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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

held on Monday 11 May 2026, at 3 p.m., at the Peace Palace,

President Iwasawa presiding,

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

VERBATIM RECORD

ANNÉE 2026

Audience publique

tenue le lundi 11 mai 2026, à 15 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

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

COMPTE RENDU

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

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

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

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comme membres de la délégation.

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

The Court meets this afternoon to hear the second round of oral argument of Venezuela on the merits in the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*. I note the presence of Her Excellency Ms Delcy Rodríguez, Acting President of the Bolivarian Republic of Venezuela, in the Great Hall of Justice.

I now invite Professor Paolo Palchetti to address the Court. You have the floor.

Mr PALCHETTI:

**THE INVALIDITY OF THE 1897 ARBITRATION TREATY AND THE ABSENCE
OF REASONS IN THE AWARD**

1. Mr President, Members of the Court, last Wednesday, Venezuela demonstrated what the real issue in these proceedings is: not the validity or invalidity of the 1899 Arbitral Award, but the pursuit of a mutually satisfactory solution by Guyana and Venezuela. Venezuela addressed, in detail, the interpretation and legal effects of the Geneva Agreement, as well as the historical circumstances that led to its conclusion.

2. Venezuela had hoped that, during the second round of oral pleadings, Guyana would finally engage with Venezuela's arguments concerning the Geneva Agreement. Guyana has not done so.

3. On Friday, Guyana has, again, largely ignored the Geneva Agreement. What we have is a fragmented response on few selected points.

4. This is unfortunate, as Friday was Guyana's last opportunity to finally reply to Venezuela's extensive arguments on the Geneva Agreement. Unfortunate but not surprising. From the start, Guyana has sought to divert attention from the only legal instrument that defines the rights and obligations of Guyana and Venezuela by focusing exclusively on the 1899 Arbitral Award.

5. As you heard on Wednesday from Venezuela's Agent, Professor Moncada, Venezuela is here to respond to Guyana's erroneous and misleading narrative. As in the first round of oral hearings, in this second round Venezuela's main focus will be on the interpretation and the effects of the Geneva Agreement. Albeit irrelevant, the issue of the Award's invalidity will nevertheless be addressed in order to respond to Guyana's unfounded allegations.

6. Today, I will begin Venezuela's second round of oral pleadings by addressing the issue of the invalidity of the 1897 Arbitration Treaty and that of the invalidity of 1899 Award for lack of reasons. I will be followed by Professor Christian Tams, who will rebut Guyana's arguments on excess of power. Professor Jean-Marc Thouvenin will then address the alleged waiver by conduct of Venezuela's right to raise the nullity of the Arbitral Award.

7. This will bring us to the Geneva Agreement. Professor Andreas Zimmermann will rebut the few arguments made by Guyana on its interpretation. Next, Professor Makane Mbengue will address novation, decolonization, and the importance of identifying the real issue before you.

8. Her Excellency Ms Arianny Seijo Noguera will give an overview of the arguments advanced by Venezuela before the Court.

9. The second round of Venezuela's oral pleadings will close with the intervention of the acting President of the Bolivarian Republic of Venezuela, Her Excellency Ms Delcy Rodríguez Gómez.

10. Mr President, I will now address the invalidity of the 1899 Award.

I. The absence of reasons in the Award

11. On absence of reasons as a self-standing ground of invalidity, I will make one point only.

12. On Friday, Guyana insisted that the Court's Judgment in the *King of Spain* case is irrelevant for establishing whether, at the end of the nineteenth century, arbitral tribunals already had an obligation to state reasons in their awards. Let me explain why Guyana is wrong on this.

13. Nicaragua had asked the Court to determine the invalidity of the Award rendered by the King of Spain for "lack or inadequacy of reasons". The Court addressed the merits of this contention. And in assessing it, the Court did not dismiss Nicaragua's claim on the ground that in 1906 arbitral tribunals had no obligation to state reasons. Rather, for the Court, the Award was valid because "it deals in logical order and in some detail with all relevant considerations and . . . it contains ample reasoning and explanations in support of the conclusions arrived at by the arbitrator"¹. Of this very standard, the Award of 1899 falls short.

14. Significantly, both Honduras and Nicaragua admitted the existence at the relevant time of an obligation to state the reasons in the Award. This is Professor Rolin, on behalf of Nicaragua: "ce

¹ *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), Judgment, I.C.J. Reports 1960*, p. 216

n'est que dans la fin du XIX^e siècle que la pratique s'est définitivement ancrée sur la nécessité de motiver les sentences”².

15. The arbitral tribunal between Great Britain and Venezuela was rendered at the end of the nineteenth century, at a time when, as remarked by Professor Rolin, the general practice confirmed the existence of an obligation to state the reasons. The tribunal did not comply with this obligation. And for this reason, the Award is null and void.

II. The invalidity of the 1897 Arbitration Treaty

16. I move now on to the invalidity of the Arbitration Treaty.

17. Mr President, Members of the Court, Venezuela and Guyana hold opposing views regarding the role played by Venezuela in the negotiation of the Arbitration Treaty.

18. Guyana pretends that Venezuela was closely involved in the Treaty's negotiation³. This, according to Guyana, is fully documented and uncontested. The fact that Venezuela played no role in the negotiation is — Guyana adds — simply part of Venezuelan current mythology⁴, the product of the imagination of counsel who would say *n'importe quoi* just to be allowed on the podium⁵.

19. In short, Guyana attributes to Venezuela the very practice of distortion of facts that permeates Guyana's narrative. Venezuela rejects this baseless accusation. Venezuela's historical position is based on a great amount of concordant, contemporaneous evidence. This evidence is the result of careful and in-depth research conducted by historians, beginning with the seminal work carried out in the 1960s by the Venezuelan experts Hermann Gonzalez-Oropeza and Pablo Ojer-Celigueta.

20. The products of this historical research have been confirmed by non-Venezuelan historians who have worked on the Venezuelan crisis. For instance, this is the position of a great British historian, Robert Arthur Humphreys:

“[T]he United States, with British concurrence, acted on Venezuela's behalf, but Venezuela herself was not consulted, or, rather . . . she was not consulted till the very

² *I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Vol. II, p. 346.

³ CR 2026/28, p. 17, para. 12 (Reichler).

⁴ CR 2026/28, p. 12, para. 2 (Reichler).

⁵ CR 2026/28, p. 21, para. 24 (Reichler).

end of the negotiations, and then only perfunctorily. Venezuela, said Olney on one occasion, ‘has got to do exactly what we tell her’; he revealed not the slightest wish that she should be represented by one of her own citizens on the Tribunal of Arbitration which he proposed should be set up; and when a final agreement was reached in Washington her President [Crespo] was simply given to understand that it was ‘very just and fair’ and that he ‘had better expedite its completion’ or it would be ‘bad for his country’.”⁶

21. Humphreys’ position cannot be dismissed as biased. He was the first professor of Latin American studies in the United Kingdom. This passage comes from a speech delivered at the Royal Historical Society in 1967, when Humphreys served as its president. His position coincides with that presented by the Venezuelan experts contemporaneously.

22. Humphreys’ factual account is the same that you find in Venezuela’s written pleading and that you have heard on Wednesday. The fraudulent attitude: Venezuela’s “President [Crespo] was simply given to understand that [the agreement] was ‘very just and fair’”. The coercion: Venezuela “has got to do exactly what we tell her” and President Crespo “‘had better expedite its completion’ or it would be ‘bad for his country’”.

23. The historians’ work confirms that the injustices suffered by Venezuela were not a fabricated myth, as Guyana would have you believe, but a fact.

24. Nevertheless, the 1897 Treaty was not simply unjust. It was invalid.

25. The text of the agreement submitted to Venezuela was not the text agreed upon by Great Britain and the United States. Venezuela was not informed of the confidential Notes exchanged between Olney and Pauncefoot.

26. On the confidential Notes, last Friday, Guyana has made three points:

- First, Venezuela is hiding their text from the Court⁷;
- Second, Venezuela’s two representatives in Washington — Storrow and Andrade — were privy to the confidential Notes⁸;
- Third, if Harrison, the United States’ lead counsel for Venezuela, was not aware of the existence of these Notes, it is Venezuela’s fault⁹.

⁶ R. A. Humphreys, *Anglo-American Rivalries and the Venezuela Crisis*, Transactions of the Royal Historical Society, Vol. 17, 1967, p. 158. CMV, p. 196, para. 5.2.24.

⁷ CR 2026/28, p. 19, para. 17 (Reichler).

⁸ CR 2026/28, p. 19, para. 18 (Reichler).

⁹ CR 2026/28, p. 19, para. 19 (Reichler).

27. On the first point, Mr President, there is nothing to hide. The document has long been part of the documentary record of the present case¹⁰. For the sake of clarity, you can find it again at tab 58-A of the judges' folders. It is clear from this Note that Olney and Pauncefote had agreed that the critical date for calculating the prescription period was the date of the conclusion of the Arbitration Treaty and could not be 1814, as first argued by Venezuela based on a reasonable interpretation of the Treaty.

28. On the second point, there is nothing in the documents presented by Guyana that proves that the Venezuelan Minister in Washington, Andrade, had been informed of this confidential Note, except the fact that, one day, Olney received Andrade and Storrow at his home¹¹. This proves nothing.

29. It would be hard to understand why Olney expressly characterized this document as “strictly personal”¹², if in the end all parties concerned were informed about its content.

30. But there is more. Let me come back to the letter I presented to you last Wednesday — the letter of Olney to Pauncefote dated 24 May 1899. As you will recall, this letter is a reply to a letter in which Pauncefote informed Olney of Great Britain's intention to present the confidential Note to the Arbitral Tribunal. In his reply, Olney, after emphasizing that the negotiation was conducted “mostly by informal personal talks or, so far as the negotiations were in writing, by equally informal and private notes”, asks Pauncefote: “Do you not think that it would be unfair that one out of the many notes so exchanged should be selected for publication while the remainder are suppressed?”¹³

31. Where would be the unfairness if all the parties — the United States, Great Britain and Venezuela — were aware of the content of these confidential Notes, as Guyana claims? Unfair to whom? Certainly, not to Great Britain or to the United States. They knew about the existence of these documents. If there is a question of unfairness, the reason is clear: Venezuela was never informed of the existence, let alone of the content, of these confidential Notes.

¹⁰ Strictly personal letter from Richard Olney, Secretary of State, to Sir Julian Pauncefote, British Ambassador in Washington, 29 October 1896, Ministerio de Relaciones Exteriores Republica de Venezuela in *Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts*, 1967, p. 40, in CMV Annex 150.

¹¹ CR 2026/28, p. 19, para 18 (Reichler).

¹² Letter from Richard Olney to Sir Pauncefote, 24 May 1899, in RV, Annex 19 (also reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), p. 25).

¹³ *Ibid.*

32. Concerning Mr Storrow, I think that I do not have much to add to what I already said on Wednesday and what you find in Venezuela's written pleadings¹⁴. Storrow is central to Guyana's strategy. Let us take a look at footnote 14 in Guyana's second round of oral pleadings: everything revolves around the correspondence between Storrow and Olney¹⁵. Without Storrow, Guyana's attempt to prove Venezuela's participation to the negotiation collapses. There is no evidence that Venezuela was involved in the negotiation, because it was not.

33. In fact, the correspondence between Olney and Storrow confirms that Venezuela was absent from the negotiation. Reading this correspondence carefully, one can see that there is not a single reference to the position of the Venezuelan Government. One would expect to find sentences like "I have instructions from Caracas", or "I need to consult the Venezuelan Government". Nothing of the sort can be found in the correspondence. Olney and his close associate, Storrow, exchange views and impressions as if Venezuela did not exist.

34. Finally, let me come to Harrison and his lack of knowledge of the existence of the confidential documents. Guyana's argument is always the same. If Storrow knew of the Notes, Venezuela knew, too. If Harrison did not know of the Notes, it is Venezuela's fault. Guyana wants you to believe that whatever Storrow or Harrison said or did, this reflected the position of the Venezuelan Government. This is baseless.

35. Last Wednesday, Venezuela presented multiple pieces of evidence showing that neither Storrow nor Harrison was loyal to Venezuela. On Friday, Guyana offered a half-hearted defence of Storrow. It did not even try to defend Harrison.

36. In fact, the evidence shows, most simply, that Venezuela was never informed of the confidential Notes. But if further proof were needed, let us look again at the letter that Olney sent to Pauncefote on 24 May 1899.

37. Olney candidly recognized that Venezuela could not have been aware of this confidential correspondence because he himself had expressly denied its existence:

"Further — *entre nous* entirely — being inquired of last Summer, on behalf of Venezuela, respecting diplomatic correspondence preceding the Treaty, I replied that my letter to you of 13th July, 1896, was the last thing of record . . . The Counsel for

¹⁴ CR 2026/27, pp. 30-31, paras. 33-35 (Palchetti); RV, pp. 140-143, paras. 5.24-29; CMV, pp. 196-197, para. 5.24.

¹⁵ CR 2026/28, p. 17, footnote 14 (Reichler).

Venezuela . . . would be both surprised and irritated, and perhaps justly so, if now confronted with a writing they had been led to believe did not exist.”¹⁶

38. Mr President, Venezuela has been victim of fraud and the evidence before you amply justifies the conclusion that the Arbitration Treaty is invalid and, as a consequence, the Award is invalid.

39 The evidence before you, as well as the work of the historians — both Venezuelan and non-Venezuelan — also show the injustices suffered by Venezuela. It is not a myth; it is a fact.

40. I thank the Court for its kind attention and ask, Mr President, to give the floor to Professor Tams.

The PRESIDENT: I thank Professor Palchetti for his statement. I now give the floor to Professor Christian Tams. Sir, you have the floor.

Mr TAMS:

THE INVALIDITY OF THE AWARD [2]

1. Mr President, Members of the Court, it is an honour to address you with brief comments on the invalidity of the 1899 Arbitral Award.

2. Mr President, on this Award, Guyana has tried to build its case. At the start, it placed it on a pedestal. On 3 October 1899, it said at the opening: “international law spoke”¹⁷: it spoke, Guyana said further, through the voice of “eminent jurists whose legal ability, fairness and integrity were widely recognised”¹⁸, making 3 October a “special day [for] the rule of law internationally”¹⁹.

3. We have come a long way. As these hearings end, the Award appears in a very different light. Guyana no longer makes a positive case, it has become defensive, relying on intertemporality, formalism and acquiescence. A reasoning was not yet required, it says²⁰. Pushing through a deal —

¹⁶ Letter from Richard Olney to Sir Pauncefote, 24 May 1899, in RV, Annex 19 (also reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private* (Vol. III, New York, 1979), p. 25).

¹⁷ See CR 2020/5, p. 16, para. 5 (Ramphal).

¹⁸ See MMG, para. 7.44.

¹⁹ See “Statement on the Commemoration of the Arbitral Award of October 3, 1899”, available at <https://guyanahctrinidad.mission.gov.gy/statement-on-the-commemoration-of-the-arbitral-award-of-october-3-1899/>.

²⁰ See CR 2026/25, pp. 14-15, paras. 6, 9 (Pellet), and p. 32, para. 13 (Oral).

that is fine, it says²¹. Venezuela accepted it, after all²² — never mind the fact that it faced civil war and military threats. And of course: challenging this Award, you have heard, would open floodgates²³.

4. Mr President, Members of the Court, if the 1899 Award were a PhD — a doctorate — and Guyana its examiner, it seems we have moved from *summa cum laude* to *rite* — from highest honours to barely enough to pass.

5. Now, of course, Venezuela does not accept that this Award “passes” any test. But we believe that Guyana’s new approach reflects clarifications that these proceedings have brought about. I will highlight three of them.

I. The question of titles

6. I begin — briefly — with the question of titles to territory. These titles, under Article III, the Tribunal had to “investigate and ascertain”, separately from any boundary determination — and it failed to do so. Guyana on Friday argued that the Tribunal had decided on titles by implication when it drew its boundary line²⁴.

7. But this construction — a decision by implication — undermines Article III and the Parties’ position. The Parties addressed titles as an autonomous matter. As one example, you see on the slide excerpts from Venezuela’s counter-case. It is the final section entitled “Judgment Invoked”. In this final section, Venezuela asked the Tribunal to render judgment on, amongst other things, “Spain’s discovery of America” and its legal relevance. On “its original title to the entire region”. And it insisted that “the present occupation by Great Britain . . . cannot be made the basis of title”. Explicit submissions on title.

8. Mr President, the Tribunal could not — failed to respond to these explicit submissions. To do so was for it a dereliction of its duty.

²¹ See CR 2026/28, pp. 44-45, paras. 34-36 (Pellet).

²² See CR 2026/28, pp. 47-48, paras. 8-9 (Sands).

²³ See CR 2026/28, p. 54, paras. 25-26 (Sands).

²⁴ CR 2026/28, p. 39, para. 19 (Pellet).

II. The régime of navigation

9. My second point, equally brief: the navigation régime for the rivers Amakuru and Barima.

10. The Parties agree now that the Tribunal had no explicit mandate to impose such a navigation régime. Guyana's reference to Article IV (c) of the Treaty²⁵ ignores the clear and strict narrow wording of the provision (which is, as I suggested on Wednesday, about the “determin[ation] [of] the boundary-line” — not about anything else)²⁶. On Friday, Guyana referred you to a passage of the pleadings, where Venezuela — according to Guyana — had accepted that Article IV (c) gave the Tribunal a right to decide on aspects relating to the legal relations between the parties²⁷.

11. But Mr President, this passage does not help Guyana. In it, Venezuela did not discuss navigation — the parties never did — but it discussed the impact of the eventual boundary decision on existing land grants and concessions²⁸ — land grants and concessions. This is the context for which Article IV (c) may have been intended. Navigation is not, not by any stretch (whether of imagination, or of legal reasoning). By pronouncing on navigation, the Tribunal showed the same cavalier approach that marked its failure to not decide on legal titles. It plainly acted *ultra vires*.

III. The Tribunal's decision-making

12. Mr President, my third point: the process by which the decision was reached. Was the Award the result of a deal, as Mr Mallet-Prevost had pointed out in his memorandum?

13. On Monday last, Guyana accused Venezuela of having “opened before us a world of theatre and fiction, not law, not fact”²⁹. It explicitly claimed that “[c]laims about Mr Mallet-Prevost's conversations are demonstrably untrue or wholly uncorroborated”³⁰. Firm words. No slip of the tongue.

14. But what a difference a week makes. On Friday, Guyana sounded very different:

(i) The private conversations recounted by Mallet-Prevost but also by Lords Russell and Martens (to which I had taken you), were not the only ones, Guyana now seems to say. The Tribunal also

²⁵ CR 2026/25, pp. 27-28, paras. 48-49 (Pellet).

²⁶ CR 2026/27, p. 42, para. 20 (Tams).

²⁷ CR 2026/28, p. 40, para. 23 (Pellet).

²⁸ Venezuela-British Guiana boundary arbitration. The printed argument on behalf of the United States of Venezuela (1898), Vol. I, pp. 57-65.

²⁹ CR 2026/25, p. 58, para. 49 (Sands).

³⁰ CR 2026/25, p. 58, para. 50 (Sands).

held regular sessions, and initially — Guyana now seems to say — the arbitrators did advance legal views³¹.

(ii) As for President Martens’s insistence on pushing through a deal, Guyana now says that the President was moved by a perfectly decent quest for unanimity³².

15. Mr President, I will respond to these points shortly. But before I do so, let me state one thing very clearly. On the core issue, Guyana now has *nothing* to say. Are Mallet-Prevost’s claims on how the deal was struck “uncorroborated”? Are they, as Guyana said exactly one week ago in this room, “demonstrably untrue”? Of course not. Quite the opposite. These oral hearings have corroborated that conversations described by Mr Mallet-Prevost — confirmed by Lord Russell and President Martens — did take place. They have demonstrated that, during these “conversations”, the Tribunal determined the boundary line. This *was* a political deal. Guyana no longer disputes it, and we welcome its change of position on this — the core issue.

16. What about Guyana’s attempts to explain away this — now undisputed — fact? Well, Guyana cannot ignore what happened in the six days of deliberations. What Guyana asserted on Friday was that the arbitrators initially formulated legal arguments. But when the decision was reached, when the deal was struck, the law was silent.

17. Mr President, Members of the Court, the Paris Tribunal was not tasked to try out a bit of law, and when that fails, strike a political deal. Its mandate was clear: It had to decide based on principles of international law. Yet after Guyana’s pleadings on Friday, it is clear that this was a political deal³³ — a political deal pushed through by President Martens, whose line, as Professor Thouvenin will show shortly, was neither based on titles nor on occupation. A line of convenience based on a mish-mash of British lines without any basis in law.

18. Now, Guyana says that this “deal” was all part of a laudable quest for unanimity, for which President Martens cannot be faulted. The response to this can be brief:

³¹ CR 2026/28, para. 32 (Pellet).

³² CR 2026/28, paras. 37-38 (Pellet).

³³ Reuter, “La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Venezuela”, in *Mélanges offerts à Juraj Andrassy*, Springer 1968, p. 238.

19. It can be brief because the mandate addresses the issue. The Tribunal had to render a legal decision³⁴ and, as Article V made clear, it had to do so “by a majority”. The quest for unanimity did not justify the deal. If anything, it shows that the Tribunal operated in its own universe. A universe in which the personal predilections of a president trumped the terms of the mandate.

20. Mr President, discussing the Tribunal’s “deal” on Friday, Guyana referred you to former President Bedjaoui’s writing on the “manufacture” or “*fabrication*” of ICJ Judgments, suggesting that it could help assess us the 1899 Award. We agree. We agree that, as Guyana suggested, this “manufacture” will involve a “give and take” — though I cannot help but add that President Bedjaoui reflected on the give and take that was inevitably involved in the drafting of a judgment’s reasons³⁵. For our purposes, another passage of President Bedjaoui’s piece is more apposite, it seems to us. In this other passage, President Bedjaoui formulated a clear red line, and we suggest this is key to appreciating the 1899 Award. This is what he said: “[I]t must never be forgotten . . . that it is the absolute duty of a Judge to reject any compromise incompatible with his innermost sense of justice and of the limits of the reasoning that may lead to it”³⁶.

21. This absolute duty, the Tribunal members ignored in reaching their deal, as these oral hearings have shown. It is as simple as that.

22. Mr President, Members of the Court, let me conclude with one final remark. It concerns the point of connection between the three excesses of power I have now discussed. These point to one inescapable conclusion. This tribunal showed no respect for the terms by which the parties had defined its task. It operated according to its own logic — deciding what was not asked of it; ignoring what it had to decide; and violating its “absolute duty” to decide on the basis of law. We might say, as we have in the written pleadings, that in rendering this Award, this tribunal “went rogue”.

23. Despite Guyana’s strained claims to the contrary, the result of this “rogue” Award was a disaster for Venezuela. President Martens’ compromise line gave Britain over 90 per cent of the disputed territory. And what Venezuela retained (control of the mouth of Orinoco) was not seriously

³⁴ *Ibid.*

³⁵ M. Bedjaoui, “The ‘Manufacture’ of Judgments at the International Court of Justice” (1991), *Pace Yearbook of International Law*, Vol. 3, p. 49.

³⁶ *Ibid.*, p. 54.

in contention: as Lord Russell had noted, during the proceedings “Britain had explicitly admitted that the Orinoco was Venezuelan”³⁷.

24. *Punch* magazine, as often, knew what to make of the Award. It understood the central message that Guyana tries to obscure. The *Punch* cartoon of 11 October 1899 is on the slide. It is entitled *Peace and Plenty*. It shows Prime Minister Lord Salisbury, chuckling, as it is said in the caption, barely capable of holding on to everything that this arbitration delivered for Britain — territory, gold mines, wrapped up nicely in the Union Jack. The caption says “I like arbitration. In the proper place”.

25. Mr President, Members of the Court, this arbitration may have brought “plenty” for Britain, but it did not bring “peace”. Amidst the civil war, faced with regular threats of military invasion — from the British ultimatum of 1895 to the crushing blockade European Powers imposed on it soon thereafter — Venezuela was not in a position to react meaningfully³⁸. As many other nations in colonial or quasi-colonial situations, Venezuela had to put on a brave face. It had to accept the 1899 Award which enacted “coercion . . . through [the] civility” of the legal form³⁹. If I can return to the language of PhD exams — this Award deserves neither a *summa cum laude* nor even a *rite* — it is a “fail”.

26. This concludes, Mr President, my remarks today. I thank you for your attention and would ask you to please call to the podium Professor Jean-Marc Thouvenin.

The PRESIDENT: I thank Professor Tams. J’invite maintenant le professeur Jean-Marc Thouvenin à prendre la parole. Vous avez la parole, Monsieur.

M. THOUVENIN : Merci beaucoup, Monsieur le président.

³⁷ See Letter from Lord Russell to Lord Salisbury, 7 October 1899 (CMV, Annex 67). See references in CMV, para. 5.95.

³⁸ See on these aspects CR 2026/27, paras. 16, 42-43 and 47-48 (Azaria) (with references).

³⁹ See observations by Georgios Giannakopoulos, “A ‘Corpus Vile’ of International Order: Protection, Coercion, and the British Blockade of Greece, 1850” (2026) *The International History Review*, p. 1 (concerning the interplay of coercion and law during the British blockade of Greece, 1850).

**ALLEGED WAIVER BY CONDUCT OF VENEZUELA'S RIGHT TO CLAIM
THE NULLITY OF THE ARBITRAL AWARD OF 1899**

I. Cartes

1. Monsieur le président, Mesdames et Messieurs les juges, avant de traiter le thème qui m'est alloué, deux séries d'observations pourraient aider votre délibération. D'abord, à propos des croquis, cartes et lignes. Voyons le croquis que M^e Reichler vous a montré avec autorité vendredi, pour justifier, chacun s'en souvient, que l'occupation espagnole entre les fleuves Orénoque et Essequibo jusque 1799 n'avait existé que dans la moitié ouest de la zone, et que « none of the settlements were in the territory awarded to Great Britain »⁴⁰. Bref, la sentence aurait attribué au Venezuela toute la partie que la mission espagnole avait historiquement occupée⁴¹.

2. Mais en regardant de plus près, on voit que, dans le quart sud-est de la zone, en bas à droite, très près du fleuve Essequibo, se trouve une fortification espagnole du nom de « Castillo El Burgo ».

3. Un peu plus au nord, en haut à droite, sur la côte immédiatement à l'ouest de l'embouchure du fleuve Essequibo, entre Ciudadello de Pomorón et les Ciudadellos de Moroco, se trouve la « misión de Santa Rosa de Moroco ». Il s'agit d'une mission de capucins d'exacte même nature que celles, sur l'ouest de la zone, que le Guyana a apparemment reconnues comme des occupations espagnoles. Et elles sont en plein dans le territoire offert à la Couronne britannique par l'arbitrage de 1899.

4. Mais regardons d'autres cartes.

5. Voici comment les Espagnols voyaient la frontière avec la Guyane néerlandaise en 1778, au fleuve Moroco, légèrement à l'ouest de l'Essequibo.

6. Voici maintenant comment les Anglais voyaient la frontière de la Guyane néerlandaise en 1806 : sur l'Essequibo.

7. Même chose, vue de Londres, en 1822.

8. Voici maintenant comme les Anglais « de terrain » voyaient la limite. Plus particulièrement Hadfield, qui était cartographe officiel de l'Empire britannique, spécifiquement chargé par le gouverneur de la colonie britannique de Guyane britannique d'en montrer les limites sur une carte. C'est la carte officielle Hadfield de 1838. On voit la limite ouest de la colonie britannique sur le fleuve Pomorón, très proche du fleuve Moroco. On voit aussi, dans les terres, la mention suivante :

⁴⁰ CR 2026/28, p. 14, par. 5 (Reichler).

⁴¹ CR 2026/28, p. 13-14, par. 5 (Reichler).

« The Cuyuni and a considerable portion of the Masseroony are yet unexplored ». Bref, si l'on vous a assuré vendredi que « evidence shows continuous occupation of the territory by the Dutch and then the British »⁴², les Anglais, eux, sur le terrain, disaient le contraire.

9. Mais Londres avait d'autres appétits, et avait mandaté Schomburgk pour établir une ligne proprement imaginaire. C'est la ligne officielle de revendication britannique de 1840, comme l'explique Sir Edward Hertslet dans le mémorandum de septembre 1886 que j'ai cité mercredi, et que vous trouverez dans vos dossiers à l'onglet n° 61. Comment justifier juridiquement une telle différence avec la ligne de la carte Hadfield ? On ne peut pas.

10. En 1844, n'accordant visiblement aucun crédit à la ligne Schomburgk, qui avait été vivement rejetée par le Venezuela⁴³, voici la ligne Aberdeen. C'est la ligne verte, qui part — vous le voyez — du cap Nassau à l'embouchure du Moroco. Si le point de départ sur la côte peut faire sens, et, on s'en rappelle, avait convaincu les arbitres américains, on voit mal pourquoi elle s'enfonce dans des territoires dont les Anglais reconnaissaient qu'ils ne les avaient même pas explorés. Il n'y a évidemment aucune raison juridique.

11. Excusez-moi, Monsieur le président — je reprends. Schomburgk meurt en 1865 ; pourtant une nouvelle ligne Schomburgk apparaît soudain en 1875 ; c'est le trait jaune que vous pouvez voir ici. Fondement juridique ? Aucun.

12. Puis vient la ligne Granville, en 1881. Le trait bleu. Je rappelle que toute occupation de territoire avait été gelée depuis 1850. Pourtant la voici qui mange encore un peu plus de territoire à l'ouest. Pourquoi ? Parce que, probablement, tel était le bon plaisir de l'Empire.

13. 1886, voici la ligne Rosebery, en rose, simplifiant par des lignes droites la ligne Schomburgk de 1875. Tout aussi fantaisiste que les précédentes, elle reflue toutefois un peu vers l'est par rapport à la ligne Granville. Sacrilège !

14. Mais, 1887, voici une nouvelle « ligne Schomburgk », en rouge. Schomburgk était mort depuis 22 ans, mais, ô miracle, « sa » nouvelle ligne reprend largement la ligne Granville de 1881 qui, c'était décidément ennuyeux, ne trouvait pas de support dans la ligne Schomburgk de 1875 malencontreusement reprise par Rosebery.

⁴² CR 2026/28, p. 14, par. 6 (Reichler).

⁴³ CMV, par. 4.80 et 4.89.

15. Puis c'est la deuxième ligne Rosebery, de 1893, en noir — il avait enfin compris le jeu des lignes —, suivie de l'« extreme British Claim » de 1896, une autre « red herring » comme dirait un Anglais.

16. La sentence de 1899 reprend l'essentiel de la ligne Schomburgk de 1887, qui correspond largement à la ligne Granville de 1881, mais ajustée, au nord, d'un petit bout de la ligne Rosebery de 1886, comme pour ne vexer aucun lord. C'est un patchwork, on dit un compromis, un « deal », mais pas entre les revendications vénézuéliennes et britanniques mais entre les différentes revendications britanniques de 1881, 1886 et 1887. Quel fondement juridique en droit international ? Aucun.

II. La déclaration Iribarren Borges de 1966

17. J'en viens à une deuxième série d'observations, qui concerne la déclaration Iribarren Borges. Elle a été faite un mois environ *après* la signature de l'accord de Genève. Elle est la fausse clé ou la clé faussée utilisée par le Guyana tout au long de cette procédure⁴⁴.

18. J'ai indiqué mercredi dernier qu'il s'agit d'une déclaration « politique, ... erronée et sans portée juridique »⁴⁵. À défaut de me dire Pinocchio, ce que l'on a peut-être pensé *in petto*, on m'a dit culotté de tenir un propos aussi « énorme » et « sidérant »⁴⁶. Cyrano de Bergerac répondrait à son contempteur : « c'est un peu court jeune homme ! On pouvait dire... Oh ! Dieu !... bien des choses en somme... En variant le ton, — par exemple, tenez : [Juriste...] »⁴⁷. Oui, « Juriste ». Ce n'est pas dans la tirade de Cyrano, mais c'est bien le ton de juriste qu'il faut adopter pour évaluer, en droit, la déclaration Iribarren Borges.

19. S'agit-il d'une déclaration interprétative ? Certainement pas, et cela n'a jamais été soutenu. S'agit-il d'une réserve ? Sans doute pas. S'agit-il alors d'un acte qui entre dans les prévisions du droit coutumier codifié dans les articles 31 et 32 de la convention de Vienne sur le droit des traités ? Pas davantage. Alors, quel effet juridique pourrait-elle avoir sur l'interprétation de l'accord de

⁴⁴ MG sur la compétence et/ou la recevabilité, par. 2.13, 2.23, 2.33, 2.38, 3.19, 3.24, 3.50, 3.65, 3.76 ; mémoire du Guyana sur le fond (ci-après, « MG sur le fond »), par. 7.21 ; CR 2026/24, p. 23, par. 5, et p. 28, par. 16 (d'Argent).

⁴⁵ CR 2026/27, p. 52, par. 9 (Thouvenin).

⁴⁶ CR 2026/28, p. 28, par. 9 (d'Argent).

⁴⁷ Edmond Rostand, *Cyrano de Bergerac*, acte I, scène 4, 1897.

Genève ? Aucun. C'est une déclaration interne à visée de politique interne, postérieure à l'entrée en vigueur du traité.

20. S'agit-il d'une déclaration fiable ? Iribarren Borges dit ceci de l'article VII : « With regard to Article 7, it is clear that when the law approving the Agreement is submitted to this Sovereign Congress, the Agreement will enter into force upon ratification of said law. »⁴⁸ Faux. L'article VII stipule que l'accord était entré en vigueur depuis sa signature.

21. Pourquoi Iribarren Borges a-t-il présenté de manière approximative l'accord de Genève ? Peu importe. S'y fier est en tout cas plus qu'aventureux. Voici d'ailleurs ce qu'il dit de l'article IV : « [A]ccording to the terms of Article 4, in the event that no satisfactory solution for Venezuela is reached, the so-called 1899 Award shall be revised through arbitration or judicial recourse. »⁴⁹

22. Donc, dans l'hypothèse où les travaux de la commission mixte ne permettraient pas de parvenir à une solution satisfaisante *pour le Venezuela*, la sentence devrait être *révisée* par arbitrage ou règlement judiciaire, c'est-à-dire réécrite *de novo*. Si on ne réécrit pas son texte⁵⁰, il n'était donc pas question, selon Iribarren Borges, de s'interroger par voie judiciaire sur la validité de la sentence.

23. Monsieur le président, le Guyana ne peut pas prendre de la déclaration Iribarren Borges ce qui l'arrange, l'interprétation proprement incompréhensible de l'article V de l'accord dont il a fait son miel, et ignorer ou travestir ce qui ne l'arrange pas. Le Venezuela s'en tient pour sa part à l'accord de Genève, et rien qu'à l'accord de Genève.

III. La prétendue renonciation du Venezuela à se prévaloir de la nullité de la sentence de 1899

24. J'en viens à mon thème principal : quid de la prétendue renonciation du Venezuela à son droit de se prévaloir de la nullité de la sentence ? L'argument est à la fois inadmissible (A) et non fondé (B).

⁴⁸ Presentation to the National Congress by Mr Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement, 17 March 1966, DV, annexe 2, p. 37.

⁴⁹ *Ibid.*, p. 35.

⁵⁰ CR 2026/28, p. 32, par. 19 (d'Argent).

A. L'argument du Guyana est inadmissible dans le cadre de l'application de l'accord de Genève

25. Le Venezuela affirme et maintient que cet argument guyanais ne trouve aucune place dans le cadre de l'application de l'accord de Genève. Durant ce que j'ai appelé le « processus de Genève », la position du Royaume-Uni quant à la controverse au cœur de l'accord de Genève n'a jamais porté sur le comportement du Venezuela postérieur à la sentence de 1899⁵¹.

26. Ce sur quoi les parties divergeaient était uniquement l'existence, ou non, de preuves de nullité de la sentence en tant que telle. La Cour l'a d'ailleurs constaté en 2020, en relevant que les discussions entre les parties au sujet de la nullité de la sentence de 1899 n'avaient porté que sur « la documentation relative à celle-ci en vue d'apprécier le bien-fondé de la position vénézuélienne quant à sa nullité », que cet examen « a été entrepris par le Gouvernement du Royaume-Uni »⁵², et que c'est « *sur cette base* que se sont déroulées les réunions ultérieures tenues à Genève en février 1966, à l'issue desquelles a été adopté l'accord »⁵³.

27. Durant ce processus, les Britanniques n'ont *pas* exhibé les cartes publiées par le Venezuela depuis 1905. Ni les coupures de presse exhumées la semaine dernière⁵⁴ par un Guyana affairé à ressasser ses écritures⁵⁵. Et lors des réunions de la commission mixte mise en place par l'accord de Genève, le Guyana n'a pas dit un mot de la conduite du Venezuela post 1899, se bornant, selon ses propres mots, à inviter le Venezuela « to produce evidence and arguments in support of her basic contention that the 1899 Arbitral Award was null and void ».⁵⁶

28. C'est à partir de 1981 que l'argument a été formulé par le Guyana⁵⁷. C'est à ce moment que le Guyana a commencé à « souffler le froid ». Il n'est pas en droit de le faire à raison d'un estoppel.

29. Je l'ai expliqué mercredi dernier⁵⁸. Réponse du Guyana ? Néant.

⁵¹ CR 2026/27, p. 51-52, par. 6-8 (Thouvenin).

⁵² *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 490-491, par. 132.

⁵³ *Ibid.*, p. 491, par. 133 (les italiques sont de nous).

⁵⁴ CR 2026/25, p. 30, par. 5, p. 31, par. 9 (Oral) ; CR 2026/28, p. 60, par. 22 (Oral).

⁵⁵ MG sur le fond, par. 4.7-4.8 ; RG, par. 4.10.

⁵⁶ Lettre du représentant permanent du Guyana auprès des Nations Unies au Secrétaire général de l'Organisation, en date du 9 novembre 1981, CMV, vol. III, annexe 148, p. 374.

⁵⁷ RG, p. 151, par. 4.94-4.96.

⁵⁸ CR 2026/27, p. 55, par. 21 (Thouvenin).

B. L'argument du Guyana n'est pas fondé

30. Mais voyons tout de même l'argument fondé sur l'inaction du Venezuela.

31. Dans son cours donné à l'Académie sur « La prescription en droit international », Roger Pinto professe que l'inaction du titulaire d'un droit ne lui est opposable que lorsqu'elle est injustifiée⁵⁹. C'est ce *ratio decidendi* qui est au cœur de l'arrêt de la Cour dans l'affaire de la *Sentence du roi d'Espagne*. Le Nicaragua n'avait aucune justification à son retard à affirmer la prétendue nullité de la sentence.

32. De là, deux questions se posent.

33. Premièrement, est-il injustifié de ne réclamer la nullité d'une sentence arbitrale lorsque l'on craint des représailles si on le fait ? Certainement pas.

34. Nos contradicteurs ne semblent pas contester le principe, mais contestent la coercition dans le cas d'espèce, et mettent le Venezuela au défi : « [w]here is the contemporaneous evidence »⁶⁰ ? Défi relevé : chacun peut voir les preuves documentaires sur lesquelles le Venezuela se fonde, par exemple en relisant soigneusement la plaidoirie de ma collègue la professeure Azaria⁶¹, ainsi que la duplique du Venezuela⁶².

35. Et il suffit d'ailleurs de se référer au rapport du ministre des affaires étrangères du Venezuela Rafael Seijas du 4 mai 1900, utilisé de manière sélective par le Guyana⁶³ — c'est de bonne guerre. Mais en voici les extraits pertinents à propos de l'impossibilité de dénoncer la sentence dès 1900 :

⁵⁹ Roger Pinto, « La prescription en droit international », *RCADI*, 1955, vol. 87, p. 393, par. 4.

⁶⁰ CR 2026/28, p. 15, par. 11 (Reichler).

⁶¹ CR 2026/27, p. 15-16, par. 18-19, note 9 (Azaria), citant le site Internet du US State Department : « Venezuela Boundary Dispute, 1895-1899 », Office of the Historian, USA Department of State, accessible à l'adresse suivante : [https://history.state.gov/milestones/1866-1898/venezuela#:~:text=The%20Venezuelan%20Boundary%20Dispute%20%20officially,30%2C000%20square%20miles%20for%20Guiana.Letter%20from%20Lord%20Salisbury%20to%20Sir%20Julian%20Pauncefoot%20\(26%20November%201895\),in%20U.S.%20Department%20of%20State,%20Papers%20Relating%20to%20the%20Foreign%20Relations%20of%20the%20United%20States,%20with%20the%20Annual%20Address%20of%20the%20President,%20Part%20I%20\(Transmitted%20to%20Congress%202%20Dec.%201895\)%20\(1896\),doc.529](https://history.state.gov/milestones/1866-1898/venezuela#:~:text=The%20Venezuelan%20Boundary%20Dispute%20%20officially,30%2C000%20square%20miles%20for%20Guiana.Letter%20from%20Lord%20Salisbury%20to%20Sir%20Julian%20Pauncefoot%20(26%20November%201895),in%20U.S.%20Department%20of%20State,%20Papers%20Relating%20to%20the%20Foreign%20Relations%20of%20the%20United%20States,%20with%20the%20Annual%20Address%20of%20the%20President,%20Part%20I%20(Transmitted%20to%20Congress%202%20Dec.%201895)%20(1896),doc.529), accessible à l'adresse suivante : <https://history.state.gov/historicaldocuments/frus1895p1/d529> (dernier accès le 10 mai 2026). CR 2026/27, p. 15, par. 16, note 7 (Azaria), citant « English Ultimatum: A Note Sent to the President of Venezuela by the Marquis of Salisbury — Force Threatened », *The Rocky Mountain News* (daily), vol. 36, n° 293 (20 octobre 1895), accessible à l'adresse suivante : <https://www.coloradohistoricalnewspapers.org/?a=d&d=RMD18951020-01.2.4&e=-----en-20--1--img-txIN%7ctxCO%7c txTA-----0-----> (dernier accès le 5 mai 2026). CR 2026/27, p. 15, par. 16, note 8 (Azaria) citant « Maxim Guns for Guyana. Mr Chamberlain's Radical Measures for Obliging Venezuela to Come to Terms », *The New York Herald* (19 octobre 1895) disponible à l'adresse suivante : <https://gallica.bnf.fr/ark:/12148/bpt6k4787808x/fl.item.zoom> (dernier accès le 5 mai 2026).

⁶² DV, par. 6.77-110.

⁶³ MG sur le fond, par. 8.30, 9.8 ; MG sur le fond, vol. IV, annexe 66 ; CR 2026/28, p. 58, par. 15 (Oral).

« It is not to be assumed that disavowal of the award by Venezuela would be successful. ... [The shift in the political stance of the US] does not permit the hope that rejection of the judgment will find favour in Washington, still less when one considers that the two American arbitrators concurred in it.

.....

We must not rely on this (protection) in this case.

.....

[A]s regards Great Britain, its contempt for the weak being notorious and its persistence in laying hands on the mouth of our great river, a plan on which it has been working since the end of the 18th century, it is considered not only that it would not agree to Venezuela's opinion that the case should be reopened, but that it would take advantage of it with a view to retaining what it still holds, and very probably extent its encroachment.

.....

It would require very substantial reasons for this »⁶⁴.

Et là, il faisait référence à la contestation de la sentence.

36. Quoi qu'en disent nos contradicteurs fâchés avec l'histoire, le Venezuela était confronté à une parfaite injustice dont il ne se réjouissait nullement, et sans moyen de la dénoncer sans « substantial reasons », c'est-à-dire sans preuve, faisant face à une situation durable de coercition, qui n'était pas seulement structurelle, mais bien réelle, comme le Venezuela l'a appris à ses dépens peu après la décision de Paris, lorsque ses protestations contre l'impérialisme européen ont été brutalement réprimées lors du blocus de 1902.

37. Deuxième question : l'inaction à raison de manque de preuve est-elle justifiée ? C'est la position du Venezuela depuis toujours.

38. Dans la note du 22 février 1962 par laquelle le Venezuela a formellement fait valoir que la sentence de 1899 est nulle et non avenue⁶⁵, le représentant du Venezuela expose très clairement que « [t]he strange circumstances in which the Paris decision had been arrived at began to unfold from the very day of the decision; but it was not until several decades later that the truth of what had occurred could be confirmed »⁶⁶.

⁶⁴ MG sur le fond, vol. IV, annexe 66.

⁶⁵ MG sur la compétence et/ou la recevabilité, vol. II, annexe 19.

⁶⁶ *Ibid.*, par. 34.

39. Quelques jours auparavant, le 14 février 1962, dans une lettre adressée au Secrétaire général des Nations Unies, le représentant du Venezuela avait également écrit que c'est : « When it obtained clear evidence of the defects which invalidate [the 1899 award], the Government of Venezuela explicitly reserved its rights. »⁶⁷

40. Le Guyana adopte la stratégie de l'autruche, n'écoute pas, confond volontairement deux choses bien différentes : avoir des doutes, sur la base de confidences, d'impressions, ou d'analyses journalistiques⁶⁸, ce qu'il appelle « awareness »⁶⁹, et disposer de preuves. Le Venezuela dit qu'il n'avait pas de preuve jusqu'à la publication du mémorandum Mallet-Prevost.

41. La surdité du Guyana sur ce point est d'autant moins compréhensible que c'est exclusivement — on l'a déjà dit — autour de la question des preuves issues du matériau documentaire concernant la sentence de 1899, question qui ne s'est posée qu'à partir de la première des preuves, le mémorandum Mallet-Prevost, que le processus de Genève s'est noué. L'arrêt de 2020 s'en fait l'écho⁷⁰ — je l'ai déjà indiqué.

42. Mais revenons aux preuves. On se souviendra qu'à cette même barre, lundi après-midi, a été mise en doute l'intégrité de M. Mallet-Prevost ainsi que celle de M. Schoenrich⁷¹. L'exercice amusant a été aussi gratuit que vain puisque vendredi le Guyana en est venu à reconnaître que les faits dont Mallet-Prevost a été témoin direct et qu'il décrit dans son mémorandum sont « raisonnablement établis »⁷².

43. Enfin ! Il aura fallu 64 ans au Guyana pour reconnaître la valeur probante du mémorandum Mallet-Prevost. C'était donc bien la preuve, la première, qui manquait au Venezuela pour pouvoir contester la sentence.

44. De là, je l'ai dit mercredi, le Venezuela a fouillé les archives qui venaient d'être rendues publiques — accessibles en tout cas — en particulier celles du Foreign Office et certaines archives

⁶⁷ MG sur la compétence et/ou la recevabilité, annexe 17.

⁶⁸ CR 2026/28, p. 46, par. 5 (Sands).

⁶⁹ CR 2026/28, p. 55, par. 2, p. 56, par. 7 (Oral).

⁷⁰ *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 466, par. 37-38.

⁷¹ CR 2026/28, p. 45-49 (Sands).

⁷² CR 2026/28, p. 42, par. 28 (Pellet).

américaines, dans la mesure où elle a pu y avoir accès⁷³. Cela prend un petit peu de temps – qui pourrait prétendre que, en 1950, cela ne prenait pas un petit peu de temps de mettre à jour ces archives ?

45. Le Guyana reproche au Venezuela d'avoir maintenu un silence coupable de 1949 à 1962⁷⁴. À tort. Alors qu'il recherchait des preuves additionnelles après lecture du mémorandum Mallet-Prevost, le Venezuela a immédiatement tenu à préserver son droit.

46. En mars 1951, le représentant du Venezuela déclarait durant la 4^e réunion de consultation des ministres des affaires étrangères du continent américain :

« In the opinion of the Government of Venezuela, no change of status which may occur in British Guiana as a consequence of the international situation, of any measures which may be adopted in the future or of the advance of the territory's inhabitants towards self-determination will prevent Venezuela, in view of the special circumstances prevailing when the frontier line with the British Guiana was defined, from pressing its just demand that the injury suffered by the Nation on that occasion should be redressed by an equitable rectification of the frontier. »⁷⁵

47. En mars 1954, dans une déclaration faite à la 10^e conférence interaméricaine, le représentant vénézuélien répétait solennellement qu'il n'était pas question que le Venezuela renonce à son droit⁷⁶. Et en 1962 le processus de Genève débutait, à l'invitation des Britanniques.

48. Monsieur le président, Mesdames et Messieurs les juges, sans preuve l'inaction n'est pas opposable. Sinon, le mécanisme de révision des arrêts, qui n'est pas en cause ici mais à propos duquel on peut faire une comparaison ou un parallèle, n'aurait aucun sens. Le Venezuela a agi lorsque les faits ont été « raisonnablement établis ». De là, la chronologie de la mise en cause de la sentence de 1899 montre qu'il a fait valoir son droit en temps voulu.

IV. La démarcation de 1905

49. Monsieur le président, avant de terminer, je dirai quelques mots de l'accord de 1905 dont le Guyana fait grand cas⁷⁷. J'invite les interprètes à passer directement au paragraphe 54.

⁷³ CR 2026/28, p. 65, par. 60-61 (Thouvenin).

⁷⁴ CR 2026/28, p. 46, par. 4 (Sands).

⁷⁵ MG sur la compétence et/ou la recevabilité, vol. II, annexe 17.

⁷⁶ Declaration made at the Tenth Inter-American Conference, held in March 1954 (MG sur la compétence et/ou la recevabilité, vol. II, annexe 17).

⁷⁷ CR 2026/25, p. 43, par. 60 (Oral) ; CR 2026/28, p. 29, par. 12 (d'Argent).

50. L'accord de 1905 est, et est uniquement, un accord d'interprétation, sur le terrain, de la sentence de 1899, c'est-à-dire, en bon français, un accord de « démarcation ».

51. Le Guyana s'appuie sur la sentence de l'affaire de la *Lagune du Désert*⁷⁸ pour assurer qu'il s'agit d'un accord distinct de la sentence arbitrale et qu'il survivrait à la nullité de cette dernière. Il est distinct, personne n'en doute, mais il ne peut survivre à la nullité de la sentence puisqu'il se borne à l'interpréter. Si cette dernière est écartée comme invalide, l'accord qui l'interprète perd son objet même. Dès lors que la circonstance qui constituait la base essentielle de cet accord était la sentence arbitrale de 1899, la nullité de cette dernière constitue sans nul doute un cas typique de changement fondamental de circonstance qui met inévitablement fin à l'accord de démarcation.

52. Monsieur le président, Mesdames et Messieurs de la Cour, ayant épuisé, si ce n'est votre patience, le temps qui m'est alloué, je conclus en vous remerciant de votre attention, tout en vous priant d'appeler à la barre le professeur Zimmermann.

Le PRÉSIDENT : Je remercie le professeur Thouvenin. I now call Professor Andreas Zimmermann to the podium. Sir, you have the floor.

Mr ZIMMERMANN:

INTERPRETATION OF THE GENEVA AGREEMENT

A. Introduction

1. Mr President, Members of the Court, I will now address the arguments finally made by counsel for Guyana concerning the Geneva Agreement, few as they were, but limiting myself to legal considerations.

2. At the outset, I note the many arguments counsel for Guyana deliberately chose *not* to address in that regard — and I believe that this was not a mere coincidence but rather an implicit acknowledgment that they had nothing to say on them.

3. This included
— the drafting history of the Geneva Agreement⁷⁹,

⁷⁸ CR 2026/25, p. 43, par. 58 (Oral).

⁷⁹ CR 2026/26, p. 43 *et seq.*, paras. 15-19 (Zimmermann); CMV, paras. 3.9. *et seq.*; RV, paras. 2.82 *et seq.*

- the argument based on the very title of the Agreement⁸⁰,
- the Geneva Agreement’s preamble⁸¹,
- the argument based on Article II, paragraph 3, of the Geneva Agreement⁸²,
- the arguments based on Article IV, paragraphs 1 and 2, of the Geneva Agreement⁸³,
- the argument based on the subsequent practice of the parties⁸⁴,
- my arguments based on both the Port of Spain Protocol, which once again was not even mentioned, and the practice arising thereunder,
- and, finally, the argument based on the understanding, by the United Nations Secretary-General, of the Geneva Agreement⁸⁵.

4. And that then leaves me with addressing Articles I and V of the Geneva Agreement.

B. Article I of the Geneva Agreement

5. Once again, however, also with regard to Article I of the Geneva Agreement, certain of Venezuela’s arguments were not addressed, namely
- that the Mixed Commission, given the wording of Article I, had *not* been tasked to settle the controversy between Venezuela and the United Kingdom “*as to the validity* of the Arbitral Award of 1899”⁸⁶;
 - nor that the Mixed Commission had been tasked to *decide* anything, and even less decide the issue of the validity of the Award.

⁸⁰ CR 2026/26, p. 45 *et seq.*, paras. 21-28 (Zimmermann); RV, paras. 2.68 *et seq.*

⁸¹ CR 2026/26, p. 46 *et seq.*, paras. 29-35 (Zimmermann); CMV, paras. 3.51 *et seq.*; RV, paras. 2.10 *et seq.*

⁸² CR 2026/26, p. 50 *et seq.*, paras. 59-62 (Zimmermann); RV, paras. 2.48 *et seq.*

⁸³ CR 2026/26, p. 51 *et seq.*, paras. 63-74 (Zimmermann); RV, paras. 2.51 *et seq.*

⁸⁴ CR 2026/26, p. 53 *et seq.*, paras. 75-82, 91-103 (Zimmermann); CMV, paras. 3.61 *et seq.*; RV, paras. 2.124 *et seq.* and 2.147 *et seq.*

⁸⁵ CR 2026/26, p. 58 *et seq.*, paras. 104-113 (Zimmermann); CMV paras. 3.92 *et seq.*; RV, paras. 2.163 *et seq.*

⁸⁶ CR 2026/26, p. 48, paras. 40-42 (Zimmermann); RV paras. 2.26 *et seq.*

6. Instead, the Mixed Commission, just like the other actors now acting under Article IV, had been tasked to seek a practical settlement of the controversy, and search for satisfactory solutions to the controversy⁸⁷.

7. Before moving on, it is also worth noting in passing, and indeed telling, that unlike the Washington Agreement, which had referred to a “settlement” *tout court*⁸⁸ to be reached by an arbitration, the Geneva Agreement in contrast specifically aimed at a “*practical* settlement” — “settlement”, “practical settlement” — which an upheld arbitral award obviously could not constitute.

8. Finally, counsel for Guyana at least tried to counter my argument based on the use, by the parties, in Article I of the term “controversy” rather than the term “dispute”, and the thereby implicit reference to the overall boundary controversy that had already been addressed in the 1897 Washington Treaty⁸⁹. In doing so, counsel for Guyana claimed that Article I of the Geneva Agreement concerns, and I quote counsel for Guyana “a controversy *over Venezuela’s contention* that the Award is null and void”⁹⁰. That is how counsel for Guyana described it.

9. But, as you can see, this is not what Article I of the Geneva Agreement says. Article I does not refer to “*a controversy over Venezuela’s contention* that the Award is null and void”, as counsel for Guyana claimed. Instead, and to the contrary, it refers to “the controversy *that has arisen as a result of Venezuela’s contention* that [it] is null and void”.

10. Obviously, it was indeed Venezuela’s contention as to the nullity that brought the underlying overall boundary controversy back to the floor and that had therefore arisen, as Article I puts it. And it was accordingly that boundary controversy as such, already addressed in the 1897 Washington Treaty, which had once again arisen due to Venezuela’s contention, that was then to be solved by virtue of the Geneva Agreement by way of negotiation.

⁸⁷ CR 2026/26, p. 47 *et seq.*, paras. 36 *et seq.* (Zimmermann); RV, paras. 2.21 *et seq.*

⁸⁸ Cf. preamble of the 1897 Washington Treaty.

⁸⁹ CR 2026/26, p. 47 *et seq.*, paras. 36-39 (Zimmermann); RV, paras. 2.28, 2.29.

⁹⁰ CR 2026/28, p. 12 *et seq.*, para. 31 (Reichler).

11. And that now brings me to Article V of the Geneva Agreement, and I am really grateful that we finally learned what Guyana thinks Article V stands for. However, Article V does not lead Guyana's arguments anywhere. I make several points:

C. Article V of the Geneva Agreement

12. *First*, and as per its clear wording, Article V is intended to preserve the claims of *both* parties to territorial sovereignty. At the same time, however, there is no hint whatsoever in the text of Article V that it was meant to prevent a *future* practical settlement of the boundary controversy. And how could it be otherwise, since this is the very object and purpose of the Agreement?

13. In other words, Venezuela is *not* arguing that the Geneva Agreement had wanted to set aside *any* claim of territorial sovereignty by Guyana, or by Venezuela for that matter. And this again confirms that it is the overall boundary dispute, and how to solve it, that is the subject-matter of the controversy, and thus also, as Professor Mbengue will further elaborate on, the real issue before the Court.

14. Instead, what Venezuela *is* arguing is that the Geneva Agreement wanted to provide how to reach a practical settlement that would address the territorial claims of both, Guyana and Venezuela, namely by way of negotiations. This is also suggested by the very introductory line of Article V, paragraph 1, which provides that it is meant "to facilitate the greatest possible measure of cooperation and mutual understanding" between the parties.

15. Article V of the Geneva Agreement therefore supports, rather than precludes a practical settlement of the boundary controversy to be reached by way of negotiation as the only possible way to move forward, with such practical settlement then setting aside any legal effect the 1899 Award might have, *quod non*.

16. *Second*, I cannot but also further note that Guyana aims to assert its territorial claim through a judgment of this Court, hoping that it will confirm the validity of the Award. In Guyana's own reading of Article V, paragraph 2, — *Guyana's* reading — *no* post-1966 acts or activities whatsoever shall constitute a basis for asserting or supporting a claim to territorial sovereignty. But how can Guyana then now assert its claim that the Award is valid by unilaterally bringing, *in 2018*, its case on the basis of the alleged compromissory clause in Article IV of the Geneva Agreement?

17. Thus, in Guyana's own understanding, Article V precludes the possibility to rely on Article IV of the Geneva Agreement to have the claimed validity of the Award, and Guyana's ensuing territorial sovereignty, recognized by the Court.

18. And this understanding of Article V is confirmed by the Court's Judgment in the *Gulf of Maine* case. In said case, Article III, paragraph 2, of the *compromis* provided for a similar "without prejudice" clause as the one contained in Article V. It was meant to keep certain claims of the parties outside of the scope of the *compromis*⁹¹. The Court's Chamber found that the parties "have chosen to reserve for themselves, as the subject of future direct negotiation with a view to an agreement, the determination of the course of the delimitation line between the international boundary terminus and point A"⁹². The Court's Chamber then reached the conclusion that the parties' "intention . . . to have recourse to judicial settlement must be taken within the limits in which it was conceived and expressed"⁹³.

19. Accordingly, the Court's Chamber then continued that, in the task conferred upon it, it must "conform to the terms by which the Parties have defined this task"⁹⁴.

20. In the Geneva Agreement, Article V is a similar "without prejudice" clause. Its scope is, however, not limited to some positions or claims, as in the *Gulf of Maine* case, but covers *all* positions and claims of the parties. The only conclusion to be drawn therefore is that, indeed, as argued by Venezuela, the parties — to use the words of the Court in *Gulf of Maine* — "have chosen to reserve for themselves, as the subject of direct negotiation with a view to an agreement"⁹⁵ the solution of the controversy addressed by the Geneva Agreement. And this plainly confirms that they had no intention to have recourse to judicial settlement. Accordingly, the parties cannot have defined, in the Geneva Agreement, any task for the Court.

21. *Third*, what is more, is that Article V does not exclude, in any manner whatsoever, the search for a practical settlement of the boundary controversy by way of negotiations. The reason for

⁹¹ Cf. Article III, paragraph 2 of the *compromis*, see *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 253, para. 5.

⁹² *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 266, para. 23.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

this is the lack of a clause akin to clause 3 of the Polish-Danzig Agreement which had *explicitly* provided that the subsequent 1923 Polish-Danzig Agreement *itself* did not, and could not, set aside the legal effects of the previous decision of the High Commissioner for Danzig.

22. On Wednesday, counsel for Guyana tried to argue that Article V constitutes a similar savings clause, but maybe a closer look at the two cases would have been helpful to discern the fundamental differences between Article V Geneva Agreement on the one hand, and clause 3 of the Polish-Danzig Agreement on the other.

23. For one, Article V, paragraph 2 Geneva Agreement is solely concerned with post-1966 unilateral acts of the two parties.

24. Article V, paragraph 1, in turn, provides that during the process of searching for an agreed mutually acceptable practical settlement of the overall boundary dispute by the parties, any claim that the Award is valid cannot be dispositive of the controversy since this would amount to a diminution of Venezuela's claim to territorial sovereignty over the disputed territory.

25. Had the parties indeed wanted, as Guyana wants you to believe, to foreclose any practical settlement by way of negotiations, they would have specifically said so in Article V. But, unlike Poland and Danzig in clause 3 of their 1923 Agreement, they did not formulate Article V in such a manner.

26. At the same time, since Article V was meant not to interfere with the parties' territorial claims, its purpose was not, and cannot be, to safeguard the purported validity of the 1899 Award by way of a judgment of the Court since this would prevent Venezuela to bring forward its own claim.

27. On the whole, Article V of the Geneva Agreement therefore supports, rather than precludes a practical settlement of the boundary controversy to be reached by way of negotiation as the only possible way to move forward. This practical settlement would set aside any legal effects the 1899 Award might have, *quod non* — unless, following *mutatis mutandis* the *Gulf of Maine* precedent, Article V forecloses the recourse to judicial settlement *in toto*.

D. Conclusion

28. Before I conclude, let me draw your attention to the extensive substantive discussions that took place in November 1984 between the Parties. During these talks, the Parties discussed in

significant detail possible alternative boundary lines. While Venezuela put forward the so-called Shahabuddeen line, which Guyana dismissed⁹⁶, Guyana alternatively proposed a potential cession of a smaller coastal strip⁹⁷.

29. Accordingly, Guyana, in fulfilling then its legal obligations under the Geneva Agreement, was then willing to discuss the territorial controversy as such regardless of its own position as to the alleged validity of the Award. Although these discussions did not result in an agreement, they confirm — the negotiations — once more, that the Parties had moved on from discussions about the invalidity of the Award.

30. Why have we heard nothing, and I repeat nothing, about these Guyanese advances and other advances made by Guyana during their oral submissions? I submit, the question is best answered by Guyana's own representative, Rashleigh Jackson, who in 1985 expressly acknowledged his concerns regarding public reaction should the existence of negotiations about the border become public. He observed that "if it surfaces, the publics (*sic!*) would say: 'what is this talking about?'"⁹⁸. That statement is difficult to reconcile with Guyana's present attempt to portray the post-1966 process as involving no meaningful engagement concerning the territorial controversy itself. To the contrary, it reflects an awareness that substantive discussions were in fact taking place, albeit in a politically sensitive context.

31. Guyana has thus played both sides of the fence. It is only during these proceedings that Guyana has adopted a markedly different — and difficult to comprehend — position. But Guyana cannot *ex post facto* undo its own subsequent practice and its own understanding of the Geneva Agreement, tasking the parties to reach mutually acceptable practical solutions for their long-standing boundary dispute.

32. Members of the Court, in 1966, the parties committed themselves to an agreed diplomatic process, meant to bring about a practical settlement of a long-standing territorial controversy caused by a, to say the least — as you have seen — fundamentally flawed Award on the validity of which

⁹⁶ CMV, Annex 114.

⁹⁷ CMV, Annex 113, p. 1, para. 2.

⁹⁸ RV, Annex 31, p. 225.

they held completely divergent views. Four years later, with Guyana having gained full independence, Guyana re-committed itself to this process by signing the Port of Spain Protocol.

33. In fulfilling the obligations arising under the Geneva Agreement, both Parties have engaged in negotiations addressing the root causes of their conflict, namely their boundary dispute as such. The Court must not now second-guess the Parties' intentions or override their free choice to opt for the path of reaching mutually acceptable solutions leading to a practical settlement of their boundary dispute.

34. Yet, Guyana now claims that, if the Court were to follow Venezuela's arguments, it would lead to "eternal negotiations"⁹⁹. That warrants two remarks.

35. For one, it is the Parties' understanding of the Geneva Agreement, and the Parties' understanding alone, as reflected in the Geneva Agreement and their agreed subsequent practice, that, as the ILC has confirmed, provides an "authentic means of interpretation"¹⁰⁰ not to be second-guessed by external actors. It is for that reason, I submit, that Guyana has not engaged at all, ever since it brought the case before you, with the practice of the Parties ever since 1966 up to the 2023 joint declaration. This practice, as Venezuela has demonstrated, confirms that it has always been the shared view of both, Guyana and Venezuela, that they wanted to reach a practical settlement on the boundary controversy by way of negotiations, whatever their fundamentally divergent views on the nullity of the Award up to today are. And Guyana cannot *ex post facto* undo this subsequent joint practice.

36. Finally, let us step back for a moment and reflect on the Beagle Channel conflict between Chile and Argentina. It confirms that even a conflict which — just like the case at hand — *first*, dated back to at least the middle of the nineteenth century and which, *second*, concerned the contestation of an arbitral award as being "irrevocably null and void" — as the claim was made by one party then in the Beagle Channel — may be solved by way of an agreed mediation. As you are aware, Chile and Argentina managed to reach a peaceful settlement of their long-standing controversy and

⁹⁹ CR 2026/28, p. 32, para. 18 (d'Argent).

¹⁰⁰ ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties (2018), Conclusion 3.

concluded, in 1984, a Treaty of Peace and Friendship¹⁰¹, which, as the parties themselves put it, “constitute[d] a compromise”, solving the boundary dispute for good.

37. Guyana has provided no answer, and was unable to provide an answer anyhow, why what was possible for Argentina and Chile in the 1980s, cannot be possible for Guyana and Venezuela today — despite Guyana’s commitment to do so in the Geneva Agreement, and despite the fundamental flaws inherent in the 1899 Award leading to its nullity.

38. Mr President, Members of the Court, I thank you, as always, for your kind attention, and would now kindly request you, Mr President, to call Professor Mbengue to the podium. Thank you very much.

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

The Court adjourned from 4.20 p.m. to 4.35 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now call Professor Makane Mbengue to the podium. You have the floor, Sir.

Mr MBENGUE:

REBUTTAL — REAL ISSUE, DECOLONIZATION, NOVATION

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

2. You have just heard Professor Zimmermann methodically dismantling Guyana’s flawed reading of the Geneva Agreement. I shall now take up the torch and address the arguments — the very few arguments — Guyana managed to marshal in countering Venezuela’s first round of submissions on the real issue in these proceedings, the notion of novation and the relevance of decolonization.

3. Mr President, Venezuela does not appear before you to litigate a case you have no jurisdiction to hear. Venezuela appears, rather, to ensure that its voice — and the historical truth it

¹⁰¹ Treaty of Peace and Friendship, signed at Vatican City, 29 November 1984, *UNTS*, Vol. 1399, 1985, No. 23392.

carries — is not drowned out by Guyana’s monologue. Oral hearings, in that sense, are far more than the procedural right enshrined in Article 43 of the Statute. They allow the international community to judge for itself the merits of each side’s position. But this requires States to seize the opportunity to answer each other during an oral stage. And on Friday, that opportunity was Guyana’s: it had before it two sets of written submissions and Venezuela’s first round of oral pleadings.

4. This opportunity, Guyana squandered. Not only did its first round of oral pleadings fail, as we demonstrated on Wednesday, to engage with the Rejoinder, but its second round compounded the error, recycling what it stated in its written submissions. Guyana was there; its team received the verbatim. And yet, somehow, it refused to engage.

5. I shall nonetheless take up the few crumbs Guyana has left us and address them in turn.

6. *First*, I will show that Guyana has still not answered Venezuela’s position that the real issue in these proceedings is governed by the Geneva Agreement and its requirement of a mutually satisfactory practical settlement. *Second*, I will address Guyana’s new attempts to resist the conclusion that the 1899 framework was novated by the Geneva Agreement. *Third*, I will return to decolonization and show why Guyana’s reliance on the stability of colonial boundaries cannot displace the specific legal framework Guyana and Venezuela themselves adopted in 1966.

Real issue

7. Mr President, delineating the “real issue” or “subject-matter”, on an objective basis, is a fixture of international adjudication. We explained on Wednesday what is at stake: ensuring that a decision is not misled by a unilateral presentation of a case.

8. Venezuela further demonstrated that the Court is yet to identify the real issue in this case and that this exercise leads to one conclusion: the controversy is governed by the Geneva Agreement and by the obligation it lays on Guyana and Venezuela to seek a mutually satisfactory solution.

9. Guyana offered no answer as to the “real issue”. Instead, it tried to deflect the matter, in two principal ways:

(a) *First*, Professor d’Argent quoted past statements from Venezuela’s counsel to suggest that Venezuela accepts that the validity of the Award is at stake in these proceedings¹⁰². But it goes

¹⁰² CR 2026/28, p. 27-28, paras. 5-7 (d’Argent).

without saying that these statements, made in incidental proceedings and taken outside their context, do not represent Venezuela's constant position — and in line with both States' practice since 1966 — that the question of validity is moot.

(b) *Second*, Professor d'Argent sought again to confuse the “real issue” and the scope of the Court's *ratione materiae* jurisdiction¹⁰³. But I insist: these are not the same thing. They are, if you will, two circles that may overlap, and only what falls at their intersection can be adjudicated. Venezuela's position is that there is no overlap here, and no role for the Court to play.

10. Guyana's sole engagement with the critical identification of the “real issue” was to assert that the 2020 Judgment has already determined it. How — we were not told; but in the verbatim Professor d'Argent inserted a footnote¹⁰⁴ — a footnote referring to paragraphs 66 and 135 of the 2020 Judgment. Did these paragraphs bear any resemblance to the language typically used by the Court to identify the real issue or the subject-matter? No: paragraph 66 of the 2020 Judgment does not even mention these terms; paragraph 135 only makes a conclusion as to the Court's jurisdiction *ratione materiae* — which, as we explained last week, differs from the subject-matter.

11. Beyond this, Guyana fell back on recycling arguments from its written submissions and thought it had found a lifeline in the doctrine of *res judicata*.

12. A word is needed on this. Counsel for Guyana described again on Friday *res judicata* as a kind of guillotine. But your jurisprudence is clear that the Court is not in the habit of fashioning straitjackets out of its own words. I shall make three points.

13. *First*, and as put by the Court in the *Genocide Convention* case, “[i]f a matter has not in fact been determined, expressly or by necessary implication, then no force of *res judicata* attaches to it”¹⁰⁵. The “real issue” was not determined in 2020. That Judgment was only on jurisdiction; it did not identify what needs to be decided on the merits. Guyana's argument would transform *res judicata* into something it is not: a device by which a jurisdictional judgment silently decides the merits. But

¹⁰³ CR 2026/28, p. 33, para. 20 (d'Argent).

¹⁰⁴ CR 2026/28, footnote 74.

¹⁰⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 95, para. 126.

more importantly, Guyana's approach conflicts with the Court's *jurisprudence constante* that incidental proceedings cannot, ever, prejudge the merits of a case¹⁰⁶.

14. *Second*, the scope of the 2020 Judgment *res judicata* is not as broad as alleged by Guyana. Read the *dispositif*. Read paragraph 138. The Court spoke of the “*question of the definitive settlement of the land boundary*”, “*definitive settlement of the land boundary*”. I emphasize the word: *settlement*. *Règlement* in French. Not delimitation, not determination of the line — settlement. That word is precisely the language of the Geneva Agreement itself. Article I speaks of “satisfactory solutions for the practical *settlement* of the controversy” for both Guyana and Venezuela. The Court followed the wording of the Geneva Agreement far more closely than counsel for Guyana.

15. *Third*, Mr President, on Friday Mr Reichler placed considerable weight on the reasoning behind the *dispositif* to sustain Guyana's view of what it is *res judicata*. It is true that where the meaning of the *dispositif* requires clarification, recourse may be had to the reasoning. But the reasoning is consulted to *clarify the meaning of what was decided*¹⁰⁷ — not to expand it. Paragraph 64 of the 2020 Judgment, quoted in full by Guyana, records two things: *one*, the historical fact of the disagreement between Guyana and Venezuela over the validity of the Award. And *two*, the obligation under Article I of the Geneva Agreement to pursue a practical settlement of the controversy. The first — the validity of the Award — is the past. The second — the obligation under Article I — is the framework that governs the controversy today.

16. Guyana never engages with that framework, and never even properly acknowledges its existence. On Wednesday, I asked a simple question¹⁰⁸: why was the Geneva Agreement ever concluded? What did the parties seek to achieve? Venezuela has a clear answer to that question, but Guyana offered none. We do not know what legal function Guyana attributes to the Geneva Agreement; maybe they do not know it either. But the Agreement is in force, and needs to be respected.

¹⁰⁶ *Certain German Interests in Polish Upper Silesia, Jurisdiction, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6; Legality of Use of Force (Serbia and Montenegro v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2004 (III), p.1335, para. 72; South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase, Judgment, I.C.J. Reports 1966, pp. 36-37, para. 59.*

¹⁰⁷ *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia/Peru) (Colombia v. Peru), Judgment, I.C.J. Reports 1950, p. 402.*

¹⁰⁸ CR 2026/26, p. 26, para. 37 (Mbengue).

17. In this connection, Venezuela invoked *Northern Cameroons* for the principle that “[t]here are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, cannot ignore”. But if counsel for Guyana does not care for *Northern Cameroons*, perhaps they will accept *Haya de la Torre*. In that case, this Court was asked to choose among the various ways in which an asylum could be terminated. The Court declined, reasoning that

“these courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court’s judicial function to make such a choice”¹⁰⁹.

18. 1951, Mr President. The principle Venezuela invokes is not novel. And what did the Court then do in 1951? It expressed confidence that Colombia and Peru would be able to find, in the Court’s own words, “a practical and satisfactory solution”¹¹⁰. The very language Venezuela has placed at the centre of its pleadings. The very language of Article I of the Geneva Agreement; and the very “real issue” at stake.

Novation

19. Let me now turn to novation. Mr President, on Monday last week, Professor d’Argent thought that he could wave away the argument of novation with a simple syllogism¹¹¹. We showed, on Wednesday, that his syllogism was wrong. It is precisely because of the disagreement about the validity of the 1899 Award that novation became necessary. Professor d’Argent would have novation impossible whenever it is most needed — whenever two States hold incompatible views on a prior legal framework¹¹².

20. On Friday, Guyana tried two new strategies. Mr Reichler argued that Article V of the Geneva Agreement is a saving clause that preserves Guyana’s rights under the 1899 Award and forecloses any novation¹¹³. Professor d’Argent asked: what, exactly, was novated?¹¹⁴ Both arguments fail.

¹⁰⁹ *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 79.

¹¹⁰ *Ibid.*, p. 83.

¹¹¹ CR 2026/24, p. 32, para. 27 (d’Argent).

¹¹² CR 2026/26, p. 35, para. 84 (Mbengue).

¹¹³ CR 2026/28, pp. 21-24, paras. 24-34 (Reichler)

¹¹⁴ CR 2026/28, p. 29, para. 12 (d’Argent).

21. I turn first to Mr Reichler's reading of Article V. Professor Zimmermann has already demonstrated that the text of the provision does not support that reading, and that indeed Article V reflects the limits imposed on the Court's decision in this case. I add only one point, which bears specifically on novation.

22. Article V, paragraph 1 is symmetrical. It preserves "bases of claim" — for Venezuela, for British Guiana, for the United Kingdom — on the same terms, for all. And a "basis of claim" is something a State *asserts*; it is what a party points to when asked what justifies its position. Article V, paragraph 1, freezes those assertions, nothing more.

23. So, if Article V, paragraph 1, saves Guyana's reliance on the 1899 Award, it equally saves Venezuela's contention that the Award is null. Both stand. Neither is endorsed. And those two preserved assertions are, word for word, the two claims that Article I identifies as part of the controversy Guyana and Venezuela must settle. Therefore, if anything, Article V *confirms* novation by sending the parties' competing claims forward, into Article I, for resolution. Professor Zimmermann has already drawn the further consequence under paragraph 2 of Article V: no post-1966 act may constitute a basis for asserting or supporting a claim to territorial sovereignty, unless accepted by the Parties. And a judgment endorsing the validity of the 1899 Award would breach that provision.

24. I turn now to Professor d'Argent's question. What was novated? The Award? The 1897 Treaty? The 1905 Treaty? The boundary itself? — Professor d'Argent said Venezuela had identified none of them.

25. The answer, Mr President, is the whole framework. Not any of those instruments standing alone. The framework they constituted *together* — a framework designed, in the language of the 1897 Treaty, to produce a "full, perfect, and final settlement" of the boundary. The 1897 Treaty supplied the procedure; the 1899 Award supplied the line; the 1905 Agreement supplied the demarcation. *That* framework, as a whole, is what was novated, because it could not deliver on its promise. The Geneva Agreement replaced it with a different framework: an obligation under Article I to seek satisfactory solutions for the practical settlement of the controversy, within the procedural architecture of Articles II and IV of the Geneva Agreement.

Decolonization

26. Finally, let me turn to decolonization.

27. Mr President, the back-and-forth between pleadings is helpful to shed light on a controversy. Sometimes, this results in some degree of agreement.

28. As happened here: counsel for Guyana finally acknowledged the relevance of decolonization. More, they disavowed any support for “acts of great colonial wrongdoing”¹¹⁵, and they aptly referred to the “iconic resolution on decolonization adopted by the General Assembly in 1960”¹¹⁶.

29. But they draw the wrong lessons from that historical background. I am not talking of the bizarre argument whereby Venezuela, historically a champion of the anti-colonial movement, somehow became a new colonial bully trying to intimidate Guyana; or of the baseless, groundless contention that Venezuela hindered or delayed Guyana’s path to independence. These contentions deserve no answer.

30. No, I am referring to Guyana’s misguided attempt to desecrate the decolonization movement by turning it into a mechanism for laundering colonial dispossession into stable title.

31. Professor Pellet¹¹⁷ cited *Burkina Faso/Mali* for the proposition that maintaining the status quo in the context of decolonization is often “the wisest course”; Professor d’Argent¹¹⁸, meanwhile, relied on this Court’s recent judgment in *Gabon/Equatorial Guinea* to argue that the “territorial base and boundaries left . . . by the colonial power” have a “*permanence distincte*” that needs to be respected.

32. These arguments are flawed: they proceed, without naming it, from the notion of *uti possidetis*, which finds no application in this case. The principle *uti possidetis* preserves boundaries that existed in law at independence or according to colonial *effectivités*. But we are here dealing with an external border between an already-independent State, Venezuela, and a newly-decolonized entity, Guyana — an entirely different situation. And an external border whose very lawfulness is

¹¹⁵ CR 2026/28, p. 25, para. 35 (Reichler).

¹¹⁶ CR 2026/28, p. 52, para. 21 (Sands).

¹¹⁷ CR 2026/28, p. 35, para. 8 (Pellet).

¹¹⁸ CR 2026/28, p. 29, para. 12 (d’Argent), citing *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment of 19 May 2025, p. 42, para. 128.

the controversy. The African examples invoked by Guyana have no purchase here. *Uti possidetis* is the “wisest course” when no alternatives exist; it cannot help a State that benefits from the status quo, and it certainly cannot allow States to ignore an obligation to reach a mutually satisfactory solution.

33. But it was Professor Sands that pushed this argument to extreme limits. He did so wielding the typical and uninspired argument that challenging one colonial border is endangering them all. This is the “open the floodgate” argument all over again, recycled from Professor Pellet’s intervention on Monday. Professor Sands then asked whether “an age of instability and uncertainty” that “would run directly contrary to the wisdom of Africa” is “what Professor Mbengue [me] is asking you to do?”¹¹⁹

34. Well, let me reply to this challenge directly by noting that it is, once again and regrettably, based on a failure to engage with Venezuela’s case and ignore the Geneva Agreement. This is not any border that is at stake here, but a border subject to, and governed, by a dedicated, and indeed rather unique international instrument. An instrument that commits its parties to seek a mutually satisfactory solution to their pending territorial controversy. Reaching such an agreement would not destabilize international law, or betray the goals of decolonization, as Guyana would have you believe — instead, it would be international law at work, international law remedying an act of great colonial wrongdoing.

35. And so, this is the right conclusion to draw from the Geneva Agreement’s roots in the decolonization movement. That the peoples of Guyana and Venezuela are the bearers of that movement’s promise. And that both are best served, not by a judicial endorsement of a colonial-era artefact, but by the framework the Geneva Agreement established. A framework of negotiation, of mutual satisfaction, and of solutions that two sovereign equals can accept.

Conclusion

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

¹¹⁹ CR 2026/28, p. 54, para. 25 (Sands).

37. On Friday, Guyana's counsel opened their rebuttal by referring to the myths that allegedly power Venezuela's position. There is no merit to that position, but Guyana is right that a myth informs this controversy — a myth enacted by Guyana itself.

38. Guyana casts itself as poor Sisyphus — burdened, toiling, condemned. But unlike Sisyphus, Guyana was not condemned by the gods. It chose its boulder, its summit, and, above all, its climb.

39. The boulder is the 1899 Award, and Guyana tries to roll it up the mountain of the Geneva Agreement, hoping somehow to reach the summit of a mutually satisfactory solution. But each time, each time the boulder rolls back down. It must roll back down, because a corrupt Award cannot carry Guyana to a solution that is mutually satisfactory.

40. That is the point Guyana cannot escape: the Geneva Agreement was not concluded to entrench the 1899 Award, but to supersede it. And as long as the Agreement governs this controversy, the path forward cannot be the judicial resurrection of a colonial artifact. It must be the practical settlement the Parties committed to seek: a mutually satisfactory solution — a summit that, once the boulder is set down, Guyana and Venezuela may walk toward side by side.

41. Mr President, Members of the Court, I thank you for your kind attention and would ask you to give the floor to Dr Arianny Seijo Noguera, Attorney General of Venezuela. Thank you.

The PRESIDENT: I thank Professor Mbengue. I now give the floor to the Attorney General of Venezuela, Dr Arianny Seijo. You have the floor, Madam.

Ms SEIJO NOGUERA:

[English translation provided by the Bolivarian Republic of Venezuela]

1. Mr President, Members of the Court, it is a great honour for me to appear before you on behalf of my country, the Bolivarian Republic of Venezuela.

2. Venezuela remains firm in its refusal to recognize the Court's jurisdiction; therefore, its presence here does not constitute, nor should it ever be interpreted as, an acceptance of the Court's jurisdiction to rule on this territorial dispute. This has been its historic position for over a century.

3. Venezuela is here before you simply because it cannot remain silent and allow Guyana to use this Great Hall of Justice to deny the terms, object and purpose of the 1966 Agreement.

4. In my capacity as Solicitor General of Venezuela and as an international jurist, I will present the final legal observations on this matter. During the course of these oral hearings, you have heard Venezuela's historical truth, which demonstrates its historical position and its deep commitment to international law as the foundation of peaceful relations among all States.

5. And it is precisely for these reasons that Venezuela has consistently and unequivocally maintained its position that the 1899 Award is null and void.

6. This was the reason why, during the decolonization period, Venezuela and the United Kingdom, once the evidence came to light, put the issue of the 1899 Award behind them and redefined their relationship in the 1966 Geneva Agreement. I applaud the statement by the Attorney General of Guyana regarding his country's "deep commitment to international law", but I am compelled to recall that the Geneva Agreement is not merely a norm of international law, but rather the norm of international law that Venezuela and Guyana imposed upon themselves. *Pacta sunt servanda*.

1. Legal argument 1: the Geneva Agreement

7. Mr President, Members of the Court, I would like to refer to the 1966 Geneva Agreement as the sole binding instrument governing the territorial dispute over Guayana Esequiba.

8. As presented by Professors Mbengue and Zimmermann, Venezuela's position on the real issue or the subject matter of the dispute between Venezuela and Guyana is not the invalidity of the 1899 Arbitral Award. The real issue of the dispute is the obligation, under the 1966 Geneva Agreement, to seek a "mutually satisfactory solution" to their territorial dispute.

9. Regrettably, Guyana has attempted to distort the subject-matter of the dispute with the malicious absurdity of convincing the Court to legitimize the 1899 Award, a product of the unfortunate colonial past that our two countries endured in different ways.

10. Affirming the validity or invalidity of the 1899 Award would perpetuate a profoundly illicit and unlawful colonial outcome, which the parties to the Geneva Agreement superseded and set aside. This is a settled and resolved matter.

11. In contrast, the 1966 Geneva Agreement “novated” the previous legal régime that the colonial Power had imposed through structural coercion. By signing the Geneva Agreement, the parties replaced the fraudulent legal framework — which had been sought to be established by the 1897 Treaty, the 1899 colonialist Award, and the 1905 demarcation agreement — with a new framework: one in which they committed to seeking satisfactory solutions for the practical resolution of the territorial dispute.

12. The Geneva Agreement is part of the decolonization process. This process involves more than merely granting independence to occupied territories; it also entails redressing the injustices of territorial dispossession committed against sovereign States.

2. Legal argument 2: theory of “non-cure”: Venezuela never waived its right to challenge the invalidity of the Award

13. Mr President, Members of the Court, I will now address Guyana’s false allegation regarding Venezuela’s alleged acquiescence and its purported theory of cure, based on Venezuela’s conduct following the issuance of the award. Professors Thouvenin and Azaria have demonstrated that this argument is fundamentally flawed and lacks evidentiary basis.

14. On the one hand, there is no legal principle in international law that allows the nullity of an arbitral award to be “cured” by the conduct of the parties. In any case, Venezuela has always opposed such a principle, especially during the Vienna Conference on the Law of Treaties. Furthermore, one cannot remedy what arose from illegality and fraud.

15. The evidence gathered by Venezuela demonstrates that it never waived its right to invoke the invalidity of the Award. This was unequivocally established in the Geneva Agreement.

16. Furthermore, a State may only invoke the invalidity of the award when it possesses evidence to prove it. Venezuela only obtained such evidence *following* the publication of the Mallet-Prevost memorandum; around that time, the British archives were partially opened, and subsequent investigations were conducted, which enabled Venezuela to demonstrate the defects in the Award.

17. In this regard, Venezuela’s conduct reflects the degree of seriousness and diligence expected of a State under international law with respect to challenging an arbitral award of the importance and magnitude of the fraudulent 1899 Award.

18. *Moreover*, the circumstances of the time confirm that Venezuela was a victim of the United Kingdom's imperialist greed.

19. I am compelled to point out, Mr President, that Guyana maliciously seeks to deny the asymmetry of power that existed between Venezuela and the Powers of the time. A country devastated by war *was not in a position to confront the world's greatest naval and military Power* of that era in order to preserve its right to invalidate an award.

20. The absurdity of Guyana's claim does not end there. Guyana asks the Court to consider an even more irrational proposition as reasonable. Guyana argues that Venezuela — regardless of the circumstances of extreme military disparities in the early twentieth century — *was in a position to, and was expected to*, challenge an arbitral award, even without evidence to demonstrate the award's invalidity. *And it was expected to* do so, knowing that it would have to be prepared to endure another war at the hands of *its aggressor* — a war that it would undoubtedly lose again. With the utmost respect, Mr President, Guyana's claim runs counter to justice and good faith — and defies all reason.

3. Legal argument 3: the invalidity of the Award

21. Venezuela has made it clear that the real issue and what matters in this dispute is the 1966 Geneva Agreement. However, Mr President, Members of the Court, I would like to raise a third point before presenting my final conclusions. As Professors Tams and Palchetti clearly explained, even if the dispute concerned the 1899 Award, Guyana's assertion that the Award is valid completely fails. Venezuela has clearly demonstrated, with reliable evidence, that the 1899 Award is null and void, and that Guyana's unilateral submission to the Court lacks any basis.

22. *First*, Venezuela has demonstrated that the 1897 Treaty of Washington is invalid on grounds of error and fraud. Therefore, the 1899 Award, which was based on this invalid Treaty, is inevitably, and *consequently*, also invalid.

23. *Second*, Venezuela has provided evidence, including contemporary evidence, showing that it was coerced into accepting the 1897 Treaty of Washington, which invalidates the Treaty itself as well as the subsequent 1899 Award. There is also *contemporary* evidence demonstrating that Venezuela was the victim of coercion and during — having been threatened with the use of force —

in the months immediately preceding the negotiations of the 1897 Treaty of Washington between Great Britain and the United States.

24. *Third*, Venezuela's historical position has been that the 1899 Award also suffered from multiple defects. Venezuela convincingly demonstrated, with substantial evidence, that the Award is invalid primarily for the following two reasons: *first*, the Tribunal did not state the grounds on which the decision was based; *second*, the Tribunal exceeded its authority. There are five instances of this abuse of power:

- 1) The Tribunal failed to answer one of the questions posed to it in Article III of the Washington Treaty;
- 2) The Tribunal failed to apply the rules specified in Article IV;
- 3) The Tribunal acted in a manner inconsistent with the scope of its powers by deciding on matters outside its jurisdiction;
- 4) The Tribunal did not act impartially, as required under Article V of the Washington Treaty;
- 5) The Tribunal failed to fulfil its duty to render a decision based on the law.

Concluding remarks

25. Mr President, Members of the Court, I have two concluding remarks.

26. *First*, I will comment on the documentary record. Despite the obstacles and difficulties created by the United Kingdom to prevent Venezuela from accessing the original sources, we have been able to compile and present *hundreds* of documents.

27. This documentary evidence has been compiled and analysed over many years by Venezuelan and British experts, who examined the archives of the United Kingdom, as well as Venezuela's national archives, in order to investigate the circumstances surrounding the null and void Award of 1899.

28. This process has been a source of deep sadness, as it has laid bare in great detail and reignited the injustice that our country has had to endure for more than 120 years, due to the unjust and invalid Treaty of Washington of 1897 and the unjust and invalid Arbitral Award of 1899 — both products of the colonial era that our country has hoped and strived to leave behind.

29. Venezuela is also aware of the probable existence of other relevant documents. With regard to such documentation, the conduct of the United Kingdom and Guyana is inexcusable.

30. Archival documents from April 1970, to which access has only recently been granted, confirm that the United Kingdom actively co-operated with Guyana in the preparation of this case. The relevant file, held at the British National Archives under reference number FCO 63/477, contains documents demonstrating cooperation between the Government of the United Kingdom and Guyana's legal advisers regarding the territorial dispute with Venezuela.

31. These documents reveal that British authorities acknowledged they were in possession of archival material that might not be available elsewhere. Consequently, the United Kingdom provided Guyana's legal advisers with access to restricted documents, including confidential material, while denying Venezuela equivalent access. This constitutes a serious violation of the principle of equality of arms.

32. But there is more. The United Kingdom's history of selectively destroying archives in the context of the decolonization process is also confirmed by the documents identified by reference numbers FCO 141/19928 and FCO 63/476. This must not be ignored.

33. In an effort to remedy this asymmetry, on 25 April 2023, Venezuela transmitted a Note Verbale expressing its concern regarding Guyana's exclusive access to documents related to the dispute. In that Note, Venezuela recalled the existence of a set of documents communicated by the United Kingdom to Guyana without notification or transmission to Venezuela or the United Nations, as required by the Geneva Agreement.

34. Venezuela made a specific request: that Guyana share a detailed list of the documents received, as well as any other documents obtained exclusively and without Venezuela's knowledge. Guyana's response of 22 June 2023 categorically rejected any obligation to provide such documentation.

35. I now turn to my *second* observation. Throughout these hearings, Guyana's lawyers have portrayed Venezuela's position as a "myth" or a "fiction". They also attempted to counter the weight of Venezuela's arguments and historical position with shameful personal attacks and disparagements against Venezuela's legal team.

36. I will not go into Guyana's tactics, which are inelegant, inappropriate, and lack the dignity expected in this type of proceeding, especially from a State that claims to respect international law. These tactics reveal that Venezuela's official position, its arguments and the evidence supporting them can only be met by Guyana with insults, offenses and a lack of professionalism. Any reasonable observer would see through these tactics and draw the appropriate conclusions from them. Venezuela is very proud of its legal team and is enormously grateful to them for their dedication and professionalism.

37. Mr President, Members of the Court, it was the existence of two contradictory positions regarding the validity of the 1899 Award that led, in 1966, to the Geneva Agreement. The Agreement was not concluded because one party was right and the other was living in a fantasy. It was concluded because both parties recognized that their disagreement could not be resolved by determining who was right about the past, but only by agreeing on a way forward.

38. Venezuela is willing to resolve the dispute over the territorial border with Guyana. But such a solution must be achieved in accordance with the only valid legal framework governing the dispute: the 1966 Geneva Agreement and its mandate to reach a mutually satisfactory solution to the territorial dispute between Venezuela and Guyana.

39. Mr President, Members of the Court, I thank you very much for your kind attention. I respectfully request that you grant the floor to the President of the Bolivarian Republic of Venezuela to take the stand.

The PRESIDENT: I thank the Attorney General. I now invite the Acting President of Venezuela, Her Excellency Ms Delcy Rodríguez, to address the Court. Your Excellency, you have the floor.

Ms RODRÍGUEZ:

[English translation provided by the Bolivarian Republic of Venezuela]

1. Mr President, Members of the Court, I come before this Court to bring the voice of a people who deeply cherish justice, peace, and international law. It is the people of the Bolivarian Republic of Venezuela.

2. On 3 December 2023, our people turned out in large numbers at the polls and gave us a series of clear and unequivocal mandates. Allow me to highlight the following:

3. *First*, to maintain the historic position of not submitting their existential matters, such as independence and territorial integrity, to judicial mechanisms.

4. *Second*, to uphold the Geneva Agreement as the only valid legal instrument for resolving the territorial dispute over Guayana Esequiba.

5. *Third*, to defend the territory of Guayana Esequiba by all peaceful means, in accordance with international law. True to those mandates, I stand before you this afternoon.

6. Mr President, Venezuela's historic position of not submitting matters related to its vital interests to judicial dispute resolution mechanisms is not an act of defiance or disregard for the Court as an institution of the United Nations. Venezuela is a fervent promoter and defender of international law. For this reason, it respects the International Court of Justice as the principal judicial body of the United Nations.

7. However, this is a matter of defending one of the essential attributes of our State, namely its sovereignty. Venezuela has never consented to submit the territorial dispute over Guayana Esequiba to the jurisdiction of this Court. In no way does Article IV of the Geneva Agreement constitute an arbitration clause.

8. With this in mind, since 2018, Venezuela has filed various briefs and intervened in different hearings before this Court with a twofold purpose:

9. First, to attempt to uphold international law in the face of this anti-legal absurdity promoted by Guyana. Second, to demonstrate to the world the truth regarding the rights that, since its inception, have belonged to Venezuela over the territory of Guayana Esequiba. This does not imply recognition of the Court's jurisdiction in the territorial dispute.

10. Mr President, the territorial dispute over Guayana Esequiba is governed by a legally binding international treaty that must be complied with by the parties in good faith. This instrument is none other than the 1966 Geneva Agreement.

11. It is a unique treaty for which it would be difficult to find a parallel in decolonization practice, seeking to resolve a colonial injustice through a mutually acceptable settlement. A negotiated solution is, therefore, an inevitable and indispensable condition of the dispute.

12. The Geneva Agreement buries and moves beyond the debate over the validity or invalidity of the 1899 Award. The Agreement recognizes that the border dispute could not be resolved in those terms and directs it toward a process aimed at achieving a practical, satisfactory, and mutually acceptable outcome. This framework cannot be circumvented, reformulated, or replaced through unilateral recourse to judicial resolution. It is law between the parties.

13. The preparatory work on the Geneva Agreement, its title, preamble, and articles, as well as the subsequent practice of the parties, demonstrate that resolving the legal question of the validity or invalidity of the award was never on the horizon. It was not a legal controversy. The object, nature, and purpose have always been to resolve the territorial dispute over Guayana Esequiba through political, peaceful, and diplomatic negotiation.

14. The dispute does not concern the confirmation or invalidation of an award. It concerns the resolution of a territorial dispute that both Parties expressly recognized as unresolved in 1966, and for which they agreed upon a specific method of resolution. That method is negotiation, not imposition. There are no winners or losers.

15. This negotiation process was neither exhausted nor abandoned by Venezuela; it was undermined by Guyana's conduct. At a time when the mechanisms provided for in the Geneva Agreement remained fully in force, Guyana unilaterally chose to shift the dispute from the realm of negotiation to that of judicial resolution, in open violation of the agreed-upon legal framework.

16. That shift was not innocent. It coincided with the discovery, in 2015, of an oil find described as "world-renowned". Guyana ceased to act in good faith and harboured a silent intention to evade compliance with the Geneva Agreement.

17. From that moment on, Guyana abandoned the logic of a mutually acceptable solution and adopted an unlawful strategy of judicialization aimed at obtaining, through this Court and without Venezuela's consent, what it could not achieve under the Geneva Agreement: validating a fraudulent award. An all-or-nothing approach.

18. Negotiation was replaced by litigation; good offices, by pressure; and political consensus, by unilateral action that perpetuates and exacerbates the dispute.

19. Venezuela cannot accept that this shift, driven by Guyana, redefines the nature of the dispute or the manner in which it should be resolved. Nor can it support the use of the Court as an instrument to consolidate that change, in violation of the Geneva Agreement and international law.

20. This is not a criticism of the judicial function. On the contrary, it is a defence of its scope. This Court was not created to supplant the will of States, but to act within the limits defined by that will. And those limits, in this case, are clearly established in the Geneva Agreement.

21. Venezuela will not renounce its history, nor its legitimate rights — rights expressly recognized and preserved in the Geneva Agreement — simply because Guyana now seeks, unilaterally and opportunistically, to redefine the dispute. For us, the Guayana Esequiba is not reduced to mere economic and commercial interests. It forms part of our inalienable historical legacy.

22. Guyana is evading its obligations and seeking to revive the debate over the validity or invalidity of the award. Through this manipulation, the Agreement itself, the Port of Spain Protocol, and decades of bilateral negotiations — including those conducted under the good offices of several UN Secretaries-General — are being disregarded.

23. This is not an oversight. It is a clear violation of the 1966 Agreement, which does not stand up to rigorous scrutiny. The narrative presented belongs to a different story, one that is divorced from historical and legal precedent. It invites the Court, in bad faith, to set aside more than a century of state practice in favour of a manipulated version of reality.

24. Mr President, members of the Court as part of its defence of the truth, Venezuela has made available to this Court — and henceforth to the world — abundant evidence confirming its historical rights over Guayana Esequiba, as well as the parties' decision to resolve the territorial dispute through the Geneva Agreement.

25. Despite the British blockade of evidentiary sources and the destruction of documents, Venezuela compiled and submitted a comprehensive and coherent body of documentation, consisting of more than three thousand (3,000) pages of evidence, distributed across several volumes.

26. The body of evidence presented to the Court includes international treaties and agreements, colonial and historical documents, extensive diplomatic correspondence, negotiation records, official statements, United Nations documents, as well as a substantial collection of maps.

27. Taken as a whole, this evidence confirms the nullity of the 1899 Arbitral Award. It also unequivocally reflects a long-standing practice and mutual recognition by Guyana and Venezuela of the existence of a territorial dispute and the need to resolve it through direct negotiations aimed at reaching a mutually satisfactory solution, as established and required by the 1966 Geneva Agreement.

28. The evidence is irrefutable. Guayana Esequiba has been part of Venezuelan territory since its inception. In 1777, the Spanish Crown created the Captaincy General of Venezuela, comprising, among others, the Province of Guayana.

29. This administrative unit is the territorial origin of what later became the Republic of Venezuela, which was born with its Declaration of Independence and its 1811 Constitution. From that time onward, all the constitutions of the Republic of Venezuela have reflected the fact that Guayana Esequiba belongs to Venezuelan territory.

30. In 1825, the United Kingdom recognized Gran Colombia, whose eastern border was the territory of Venezuela's Guayana Esequiba. The United Kingdom never held any title to the territory of Guayana Esequiba. Its successor state did not hold it, nor does it hold it now. It seeks to artificially forge such a title through this process.

31. Beginning in 1840, the British Crown — aware of the immense gold reserves in that territory — established a strategy to plunder it. To this end, it enlisted a German adventurer to unilaterally draw an arbitrary line within Venezuelan territory: the so-called Schomburgk Line, which has never been validated or recognized by Venezuela.

32. Later, the United Kingdom attempted to consolidate this dispossession through a sham arbitration, which concluded with the fraudulent and rigged award of 1899. Today, they are attempting to validate that fraud through this biased process riddled with legal inconsistencies. There are even those who have dared to publicly predict the outcome of this procedure.

33. The truth of the award and its deceptive nature highlight the intention of Guyana — and of those who pushed it toward this reckless action — to tarnish and erode the prestige of this Court. How can they expect this Court to stain its history with a ruling that revives and legitimizes such a colonial judicial fraud?

34. Mr President, the negotiation process carried out by the parties following the signing of the Geneva Agreement demonstrates that there are various mechanisms to definitively resolve the territorial dispute. All are based on political dialogue and direct negotiation between the parties.

35. Both in the Joint Commission talks and in the good offices process, both parties put forward creative proposals aimed at reaching a practical, satisfactory, and mutually acceptable settlement. In fact, the former Prime Minister of Guyana, Forbes Burham, a signatory to the Geneva Agreement, proposed signing a new agreement that would settle the border issue, linked to the construction of a hydroelectric project in the Upper Mazaruni region.

36. It should be noted that every step and mechanism throughout this process was adopted with the prior and express consent of both parties to the Geneva Agreement.

37. Regrettably, the UN Secretary-General abandoned this practice, which had been followed for over 50 years, yielding to the strong and intense pressure from lobbyists hired by the Cooperative Republic of Guyana, driven by powerful energy interests, as evidenced by the confessions of former Guyanese Minister Raphael Trotman. This dangerously exacerbated the controversy between the parties.

38. The global energy landscape points to high demand for hydrocarbons in the short and medium term, driven, among other factors, by the boom in new technologies. Venezuela holds the world's largest reserves of oil and natural gas and is considered a strategic target by major powers.

39. At the heart of the current development of this territorial dispute lies the region's hydrocarbon wealth, which has sparked the interest of major consumers and transnational oil companies that view the resources available in the area as a major opportunity. These vital interests have further complicated this historic dispute.

40. Only a practical, satisfactory, and mutually acceptable settlement of the dispute can create the conditions of stability and trust required for both countries, as well as the interests of third parties involved, to fully capitalize on the potential of that territory for the benefit of sustainable economic development and the social well-being of the peoples of the region.

41. Mr President, members of the Court, the dichotomous approach of validity or invalidity put forward by Guyana in its unilateral application is profoundly pernicious and futile.

42. No judgment by this Court on the territorial dispute will provide a definitive solution acceptable to the parties. On the contrary, it will exacerbate the differences and lead the parties to entrench themselves in their respective positions, distancing them from the practical, satisfactory, and mutually acceptable settlement to which they committed in 1966 by signing the Geneva Agreement.

43. Such a judgment may conclude a case, but it will not put an end to the territorial dispute over the Guayana Esequiba, as conceived and agreed upon by Venezuela, the United Kingdom, and Guyana. At best, it would return to the same impasse that the Geneva Agreement overcame.

44. Proof of this can be found in Guyana's unprecedented and extravagant submissions before this Court, which reflect an inexcusable spirit of superiority.

45. Just as colonial empires erased the history of the peoples they sought to dominate, this Court is being asked to order the destruction of maps, prohibit the teaching of history, eliminate symbols, and tear Guayana Esequiba from the hearts of Venezuelans. The aim is to erase the memory of a people in order to nullify their future.

46. Annihilating history will never legitimize dispossession. The truth will always prevail.

47. Mr President, this Court was created to resolve conflicts, not to encourage them. Only a political and negotiated solution to the territorial dispute can lay a solid and stable foundation for good neighbourliness, cooperation, shared economic development, and the promotion of secure investment in the region.

48. Venezuela will never endorse a violation of the Geneva Agreement and international law. To validate a ruling that seeks to disregard a legal instrument that is in force and has been duly deposited with the United Nations would run counter to the international legal order.

49. Even if the Court were to declare the award invalid, Venezuela would be unable to comply with such a ruling, as it would also be nullifying the Geneva Agreement and international law. It follows very clearly from this that there is no legal possibility of recognizing a decision resulting from this process, whatever it may be.

50. This is not an act of disrespect toward this esteemed Court. It is an act of unwavering defence of Venezuela's rights, of international law, and of the integrity of this Court as the principal judicial organ of the United Nations.

51. My presence before this Court demonstrates not only the importance that the territory of Guayana Esequiba holds for us. It is also clear evidence of the respect we have for the Court as an institution.

52. Mr President, Venezuela is ready and prepared to achieve the noble and peaceful purpose of the Geneva Agreement: to reach, by all means at its disposal, a practical, satisfactory, and mutually acceptable solution for the parties.

53. In today's turbulent world, we have reached a historic moment where we can demonstrate that dialogue and negotiation are the path to coexistence, happiness and well-being for our peoples. It is time to take a step forward. There is no other way.

54. A high-level bilateral meeting, organized by key regional stakeholders, will undoubtedly be far more productive and effective in achieving that goal.

55. Mr President, a country's virtue is not measured by its territorial size but by its efforts in the legitimate defence of its sovereignty, territorial integrity, and inalienable rights.

56. Guyana and Venezuela are called upon by history and geography to coexist, understand one another, and build a shared future. Therefore, the only real path forward for this dispute is a return to direct dialogue and the search for creative and mutually beneficial solutions that will transform a dispute inherited from colonialism into an opportunity for cooperation, joint development, and the well-being of future generations of both peoples.

57. To the people of Guyana I say: Venezuela is a peaceful nation, and our common destiny will always be intertwined.

58. Venezuela will never surrender its historic rights and territorial integrity, the legacy of our ancestors.

59. We bear the scars of history on our skin and in our souls the tenacity of the peoples who learned to defend what is ours, to not give up in the face of difficulties, and to march together towards a future of peace and development.

The PRESIDENT: I thank Her Excellency the Acting President of Venezuela for her statement. I now call the Agent of Venezuela, His Excellency Mr Samuel Reinaldo Moncada, to the podium. You have the floor, Sir.

Mr MONCADA:

[English translation provided by the Bolivarian Republic of Venezuela]

CLOSING STATEMENTS

1. Mr President, Members of the Court, I will now read into the record the closing statements of the Bolivarian Republic of Venezuela in these oral proceedings.

“In the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, for the reasons explained in the Written and Oral phase, the Bolivarian Republic of Venezuela respectfully reiterates its requests to the Court to:

1) abstain from intervening in the territorial controversy between Venezuela and Guyana on Guayana Esequiba and from interfering with the obligations arising from the 1966 Geneva Agreement regarding the settlement of said dispute in an amicable, satisfactory and acceptable manner to the Parties, by means of peaceful, political and diplomatic negotiations,

and,

2) consequently, refuse to hear and dismiss the Co-operative Republic of Guyana’s claims.”

2. Finally, on behalf of the Venezuelan team, I would like to thank you, Mr President, Members of the Court, the Registry and its staff. We also extend our sincere gratitude to the interpreters for their excellent work, and in particular for the interpretation of these oral pleadings into Spanish. My thanks go as well to the delegation of Guyana.

3. In addition, I wish to express my deepest gratitude to Venezuela’s distinguished counsel, and to the women and men who make up the Venezuelan delegation. It has been both a privilege and an honour to work alongside you in this case.

4. Thank you for your kind attention.

The PRESIDENT: I thank the Agent of Venezuela.

The Court has taken note of the final submissions of the Parties. I would like to thank the Agents, counsel and advocates for their statements. In accordance with practice, I shall request both Agents to remain at the Court’s disposal to provide any additional information it may require. With this proviso, I declare closed the oral proceedings on the merits in the case concerning *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

The Court will now retire for deliberation. The Agents of the Parties will be advised in due course of the date on which the Court will deliver its Judgment.

Since the Court has no other business before it today, the sitting is closed.

The Court rose at 5.55 p.m.
