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Summary
Unofficial

Summary 2023/4
6 April 2023

Arbitral Award of 3 October 1899 (Guyana v. *Venezuela)*

Summary of the Judgment of 6 April 2023

Procedural history (paras. 1-27)

The Court begins by recalling that, on 29 March 2018, the Government of the Co-operative Republic of Guyana (hereinafter "Guyana") filed in the Registry of the Court an Application instituting proceedings against the Bolivarian Republic of Venezuela (hereinafter "Venezuela") with respect to a dispute concerning "the legal validity and binding effect of the Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899" (hereinafter the "1899 Award" or the "Award"). In its Application, Guyana sought to found the jurisdiction of the Court, under Article 36, paragraph 1, of the Statute of the Court, on Article IV, paragraph 2, of the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana" signed at Geneva on 17 February 1966 (hereinafter the "Geneva Agreement" or the "Agreement"). It explained that, pursuant to this latter provision, Guyana and Venezuela "mutually conferred upon the Secretary-General of the United Nations the authority to choose the means of settlement of the controversy and, on 30 January 2018, the Secretary-General exercised his authority by choosing judicial settlement by the Court".

On 18 June 2018, Venezuela stated that it considered that the Court lacked jurisdiction to hear the case and announced that it would not be participating in the proceedings. The Court held that, in the circumstances of the case, it was necessary first of all to resolve the question of its jurisdiction, and that, accordingly, it should rule on this question separately, before any proceedings on the merits. By an Order of 19 June 2018, the Court fixed the time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela addressed to the question of the jurisdiction of the Court. While Venezuela did not file a Counter-Memorial on the question of the jurisdiction of the Court within the time-limit fixed for that purpose, it submitted to the Court on 28 November 2019 a document entitled "Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29th, 2018". Nor did Venezuela participate in the public hearing held on 30 June 2020 on the question of the jurisdiction of the Court, but it did transmit its written comments on the arguments presented by Guyana at that hearing.

In its Judgment of 18 December 2020 (hereinafter the "2020 Judgment"), the Court found that it had jurisdiction to entertain the Application filed by Guyana on 29 March 2018 in so far as it concerns the validity of the 1899 Award and the related question of the definitive settlement of the

land boundary dispute between Guyana and Venezuela. The Court also found that it did not have jurisdiction to entertain the claims of Guyana arising from events that occurred after the signature of the Geneva Agreement.

On 7 June 2022, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, Venezuela raised preliminary objections which it characterized as objections to the admissibility of the Application. Although Venezuela refers in its final submissions to "preliminary objections" in the plural, the Court understands Venezuela to be making in substance only a single preliminary objection based on the argument that the United Kingdom is an indispensable third party without the consent of which the Court cannot adjudicate upon the dispute.

I. HISTORICAL AND FACTUAL BACKGROUND (PARAS. 28-52)

The Court recalls the historical and factual background to the present case, as set out in its Judgment of 18 December 2020. At the time the present dispute arose, Guyana was still a British colony, known as British Guiana. It gained independence from the United Kingdom on 26 May 1966. Next, the Court explains that the dispute between Guyana and Venezuela is part of a series of events dating back to the second half of the nineteenth century, which it then describes in more detail.

A. The 1897 Washington Treaty and the 1899 Award (paras. 30-33)

The Court recalls that, in the nineteenth century, the United Kingdom and Venezuela both claimed the territory located between the mouth of the Essequibo River in the east and the Orinoco River in the west. In the 1890s, the United States of America encouraged both parties to submit their territorial claims to arbitration. A treaty of arbitration entitled the "Treaty between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary between the Colony of British Guiana and the United States of Venezuela" (hereinafter the "Washington Treaty") was signed in Washington on 2 February 1897.

The arbitral tribunal established under the Washington Treaty rendered its Award on 3 October 1899. That Award granted the entire mouth of the Orinoco River and the land on either side to Venezuela; it granted to the United Kingdom the land to the east extending to the Essequibo River. The following year, a joint Anglo-Venezuelan commission was charged with demarcating the boundary established by the 1899 Award. The commission carried out that task between November 1900 and June 1904. On 10 January 1905, after the boundary had been demarcated, the British and Venezuelan commissioners produced an official boundary map and signed an agreement accepting, *inter alia*, that the co-ordinates of the points listed were correct.

B. Venezuela's repudiation of the 1899 Award and the search for a settlement of the dispute (paras. 34-38)

The Court explains that, on 14 February 1962, Venezuela informed the Secretary-General of the United Nations that it considered there to be a dispute between itself and the United Kingdom "concerning the demarcation of the frontier between Venezuela and British Guiana", that the 1899 Award was "the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights" and, consequently, that it could not recognize that Award.

The Government of the United Kingdom, for its part, asserted that "the Western boundary of British Guiana with Venezuela [had been] finally settled by the award which the arbitral tribunal announced on 3 October 1899", and that it could not "agree that there [could] be any dispute over the question settled by the award". It nevertheless declared that it remained open to discussions through diplomatic channels.

On 16 November 1962, with the authorization of the representatives of the United Kingdom and Venezuela, the Chairman of the Fourth Committee of the United Nations General Assembly declared that the Governments of the two States (the Government of the United Kingdom acting with the full concurrence of the Government of British Guiana) would examine the "documentary material" relating to the 1899 Award (hereinafter the "Tripartite Examination"). The Tripartite Examination took place from 1963 to 1965. It was completed on 3 August 1965 with the exchange of the experts' reports. While Venezuela's experts continued to consider the Award to be null and void, the expert of the United Kingdom was of the view that there was no evidence to support that position.

C. The signing of the Geneva Agreement (paras. 39-43)

Next, the Court recalls that, following the failure of the talks held in London, the three delegations agreed to meet again in Geneva in February 1966 and, on 17 February 1966, signed the Geneva Agreement, the English and Spanish texts of which are authoritative. On 26 May 1966, Guyana, having attained independence, became a party to the Geneva Agreement, alongside the Governments of the United Kingdom and Venezuela.

The Geneva Agreement provides, first, for the establishment of a Mixed Commission to seek a settlement of the controversy between the parties (Articles I and II). In addition, Article IV, paragraph 1, states that, should this Commission fail in its task, the Governments of Guyana and Venezuela shall choose one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations. Finally, in accordance with Article IV, paragraph 2, should those Governments fail to reach agreement, the decision as to the means of settlement shall be made by an appropriate international organ upon which they both agree, or, failing an agreement between them on this point, by the Secretary-General of the United Nations.

D. The implementation of the Geneva Agreement (paras. 44-52)

The Mixed Commission was established in 1966, pursuant to Articles I and II of the Geneva Agreement, and reached the end of its mandate in 1970 without having arrived at a solution.

Since no solution was identified through the Mixed Commission, it fell to Venezuela and Guyana, under Article IV of the Geneva Agreement, to choose one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations. However, in view of the disagreements between the Parties, a moratorium on the dispute settlement process was adopted in a protocol to the Geneva Agreement (hereinafter the "Protocol of Port of Spain"), signed on 18 June 1970. Article III of the Protocol provided for the operation of Article IV of the Geneva Agreement to be suspended so long as the Protocol remained in force.

In December 1981, Venezuela announced its intention to terminate the Protocol of Port of Spain. Consequently, the application of Article IV of the Geneva Agreement was resumed from 18 June 1982.

Pursuant to Article IV, paragraph 1, of the Geneva Agreement, the Parties attempted to reach an agreement on the choice of one of the means of peaceful settlement provided for in Article 33 of the Charter. However, they failed to do so within the three-month time-limit set out in Article IV, paragraph 2. They also failed to agree on the choice of an appropriate international organ to decide on the means of settlement, as provided for in Article IV, paragraph 2, of the Geneva Agreement.

The Parties therefore proceeded to the next step, referring the decision on the means of settlement to the Secretary-General of the United Nations.

After the matter was referred to him by the Parties, the Secretary-General, Mr. Javier Pérez de Cuéllar, agreed by a letter of 31 March 1983 to undertake the responsibility conferred upon him under Article IV, paragraph 2, of the Geneva Agreement. In early 1990, he chose the good offices process as the appropriate means of settlement.

Between 1990 and 2014, the good offices process was led by three Personal Representatives appointed by successive Secretaries-General.

In September 2015, the Secretary-General held a meeting with the Heads of State of Guyana and Venezuela, before issuing, on 12 November 2015, a document in which he informed the Parties that "[i]f a practical solution to the controversy [were] not found before the end of his tenure, [he] intend[ed] to initiate the process to obtain a final and binding decision from the International Court of Justice".

In December 2016, the Secretary-General announced that he had decided to continue the good offices process for a further year.

After taking office on 1 January 2017, the new Secretary-General, Mr. António Guterres, continued the good offices process for a final year, in conformity with his predecessor's decision. In letters dated 30 January 2018 to both Parties, the Secretary-General stated that he had "carefully analyzed the developments in the good offices process during the course of 2017" and announced that, "significant progress not having been made toward arriving at a full agreement for the solution of the controversy", he had "chosen the International Court of Justice as the means that is now to be used for its solution".

On 29 March 2018, Guyana filed its Application in the Registry of the Court.

II. THE ADMISSIBILITY OF VENEZUELA'S PRELIMINARY OBJECTION (PARAS. 53-74)

In respect of Venezuela's preliminary objection, the Court notes that Guyana asserts that the objection concerns the exercise of the Court's jurisdiction and should be rejected as inadmissible, because it is jurisdictional in nature and not an objection to admissibility. Guyana contends that Venezuela is no longer entitled to raise a preliminary objection which concerns questions of jurisdiction decided by the Court in a binding judgment in 2020. It argues that Venezuela's preliminary objection is time-barred, because Venezuela could and should have raised its objection within the time-limit fixed by the Court's Order of 19 June 2018.

The Court recalls that it has, on a number of occasions, considered whether a State that is not party to the proceedings before it should be deemed to be an indispensable third party without the consent of which the Court cannot adjudicate. It explains that, when rejecting an objection that a third State is an indispensable party without the consent of which the Court cannot adjudicate in a given case, it has proceeded on the basis that the objection concerned the exercise of jurisdiction rather than the existence of jurisdiction.

The Court recalls the decisions it has reached in several cases on the basis of the principle referred to as "Monetary Gold" and explains that its jurisprudence is premised on a distinction between two different concepts: on the one hand, the existence of the Court's jurisdiction and, on the other, the exercise of its jurisdiction where that jurisdiction is established. Only an objection concerning the existence of the Court's jurisdiction can be characterized as an objection to jurisdiction. The Court concludes that Venezuela's objection on the basis of the Monetary Gold principle is an objection to the exercise of the Court's jurisdiction and thus does not constitute an objection to jurisdiction.

The Court next addresses Guyana's argument according to which Venezuela is no longer able to raise a preliminary objection which, the Applicant contends, concerns questions of jurisdiction already decided in the 2020 Judgment.

The Court states that the force of *res judicata*, a principle reflected in Articles 59 and 60 of its Statute, attaches not only to a judgment on the merits, but also to a judgment determining jurisdiction, such as the Court's 2020 Judgment. Specifically, the operative part of a judgment of the Court possesses the force of *res judicata*. In order to determine what has been decided with the force of *res judicata*, "it is also necessary to ascertain the content of the decision, the finality of which is to be guaranteed", and it "may be necessary to determine the meaning of the operative clause by reference to the reasoning set out in the judgment in question". If a matter "has not in fact been determined, expressly or by necessary implication, then no force of *res judicata* attaches to it".

The Court examines the operative paragraph of the 2020 Judgment and the reasoning underlying it, and concludes that they only address questions concerning the existence of the Court's jurisdiction. It observes that the Judgment does not address, even implicitly, the issue of the exercise of jurisdiction by the Court. Thus, the question whether the United Kingdom is an indispensable third party without the consent of which the Court could not exercise its jurisdiction was not determined by necessary implication in the 2020 Judgment.

The Court is of the view that the force of *res judicata* attaching to the 2020 Judgment does not bar the admissibility of Venezuela's preliminary objection.

The Court also notes that the time-limits fixed in its Order of 19 June 2018 only concerned pleadings with respect to the question of the existence of the Court's jurisdiction and therefore did not apply to pleadings with respect to the preliminary objection raised by Venezuela.

In light of the foregoing, the Court considers that Venezuela remained entitled to raise its preliminary objection within the time-limit set out in Article 79*bis*, paragraph 1, of the Rules of Court. The Court concludes that Venezuela's preliminary objection is admissible.

III. EXAMINATION OF VENEZUELA'S PRELIMINARY OBJECTION (PARAS. 75-107)

The Court recalls that Venezuela, relying on the Monetary Gold principle, submits that the United Kingdom is an indispensable third party to the proceedings, in the absence of which the Court cannot decide the question of the validity of the 1899 Award. The Respondent asserts that, in accordance with this principle, an application is inadmissible if the legal interests of a third State would constitute the very subject-matter of the decision that is applied for, and that State has not consented to adjudication by the Court. According to Venezuela, the legal interests of the United Kingdom would be the very subject-matter of the Court's decision in the present case.

The Court notes that the two Parties to these proceedings, as well as the United Kingdom, are parties to the Geneva Agreement, on which the Court's jurisdiction is based. Accordingly, the Court considers the legal implications of the United Kingdom being a party to the Geneva Agreement and proceeds to interpret the relevant provisions of that instrument.

To interpret the Geneva Agreement, the Court applies the rules of treaty interpretation to be found in Articles 31 to 33 of the Vienna Convention, which reflect customary international law.

First, the Court notes that the emphasis placed by the parties on British Guiana becoming independent is an important part of the context for the purpose of interpreting Article IV of the Geneva Agreement. Indeed, the preamble states that the United Kingdom participated in the elaboration of the Agreement in consultation with the Government of British Guiana. The Court also observes that the references to "Guyana" in paragraphs 1 and 2 of Article IV presuppose the

attainment of independence by British Guiana. This independence was attained on 26 May 1966, some three months after the conclusion of the Agreement; on that date, Guyana became a party to the Geneva Agreement in accordance with Article VIII thereof.

The Court then proceeds to the interpretation of Articles I and II of the Geneva Agreement, which address the initial stage of the process for the settlement of the dispute between the Parties — namely the establishment of a Mixed Commission with the task of seeking solutions for the settlement of the controversy — and identify the role of Venezuela and British Guiana in that process. The Court observes that, while Article I of the Agreement describes the dispute as one existing between the United Kingdom and Venezuela, Article II provides no role for the United Kingdom in the initial stage of the dispute settlement process. Rather, it places the responsibility for appointment of the representatives to the Mixed Commission on British Guiana and Venezuela. The Court notes that the reference to "British Guiana" contained in Article II, which can be distinguished from references to the "United Kingdom" contained elsewhere in the treaty and particularly in Article I, supports the interpretation that the parties to the Geneva Agreement intended for Venezuela and British Guiana to have the sole role in the settlement of the dispute through the mechanism of the Mixed Commission. The Court observes that such an understanding was arrived at notwithstanding that British Guiana was a colony which had not yet attained independence and was not yet a party to the treaty.

The Court turns next to Article IV of the Geneva Agreement, which sets out the final stages of the process for the settlement of the dispute. It notes that neither paragraph 1 nor paragraph 2 of Article IV contains any reference to the United Kingdom. Those paragraphs refer only to the Government of Guyana and the Government of Venezuela, and place upon them the responsibility to choose a means of peaceful settlement provided in Article 33 of the Charter of the United Nations or, failing agreement on such means, the responsibility to refer the decision on the means to an appropriate international organ upon which they both agree. Failing agreement on that point, the Parties would refer the matter to the Secretary-General of the United Nations who would choose one of the means of settlement provided in Article 33 of the Charter of the United Nations.

In the view of the Court, an examination of the relevant provisions of the Geneva Agreement shows the importance that the parties to the Agreement attached to the conclusive resolution of the dispute. In this regard, the Court recalls that, in its 2020 Judgment, it determined that the object and purpose of the Agreement is to ensure a definitive resolution of the controversy between the Parties.

The Court considers that the Geneva Agreement specifies particular roles for Guyana and Venezuela, and does not provide a role for the United Kingdom in choosing, or in participating in, the means of settlement of the dispute. It considers that the scheme established by Articles II and IV of the Geneva Agreement reflects a common understanding of all parties to that Agreement that the controversy which existed between the United Kingdom and Venezuela on 17 February 1966 would be settled by Guyana and Venezuela through one of the dispute settlement procedures envisaged in the Agreement.

The Court further notes that when the United Kingdom accepted, through the Geneva Agreement, the scheme for the settlement of the dispute between Guyana and Venezuela without its involvement, it was aware that such a settlement could involve the examination of certain allegations by Venezuela of wrongdoing by the authorities of the United Kingdom at the time of the disputed arbitration.

In that respect, the Court refers to the letter of 14 February 1962 addressed to the Secretary-General by Venezuela's Permanent Representative to the United Nations, and to the statements delivered by Venezuela and the United Kingdom to the Fourth Committee of the United Nations General Assembly in November 1962, which reflect the positions of the two States.

The Court then mentions that, following the Tripartite Examination of the documentary material relevant to the validity of the 1899 Award, the Foreign Ministers of the United Kingdom and Venezuela and the Prime Minister of British Guiana met in London, on 9 and 10 December 1965, to discuss a settlement of the dispute. During those discussions, the United Kingdom and British Guiana rejected the Venezuelan proposal that the only solution to the frontier dispute lay in the return of the disputed territory to Venezuela, on the basis that it implied that the 1899 Award was null and void and that there was no justification for that allegation. After the failure of these talks, the United Kingdom participated in the negotiation and conclusion of the Geneva Agreement.

The Court is therefore of the view that the United Kingdom was aware of the scope of the dispute concerning the validity of the 1899 Award, which included allegations of its wrongdoing and recourse to unlawful procedures, but nonetheless accepted the scheme set out in Article IV of the Geneva Agreement, whereby Guyana and Venezuela could submit the dispute to one of the means of settlement set out in Article 33 of the Charter of the United Nations, without the involvement of the United Kingdom. The Court considers that the ordinary meaning of the terms of Article IV read in their context and in light of the object and purpose of the Geneva Agreement, as well as the circumstances surrounding its adoption, support this conclusion.

Next, the Court recalls Article 31, paragraph 3, of the Vienna Convention on the Law of Treaties and examines the subsequent practice of the parties to the Geneva Agreement to ascertain whether it establishes their agreement on the lack of involvement of the United Kingdom in the settlement of the dispute between Guyana and Venezuela.

The Court refers among other things to the statement issued by the Venezuelan commissioners at the 11th meeting of the Mixed Commission held in Caracas on 28 and 29 December 1968, observing that the United Kingdom did not seek to participate in the Mixed Commission procedure; nor did Venezuela and Guyana request the United Kingdom's participation. The Court notes that Venezuela's exclusive engagement with the Government of Guyana at the Mixed Commission indicates that there was a common understanding among the parties that Article II did not provide a role for the United Kingdom in the dispute settlement process.

The Court also notes that Venezuela engaged exclusively with the Government of Guyana when implementing Article IV of the Geneva Agreement. Again, the Court observes that the United Kingdom did not seek to participate in the procedure set out in Article IV to resolve the dispute; nor did the Parties request such participation. Venezuela's exclusive engagement with the Government of Guyana during the good offices process thus indicates that there was agreement among the parties that the United Kingdom had no role in the dispute settlement process.

In view of the foregoing, the Court is of the view that the practice of the parties to the Geneva Agreement demonstrates their agreement that the dispute could be settled without the involvement of the United Kingdom.

The Court concludes that, by virtue of being a party to the Geneva Agreement, the United Kingdom accepted that the dispute between Guyana and Venezuela could be settled by one of the means set out in Article 33 of the Charter of the United Nations, and that it would have no role in that procedure. Under these circumstances, the Court considers that the Monetary Gold principle does not come into play in this case. It follows that even if the Court, in its Judgment on the merits, were called to pronounce on certain conduct attributable to the United Kingdom, which cannot be determined at present, this would not preclude the Court from exercising its jurisdiction, which is based on the application of the Geneva Agreement. The preliminary objection raised by Venezuela must therefore be rejected.

OPERATIVE CLAUSE (PARA. 108)

For these reasons,

THE COURT,

(1) Unanimously,

Finds that the preliminary objection raised by the Bolivarian Republic of Venezuela is admissible;

(2) By fourteen votes to one,

Rejects the preliminary objection raised by the Bolivarian Republic of Venezuela;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Wolfrum;

AGAINST: *Judge* ad hoc Couvreur;

(3) By fourteen votes to one,

Finds that it can adjudicate upon the merits of the claims of the Co-operative Republic of Guyana, in so far as they fall within the scope of paragraph 138, subparagraph 1, of the Judgment of 18 December 2020.

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Wolfrum;

AGAINST: *Judge* ad hoc Couvreur.

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Judge BHANDARI appends a declaration to the Judgment of the Court; Judge ROBINSON appends a separate opinion to the Judgment of the Court; Judge IWASAWA appends a declaration to the Judgment of the Court; Judge *ad hoc* WOLFRUM appends a declaration to the Judgment of the Court; Judge *ad hoc* COUVREUR appends a partially separate and partially dissenting opinion to the Judgment of the Court.

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Declaration of Judge Bhandari

In his declaration, Judge Bhandari first sets out his agreement with the Court's conclusions that the United Kingdom has no role in the resolution of this dispute and that the Monetary Gold principle does not come into play.

He then notes an additional conceptual point, which is that this reasoning in principle applies to all parties to the 1966 Geneva Agreement. Consequently, he concludes, Venezuela itself could be said to have forfeited any right it might otherwise have had to object to this dispute being settled through a procedure not involving the United Kingdom.

Separate opinion of Judge Robinson

1. In his separate opinion, Judge Robinson draws attention to the statement in paragraph 81 of the Judgment that "the United Kingdom granted independence to Guyana in 1966". He argues that as a matter of law, this statement is incorrect because the right to self-determination had already become a rule of customary international law on the adoption by the General Assembly of resolution 1514 (XV) of 14 December 1960.

2. Judge Robinson notes that nowhere in the resolution is there any reference to a colonial Power granting independence to its colony. In Judge Robinson's view, following the adoption by the General Assembly of resolution 1514 (XV), the attainment of independence by colonized countries was not a gift, grant or concession of colonial Powers. Rather, independence resulted from the discharge by the colonial Powers of an obligation imposed on them by paragraph 5 of 1514, to transfer all powers to the peoples of colonized countries in accordance with their freely expressed will.

Declaration of Judge Iwasawa

Judge Iwasawa notes that Venezuela characterizes its objection that the United Kingdom is an indispensable third party as an objection to the admissibility of the Application. He observes that the Court has considered objections based on the Monetary Gold principle to be concerned with admissibility and not the jurisdiction of the Court. For example, in the *Military and Paramilitary Activities* case, the Court expressly described the objection of the United States as one concerning the admissibility of the application. Judge Iwasawa explains that Venezuela's objection is not an objection to the Court's jurisdiction but an objection to admissibility.

Declaration of Judge *ad hoc* Wolfrum

Having voted in favour of the Judgment's operative paragraph, Judge *ad hoc* Wolfrum considers it appropriate to submit some considerations on the Court's reasoning. He discusses three aspects: the relationship between the Monetary Gold principle and the Geneva Agreement; the subsequent practice of the parties to the Agreement; and the subject-matter of the dispute before the Court.

Judge *ad hoc* Wolfrum notes that the present case factually resembles *Monetary Gold* and *East Timor*, on which Venezuela relies. However, the difference lies in the existence of the Geneva Agreement. Judge *ad hoc* Wolfrum agrees that, in participating in the Geneva Agreement, the United Kingdom accepted that the resolution of the dispute by Guyana and Venezuela without the United Kingdom's participation might entail the discussion of acts or omissions related to the United Kingdom.

Judge *ad hoc* Wolfrum considers that, properly interpreted, the Geneva Agreement constitutes a *lex specialis* for the protection of the United Kingdom's interests, which are protected in parallel by the Monetary Gold principle operating in the abstract. He therefore agrees with the Judgment that it is necessary to first interpret the Geneva Agreement in order to ascertain whether the United Kingdom has declared with sufficient clarity that it leaves the resolution of the dispute between Guyana and Venezuela to the two Parties, in full awareness of the implications this may have for the United Kingdom, and whether there is a corresponding agreement of Guyana and Venezuela. Judge *ad hoc* Wolfrum endorses the interpretation of the Geneva Agreement by the Court.

Consequently, Judge *ad hoc* Wolfrum concludes that it was unnecessary to consider further the applicability of the Monetary Gold principle. In his view, however, this does not mean that the Court cannot consider all information provided by the Parties concerning the alleged fraudulent behaviour of the arbitrators.

While questioning the information generated through the subsequent practice of the parties to the Geneva Agreement, Judge *ad hoc* Wolfrum finds that, evidently, no attempt at involving the United Kingdom in the discourse between Guyana and Venezuela was made by any of the parties concerned.

Judge *ad hoc* Wolfrum further adds some clarifying remarks on the subject-matter of the dispute, because he observes that Venezuela has stated in a variety of contexts that the interests of the United Kingdom also form the very subject-matter of any decision that the Court would have to render on the merits. Having recalled the Court's jurisprudence, as reiterated by the arbitral tribunal in *South China Sea*, Judge *ad hoc* Wolfrum argues that the Court, when deciding on the subject-matter of a dispute, has always emphasized that particular attention should be paid to the formulation of the applicant. He points out that the 2020 Judgment stated that the subject-matter of the dispute was the validity of the 1899 Award about the frontier between British Guiana and Venezuela and the related question of the definitive settlement of the land boundary between Guyana and Venezuela. According to Judge *ad hoc* Wolfrum, this subject-matter is to be distinguished from arguments used by the parties to sustain their respective submissions on the dispute.

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