find a middle ground which would be the least distasteful to his colleagues. He was not a lawyer by profession, but had received his training in the Russian foreign office . . . and his decision was one of expediency and compromise. While it was largely in favor of the

[122] "Declarations from Mallet-Prevost and General Harrison, Venezuelan's Agents before the 1899 Tribunal", *The Times* (4 Oct. 1899), p. 6, available at https://www.thetimes.com/tto/archive/page/1899-10-04/6.html#start%3D1899-10-03%26end%3D1899-10-04%26terms%3Dmallet%26back%3D/tto/archive/find/mallet/w:1899-10-03~1899-10-04/1%26prev%3D/tto/archive/frame/goto/mallet/w:1899-10-03~1899-10-04/1.

> British contention, it was quietly understood at the time that it would have been even more in that direction but for the firm attitude of the American members."[123]

13. Mr Foster talked in that address about other arbitral awards. What was his conclusion about the totality of international practice at that period in time? "I would not have it understood that I condemn the general results of these arbitrations . . . they have been beneficial . . . But the defects of the system are so serious that they call for the reform to be found in a permanent international tribunal"[124]. That is one of the reasons we are here today, in this Great Hall of Justice at the International Court of Justice.

14. That was 1911. Twenty years later, Professor Hersch Lauterpacht wrote of the 1899 Award in his seminal 1933 book, "The Function of Law in the International Community". You will find extracts of it in the folder at tab 4.1. Did Professor Lauterpacht criticize the Award, as counsel have done? He did not. To the contrary, he described the proceedings as "a lengthy legal contest on such questions as acquisition of title by occupation, discovery, and prescription, and on such procedural technicalities as the function of estoppel in relations between States"[125]. He understood the Arbitral Award to be exactly what it was: a creature of its early times, one that sought to resolve a "political dispute"[126], those are his words, based on an 1897 Treaty that conferred on the tribunal what Hersch Lauterpacht characterized as "large discretionary powers"[127].

15. Everybody knew what had passed with the Award and the outcome, in 1899, 1911, 1933. And Venezuela itself confirmed this in 1962, at the very moment that it adopted its change of position. When Venezuela's Foreign Minister addressed the United Nations General Assembly on 1 October of that year, he invoked the Mallet-Prevost memorandum, and said that it "coincides with the view widely held from the very moment of the court's award, namely that the award was the

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[123] Proceedings of the American Society of International Law at Its Annual Meeting (1907-1917), April 23 and 24, 1909, Vol. 3, pp. 25-60, Address of Mr John W. Foster, of Washington, D.C., p. 28. Available at: https://www.jstor.org/stable/pdf/25656371.pdf?refreqid=fastly-default%3Aa41b0b1f3cb6fa66e7f244ebb079518d&ab_segments=&initiator=&acceptTC=1.

[124] *Ibid.* p. 34.

[125] H. Lauterpacht, "The Function of Law in the International Community", *British Contributions to International Law* (1933), p. 149, available at https://ia801500.us.archive.org/30/items/in.ernet.dli.2015.459090/2015.459090.The-Function-Of-Law-In-The-International-Community.pdf .

[126] *Ibid.*

[127] *Ibid.* p. 329.

outcome of a political compromise rather than the application of the rules of law to which the parties had agreed"[128].

16. Did Venezuela object in 1899? No, it did not. Did it object in 1905? No. Or in 1949, when the memorandum became available? No. So, with great respect, it is simply not open to Venezuela to argue today, or as it did in 1962, that Mallet-Prevost somehow gave them something new. It did not. The only thing that was new in that document — magical realism — was the claim of an Anglo-Russian deal prompting the outcome. And, of course there is no support whatsoever for that. And, no doubt, as you will have heard, while you were listening carefully on Wednesday, Venezuela now places no reliance at all on that outlandish claim. It passed in complete silence on the point, which must be taken to be abandoned. I refer you to our written pleadings, our Memorial on the merits and in our Reply for the reasons that it could not be true.

17. So what is really going on here? What are we actually addressing in this courtroom? We submit that the real clue is to be found in the Foreign Minister's speech to the United Nations General Assembly on 1 October 1962. Mr Briceño invoked Venezuela's supposed "inflexible anti-colonialist position" and he segued from that directly via a fig leaf to the "Question of boundaries between Venezuela and the territory of British Guiana"[129].

18. In other words, as Mr Reichler hinted, British Guiana's desire for independence offered a wonderful opportunity to re-open, for the first time, after 63 years, the path to resolve a lingering unhappiness about the substantive outcome of the Award and the 1905 Treaty. Thirteen years after it is published, the Mallet-Prevost memorandum is instrumentalized, it is weaponized, it is used for another purpose: to re-open an issue that has long been settled. And that is why counsel for Venezuela have to argue that the memorandum gave them something new, even though it did nothing of the sort: the Mallet-Prevost memorandum is used in the service of an "anti-colonialist" claim, to attack what counsel called the "revolting" 1899 Award, on the grounds that it set in stone a colonial legacy[130].

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[128] *Speech* by Dr Marcos Falcón Briceño, *reprinted* in United Nations General Assembly, 17th Session, *Agenda item 9*, UN doc. A/PV.1138 (1 Oct. 1962), p. 245, para. 68, available at https://digitallibrary.un.org/record/732913?ln=en&v=pdf#filesn.

[129] *Ibid*., pp. 243 to 244, paras. 62 to 63.

[130] CR 2026/26, p. 40, para. 107 (Mbengue).

19. Now this became clear to me, a sort of dropping of the penny, as I listened to my good friend, my brother, Professor Mbengue, on Wednesday morning, as he waxed lyrically, and passionately, about the evils of colonialism. To be fair, the seeds for his argument were sown in Venezuela's Counter-Memorial, and in its Rejoinder.

20. This case, he told you, is an "illustration of the unfortunate legacies of colonialism"[131]. And he invited you to draw inspiration from the approach taken by this Court in the *Chagos* Advisory Opinion, which he initially described as "a direct precedent"[132], but then there was a modest retreat, as he recognized, as he is bound to do, that "it might be said that the 1899 Award is different"[133]. It might indeed be said that it is different, and I am going to tell you that it is different: *Chagos* offers no assistance whatsoever to Venezuela. It is totally different: Mauritius was not the recipient of an arbitral award, Mauritius did not negotiate a treaty with the United Kingdom recognizing Chagos as part of the United Kingdom, and Mauritius did not wait 63 years to assert a claimed right.

21. Now, Professor Mbengue knows that I am not the kind of person who is going to stand before this Court and defend acts of great colonial wrongdoing. He also knows that he and I are both very familiar with the *Chagos* matter — we both argued it — and he knows, as I know, that it is a totally different story. The *Chagos* Advisory Opinion is premised on the Court's recognition of a fundamental principle: when a colony achieves independence, its territorial boundaries as an independent State will be the same as those of the former colony, unless the population of that territory has freely given its consent for those boundaries to be changed. And in *Chagos*, the Court, and two distinguished dissenters in another arbitral proceeding, found that the population of Mauritius had not freely consented to the excision of the Chagos Archipelago.

22. That principle, relied on by the Court in *Chagos*, is based on United Nations General Assembly resolution 1514 of 1960, which you know well. Paragraph 6 of that resolution prohibits "the partial or total disruption of the national unity and the territorial integrity of a country"[134]. The resolution was adopted in December 1960. Venezuela voted in support of it. Did Venezuela, in

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[131] *Ibid*. p. 30. para. 59.

[132] *Ibid*. p. 39. para. 103.

[133] *Ibid*. p. 40. para. 104.

[134] Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples.

exercising that vote, articulate a reservation in relation to the territory of British Guiana, or its own territory, at that session of the General Assembly in 1960? No, it did not[135]. That is because that was two years before it concocted the idea of opening the door to an argument that the 1899 Award was invalid. At the moment it voted for resolution 1514, it still accepted its boundaries as they had existed for more than 60 years, as established by the Arbitral Award, and the 1905 Treaty.

23. It only changed its position two years later after that resolution was adopted. Coincidentally, or maybe not, at the very moment that the independence of Guyana suddenly hoved into view. And, as Mr Reichler made clear, in the face of a real fear that Venezuela might act to interfere with the national unity or territorial integrity of a newly independent Guyana, the United Kingdom insisted on what became the 1966 Geneva Agreement being negotiated and adopted. It committed Venezuela to a process to resolve the controversy by peaceful means on the validity of the 1899 Award, in a manner that in no way undermined the totality of Guyana's territorial integrity.

24. Now, Professor Mbengue better than anyone will understand the challenges his argument on Wednesday will pose for this Court. He knows far better than I all about the Organization of African Unity's famous 1964 Cairo Declaration, when the Heads of State and government came together — of African countries — to declare that all Member States had pledged "to respect the borders existing on their achievement of national independence"[136]. And he will be aware too of the powerful statement made by the Permanent Representative of Kenya to the United Nations, in February 2022, on the cusp of Russia's invasion of Ukraine: "Kenya, and almost every African country, was birthed by the ending of empire". Dr Kimani told the Security Council, "Our borders were not of our own drawing. They were drawn in the distant colonial metropoles of London, Paris, and Lisbon with no regard for the ancient nations that they cleaved apart". But, he continued, "we agreed that we would settle for the borders that we inherited", not because these borders were satisfactory "but because we wanted something greater forged in peace". "We must complete our

[135] See General Assembly Fifteenth Session, 947th Plenary Meeting, Agenda item 81: "Declaration on the granting of independence to colonial countries and peoples" (14 Dec. 1960). Available at: https://legal.un.org/avl/pdf/ha/dicc/A PV 947.pdf.

[136] Available at: https://www.peaceau.org/uploads/ahg-res-16-i-en.pdf .

recovery from the embers of dead empires in a way that does not plunge us back into new forms of domination and oppression."[137]

25. We say, those words are especially pertinent now and to these proceedings because if this Court is to accede to Professor Mbengue's invitation, and find invalid the 1899 Arbitral Award, and presumably also the 1905 Treaty, you would rekindle the "embers of dead empires". You would plunge Guyana into a "new form of domination and oppression" in relations with its much larger neighbour. And you would send a signal to the world that the passage of six decades is no bar to setting aside an arbitral award or a boundary treaty; you would rekindle an age of instability and uncertainty, one that would run directly contrary to the wisdom of Africa, one that would threaten to open the gates of challenge to any and every colonial era arbitration award or boundary settlement. Is that really what Professor Mbengue is asking you to do? Is that really what this Court is being asked to do, by Venezuela?

26. Mr President, it was, indeed, uncomfortable — understatement — for Guyana to hear it suggested that, as a State, it is an inheritor of an act of British colonial wrongdoing, that it seeks to defend a "revolting" colonial legacy. These are really unfortunate suggestions. Guyana emerged into independence with a strong sense of identity, and that was formed in large part by a sense of its territorial identity. Ever since it came into independence, it has existed under an existential threat of dismemberment. In this way, it is no different from so many African countries, or central and eastern European countries, or other countries of Latin America, which have emerged, in their modern form, out of the legacies of colonialism. That legacy may indeed be a scourge, but the greater scourge will be to open the gates to the setting aside of an Award and a Treaty that are more than a century old, and that is what Venezuela is asking you to do. That is what we feel sure you must resist.

27. Mr President, Members of the Court, that concludes my submissions. I end, as I always do, with an expression of thanks to my colleagues, Mr Edward Craven and Ms Lucy Jones, for their assistance in preparing my words over this week. But if I may, I would also like to just momentarily express my respect to Sir Shridath Ramphal and Ms Liz Harper, who guided us over the years of this case. For many of us, Sir Shridath was truly a mentor, and not long before he left us, he sent me a

[137] Statement by Amb. Martin Kimani, UN Security Council Urgent Meeting on the Situation in Ukraine (21 Feb. 2022), available at kenya_statement_during_urgent_meeting_on_on_ukraine_21_february_2022_at_2100.pdf.

postcard of a painting that he told me he loved, by the renowned Guyanese and British artist, Sir Frank Bowling. It is today at the Tate Gallery, in London. *Who's Afraid of Barney Newman* was painted in 1968, just two years after Guyana achieved independence.

28. If you look carefully, you will see in this painting the outlines of two continents — South America and Africa — slipped into the vertical blocks of green, yellow and red, references to Guyana and various African flags and adornments worn by Jamaican Rastafarians. When Bowling was born in Barima, in 1934, Venezuela accepted that this small town was in Guyana and that he was Guyanese. But today it does not. So, in this way, it could be said this painting is emblematic of many of the issues that have been heard in this Great Hall of Justice — matters of history, of connections, of the need for things to be whole, and of the power and the finality of law. And that is why Sonny sent me the postcard — the painting is a whole and a whole, we trust, it must remain.

29. I thank you, Mr President, for your attention, and I invite you to call Professor Nilufer Oral to the podium.

The PRESIDENT: I thank Professor Sands. I now give the floor to Professor Nilufer Oral. You have the floor, Madam.

Ms ORAL:

BACK TO REALITY, BACK TO THE FACTS: VENEZUELA'S POST-AWARD CONDUCT

1. Mr President, distinguished Members of the Court, it is my great pleasure to appear before you again. Venezuela's counsel have relied extensively on vituperative statements and a touch of demagoguery — making every effort to avoid the facts. Today, I will bring us back to the reality of the facts.

2. Now my distinguished colleagues today have just clearly demonstrated, based on facts and law, that the 1899 Award was and is a valid award. However, *arguendo* — or, in plain English, for the sake of argument — let us say Venezuela did have grounds to challenge the validity of the Award. Venezuela would still face a formidable obstacle — its own conduct for more than half a century. In an attempt to overcome this major obstacle, as Professor Sands has just presented, Venezuela relies heavily on the improbable excuse that it was *not aware* of any of the alleged defects of the 1899

Award until the publication of the 1949 Mallet-Prevost memorandum, 50 years after the Award was issued. For 50 years, they said they had no inkling that any grounds existed to challenge the validity of the Award. Really?

3. In 1899, within days after receiving the Award — and at all times thereafter — Venezuela was well aware of all the circumstances underlying the Award and its purported defects. Every one of the defects alleged by Venezuela in these proceedings — every single one — was known to Venezuela soon after the Award was issued, if not immediately upon its issuance.

4. Now, Mr President, I know we are running out of time, so with your permission, and if the interpreters could please turn to paragraph 8.

5. Now, from what my learned colleagues have presented today, the following conclusions are inevitable. One: Venezuela was fully aware in 1899, or at latest by 1900, of each and every ground it now asserts for invalidating the Award. Two: there is no evidence that Venezuela faced any pressure whatsoever, let alone coercion, to refrain from asserting a challenge, between 1899 and 1962. Three: under the applicable law, Venezuela acquiesced in the Award and lost the right to challenge it long before it first did so in 1962. Venezuela has simply not been able to refute this factual reality. The real "farce" — to use Venezuela's counsel's word — is that evidence of supposed defects in the Award came into Venezuela's possession, "only in the second half of the twentieth century."[138]

6. On Monday, we presented an abundance of facts and supporting law, demonstrating the consistent, express and complicit conduct of Venezuela accepting and strictly implementing the boundary as decided by the 1899 Award and demarcated by the 1905 Boundary Agreement.

7. We showed some 16 maps dating from 1905 until 1962 consistently reflecting the 1899 Award and the 1905 Agreement *to the letter*! No indications of any protest to the boundary even after the publication of the 1949 Mallet-Prevost memorandum. There is nothing from Venezuela to refute any of this. This is why the only explanation that Venezuela can offer to counter, what they know to be unassailable evidence against them, is their lack of "awareness" until the publication of the 1949 Mallet-Prevost memorandum[139]. The reality simply does not support

[138] CR 2026/27, p. 19, para. 39, and p. 22, para. 53 (Azaria).

[139] CR 2026/27, p. 45, para. 31 (Tams).

Venezuela's claims of ignorance. Professor Sands has just skilfully deconstructed this argument based on the Mallet-Prevost memo.

8. However, there is one legal point related to Venezuela's reliance on the Mallet-Prevost memorandum. If we accept that the events that took place in the Mallet-Prevost memorandum are true, this means Mallet-Prevost himself, after his meeting with Justice Brewer, had first-hand knowledge of the compromise taking place, and together with Venezuela's lead counsel, Mr Harrison, agreed to the deal offered. In other words, Venezuelan counsel were instrumental to the political compromise — as according to the memo, Justice Brewer had asked for their approval. How can Venezuela now claim error when its very own counsel participated in the so-called compromise that resulted in the boundary line — which they allegedly told Justice Brewer they would accept!

9. This Court said in the *Temple of Preah Vihear* case:

> "It is an established rule of law that the plea of error cannot be allowed as an element vitiating consent if the party advancing it *contributed by its own conduct* to the error, or could have avoided it, *or if the circumstances were such as to put that party on notice* of a possible error."[140]

10. The most telling proof that Venezuela was well aware of *any possible defects* in the Award and contemplating challenging the Award is found in the 4 May 1900 report by Venezuelan jurist and former foreign minister, Dr Rafael Seijas. The reality is that there were no grounds to challenge the Award. In this report, he advised Venezuela on the following key issues:

11. First, on the lack of reason by the tribunal in the Award, he wrote that the 1897 Treaty "did not stipulate any requirement to give reasons for its [the tribunal's] decision", and therefore "does not permit any complaint on this score"[141]. Plainly, Venezuela knew in 1899, at the moment of issue, that the Award did not include a statement of reasons and, as of 1900, it did not consider this a valid ground for challenging the Award. No one defrauded, no one coerced it.

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[140] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962,* p. 26 (emphasis added).

[141] *Report* of Counsellor Dr Rafael Seijas (4 May 1900), p. 1. MMG, Vol IV, Annex 66.

12. On the question of the arbitrators, Dr Seijas also negated this as a reason to challenge the Award highlighting that Venezuela had participated in the selection of the arbitrators and could be challenged to have "*uttered no word in opposition*"[142].

13. According to the Seijas report, when Justice Brewer was asked "if, in his judgment, Venezuela had a title to more than adjudged to it":

> "*[H]e hesitated, shrugged his shoulders and said it was better to say nothing on this point* and ended by observing that whoever (sic? 'whatever') the two parties thought of the award, Venezuela would receive Punta Barima which gives her full control of the hinterland, while England is confirmed in the possession of a territory in the development of which it has disbursed such money and effort; *but the main advantage is that the two nations can at last cultivate peacefully, side by side, the extensive territories which*, *because of previous antagonisms, have remained unproductive.*"[143]

14. After a detailed discussion on the issue of the freedom of navigation — Seijas concludes his report with the following words: "Despite the foregoing exposition, I consider that it would not be expedient to reopen the case and appoint other arbitrators, or to extend the jurisdiction of those who have served as such, since their mandate ended with the pronouncement of the award."[144]

15. What more compelling evidence can we show than the legal advice provided by Venezuela's own expert on international law, Dr Seijas, a respected jurist and former foreign minister, who in 1900 provided his legal views on all the possible reasons, now claimed by Venezuela to challenge the Award, but Venezuela took no action before 1962. In its own words, Venezuela "cannot have its cake and eat it too"[145]. It cannot selectively use the Seijas report as evidence of so-called "structural coercion"[146] — which frankly is a stretched interpretation of his words — and also conveniently omit the parts of his report that show Venezuela was looking at grounds to challenge the legality of the Award and found none.

16. This brings me to my second point concerning the so-called "structural coercion" that Venezuela now claims for the first time, after some 120+ years, that it was because of fear from the

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[142] *Ibid.*, p. 1. MMG, Vol IV, Annex 66 (emphasis added).

[143] *Ibid.*, pp. 3-4 (emphasis added), MMG, Vol IV, Annex 66.

[144] *Ibid.*, p. 5. MMG, Vol IV, Annex 66.

[145] CR 2026/26, p. 42, para. 8, and p. 60, para. 118 (Zimmermann).

[146] CR 2026/27, p. 12 (Azaria).

powerful naval forces of Great Britain that Venezuela, for five years, engaged in the demarcation of the 825 km boundary[147].

17. There is absolutely no evidence before the Court that Great Britain in 1900 (before the blockade Venezuela relies on to claim it was "structurally coerced") threatened any military action against Venezuela after the 1899 Award to force it to engage in the demarcation process.

18. *Au contraire*, the evidence shows that Great Britain remained loyal to the 1899 boundary and never once attempted to cross it or expand it. And never once threatened to do so. The Award accomplished Venezuela's objective in seeking arbitration. It halted — permanently — the westward advance of British settlement.

19. The evidence we showed on Monday, from the vigilant and dedicated work of Chief Commissioner Dr Tirado, and the pride he expressed in his work[148], and the insistence of Venezuela to abide strictly to the 1899 Award *to the letter*[149] — completely refute any claim that Venezuela now makes some 120+ years later of being "forced against its will" to demarcate the boundary. Words by overzealous counsel alone cannot compensate for objective and established facts — for credible and contemporaneous evidence.

20. I will now proceed to the legal issues.

21. Venezuela's post-Award conduct goes beyond mere silence, but as we have shown with ample evidence it includes express words amounting to acceptance, recognition and satisfaction with having received what at the time in 1899 was what Venezuela most desired — the mouth of the Orinoco River. These are not my sentiments but the very words from Venezuela's counsel and its officials. The Foreign Minister and the President expressed "satisfaction". This is in black and white. And it is contemporaneous. To be sure, Venezuela was disappointed that it did not get more territory, as you were told on Wednesday, but also by colleagues on Monday. But it cannot be the case that a party's disappointment with the substance of an award or a judgment of the Court constitutes grounds for its invalidation.

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[147] CR 2026/27, p. 21, para. 49 (Azaria).

[148] CR 2026/25, p. 34, paras. 18-19 (Oral).

[149] CR 2026/25, p. 35, paras. 22-25 (Oral).

22. Venezuela's attempt to distinguish the *King of Spain* case also fails on this point. Like the President of Nicaragua, the President of Venezuela Mr Ignacio Andrade also publicly expressed "satisfaction" with the 1899 Award just one week later: and I repeat, "the award was a source of satisfaction for the country, as international justice had returned a part of its territory that had been usurped and vindicated its right"[150].

23. There is a reason for this satisfaction: in the words of Venezuela's counsel on the importance of the mouth of the Orinoco River, "[n]o portion of the entire territory possessed more strategic value than this, both from a commercial and a military standpoint"[151].

24. But the *King of Spain* case was not the only judgment of this Court we referred to where the conduct of the State was decisive[152]. We discussed the *Temple of Preah Vihear* case[153], to which Venezuela did not respond. In that case, the absolute key factor was the conduct of Siam and later Thailand on the use of maps. We presented 16 official maps between the dates of 1905 and 1962 all showing the very same boundary — the one determined by the Arbitral Award in 1899 and demarcated by Great Britain and Venezuela in 1905. There is no response from Venezuela on this — not one.

25. I take the opportunity and with the Court's indulgence to quote another very important part of the *Temple of Preah Vihear* case with significance for our case at least during the 60-plus years between 1899 and 1962 before Venezuela engaged in aggressive conduct against Guyana threatening the stability of the boundary it had respected beforehand:

> "Even if there were any doubt as to Siam's acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand's acceptance of the map . . . It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party."[154]

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[150] « Nouvelles de l'Étranger : Venezuela », *Le Temps* (11 Oct. 1899) *quoting* Venezuelan President Ignacio Andrade. See MMG, para. 4.7.

[151] "Declarations from Mallet-Prevost and General Harrison, Venezuelan's Agents before the 1899 Tribunal", *The Times* (4 Oct. 1899). MMG, para. 4.8.

[152] CR 2026/25, pp. 41-43, paras. 50-57 (Oral); *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, p. 192.

[153] CR 2026/25, pp. 40-41, paras. 47-48 (Oral).

[154] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962,* p. 32.

26. The Court's words have much bearing today on the current case.

27. Venezuela also relies on the *Costa Rica and Panama* case in an attempt to counter 60-plus years of post-Award conduct during which Venezuela not simply recognized but actively implemented the boundary until 1962[155]. The arbitrator, in that case, did not take into account post-Award conduct — it was not at issue! The case is irrelevant — whereas the two cases we have cited: the *King of Spain* case and the *Temple of Preah Vihear* case turned expressly on the conduct of the parties.

28. As for the *DRC* v. *Uganda* case. Frankly, counsel for Venezuela omitted an important part of the Court's decision. The Court observed: "that waivers or renunciations of claims or rights must either be *express or unequivocally implied* from the conduct of the State"[156]. Uganda was simply unable to present evidence of the conduct as expressed in the Court's views. I am going to continue.

29. By contrast, Guyana has presented a mountain of evidence: 60-plus years of unequivocal conduct by Venezuela accepting and implementing the Award and the 1905 Agreement while fully aware of any possible challenges it could have raised at the time — as is made clear in the detailed report dated 4 May 1900 by Dr Seijas.

30. Professor Thouvenin also attempted to distinguish the *King of Spain* case from the present case on rather weak reasons[157]. One being that Nicaragua did not assert lack of awareness! But this is not true. The President of Nicaragua, in dispatching his telegram of 25 December 1906, specifically gave the reason that "*he was not aware* of the actual terms of the Award"[158].

31. Mr President, I come now to my conclusion. We have presented the facts and the law as they are, no more and no less. The reality, as we have highlighted Monday and reinforced today, is that Venezuela had all the information in plain sight 127 years ago and chose not to challenge the Award. It is a complete fiction that Venezuela was not able to challenge the award until after the 1949 Mallet-Prevost memorandum was published. Venezuela's post-Award conduct was not simply passive silence but one that proactively implemented and complied with the Award and the

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[155] CR 2026/27, pp. 55-56, paras. 24-26 (Thouvenin).

[156] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 266, para. 293 (emphasis added).

[157] CR 2026/27, pp. 58-61, paras. 35-48 (Thouvenin).

[158] *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, p. 213 (emphasis added).

Agreement. The narrative of "structural coercion" to excuse their conduct, which appeared for the first time in their Counter-Memorial dated 8 April 2025[159], is simply not tenable, and certainly cannot be the basis for depriving Guyana of more than 70 per cent of territory over which it has lawfully exercised sovereignty as an independent State since 1966. I thank the Court for its kind attention and ask that Guyana's Attorney General and Minister of Legal Affairs the Honourable Mohabir Anil Nandlall be called to the podium.

The PRESIDENT: I thank Professor Oral. I now invite the Attorney General of Guyana, the Honourable Mohabir Anil Nandlall, to address the Court. Sir, you have the floor.

Mr NANDLALL:

CONCLUDING REMARKS

1. Mr President, Members of the Court, it is an honour to appear before you and a privilege to deliver this final presentation on behalf of my country, the Co-operative Republic of Guyana.

2. It is difficult to express in words how important this case is to Guyana and its people. As the Court knows, this hearing is the culmination of a process which has been decades in the making. For more than 60 years Venezuela has laid claim to more than 70 per cent of Guyana's sovereign territory. Generations of Guyanese, mine being one of them, have grown up under the long and threatening shadow cast by Venezuela's claim to nearly three quarters of our country. Venezuela's claim has blighted, bedevilled and burdened Guyana for the entirety of its life as a sovereign State. It is hard to overstate the impact that this has had on Guyana's development and on the security, prosperity and wellbeing of its people.

3. As our representatives vividly described on Monday, the loss of the territory claimed by Venezuela would eviscerate Guyana. Indeed, the country as we know it would cease to exist. Guyana's Foreign Minister was not exaggerating when he described this case as having an existential quality for Guyana. For Guyana and its people, the stakes could scarcely be higher.

4. But while the stakes of this dispute could not be higher, nor could Guyana's faith in international law, as the means for fairly and finally resolving it. As Attorney-General of Guyana, I

[159] CMV, para. 7.2.

can personally attest to Guyana's profound commitment to the rule of international law. It is a commitment which runs deep in Guyana's institutions and national culture. It is both an article of faith and a source of national pride. It is founded on a firm conviction that international law is the bedrock of the international order and the indispensable foundation for peaceful relations between all States. From Guyana's perspective, there is no higher value or greater imperative than respect for international law.

5. Mr President, when Guyana brought its Application to the Court in 2018, it was confident of three things. First, Guyana had unwavering confidence in the correctness of its decision regarding the validity of the 1899 Award and the boundary which it determined. Second, Guyana was equally confident in the wisdom of the decision of the Secretary-General of the United Nations that the Court should be entrusted with resolving this intractable controversy. Third, Guyana had complete confidence in the independence and impartiality of the Court, and its ability to deliver a just outcome based on the fair-minded and even-handed application of international law.

6. Since Guyana filed its Application eight years ago, these proceedings have vindicated and reinforced Guyana's confidence in each of those things. At every stage, the Court has conducted the proceedings with conspicuous care, attentiveness and fairness. The Court has carefully considered and confirmed its jurisdiction to entertain Guyana's Application, and it has carefully considered and confirmed the admissibility of that Application. We have no doubt that the Court will now proceed to carefully consider the merits of Guyana's case regarding the validity of the 1899 Award and the location of the Parties' land boundary.

7. Since the start of these proceedings, Venezuela has strained every sinew to avoid the Court delivering a judgment on the merits of Guyana's Application. These strenuous efforts have even continued throughout this hearing on the merits. Notwithstanding this Court's Judgments in 2020 and 2023, Venezuela has sought to argue that the terms of the Geneva Agreement mean that the Court cannot or should not rule upon the validity of the 1899 Award. Guyana's counsel have demonstrated the lack of merit in those arguments, which find no support in the text or the history of the Geneva Agreement, and which are contradicted by Venezuela's previous statements to the Court and, so clearly, by the pellucid terms of the Court's previous Judgments on jurisdiction and admissibility.

8. It is not hard to see why Venezuela is so reluctant for the Court to determine the merits of Guyana's Application. Venezuela knows that it has no good answer to Guyana's case, and it knows that a judgment on the merits should bring to an end Venezuela's claims to almost 160,000 sq km of Guyana's territory.

9. In its written and oral pleadings, Guyana has convincingly demonstrated that Venezuela's attempt to impugn the validity of the 1897 Treaty of Washington has no merit whatsoever. Venezuela was neither deceived nor coerced into signing the Treaty. On the contrary, the Treaty achieved, what for years Venezuela had desired and demanded: the submission of its boundary dispute with Great Britain to international arbitration.

10. Guyana has similarly and axiomatically demonstrated that Venezuela's attack on the validity of the 1899 Award itself is misconceived. Neither the absence of written reasons nor the timing of the Award's delivery calls into question its validity. The arbitral tribunal faithfully fulfilled the mandate conferred by the 1897 Treaty. Neither the terms of the Award, nor the way it was reached, involved any excess of power or impropriety by the eminent members of the tribunal.

11. What is more, Guyana has shown that when the Award was delivered in 1899, Venezuela was aware of all the matters which it now alleges vitiated the Award; yet, for more than 60 years after 1899, Venezuela respected, asserted and affirmed the validity of the Award. As Guyana has shown at this hearing, Venezuela has no credible answer to any of this. In short, the Award was, and remains, valid and binding on the Parties. In the words of the 1897 Treaty, the Award constitutes the "full, perfect and final settlement" of the boundary between Venezuela and Guyana[160].

12. At this juncture, I feel impelled to say a brief word about one of Venezuela's arguments, which struck a particularly discordant note in Guyanese ears. As Professor Sands explained earlier, Venezuela's attempt to invoke the law of decolonization to support its case is legally unfounded. But it is also ironic — because Venezuela's sudden repudiation of the 1899 Award in the 1960s, just as the process of Guyana's decolonization was underway, impeded and delayed Guyana's progress towards independence by several years. And in the years since Guyana attained independence in

[160] Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between the Colony of British Guiana and the United States of America, 5 U.K.T.S. (2 Feb. 1897), Article XIII. Guyana's Application Instituting Proceedings, Annex 1.

1966, Venezuela has acted in a way that has striking echoes of the imperial colonialists whom it rightly denounces.

13. As Guyana has explained in both its written and oral pleadings, since 1966 Venezuela has repeatedly denied and violated Guyana's sovereignty over its Essequibo region. Venezuela has invaded and illegally occupied Guyana's territory on Ankoko Island for six decades. It has conducted numerous other military incursions into Guyana's land and maritime territory — incursions which are intended to menace and intimidate Guyana and its people.

14. During the pendency these proceedings — and in contumacious defiance of this Court's provisional measures Orders — Venezuela has enacted legislation which purports to incorporate our Essequibo region as a new Venezuelan state; to subject it to the jurisdiction of Venezuela's legislative, executive and judicial organs; and to depict it in official maps as an integral part of Venezuela.

15. Venezuela has also sought to rename the territory as "Guayana Esequiba". It has even falsely claimed at this hearing that the Essequibo River was named after a Spanish explorer. The name of the Essequibo River is, in fact, derived from an indigenous word, *dishikibo*, meaning "fireside", which was later adopted by the Dutch and British.

16. Venezuela's attempts to annex its smaller neighbour's territory; its attempts to erase and rewrite the history of Guyana's Essequibo region; and its innumerable bellicose threats to Guyana's sovereignty and territorial integrity, are all redolent of colonialism.

17. Mr President and Members of the Court, the judgment that you deliver in this case will be of exceptional importance to Guyana. It is not simply the outcome of the judgment that will be important; the terms of the judgment will be equally crucial. If the Court accepts Guyana's arguments — as we are confident that it will — then it is essential that the Court's judgment directly, explicitly and unambiguously affirms the validity of the 1899 Award in its integrity, and the boundary which it established, and elucidates the ineluctable legal consequences which flow therefrom. Any ambiguity or qualification in the Court's judgment will inevitably be seized upon by Venezuela as a basis for continuing to lay claim to vast swathes of Guyana's sovereign territory.

18. The clarity and specificity of your judgment are vital to the effective resolution of this longstanding dispute. You will have heard, as we did, the suggestion that a judgment in favour of

Guyana would not end the dispute. That suggestion underscores the need for a clear and complete judgment.

19. Mr President and Members of the Court, thank you very much indeed for your patient attention. I request, respectfully, that you invite our Agent, Mr Carl Greenidge, to the podium to read Guyana's submissions. I thank you once again.

The PRESIDENT: I thank the Attorney General of Guyana. I now give the floor to Agent of Guyana, the Honourable Carl Greenidge, to make Guyana's final submissions. You have the floor, Sir.

Mr GREENIDGE:

GUYANA'S SUBMISSIONS

1. Mr President, Members of the Court, it is an honour to appear before you once again.

2. With your permission, Mr President, I will now close Guyana's oral pleadings by reading Guyana's submissions:

> "In accordance with Article 49 (4) and Article 60 (2) of the Rules of Court, for the reasons explained in our Written Pleadings and during these hearings, the Co-operative Republic of Guyana respectfully requests the International Court of Justice:
>
> To adjudge and declare:
>
> 1) That the 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is the boundary between Guyana and Venezuela;
>
> 2) That Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela is under an obligation to fully respect Guyana's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;
>
> 3) That Venezuela has failed to comply with the obligations set out in the Orders of 1 December 2023 and of 1 May 2025.
>
> 4) That as a consequence of all the foregoing, Venezuela must:
>
> a) withdraw from any part of Guyana's territory as defined under the Award, including the part of Ankoko Island that the Award attributed to Guyana;

b) refrain from asserting or purporting to exercise sovereignty over any part of Guyana's territory and from taking any actions that violate Guyana's sovereignty or territorial integrity as defined in the Award;

c) revoke by means of its own choosing all measures, including laws, decrees and any other act that purport to annex, administer or control any part of Guyana's territory, or that was otherwise enacted or taken in violation of the provisional measures ordered by the Court, and in particular:

i. repeal the legislation which purports to incorporate Guyana's sovereign territory within Venezuela and the legislation which purports to extend Venezuela's legislative, executive and judicial jurisdiction to that territory;

ii. dissolve any entity to which Venezuela has attributed powers over Guyana's territory, such as the High Commission for the Defense of Guayana Esequiba, as well as all other executive, legislative and administrative agencies created to exercise such powers;

iii. terminate the "Social Care Plan for the population of Guayana Esequiba", and any ongoing census of the population of Guyana's territory, as well as all military activities conducted in furtherance of Venezuela's attempt to exercise sovereignty over, annex, administer or control any part of Guyana's territory; and

iv. refrain from publicly claiming or teaching its people that the Award is a nullity or the outcome of a fraudulent process, or that Venezuela was wrongly deprived of the Essequibo region, and withdraw from all public institutions and facilities, revoke and destroy, any map depicting any part of Guyana's territory as defined by the Award as part of Venezuela."

3. Mr President, allow me in closing to express — on behalf of Guyana's President, Dr Mohamed Irfaan Ali, Guyana's Government, its delegation, and its people — our profound gratitude to the Members of the Court for the care, patience and attention you have devoted to these proceedings.

4. We also wish to convey our sincere appreciation to the Registrar and wish him well as the end of his time at the Court is approaching. We express, too, our sincere gratitude to the staff of the Court and the interpreters for their unfailing professionalism, courtesy and dedication, which have greatly contributed to the orderly and efficient conduct of this hearing.

5. Finally, I would like to extend our respect and warm regards to all the distinguished members of the Venezuelan delegation. We have greatly appreciated their presence throughout these proceedings in the Great Hall of Justice.

6. Mr President, Members of the Court, this concludes Guyana's second round. I thank you very much indeed.

The PRESIDENT: I thank the Agent of Guyana for the final submissions presented on behalf of his Government. This brings to an end the second round of oral argument of Guyana, as well as this afternoon's sitting. The Court will meet again Monday 11 May 2026 at 3 p.m., to hear the second round of oral argument of Venezuela.

The sitting is closed.

The Court rose at 6.05 p.m.

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