Non corrigé
Uncorrected

CR 2022/23

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2022

Public sitting

held on Monday 21 November 2022, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

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

VERBATIM RECORD

ANNÉE 2022

Audience publique

tenue le lundi 21 novembre 2022, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

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

COMPTE RENDU

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

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

M. Gautier, greffier

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

Hon. Carl B. Greenidge,

as Agent;

H.E. Ms Elisabeth Harper,

as Co-Agent;

Mr. Paul S. Reichler, Attorney at Law, Foley Hoag LLP, member of the Bars of the Supreme Court of the United States and of the District of Columbia,

Mr. Philippe Sands, KC, Professor of International Law, University College London, 11 King's Bench Walk, London,

Mr. Pierre d'Argent, *professeur ordinaire*, Catholic University of Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Ms Christina L. Beharry, Foley Hoag LLP, member of the Bars of the District of Columbia, the State of New York, the Law Society of Ontario, and England and Wales,

as Advocates;

Mr. Edward Craven, Matrix Chambers, London,

Mr. Juan Pablo Hugues Arthur, Foley Hoag LLP, member of the Bar of the State of New York,

Ms Isabella F. Uría, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

as Counsel;

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

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

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

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

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

as Advisers;

Ms Nancy Lopez, Foley Hoag LLP,

as Assistant.

Le Gouvernement de la République coopérative du Guyana est représenté par :

l'honorable Carl B. Greenidge,

comme agent ;

S. Exc. Mme Elisabeth Harper,

comme coagente ;

M. Paul S. Reichler, avocat au cabinet Foley Hoag LLP, membre des barreaux de la Cour suprême des Etats-Unis d'Amérique et du district de Columbia,

M. Philippe Sands, KC, professeur de droit international au University College London, cabinet 11 King's Bench Walk (Londres),

M. Pierre d'Argent, professeur ordinaire à l'Université catholique de Louvain, membre de l'Institut de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

Mme Christina L. Beharry, cabinet Foley Hoag LLP, membre des barreaux du district de Columbia, de l'Etat de New York, de l'Ontario, ainsi que d'Angleterre et du Pays de Galles,

comme avocats ;

M. Edward Craven, Matrix Chambers (Londres),

M. Juan Pablo Hugues Arthur, cabinet Foley Hoag LLP, membre du barreau de l'Etat de New York,

Mme Isabella F. Uría, avocate au cabinet Foley Hoag LLP, membre du barreau du district de Columbia,

comme conseils ;

l'honorable Mohabir Anil Nandlall, membre du Parlement, *Attorney General* et ministre des affaires juridiques,

l'honorable Gail Teixeira, membre du Parlement, ministre des affaires parlementaires et de la conduite des affaires publiques,

M. Ronald Austin, ambassadeur, conseiller du chef de l'opposition sur les questions frontalières,

Mme Donnette Streete, directrice du département des frontières du ministère des affaires étrangères,

M. Lloyd Gunraj, premier secrétaire, chargé d'affaires à l'ambassade de la République coopérative du Guyana au Royaume de Belgique et auprès de l'Union européenne,

comme conseillers ;

Mme Nancy Lopez, cabinet Foley Hoag LLP,

comme assistante.

The Government of the Bolivarian Republic of Venezuela is represented by:

H.E. Ms Delcy Rodríguez, Vice-President of the Bolivarian Republic of Venezuela;

H.E. Mr. Samuel Moncada, Ambassador, Permanent Representative of the Bolivarian Republic of Venezuela to the United Nations,

as Agent;

Ms Elsie Rosales, Full Professor of Criminal Law, Universidad Central de Venezuela,

as Co-Agent;

H.E. Mr. Reinaldo Muñoz, Attorney General of the Bolivarian Republic of Venezuela,

H.E. Mr. Calixto Ortega, Ambassador, Permanent Mission of the Bolivarian Republic of Venezuela to the OPCW, ICC and other international organizations,

as Senior National Authorities;

Mr. Antonio Remiro Brotóns, Professor Emeritus of Public International Law, Universidad Autónoma de Madrid,

Mr. Carlos Espósito, Full Professor of Public International Law, Universidad Autónoma de Madrid,

Ms Esperanza Orihuela, Full Professor of Public International Law, Universidad de Murcia,

Mr. Alfredo De Jesús O., PhD, Paris 1 Panthéon-Sorbonne University, member of the Bars of Paris and the Bolivarian Republic of Venezuela,

Mr. Paolo Palchetti, Professor, Paris 1 Panthéon-Sorbonne University,

Mr. Christian Tams, Professor of International Law, University of Glasgow, academic member of Matrix Chambers, London,

Mr. Andreas Zimmermann, Professor of International Law, University of Potsdam, member of the Permanent Court of Arbitration,

as Counsel and Advocates;

Mr. Carmelo Borrego, Full Professor of Procedural Law, Universidad Central de Venezuela,

Mr. Eugenio Hernández-Bretón, Professor of Private International Law, Universidad Central de Venezuela, member and former president of the Academy of Political and Social Sciences,

Mr. Julio César Pineda, PhD, International Law and International Relations, former ambassador,

Mr. Edgardo Sobenes, Consultant in International Law,

as Counsel;

Le Gouvernement de la République bolivarienne du Venezuela est représenté par :

S. Exc. Mme Delcy Rodríguez, vice-présidente de la République bolivarienne du Venezuela ;

S. Exc. M. Samuel Moncada, ambassadeur, représentant permanent de la République bolivarienne du Venezuela auprès de l'Organisation des Nations Unies,

comme agent ;

Mme Elsie Rosales, professeure de droit pénal, Universidad Central de Venezuela,

comme coagente ;

S. Exc. M. Reinaldo Muñoz, procureur général de la République bolivarienne du Venezuela,

S. Exc. M. Calixto Ortega, ambassadeur, mission permanente de la République bolivarienne du Venezuela auprès de l'OIAC, de la CPI et d'autres organisations internationales,

comme hauts représentants de l'Etat ;

M. Antonio Remiro Brotóns, professeur émérite de droit international public, Universidad Autónoma de Madrid,

M. Carlos Espósito, professeur de droit international public, Universidad Autónoma de Madrid,

Mme Esperanza Orihuela, professeure de droit international public, Universidad de Murcia,

M. Alfredo De Jesús O., PhD, Université Paris 1 Panthéon-Sorbonne, membre des barreaux de Paris et de la République bolivarienne du Venezuela,

M. Paolo Palchetti, professeur à l'Université Paris 1 Panthéon-Sorbonne,

M. Christian Tams, professeur de droit international à l'Université de Glasgow, membre académique de Matrix Chambers (Londres),

M. Andreas Zimmermann, professeur de droit international à l'Université de Potsdam, membre de la Cour permanente d'arbitrage,

comme conseils et avocats ;

M. Carmelo Borrego, professeur de droit processuel, Universidad Central de Venezuela,

M. Eugenio Hernández-Bretón, professeur de droit international privé, Universidad Central de Venezuela, membre et ancien président de l'Académie des sciences politiques et sociales,

M. Julio César Pineda, PhD, droit international et relations internationales, ancien ambassadeur,

M. Edgardo Sobenes, consultant en droit international,

comme conseils ;

Mr. Jorge Reyes, Minister Counsellor, Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations,

Ms Gimena González, DEA, International Law and International Relations,

Ms Arianny Seijo Noguera, PhD, University of Westminster,

Ms Anne Coulon, Attorney at Law, member of the Bar of the State of New York, Temple Garden Chambers,

Mr. John Schabedoth, LLM, assistant, University of Potsdam,

Mr. Valentín Martín, LLM, PhD student in International Law, Paris 1 Panthéon-Sorbonne University,

as Assistant Counsel;

Mr. Henry Franceschi, Director General of Litigation, Office of the Attorney General of the Republic,

Ms María Josefina Quijada, LLM, BA, Modern Languages,

Mr. Néstor López, Consul General of the Bolivarian Republic of Venezuela,

Mr. Manuel Jiménez, Private Secretary and Personal Assistant to the Vice-President of the Republic,

Mr. Kenny Díaz, Director, Office of the Vice-President of the Republic,

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

Mr. Euclides Sánchez, Director of Security, Office of the Vice-President of the Republic,

Ms Alejandra Carolina Bastidas, Head of Protocol, Office of the Vice-President of the Republic,

Mr. Héctor José Castillo Riera, Security of the Vice-President,

Mr. Daniel Alexander Quintero, Assistant to the Vice-President,

as Members of the Delegation.

M. Jorge Reyes, ministre-conseiller, mission permanente de la République bolivarienne du Venezuela auprès de l'Organisation des Nations Unies,

Mme Gimena González, DEA, droit international et relations internationales,

Mme Arianny Seijo Noguera, PhD, Université de Westminster,

Mme Anne Coulon, avocate, membre du barreau de l'Etat de New York, Temple Garden Chambers,

M. John Schabedoth, LLM, assistant à l'Université de Potsdam,

M. Valentín Martín, LLM, doctorant en droit international à l'Université Paris 1 Panthéon-Sorbonne,

comme conseils adjoints ;

M. Henry Franceschi, directeur général du contentieux, bureau du procureur général de la République,

Mme María Josefina Quijada, LLM, BA, langues modernes,

M. Néstor López, consul général de la République bolivarienne du Venezuela,

M. Manuel Jiménez, secrétaire privé et assistant personnel de la vice-présidente de la République,

M. Kenny Díaz, directeur de cabinet de la vice-présidente de la République,

M. Larry Davoe, directeur des affaires juridiques de la vice-présidence de la République,

M. Euclides Sánchez, directeur de la sécurité de la vice-présidence de la République,

Mme Alejandra Carolina Bastidas, cheffe du protocole de la vice-présidence de la République,

M. Héctor José Castillo Riera, sécurité de la vice-présidence de la République,

M. Daniel Alexander Quintero, assistant, vice-présidence de la République,

comme membres de la délégation.

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

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

The Court meets this morning to hear the second round of oral argument of the Bolivarian Republic of Venezuela on its preliminary objections. I now give the floor to Professor Christian Tams. You have the floor, Professor.

Mr. TAMS:

THE UNITED KINGDOM IS AN INDISPENSABLE PARTY

Introduction

1. Thank you, Madam President. Madam President, Members of the Court, it is a privilege to open Venezuela's second-round presentation. I will respond to Guyana's arguments on the general framework of the *Monetary Gold* doctrine. Professor Palchetti will address the consequences of these proceedings for the United Kingdom and its alleged consent. Professor Zimmermann will speak to questions of admissibility. Venezuela's Agent, Ambassador Moncada, will conclude and present Venezuela's submissions. That is the programme for our morning session.

2. Madam President, on Friday counsel for Guyana professed surprise at novel arguments allegedly not advanced before[1]. In response, let me restate why we are here. We are here because in its Preliminary Objections, Venezuela made clear that "the conduct of the United Kingdom . . . in the [1899] arbitration . . . is the very object of the decision that Guyana requests from the Court"[2]. This remains Venezuela's claim. There is nothing novel.

The proper understanding of the *Monetary Gold* doctrine

3. Guyana rejects Venezuela's claim, but as far as the general framework of *Monetary Gold* is concerned, the first round suggests we agree on two important points.

---

[1] See CR 2022/22, p. 40, para. 37 (Reichler); p. 43, para. 2 (Sands).

[2] POV, para. 51. See also CR 2022/21, p. 51, para. 36 (Tams): a pronouncement on the United Kingdom's conduct "would be the very subject-matter of any decision that the Court would have to render if it reached the merits of Guyana's claim".

4. *First*, when asking whether *Monetary Gold* applies, we agree this Court should proceed from the claims of the Parties. We therefore need to envisage "the decision on the merits the Court is called upon to make"[3], as counsel for Guyana put it.

5. *Second*, we know what decision on the merits you are asked to make. On the slide, you see Guyana's central argument, as put in the Memorial, in essence asking you to uphold the validity of the 1899 Award[4]. Both of Guyana's current submissions depend on this validity claim.

6. Venezuela's claim is also clear: the Arbitral Award is invalid because of "the fraud committed by the United Kingdom in the arbitration"[5]. To this fraud challenge, Guyana responded in its Memorial and on Friday.

7. In other words, the central question of a potential merits decision is clear: is the Award invalid because of the fraudulent conduct of the United Kingdom? And equally clear are the possible outcomes: if Guyana is right, the Court, despite Venezuela's fraud challenge, will uphold the Award.

8. Conversely, if Venezuela is right, the Award will be invalid, and the United Kingdom will be found to have committed a breach of international law. Professor Palchetti will discuss this more fully. For now, I merely note two points.

9. *First*, I note that we have heard nothing from Guyana on this potential breach of international law. In light of Venezuela's fraud challenge, how can Guyana plausibly pretend that the United Kingdom "has no legal interests in the validity of the . . . Award" or "no legal skin in this game"[6]? The United Kingdom stands to be found to have breached international law by the United Nation's principal judicial organ.

10. *Second*, this interest — not to be found in breach of international law — is precisely the interest that triggers the *Monetary Gold* doctrine. In the initial *Monetary Gold* case, Albania was at risk of being found responsible for its treatment of Italian property. In *East Timor*, Indonesia was at risk of having its conduct vis-à-vis East Timor called out as unlawful.

---

[3] CR 2022/22, p. 32, para. 10 (Reichler).

[4] Memorial on the merits of Guyana, 8 Mar. 2022, Vol. I, para. 1.16, and submission 1.

[5] CR 2022/21, p. 18, para. 30 (Rodríguez). See also CR 2022/21, p. 30, para. 3 (Orihuela): "c'est le caractère frauduleux du comportement du Royaume-Uni durant cette période qui justifie la nullité de la sentence arbitrale au cœur de l'affaire".

[6] CR 2022/22, p. 35, para. 24 (Reichler); p. 59, para. 51 (Sands).

11. In our case, it is the United Kingdom that is at risk — at risk of being found to have acted fraudulently. To say that the United Kingdom has "no skin in the game" is absurd. Its skin is the same skin as that of Indonesia or Albania.

The Court will have to rule upon the United Kingdom's conduct

12. Madam President, distinguished judges, would the *Monetary Gold* doctrine apply to a case like this? On Thursday, my colleagues pointed you to some of the evidence suggesting that it does — the tip of the iceberg, if you want. I took you on Thursday to Guyana's Memorial to show that Guyana defended the United Kingdom against Venezuela's charges. At no point has counsel for Guyana indicated how such British conduct could be irrelevant to your decision.

13. What we have heard instead are high-handed dismissals. On the slide you see two examples — counsel suggesting in essence that there is no realistic prospect you would uphold Venezuela's claims, which were called "speculative"[7]. But these dismissals make one thing very clear: Guyana knows that to render the decision sought by the Parties, you *will* have to rule on the United Kingdom's conduct.

14. In fact, it also firmly tells you *how* you should rule, namely by rejecting Venezuela claims. It is a bit as if in the original *Monetary Gold* case, the United Kingdom had dismissed Italy's complaint about Albania's law — loudly asserting that Albania's conduct was clearly lawful.

15. So the first-round presentations have brought clarity on one important point: both Venezuela and Guyana recognize that, in "the decision on the merits the Court is called upon to make"[8], you would have to rule on the United Kingdom's conduct, with all the consequences such a ruling would entail. We merely disagree on what that ruling would be.

A ruling on the United Kingdom's conduct is a prerequisite to a decision on the merits

16. Madam President, how then can one escape the obvious conclusion that the United Kingdom is an indispensable party? Leaving aside its claim on consent (which Professor Palchetti will address), Guyana on Friday offered just one argument. It said that for the *Monetary Gold*

---

[7] See e.g. CR 2022/22, p. 43, para. 2, p. 45, para. 12, and p. 50, para. 24 (Sands).

[8] CR 2022/22, p. 32, para. 10 (Reichler).

doctrine to apply, it was not sufficient that your decision would have "mere implications" on third parties like the United Kingdom; rather the legal interests of an absent third State must form "the very subject-matter" of a dispute[9]. But this argument is a smokescreen.

17. A smokescreen because Venezuela on Thursday had said exactly the same: we noted that the United Kingdom's interests, and I quote from our first-round presentations, "would be the very subject-matter of any decision that the Court would have to render"[10]. A smokescreen also because Guyana's counsel said nothing on how "mere implications" would be distinguished from "the very subject-matter". And a smokescreen most importantly because, while citing the case[11], counsel for Guyana ignored the Court's clear guidance on this point offered by the *Nauru* case[12].

18. Madam President, this guidance — on how to distinguish "mere implications" from "the very subject-matter of a decision" — completely undermines Guyana's argument. Let me say why by taking you to the salient sections of paragraph 55 of the *Nauru* Judgment, which counsel for Guyana cited on Friday.

19. In that passage, the Court began by stating the outcome, and you see it on the slide. It rejected Australia's reliance on *Monetary Gold* precisely because the interests of third States — in this case, New Zealand and the United Kingdom — would not form the very subject-matter of the decision.

20. Now, why were these interests not "the very subject-matter"? The response the Court gave us is on the next slide. The Court clarified that what mattered was what I might call a "prerequisite test". This is what it said:

> "In the latter case [that is, *Monetary Gold*], the determination of Albania's responsibility was a prerequisite for a decision to be taken on Italy's claims. In the present case [that is, *Nauru*], the determination of the responsibility of New Zealand or the United Kingdom is not a prerequisite for the determination of [the responsibility of Australia]."[13]

---

[9] CR 2022/22, e.g. pp. 32-33, paras. 10-13 (Reichler).

[10] CR 2022/21, p. 51, para. 36 (Tams). See also CR 2022/21, p. 30, para. 4 (Orihuela), and POV, references in paras. 21-24.

[11] CR 2022/22, pp. 32-33, para. 13 (Reichler).

[12] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 261, para. 55.

[13] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 261, para. 55; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 104, para. 33.

21. And the Court — at the bottom of the slide — then offered some clarification on this prerequisite test. A finding might have implications for the United Kingdom and New Zealand, the Court said. But "no finding in respect of that legal situation will be needed as a basis for the Court's decision on Nauru's claims against Australia"[14].

22. So, we have clear guidance on the question that Guyana was so concerned about. The guidance is this: if, as a prerequisite to deciding upon the parties claims on the merits, the Court has to rule on the conduct of an absent third State (if such a ruling is needed), then the absent third State's interests form "the very subject-matter" — and the *Monetary Gold* doctrine applies. If not, we are in the terrain of "mere implications". "Prerequisite" means "very subject-matter". The guidance is clear.

23. Madam President, what does this clear guidance mean for our case? The Parties' claims, to reiterate, go to the validity of the Award — which Venezuela challenges because of "the fraud committed by the United Kingdom in the arbitration"[15], while Guyana dismisses this as "speculative"[16]. In light of this, and in the words of the *Nauru* Judgment, is a ruling on the United Kingdom's conduct "needed as a basis" for the Court's decision on the Parties' claims? Is it a "prerequisite"?

24. Madam President, distinguished judges, you know Venezuela's answer. You heard it multiple times on Thursday. Yes, a decision is "needed". Mindful of your guidance, Madam President, that we need not repeat ourselves, let me simply read one statement: "In order to settle this dispute, the Court *will*, as a prerequisite, have to rule on the United Kingdom's conduct."[17] Venezuela, on Thursday, used the very words of your *Nauru* Judgment — and this is why Guyana's long argument on "mere implications" is really a smokescreen. Britain's interests form the very subject-matter of the decision sought by the Parties in the meaning of this Court's jurisprudence.

25. And permit me, as I conclude, Madam President, to add this: of course they do. Unlike in other *Monetary Gold* cases, the United Kingdom in this case is not a "third State" in any meaningful sense. It is not in the background, like Albania or Indonesia. For the purposes of the Parties' claims,

---

[14] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 261-262, para. 55.

[15] CR 2022/21, p. 18, para. 30 (Rodríguez).

[16] CR 2022/22, p. 46, para. 12 (Sands).

[17] CR 2022/21, p. 44, para. 8 (Tams). See also *ibid.*, p. 30, para. 4 (Orihuela), and p. 36, para. 4 (Espósito).

centred on the validity of the 1899 Award and on "arbitration fraud", the United Kingdom is *the* other State. The *only* other State.

26. To put it differently: during an entire Friday afternoon of pleadings, counsel for Guyana had not said a single word on what of *Guyana's* conduct could be remotely relevant for "the decision on the merits the Court is called upon to make"[18]. Their silence was as deafening as it was revealing. There simply is no conduct of Guyana that matters at the present stage of these proceedings. And this is why this case cannot proceed in the absence of the United Kingdom.

27. Madam President, distinguished judges, this concludes my presentation. I thank you and your colleagues for your kind attention. I would ask you now, Madam President, to call on Professor Palchetti.

The PRESIDENT: I thank Professor Tams for his statement. I now invite the next speaker, Professor Paolo Palchetti, to take the floor. You have the floor, Professor.

M. PALCHETTI :

LA COUR NE PEUT PAS SE PRONONCER SUR LA CONDUITE FRAUDULEUSE DU ROYAUME-UNI CAR CET ÉTAT N'EST PAS PARTIE AU PRÉSENT DIFFÉREND

1. Madame la présidente, Mesdames et Messieurs les juges, dans le temps à ma disposition, je me concentrerai sur deux aspects :

— d'une part, le silence gardé par le Guyana sur la question de la responsabilité éventuelle du Royaume-Uni pour sa conduite frauduleuse ;

— d'autre part, l'argument du Guyana selon lequel le Royaume-Uni ne serait plus partie indispensable car il aurait donné son consentement à l'exercice par la Cour de sa compétence.

I. Le silence du Guyana sur la question de la responsabilité internationale du Royaume-Uni

2. Madame la présidente, dans les plaidoiries que nous avons entendues vendredi dernier, le Guyana a insisté sur l'argument relatif à l'absence d'intérêt du Royaume-Uni sur le territoire contesté[19]. Toutefois, le Guyana est demeuré étrangement silencieux sur la question de la

[18] CR 2022/22, p. 32, para. 10 (Reichler).

[19] CR 2022/22, p. 39, par. 36 (Reichler).

responsabilité internationale du Royaume-Uni et des obligations qui découlent d'une telle responsabilité.

3. Le Guyana s'est d'abord timidement défendu en disant qu'il était surpris, que c'était la première fois que le Venezuela soulevait la question de la conduite frauduleuse du Royaume-Uni[20]. Mais cet argument n'est pas nouveau. C'est la position historique du Venezuela. D'ailleurs, comme le professeur Tams vient de le dire, le Guyana a également soulevé dans son mémoire la question du dol, de la corruption et de la contrainte du Royaume-Uni. Le Venezuela s'est limité à mettre en exergue les conséquences qui en découlent : établir qu'un traité ou une sentence arbitrale est nul pour dol, corruption ou contrainte impose d'établir, au préalable, si le Royaume-Uni est tenu pour responsable d'un comportement frauduleux.

4. Ensuite, le Guyana s'est justifié en disant qu'il ne comprenait pas quelles étaient les conséquences de la conduite frauduleuse du Royaume-Uni. Le Guyana prétend que les conséquences envisagées par le Venezuela sont trop abstraites[21]. Pourtant, les éminents juristes de l'autre côté de la barre ne devraient pas avoir de difficultés à comprendre quelles sont les conséquences découlant de la responsabilité internationale d'un Etat, ou quelles sont les conséquences envisagées par l'article 69 de la convention de Vienne.

5. Finalement, le Guyana a amorcé une retraite prudente. Il a continué à répéter que la seule conséquence de l'invalidité du compromis ou de la sentence arbitrale serait que la sentence n'a plus de force juridique[22].

6. Puisque le Guyana a gardé le silence sur la question de la responsabilité internationale du Royaume-Uni — qui est pourtant un point fondamental —, je vous prie respectueusement, Mesdames et Messieurs les juges, de vous reporter aux plaidoiries de jeudi dernier. Je me limite à rappeler seulement :

---

[20] CR 2022/22, p. 38, par. 33 (Reichler).

[21] CR 2022/22, p. 40, par. 37 (Reichler).

[22] CR 2022/22, p. 40, par. 39 (Reichler).

— que le dol ou la corruption «ne constituent … pas, ou pas uniquement, des vices du consentement», ce sont «des faits illicites»[23] et ils soulèvent «des questions tant de responsabilité et de réparation que de nullité»[24] ;

— que l'article 69 de la convention de Vienne prévoit expressément les obligations qui incombent à l'Etat qui a tenu une conduite frauduleuse ;

— que, s'il est établi que le Royaume-Uni a tenu un comportement frauduleux, sa responsabilité internationale sera engagée et il aura obligation d'accorder une réparation appropriée ;

— que, dans le cas d'espèce, cette réparation devra tenir compte de la question, qui n'a rien d'abstraite, de l'exploitation abusive par le Royaume-Uni d'un territoire obtenu grâce à une conduite frauduleuse ;

— finalement, que cette réparation sera d'autant plus nécessaire que le Venezuela a, à maintes reprises, demandé au Royaume-Uni de cesser toute activité d'exploitation des ressources naturelles.

7. Le Guyana ne peut pas prétendre que cela n'est pas suffisant aux fins de l'application du principe de l'*Or monétaire*[25]. C'est la Cour elle-même qui nous dit que cela est suffisant. Je reprends ici les mots utilisés par la Cour dans l'affaire du *Timor oriental* : pour appliquer le principe de l'*Or monétaire*, il suffit de démontrer que la Cour, pour se prononcer sur les demandes de la partie demanderesse, devrait statuer à titre préalable sur la licéité du comportement d'un Etat tiers en l'absence du consentement de cet Etat[26]. Dans notre affaire, il suffit de démontrer qu'il serait nécessaire à la Cour, pour se prononcer sur la validité du compromis ou de la sentence arbitrale, d'établir au préalable le caractère frauduleux — et donc illicite — du comportement du Royaume-Uni. C'est justement la démonstration que le Venezuela a réalisée jeudi et sur laquelle nous n'avons pas entendu de véritables réponses de la part du Guyana.

---

[23] *Annuaire de la Commission du droit international*, 1982, vol. II, partie 2, p. 69.

[24] *Annuaire de la Commission du droit international*, 1966, vol. II, partie 2, p. 288.

[25] CR 2022/22, p. 40, par. 37 (Reichler).

[26] *Timor oriental (Portugal c. Australie), arrêt, C.I.J. Recueil 199*5, p. 105, par. 35.

II. Le principe de l'*Or monétaire* s'applique car le Royaume-Uni n'est pas partie à l'instance

8. Madame la présidente, vendredi dernier, le Guyana a aussi introduit un nouvel argument pour éviter l'application du principe de l'*Or monétaire*. Le Guyana prétend maintenant que le Royaume-Uni aurait donné son consentement à ce que la Cour exerce sa compétence pour régler le différend entre le Guyana et le Venezuela. Ce consentement du Royaume-Uni, d'après le Guyana, se dégagerait d'une part, de l'article IV de l'accord de 1966[27] et, d'autre part, du fait que le Royaume-Uni a déclaré son soutien à ce que le différend entre le Guyana et le Venezuela soit réglé par la Cour[28].

9. Premièrement, l'article IV, paragraphe 2, de l'accord de Genève : le Guyana s'évertue à affirmer que, en vertu de cette disposition, le Royaume-Uni aurait consenti à l'exercice par la Cour de sa compétence, sans que sa participation à l'instance soit nécessaire. Cette interprétation de l'article IV ne trouve aucun fondement dans le texte de cette disposition. L'article IV ne contient aucune référence au consentement ou, plus généralement, à la position du Royaume-Uni par rapport aux procédures envisagées par cette disposition. Ces procédures ont porté sur le dialogue et la coopération entre le Venezuela et le Guyana après la décolonisation de la Guyane britannique. L'objet et le but de l'article IV sont de régler le différend frontalier par un arrangement pratique et acceptable pour toutes les parties. Il n'est pas tenable d'établir un lien quelconque entre l'article IV et le consentement du Royaume-Uni à la procédure devant la Cour, d'autant plus si l'on considère qu'en 1966 le Royaume-Uni avait exclu la possibilité d'un règlement arbitral ou juridictionnel du différend[29].

10. Mais, au-delà de l'article IV, le point essentiel est que l'argument du Guyana n'est pas compatible avec le principe de l'*Or monétaire* tel qu'il a été développé par la Cour dans sa jurisprudence. Il n'est pas acceptable de laisser à un Etat tiers qui n'a pas accepté la juridiction de la Cour et qui n'est pas partie au différend le soin de décider si la Cour doit ou ne doit pas exercer sa compétence. Cet argument n'a aucun fondement. Même si l'on considère que le Royaume-Uni a

---

[27] CR 2022/22, p. 50-55 (Sands).

[28] CR 2022/22, p. 36-38 (Reichler).

[29] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 March 1966), mémoire du Guyana, 19 novembre 2018 (annexe 33).

donné son consentement — ce que réfute le Venezuela —, c'est seulement si l'Etat tiers accepte la juridiction de la Cour et devient partie à l'affaire que la Cour peut se prononcer sur les droits et obligations de cet Etat. Le juge Crawford l'a dit clairement : «the claim is inadmissible unless the necessary third state is joined as a full party to the proceedings»[30]. Mon ami le professeur d'Argent l'a également dit clairement : «Only an intervention of the third absent state *as a party* can cure the defects of claims disallowed under the Monetary Gold principle; an intervention as a non-party would not suffice.»[31]

11. Laisser à l'Etat tiers le soin de décider si la Cour doit ou ne doit pas appliquer le principe de l'*Or monétaire* est contraire à la jurisprudence de la Cour, qui d'ailleurs n'a pas accordé d'importance à la question de savoir si la partie indispensable s'oppose ou non à ce que la Cour exerce sa compétence. Ce serait également contraire à tout principe de bonne administration de la justice. Dans notre affaire, cela entraînerait une situation inacceptable. Si la Cour établit que la sentence est nulle à cause de la conduite frauduleuse du Royaume-Uni, l'arrêt n'aura aucun effet contraignant pour le Royaume-Uni, cet Etat n'étant pas partie à l'instance.

12. Mais la non-participation de la partie indispensable a d'autres effets inacceptables, notamment en matière de preuve. Si un Etat est partie au différend, cet Etat, comme la Cour l'a observé, a le «devoir de coopérer «en produisant tout élément de preuve en sa possession susceptible d'aider la Cour à régler le différend dont elle est saisie»»[32]. Or, ce devoir de coopérer n'engage pas le Royaume-Uni, qui n'est pas partie à l'instance. Cela risque de créer une situation d'inégalité flagrante entre les Parties au présent différend. En dépit de cela, le Guyana a l'audace de vous demander de vous prononcer sur les obligations du Royaume-Uni envers le Venezuela sans que le Royaume-Uni ne soit lié ni par votre arrêt ni par aucune obligation de coopérer de bonne foi au bon déroulement de la procédure.

---

[30] Crawford, J., *Brownlies's Principles of Public International Law* (Oxford University Press 2012), p. 698.

[31] D'Argent, P., "The Monetary Gold Principle: A Matter of Submissions", *AJIL Unbound*, 2021, Vol. 115, p. 152.

[32] *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie), arrêt, C.I.J. Recueil 2015 (I)*, p. 73, par. 173.

III. Conclusion

13. Madame la présidente, je conclus avec une dernière remarque. Si, aujourd'hui, le Venezuela met en cause la responsabilité internationale du Royaume-Uni, est-ce que cela serait contraire aux principes de la décolonisation et à la pratique en matière de succession d'Etats[33] ? Est-ce que cela serait une solution «unprincipled and … repugnant», comme le soutien le Guyana[34] ? Non, Madame la présidente. Ce qui est grave et inacceptable, c'est l'accusation infamante et infondée que le Guyana continue à adresser au Venezuela. Il ne s'agit évidemment pas ici de remettre en cause le processus achevé de décolonisation. Il s'agit de déterminer qui doit être tenu pour responsable de la conduite frauduleuse d'une puissance coloniale. Or, la réponse à cette question ne fait aucun doute. Cette responsabilité doit incomber à l'ancien Etat colonial — dans notre affaire : au Royaume-Uni. Le Guyana ne conteste pas ce principe. Il ne pourrait pas le faire. C'est en vertu de ce principe que le Royaume-Uni est partie indispensable.

14. Si la Cour accepte de déclarer la demande du Guyana irrecevable, il n'y aura pas un retour au passé colonial. La seule conséquence sera le retour à l'esprit qui avait animé les parties en 1966, lors de la conclusion de l'accord de Genève : trouver une solution mutuellement acceptable au différend concernant la délimitation territoriale. Le Venezuela est prêt à le faire. Mme la vice-présidente du Venezuela l'a rappelé jeudi dernier. Je me permets de la citer : «we extend once again our hand to Guyana to settle the existent territorial controversy, abiding by the Geneva Agreement»[35].

15. Madame la présidente, Mesdames et Messieurs les juges, je vous remercie pour votre attention et je vous prie, Madame la présidente, de bien vouloir donner la parole au professeur Andreas Zimmermann.

The PRESIDENT: I thank Professor Palchetti and I now invite Professor Andreas Zimmermann to address the Court. You have the floor, Professor.

---

[33] CR 2022/22, p. 57, par. 46 (Sands).

[34] CR 2022/22, p. 58, par. 50 (Sands).

[35] CR 2022/21, p. 21, par. 51 (Rodríguez).

Mr. ZIMMERMANN:

VENEZUELA'S PRELIMINARY OBJECTION IS ADMISSIBLE AND IS NOT BELATED

1. Madam President, Members of the Court, on Friday, you heard Guyana's *renewed* attempt to convince you that you should dismiss Venezuela's preliminary objection as being inadmissible[36].

2. Guyana argued, in particular, that the *Monetary Gold* objection concerns the jurisdiction of the Court since it focuses on State consent[37].

3. For sure, as the Court has reiterated time and again, the Court's jurisdiction is based on consent[38]. But, as the Court has also affirmed, it is the consent *of the Parties* to a given case that lies at the core of the evaluation of the Court's *jurisdiction*[39]. As the Court put it: "The Court is always conscious that it has jurisdiction only so far as *conferred by the consent of the parties*."[40]

4. The absence of an indispensable third party instead *restricts* the Court's ability to exercise the jurisdiction conferred upon it *by the parties*, and thus constitutes an admissibility issue and not a jurisdictional one.

---

[36] See already for an earlier attempt by Guyana: WOG, 15 July 2022, p. 13.

[37] CR 2022/22 p. 19, para. 16 (d'Argent).

[38] See *inter alia*: *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002*, p. 241, para. 57; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 182 *et seq.*, para. 42; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, I.C.J. Reports 2006*, p. 32, para. 65; *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I),* p. 307, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II),* p. 23 *et seq.*, para. 33; *Appeal relating to the Jurisdiction of the ICAO Council Under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates* v. *Qatar), Judgment, I.C.J. Reports 2020*, p. 103, para. 55; *Appeal relating to the Jurisdiction of the ICAO Council Under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates* v. *Qatar), Judgment*, *I.C.J. Reports 2020*, p. 194, para. 55.

[39] See *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 182 *et seq.*, para. 42; *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I),* p. 307, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, pp. 577-578, para. 33.

[40] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 183, para. 42; emphasis added.

5. In this regard, I also note that both parties and counsel arguing *Monetary Gold*, including the late Judge Crawford[41], have dealt with the said objection under the heading of "inadmissibility", rather than as a jurisdictional issue[42].

6. This is also in line with the Court's own understanding of the character of the *Monetary Gold* objection. Notably, in the *East Timor* case, the Court first determined that it has jurisdiction[43], before then concluding that, in light of Australia's admissibility-related objection, it could not "*exercise* the jurisdiction it has"[44]. The Court has thereby accepted, at least implicitly, and contrary to what Guyana wants you to believe[45], that the *Monetary Gold* objection is one that indeed relates to the admissibility of a given case.

7. Given the foregoing, Guyana has tried to make much of the fact that the Court, in its Order of 19 June 2018, had considered that it was necessary "to be informed of *all of the legal and factual grounds* on which the Parties rely *in the matter of its jurisdiction*"[46], which formula — in Guyana's view — was meant to embrace "*any* potential limit to the Court's jurisdiction in relation to *any* of the claims" contained in the Application[47].

8. Guyana's position is, however, untenable since its reading of the 2018 Order contradicts both its very terms as well as the Court's jurisprudence.

9. *For one*, the terms of the Court's 2018 Order and the context of this case make clear that the "question of the [Court's] jurisdiction" referred to in this Order meant the question of the *existence* of the Court's jurisdiction, not the question of the *exercise* of this jurisdiction. It is the *only* question — the only one — addressed in the Order and indeed the *only* question that was debated by the Parties at the time. As later recalled by the Court, Venezuela had stated that it considered that "the Court manifestly lacks jurisdiction"[48]. In response, Guyana had solely indicated that it "wished

---

[41] *East Timor (Portugal* v. *Australia)*, CR 1995/7, p. 51, para. 2 (Crawford).

[42] See *East Timor (Portugal* v. *Australia)*, Counter-Memorial of the Government of Australia, 1 June 1992, Part II (Inadmissibility).

[43] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 100, para. 23.

[44] *Ibid*., p. 105, para. 35; emphasis added.

[45] CR 2022/22, pp. 21-22, para. 23 (d'Argent).

[46] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Order of 19 June 2018, I.C.J. Reports 2018 (I)*, p. 403; emphasis added.

[47] CR 2022/22, pp. 16-17, paras. 7-11 (d'Argent); emphasis added.

[48] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Order of 19 June 2018, I.C.J. Reports 2018 (I)*, p. 402.

to proceed with the case", without addressing any further questions[49]. No debate about *Monetary Gold*; no debate about admissibility.

10. *Second*, the formula referred to by the Court merely echoes the wording of Article 79, paragraph 8, of the Rules of Court (in its then applicable version)[50], following "une pratique courante" of the Court.

11. *Third*, and most importantly, an examination of previous decisions on jurisdiction *contradicts* that the allegedly "all-embracing formula" used by the Court in 2018 was meant to include admissibility issues. I have already referred you to several relevant cases during my first round[51]; I will now provide you with an even more striking example of your own practice.

12. As you are certainly aware, in its first *Nottebohm* Judgment, the Court decided that Guatemala's objection as to the Court's *jurisdiction* "[did] *not affect any* jurisdiction which the Court may have to deal with the claim"[52] —which formula as used by the Court is even much broader than the formula used in the Court's 2018 Order.

13. In Guyana's reading, such broad terms, just like the terms used by the Court in 2018, surely would encompass the existence of the Court's jurisdiction, *as well as* issues of admissibility. Yet, when Guatemala in the *Nottebohm* case thereafter raised an objection as to the *admissibility* of Lichtenstein's claim, the Court considered *this* objection to be admissible, and therefore decided to hold the claim submitted by Liechtenstein inadmissible[53]. *A fortiori*, the same must then obviously hold true for the case at hand.

14. Moreover, Guyana's broad interpretation of the Court's 2018 Order also cannot be reconciled with the Court's own later Order of 13 June 2022. This Order not only confirmed that Venezuela's preliminary objection had the effect of suspending the proceedings on the merits "by

---

[49] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Order of 19 June 2018, I.C.J. Reports 2018 (I)*, p. 402.

[50] Article 79, paragraph 8, of the Rules of Court in its then applicable version stated:

> "In order to enable the Court to determine its jurisdiction at the preliminary stage of the proceedings, the Court, whenever necessary, may request the parties to argue all questions of law and fact, and to adduce all evidence, which bear on the issue."

[51] CR 2022/21, pp. 21-23, paras. 3-10 (Zimmermann).

[52] *Nottebohm (Liechtenstein* v. *Guatemala), Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 124; emphasis added.

[53] *Nottebohm (Liechtenstein* v. *Guatemala), Second Phase, Judgment, I.C.J. Reports 1955*, p. 26.

virtue of Article 79*bis*, paragraph 3, of the Rules of the Court"[54]; the 2022 Order also stated specifically that Venezuela's preliminary objection was one related to the "admissibility of the Application"[55], i.e. not one that relates to the matter of the Court's jurisdiction.

15. Guyana further asserts that Venezuela itself allegedly recognized that its *Monetary Gold* objection was already covered by the Court's 2020 Judgment[56]. But on the contrary, Venezuela in its written Preliminary Objections had claimed — as you can see — that the Court had not even discussed, and even less decided, the *Monetary Gold* objection in its 2020 Judgment. Indeed, how else could you explain the use of the conditional tense "[h]ad the Court" in paragraph 27 of Venezuela's Preliminary Objections[57]?

16. Guyana also put much emphasis on the argument that the *Monetary Gold* principle concerns the claims formulated in the Application[58]. Yet, in the case at hand, both of Guyana's claims are inadmissible, with the second one depending on the first one anyhow, by virtue of the *Monetary Gold* principle.

17. That brings me to the issue of the alleged belated character of Venezuela's objection. Counsel for Guyana misrepresents the system — I am afraid to say — set up by Articles 79 and 79*bis* of the Rules of Court.

18. Article 79 only obliges parties to argue those questions that the Court — you — has decided to be addressed separately. The procedure described at Article 79*bis*, paragraph 1, then accordingly applies to any objection addressing *other* questions.

19. And what is more is that the Court, in its Order of 13 June 2022, before noting the admissibility character of Venezuela's objection, recalled that, in its Order dated 19 June 2018, it had expressly preserved "the possibility for Venezuela of availing itself of its procedural rights as a Party to the case"[59].

---

[54] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Order of 13 June 2022*, p. 2.

[55] *Ibid.*

[56] CR 2022/22, p. 22, para. 25 (d'Argent), making reference to POV, pp. 4-5, para. 27.

[57] POV, pp. 4-5, para. 27.

[58] CR 2022/22, p. 18, para. 14 (d'Argent).

[59] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Order of 13 June 2022*, p.2.

20. Furthermore, Guyana contends that Venezuela could have known from the very outset of the case, and well before the Court's 2020 Judgment, the basis of its preliminary objection[60].

21. Unfortunately, Guyana, however, forgot to mention that its own Application had at the outset circumscribed the case as one relating to Guyana's territorial integrity, Venezuela's withdrawal from certain territories it allegedly occupies and the alleged illegal threat or use of force by Venezuela against Guyana[61]. Obviously, the case, as *then* framed, as *then* defined by Guyana itself, did not yet trigger the *Monetary Gold* objection.

22. Rather, it was only your 2020 Judgment that made it clear that, as demonstrated by my colleagues, it is the United Kingdom's conduct and its responsibility under international law which lie at the very heart of this case. It was then, and then only, that Venezuela could raise its *Monetary Gold* objection.

23. Members of the Court, let me conclude with some very brief remarks on the issue of *res judicata*.

24. Guyana itself referred you to your 2016 Judgment in the *Continental Shelf* case between Nicaragua and Colombia[62]. But said Judgment, confirming the earlier *Bosnia Genocide* merits Judgment I previously mentioned[63], the 2016 Judgment, explicitly stated that, in order to ascertain what is covered by the *res judicata* of a given judgment, it is "necessary to determine the meaning of the operative clause *by reference to the reasoning set out in the judgment* in question"[64].

25. Members of the Court, I can assure you that over the weekend I anew very thoroughly studied your December 2020 Judgment to find out whether, in its reasoning, it referred, explicitly or implicitly, in word or in content, to the *Monetary Gold* objection — and, once again, I could not find any such reference in your reasoning. This reconfirms that, as I have already previously shown[65], the

---

[60] CR 2022/22, pp. 24-25, para. 33 (d'Argent).

[61] Application instituting proceedings of the Co-operative Republic of Guyana, 29 March 2018, p. 26, para. 55.

[62] CR 2022/22, p. 27, para. 13 (Beharry).

[63] CR 2022/21, pp. 25 *et seq*, paras. 22 *et seq.* (Zimmermann), quoting *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)*, pp. 89 *et seq*., paras. 114 *et seq*.

[64] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2016 (I),* p. 126, para. 61; emphasis added.

[65] CR 2022/21, pp. 25-28, paras. 22-36 (Zimmermann).

2020 Judgment's *res judicata* effect does *not* bar the Court from considering Venezuela's preliminary objection.

26. Finally — and that almost brings me to the end — I was stunned, to say the least, by the bold proposition of Guyana that a decision by this very Court, upholding Venezuela's *Monetary Gold* objection and thus finding Guyana's Application to be inadmissible, would violate Articles 59 and 60 of the Court's Statute and even Article 94 of the United Nations Charter[66].

27. Is Guyana really saying that this Court in 1955, in finding Liechtenstein's application inadmissible in the *Nottebohm* case[67], after having previously confirmed in 1953 that it had jurisdiction to entertain the case[68], that this practice of the Court violated the Court's own Statute and the United Nations Charter?

28. I cannot but submit to you that this confirms how desperate Guyana must be to try to prevent at almost all costs the Court to consider the substance of Venezuela's well-founded preliminary objection.

29. Madam President, Members of the Court, this brings me to the end of my presentation. I once again thank all of you for your very kind attention and now ask you, Madam President, to call upon the Agent of Venezuela. Thank you so much.

The PRESIDENT: I thank Professor Zimmermann. I now give the floor to the Agent of Venezuela, H.E. Mr. Samuel Reinaldo Moncada Acosta. You have the floor, Excellency.

Mr. MONCADA:

1. Madam President, respected Members of the Court, we have witnessed in this Court a journey back in time to the nineteenth century. Guyana repeated the British Crown's claims as to the validity of the arbitration that was consummated by the 1899 dispossession. But it was all a mirage, because Guyana is not Britain. It did not even exist and yet, 123 years later, it is trying to justify this fraud. This is why this proceeding is baseless.

---

[66] CR 2022/22, p. 29, para. 17 (Beharry).

[67] *Nottebohm (Liechtenstein* v. *Guatemala), Second Phase, Judgment, I.C.J. Reports 1955*, p. 26.

[68] *Nottebohm (Liechtenstein* v. *Guatemala), Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 124.

2. It is a sad state of affairs that a country proud of its independence should seek to take advantage of the fraud committed by its former metropole against a fully independent and sovereign republic.

3. However, it is never too late for the truth. And the truth is that Venezuela for 182 years has been fighting an imperial aggression against the integrity of its territory and the wound caused by the aggression is now being excused by the State that has most benefited from the spoils of injustice. In this story there is only one victim: Venezuela.

4. The Venezuelan tradition of anti-colonial struggle has been perfectly consistent since its constitution as a sovereign State in 1811, and is proven by our fraternal support for the independence of Guyana in 1966. What Venezuela cannot accept is that, in the name of decolonization, Guyana repeats the crime committed by the colonizing Power.

5. Venezuela asks before this Court: how to conceal the fraudulent nature of the arbitration? How to conceal the secret pacts that predetermined the results of the fraud? But more importantly, how to do it without the presence of the United Kingdom? We were deceived in 1899. But today we know the truth, it is impossible to deceive us once again.

6. Venezuela is united and aware of the crime committed against our nation and we come to the International Court of Justice to tell such a historical truth, but also to extend a helping hand to Guyana. The existence of Guyana and Venezuela is everlasting, we will be eternal neighbours and we must maintain brotherly relations of friendship and co-operation. Let us not allow the consequences of the unlawful conduct of the United Kingdom, the responsible and absent State in this proceeding, to continue to affect the future of our nations.

7. The nineteenth century was dominated by the plunder of gold and natural wealth at the hands of the United Kingdom imperial mining. Now, in the twenty-first century, oil transnationals seek to dominate the sovereign rights of States over their natural resources and to stoke up artificial divisions that undermine relations between peoples for generations.

8. Madam President, respected Members of the Court, Venezuela has always had a policy based on peace, honour and respect for international law. We would never claim, or even aspire, to something that does not belong to us. This Court has a unique opportunity to prevent the perpetuation

of a fraud and to pave the way to reach, through direct talks, "satisfactory solutions for the practical settlement of the controversy" as is provided for in the 1966 Geneva Agreement.

9. Madam President, Members of the Court, I now have the honour to read Venezuela's final submission:

> "In the case concerning *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, for the reasons set forth in its written and oral pleadings on preliminary objections, the Bolivarian Republic of Venezuela requests the Court to adjudge and declare that Guyana's claims are inadmissible."

10. Finally, may I be permitted to express on behalf of the Government and the Venezuelan people our deepest gratitude to you, Madam President, and to the Members of the Court, for your kind attention.

11. We are very grateful as well to all concerned: to the Registrar and his staff. We likewise extend our gratitude to the interpreters, who have done an excellent job. In particular, we appreciate that these oral pleadings have been interpreted into Spanish.

12. Our thanks go especially to Guyana's distinguished Agent, and to the ladies and gentlemen making up its delegation. And last but certainly not least, I would like to express my heartfelt gratitude to our delegation, including our brilliant legal team.

13. Madam President, respected Members of the Court, this concludes my statement.

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

The Court will meet again tomorrow, Tuesday 22 November 2022, at 10 a.m., to hear the second round of oral argument of the Co-operative Republic of Guyana.

The sitting is adjourned.

The Court rose at 10.45 a.m.

_____