

Guyana, Venezuela and the International Court of Justice

The 1899 Award, the 1966 Geneva Agreement and the Current Proceedings

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Abstract

The case concerning the Arbitral Award of 3 October 1899 (Guyana v Venezuela) is under deliberation at the International Court of Justice. The public hearings on the merits closed on 11 May 2026; as at 4 September 2026 no judgment has been delivered and no date of delivery has been announced. This paper does not predict the outcome. It asks a prior question: what kind of instrument is the Geneva Agreement of 17 February 1966, and what does its operation between 1966 and 2018 show about how a small state uses international law? I argue that the Geneva Agreement is not a settlement but an agreement about the means of settlement, that it contains a binding delegation to the Secretary-General of the United Nations, and that its long operation is the clearest modern record of a state without leverage choosing the tribunal, because the tribunal is the one room in which it and its neighbour are the same size. I read the proceedings so far as three tests of that choice: consent (the Judgment of 18 December 2020), the absent third party (the Judgment of 6 April 2023), and the peacetime shield of provisional measures (the Orders of 1 December 2023 and 1 May 2025). The questions the merits raise are then stated and left unanswered: finality under Article XIII of the 1897 Treaty, the recognised grounds of nullity, the 1905 demarcation and six decades of conduct, the effect of the Geneva Agreement itself, and the exclusion of post-1966 events. The method is documentary. Nothing here rests on anything but the Court's own texts, the parties' pleadings and verbatim records, and the instruments themselves, and where the parties disagree both positions are given in their own words.

Keywords: Guyana; Venezuela; International Court of Justice; Geneva Agreement 1966; Arbitral Award of 1899; nullity of arbitral awards; consent to jurisdiction; Monetary Gold; provisional measures; small states

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I. Introduction

On 11 May 2026 the Registry of the International Court of Justice announced that the public hearings on the merits in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v Venezuela)* had concluded with the final submissions of Venezuela, and added two sentences that govern everything written in this paper: "The Court will now begin its deliberation. The Court's decision will be delivered at a public sitting, the date of which will be announced in due course."¹ As at 4 September 2026 no judgment on the merits has been delivered and no date has been announced.² A paper written while the Court deliberates has one duty before all others, and it is not to guess. What follows describes the record and stops where the record stops.

The record is unusually complete, and it is unusual in kind. The instrument on which the Court's jurisdiction rests, the Geneva Agreement of 17 February 1966, is, in the words of Judge Tomka, "not a typical special agreement by which the parties ask the Court to resolve a particular dispute which already exists between them", nor is its Article IV(2) "a typical compromissory clause"; the case, he said, "is rather unusual".³ The argument advanced here is that the unusual feature is the whole point. The Geneva Agreement is not a settlement. It is an agreement about the means of settlement, and it contains a delegation, to the Secretary-General of the United Nations, of the decision which means shall be used — a delegation the Court has held to be binding. Its operation between 1966 and 2018, through a Mixed Commission, a twelve-year moratorium, a failed choice of means, a referral to the Secretary-General, twenty-eight years of good offices and finally a letter choosing the Court, is, I suggest, the clearest modern record of a small state choosing law over leverage. I put the underlying idea in a sentence that is my own and for which no other author should be blamed: the tribunal is the one room in the world where Guyana and its neighbour are the same size.

The sentence is not sentiment; it is a description of procedure. Guyana's Memorial records that Venezuela is more than four times larger by territory and has a population more than thirty-five times greater.⁴ Outside the Peace Palace those numbers are dispositive of most things. Inside it, each party that has no judge of its nationality on the Bench may choose a judge ad hoc; each has the same rounds of written and oral argument; and the absent party is protected by the Court's own duty under Article 53 of the Statute to satisfy itself that the claim before it is well founded in fact and law.⁵ That equality is the asset a small state acquires when it elects to be bound, and the price is time: the contention that Venezuela raised in 1962 is still undecided sixty-four years later.

I read the proceedings so far as three tests of that choice. Consent: whether an instrument that never names the Court could found its jurisdiction on the unilateral application of one party (the Judgment of 18 December 2020). The absent third party: whether the colonial predecessor that

¹ ICJ, 'Arbitral Award of 3 October 1899 (Guyana v Venezuela): Conclusion of the public hearings on the merits held from Monday 4 to Monday 11 May 2026' Press Release No 2026/13 (11 May 2026) ('Press Release 2026/13').

² ICJ, 'Arbitral Award of 3 October 1899 (Guyana v. Venezuela)' case page and list of press releases <<https://www.icj-cij.org/case/171>> accessed 4 September 2026. The latest entries are the verbatim record of 11 May 2026 and Press Release 2026/13; no judgment on the merits is listed and no press release announces a date of delivery.

³ *Arbitral Award of 3 October 1899 (Guyana v Venezuela) (Jurisdiction of the Court)* [2020] ICJ Rep 455 ('2020 Judgment'), Declaration of Judge Tomka, para 1.

⁴ *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Memorial of Guyana on the Merits, vol I (8 March 2022) ('Memorial') para 1.7.

⁵ Statute of the International Court of Justice ('Statute') arts 31(3) and 53.

signed the arbitration treaty of 1897 and the Geneva Agreement of 1966 was an indispensable party without whom the Court could not act (the Judgment of 6 April 2023). And the peacetime shield: whether, and how, provisional measures can hold a territorial status quo while a case is pending (the Orders of 1 December 2023 and 1 May 2025). Section VIII states the questions the merits raise and leaves them where the Court has them. Section IX makes the small state's argument in full.

A word on the literature and on method. The scholarly literature specific to this controversy is thin at the top and dense at the bottom. At the top sit Otto Schoenrich's note of 1949, which carried into print the memorandum of Severo Mallet-Prevost,⁶ the two replies published in the same journal in 1950,⁷ a legal analysis of Guyana's frontiers published in 2004,⁸ a three-volume documentary history by a Guyanese diplomat,⁹ and a case note on the 2020 Judgment by a Caribbean judge.¹⁰ The doctrinal literature I engage is the general literature on the Court's jurisdiction and procedure,¹¹ on third parties,¹² on the nullity of awards,¹³ and on provisional measures.¹⁴ Where I depart from it I say so. The method is documentary. Nothing below rests on anything but the Court's judgments and orders, the parties' written and oral pleadings, and the instruments themselves; where the parties disagree I give both positions in their own words.

II. The 1897 Treaty and the 1899 Award

A. The arbitration clause and Article XIII

The Court has twice told the history in its own voice, and I follow it. In the nineteenth century the United Kingdom and Venezuela both claimed the territory between the mouth of the Essequibo River in the east and the Orinoco River in the west. In the 1890s the United States encouraged both to submit their claims to binding arbitration, and the exchanges led to the signing at Washington, on 2 February 1897, of 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". Its preamble described its purpose as being to "provide for an amicable settlement of the question . . . concerning the boundary", and Article I provided: "An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the

⁶ Otto Schoenrich, 'The Venezuela–British Guiana Boundary Dispute' (1949) 43 AJIL 523.

⁷ Clifton J Child, 'The Venezuela–British Guiana Boundary Arbitration of 1899' (1950) 44 AJIL 682; William Cullen Dennis, 'The Venezuela–British Guiana Boundary Arbitration of 1899' (1950) 44 AJIL 720.

⁸ Thomas W Donovan, 'Challenges to the Territorial Integrity of Guyana: A Legal Analysis' (2004) 32 Georgia Journal of International and Comparative Law 661.

⁹ Odeen Ishmael, *The Trail of Diplomacy: The Guyana–Venezuela Border Issue*, vol 1 (Xlibris 2013); the second and third volumes followed by 2015.

¹⁰ Winston Anderson, 'Arbitral Award of 3 October 1899 (Guyana v. Venezuela)' (2022) 116 AJIL 836.

¹¹ Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2005* (4th edn, Martinus Nijhoff 2006); Hugh Thirlway, *The International Court of Justice* (OUP 2016); Robert Kolb, *The International Court of Justice* (Hart Publishing 2013).

¹² Christine Chinkin, *Third Parties in International Law* (Clarendon Press 1993); Zachary Mollengarden and Noam Zamir, 'The Monetary Gold Principle: Back to Basics' (2021) 115 AJIL 41.

¹³ W Michael Reisman, *Nullity and Revision: The Review and Enforcement of International Judgments and Awards* (Yale University Press 1971).

¹⁴ Cameron A Miles, *Provisional Measures before International Courts and Tribunals* (CUP 2017).

Colony of British Guiana and the United States of Venezuela."¹⁵

The remaining provisions built the tribunal and told it what to do. Article II constituted a tribunal of five jurists: two on the part of Great Britain, nominated by the members of the Judicial Committee of the Privy Council (Lord Herschell, who died shortly after his appointment and was replaced by Lord Russell of Killowen, and Sir Richard Henn Collins); two on the part of Venezuela (Melville Weston Fuller, Chief Justice of the United States, and David Josiah Brewer, a Justice of the Supreme Court of the United States); and a fifth jurist, selected by the four, to preside, who was Fyodor Fyodorovich Martens. Article III set the mandate: the tribunal "shall investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana, and shall determine the boundary line".¹⁶ Article IV supplied rules "to be taken as applicable to the case", among them Rule (a), that "[a]dverse holding or prescription during a period of fifty years shall make a good title", and Rule (c), which directed that occupation at the date of the Treaty by the subjects or citizens of the other party be given "such effect . . . as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require".¹⁷ Article XIII stated the undertaking on which everything since has turned: the High Contracting Parties "engage[d] to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators".¹⁸

B. The Award and the 1905 demarcation

The tribunal sat in Paris between 15 June and 27 September 1899, in fifty-four sessions, and rendered its Award on 3 October 1899. I take the Court's summary: the 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".¹⁹ The operative description of the line, as reproduced in Guyana's Memorial, begins "Starting from the coast at Point Playa, the line of boundary shall run in a straight line to the River Barima at its junction with the River Mururuma", and runs by rivers, ridges and Mount Roraima to "the source of the Corentin called the Cutari River".²⁰

The following year a joint Anglo-Venezuelan commission was charged with demarcating the boundary; it did so between November 1900 and June 1904, and on 10 January 1905 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". President McKinley's message to Congress of 5 December 1899, reproduced in Guyana's Application, had described the Award as one "as to which the arbitrators were unanimous"; the commissioners' declaration of 1905, also reproduced there, recorded that they regarded their agreement "as having a perfectly

¹⁵ 2020 Judgment (n 3) paras 31–33. The Treaty is annexed to Guyana's Application as Annex 1 and was published as UK Treaty Series No 5 (1897) C 8439.

¹⁶ *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Application Instituting Proceedings (29 March 2018) ('Application') paras 28–30 and fn 14 (Lord Herschell's death and replacement).

¹⁷ Memorial (n 4) 60 (art IV, chapeau) and 240 (Rules (a) and (c)).

¹⁸ 2020 Judgment (n 3) para 33; Memorial (n 4) 154.

¹⁹ Application (n 16) para 32; 2020 Judgment (n 3) para 34.

²⁰ Memorial (n 4) 73–74. The Award is annexed to the Application as Annex 2 and is printed in (1899–1900) 92 British and Foreign State Papers 160, as the footnote to Article I of the Geneva Agreement in UK Treaty Series No 13 (1966) records.

official character with respect to the acts and rights of both Governments in the territory demarcated".²¹ Two texts thus fix the line: the Award and the 1905 Agreement. Guyana's pleadings treat them together throughout, and its final submissions in May 2026 ask for a declaration that "the boundary established by that Award and the 1905 Agreement is the boundary between Guyana and Venezuela".²²

C. What finality means

Article XIII is not a curiosity of Victorian drafting. It is the ordinary undertaking of every arbitration, and the International Law Commission's Model Rules on Arbitral Procedure of 1958 open with its modern statement: "Any undertaking to have recourse to arbitration in order to settle a dispute between States constitutes a legal obligation which must be carried out in good faith."²³ Finality is the product the parties bargain for; nullity is the exception, which the party alleging it must prove; and the tribunal that hears a plea of nullity is not a court of appeal. Those three propositions are the Court's, not mine; Section III takes them from the cases. How they apply to the Award of 1899 is the question now under deliberation.

III. The 1949 memorandum and the 1962 contention

A. Sixty-three years, and what each side makes of them

Between 1899 and 1962 Venezuela did not, on the record before the Court, formally contest the Award. Guyana's Application puts it that Venezuela "consistently and repeatedly expressed its unconditional acceptance of the legal validity and binding force of the 1899 Award and 1905 Agreement", and that the change of position came "[s]ixty-three years after the 1899 Award was issued", as the United Kingdom prepared for the independence of British Guiana.²⁴ Venezuela does not deny the chronology; it contests its meaning. At the hearings of May 2026 its counsel argued that "the conduct of a State — its action or silence — must be interpreted against the factual circumstances in which that conduct occurs", and that four factors — the realities of Latin America at the turn of the century, the Monroe Doctrine, the military activities of the colonial powers, and the disparity between Great Britain and Venezuela — amounted to what the pleading called "structural coercion".²⁵ I record both positions and evaluate neither.

B. The memorandum

In July 1949 the *American Journal of International Law* published a note by Otto Schoenrich under the title 'The Venezuela–British Guiana Boundary Dispute'. The note carried a memorandum attributed to Severo Mallet-Prevost, who had been junior counsel for Venezuela

²¹ 2020 Judgment (n 3) para 34; Application (n 16) paras 34–35.

²² ICJ, *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Verbatim Record CR 2026/28 (8 May 2026) ('CR 2026/28') 66–67 (Greenidge).

²³ International Law Commission, 'Model Rules on Arbitral Procedure' (1958) preamble, para 1, in *Yearbook of the International Law Commission* 1958, vol II ('Model Rules'); text at <https://legal.un.org/ilc/texts/instruments/english/draft_articles/10_1_1958.pdf> accessed 4 September 2026.

²⁴ Application (n 16) paras 5–6.

²⁵ ICJ, *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Verbatim Record CR 2026/27 (6 May 2026) ('CR 2026/27') 12–13, paras 2–6 (Azaria).

before the tribunal of 1899, dated 1944 and, on the account given by the parties, left with an instruction that it not be published during its author's lifetime. Guyana's Application describes it as a document which "alleged, without claiming or setting forth any evidence of direct knowledge, that the 1899 Award had been the result of some form of collusion between the two British arbitrators and the Russian President of the Tribunal", and which Venezuela "did not invoke . . . until 1962"; two replies appeared in the same journal the following year.²⁶ Venezuela's account, as the Court summarised it in 2023, is that there were "certain improper communications between the legal counsel of the United Kingdom and the arbitrators that it had appointed", and that the United Kingdom "knowingly submitted 'doctored' and 'falsified' maps to the arbitral tribunal".²⁷ Beyond that I do not characterise the memorandum. Reading the archive was not my task. It has been the Court's.

C. The contention of 1962

On 14 February 1962 Venezuela informed the Secretary-General of the United Nations, through its Permanent Representative, that it considered there to be a dispute with the United Kingdom "concerning the demarcation of the frontier between Venezuela and British Guiana", and stated:

"The award was the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights. The frontier was demarcated arbitrarily, and no account was taken of the specific rules of the arbitral agreement or of the relevant principles of international law. Venezuela cannot recognize an award made in such circumstances."²⁸

In the Fourth Committee on 12 November 1962 the Venezuelan Minister for External Relations, Marcos Falcón Briceño, said that "there was no arbitral award, properly speaking. There was a settlement. There was a political compromise." The United Kingdom "emphatically rejected" the allegation the following day, stated that the boundary "[had been] finally settled by the award which the arbitral tribunal announced on 3 October 1899", and offered a tripartite examination of the documentary material.²⁹ That examination ran from 1963 to 1965 and closed on 3 August 1965 with the exchange of the experts' reports: Venezuela's experts continued to consider the Award null and void; the United Kingdom's expert found no evidence to support that position. Ministerial talks in London on 9 and 10 December 1965 ended with each side where it began.³⁰

D. What an allegation establishes, and the law of nullity

An allegation establishes nothing. It identifies a question, and the question is a legal one with a settled shape. The Model Rules of 1958 state the recognised grounds in Article 35:

"The validity of an award may be challenged by either party on one or more of the following grounds: (a) That the tribunal has exceeded its powers; (b) That there was corruption on the part of a member of the tribunal; (c) That there has been a failure to state the reasons for the award or a serious departure from a fundamental rule of procedure; (d) That the undertaking to arbitrate

²⁶ Schoenrich (n 6); Application (n 16) para 42. The replies are Child (n 7) and Dennis (n 7).

²⁷ *Arbitral Award of 3 October 1899 (Guyana v Venezuela) (Preliminary Objection)* [2023] ICJ Rep 262 ('2023 Judgment') para 76.

²⁸ 2020 Judgment (n 3) para 35.

²⁹ 2023 Judgment (n 27) paras 99–100; 2020 Judgment (n 3) para 36.

³⁰ 2020 Judgment (n 3) paras 37–39.

or the compromis is a nullity."³¹

The Secretariat's commentary on the Commission's earlier draft called excess of powers "the oldest and most universally recognized ground for nullity", traced it to the Roman maxim that the arbiter may do nothing outside the compromis, and recorded a deliberate choice to recognise only "a limited number of grounds".³² The list is closed. And it does not include "essential error", the ground Nicaragua pressed in 1960 and one that Venezuela's grievances, as Guyana's counsel enumerated them in 2026, also include.³³

The Court has entertained a plea of nullity against a boundary award twice, and each time upheld the award. In *Arbitral Award Made by the King of Spain on 23 December 1906* Nicaragua argued that the Award was vitiated by excess of jurisdiction, essential error, and lack or inadequacy of reasons, and that it was in any case incapable of execution. The Court first held that Nicaragua, "by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award", adding that its "failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion".³⁴ It then stated the function it was performing:

"the Award is not subject to appeal and . . . the Court cannot approach the consideration of the objections raised by Nicaragua to the validity of the Award as a Court of Appeal. The Court is not called upon to pronounce on whether the arbitrator's decision was right or wrong. These and cognate considerations have no relevance to the function that the Court is called upon to discharge in these proceedings, which is to decide whether the Award is proved to be a nullity having no effect."³⁵

On that footing the Court found that the arbitrator had not gone beyond his authority; that the instances of "essential error" put forward "amount to no more than evaluation of documents and of other evidence submitted to the arbitrator", an appraisal that "appertained to the discretionary power of the arbitrator and is not open to question"; and that the Award "contains ample reasoning and explanations in support of the conclusions arrived at".³⁶ By fourteen votes to one it found the Award "valid and binding".³⁷

In *Arbitral Award of 31 July 1989* the Court addressed the modern grounds directly. The proceedings, it emphasised, "are not by way of appeal from [the award] or application for revision of it".³⁸ The test for excess of power was stated in terms that Venezuela's own counsel adopted at the hearings of 2026:³⁹ the Court "has simply to ascertain whether by rendering the disputed Award the Tribunal acted in manifest breach of the competence conferred on it by the

³¹ Model Rules (n 23) art 35.

³² United Nations Secretariat, *Commentary on the Draft Convention on Arbitral Procedure Adopted by the International Law Commission at its Fifth Session* (1955) UN Doc A/CN.4/92, 107.

³³ CR 2026/28 (n 22) 34, para 3 (Pellet). For the plea of 1960 see *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v Nicaragua)* [1960] ICJ Rep 192 ('King of Spain') 210.

³⁴ *King of Spain* (n 33) 210, 213.

³⁵ *ibid* 214.

³⁶ *ibid* 214–216.

³⁷ *ibid* 217.

³⁸ *Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)* [1991] ICJ Rep 53 ('Guinea-Bissau v Senegal') para 25.

³⁹ CR 2026/27 (n 25) 37, para 7 (Tams).

Arbitration Agreement, either by deciding in excess of, or by failing to exercise, its jurisdiction". An arbitration agreement "must be interpreted in accordance with the general rules of international law governing the interpretation of treaties", and in performing its task the tribunal "must conform to the terms by which the Parties have defined this task".⁴⁰ As to reasons, the Court found the tribunal's reasoning "brief but sufficient to enlighten the Parties and the Court as to the reasons that guided the Tribunal"; the award was upheld, unanimously against the plea of inexistence and by eleven votes to four against the plea of absolute nullity. The classic study of the field, Reisman's *Nullity and Revision*, is a study of a problem that these two judgments illustrate: a plea of nullity that no tribunal is competent to hear remains a plea, and only a forum converts it into a decision.⁴¹

None of this decides the present case.

The grounds Venezuela advanced in May 2026 are the invalidity of the 1897 Treaty, the absence of reasons in the Award, and excess of power.⁴² The answer Guyana advanced is that the Award is final under Article XIII, enjoys a presumption of validity, was rendered under a validly concluded compromis by a properly constituted tribunal that neither exceeded its authority nor committed error, and was accepted by Venezuela for six decades.⁴³ Which of these the Court accepts, and on what reasoning, is what the Court is now deciding.

IV. The Geneva Agreement

A. The instrument

The Geneva Agreement was signed on 17 February 1966 by the United Kingdom, "in consultation with the Government of British Guiana", and Venezuela. Its English and Spanish texts are equally authoritative; under Article VII it entered into force on signature; it was transmitted to the Secretary-General on 2 May 1966 and registered on 5 May 1966. On 26 May 1966 Guyana, having attained independence, became a party under Article VIII, "in addition to" the United Kingdom and Venezuela. On 4 April 1966 the Secretary-General, U Thant, had already written to the two Foreign Ministers that he had "taken note of the responsibilities which may fall to be discharged by the Secretary-General . . . under Article IV (2)" and considered them "of a nature which may appropriately be discharged by the Secretary-General".⁴⁴

Article I defines the task and, by the Court's later reading, the controversy:

"A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the

⁴⁰ Guinea-Bissau v Senegal (n 38) paras 47–49.

⁴¹ *ibid* paras 63, 65 and 69; Reisman (n 13).

⁴² CR 2026/27 (n 25) 23, para 5 (Palchetti) and 36, para 2 (Tams).

⁴³ Memorial (n 4) table of contents, chs 4, 6, 7 and 8.

⁴⁴ 2020 Judgment (n 3) paras 40–42 and 44; 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 (adopted 17 February 1966, entered into force 17 February 1966) 561 UNTS 322; UK Treaty Series No 13 (1966) Cmnd 2925 ('Geneva Agreement') arts VII and VIII.

frontier between British Guiana and Venezuela is null and void."⁴⁵

Article II(1) required that "two representatives shall be appointed to the Mixed Commission by the Government of British Guiana and two by the Government of Venezuela" within two months of entry into force.⁴⁶ Article IV contains the cascade on which the Court's jurisdiction rests:

"(1) If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions. Those Governments shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations.

(2) If, within three months of receiving the final report, the Government of Guyana and the Government of Venezuela should not have reached agreement regarding the choice of one of the means of settlement provided in Article 33 of the Charter of the United Nations, they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted."⁴⁷

Article V reserves positions. Under paragraph (1) nothing in the Agreement "shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty", or "as prejudicing their position as regards their recognition or non-recognition of a right of, claim or basis of claim by any of them"; under paragraph (2) "[n]o acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty", and "[n]o new claim, or enlargement of an existing claim, to territorial sovereignty in those territories shall be asserted while this Agreement is in force".⁴⁸ Article 33(1) of the Charter, to which Article IV refers, lists "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".⁴⁹

B. Its character

Read together, the provisions settle nothing about the frontier and everything about how the frontier question is to be settled. The Court described the Agreement as establishing "a three-stage process"; it identified the controversy as "the question of the validity of the 1899 Award, as well as its legal implications for the boundary line between Guyana and Venezuela"; and it found the object and purpose to be "to ensure a definitive resolution of the controversy between the Parties".⁵⁰ That is the reading my characterisation rests on: an agreement about the means of settlement, with a third-party decision-maker inserted at the point where the parties'

⁴⁵ Geneva Agreement (n 44) art I.

⁴⁶ *ibid* art II(1).

⁴⁷ *ibid* art IV.

⁴⁸ *ibid* art V(1)–(2).

⁴⁹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) ('Charter') art 33(1).

⁵⁰ 2020 Judgment (n 3) paras 61, 66 and 73.

own agreement runs out, and a reservation clause that freezes claims while the process runs.

The characterisation is contested in the merits, and I must say so. Venezuela's Rejoinder is organised around the Geneva Agreement as "a novation instrument" and around what it calls "the decolonisation imperative".⁵¹ At the hearings its counsel put it that "the 'real issue' we are concerned with today . . . is the pursuit of a mutually satisfactory solution to the controversy generated by the 1899 Award", and that the validity of the Award "is not . . . the 'real issue' or the 'subject-matter' of this controversy"; Guyana's counsel answered that the object of the proceedings was fixed by the Court's findings of 2020, and described Venezuela's argument as the fifth attempt to dissuade the Court from it.⁵² Whether the substantive language of the Agreement — "satisfactory solutions", "practical settlement", "acceptable to both parties" — bears on what the Court may decide on the merits is a question the Court has before it. I offer the characterisation for the record of 1966 to 2018, not as an answer to that question.

C. The instrument in operation, 1966–2018

The Mixed Commission met from 1966 to 1970. "A difference of interpretation regarding the Commission's mandate came to light from the time its work began": in Guyana's view its task was to find a practical solution to the legal question raised by the contention of nullity; in Venezuela's, practical solutions to the territorial controversy. It reached the end of its mandate in 1970 "without having arrived at a solution", against a "backdrop of hostile actions which aggravated the controversy".⁵³

On 18 June 1970, the day the Commission delivered its final report, the three governments signed the Protocol of Port of Spain. Its Article III suspended the operation of Article IV of the Geneva Agreement "[s]o long as this Protocol remains in force", providing that on its lapse "the functioning of that Article shall be resumed at the point at which it has been suspended, that is to say, as if the Final Report of the Mixed Commission had been submitted on that date"; Article V fixed an initial period of twelve years, renewable; Article II forbade the assertion of territorial claims meanwhile. It was signed for Guyana by Shridath Ramphal and for Venezuela by Aristides Calvani.⁵⁴ In December 1981 Venezuela announced its intention to terminate the Protocol, and Article IV of the Geneva Agreement resumed on 18 June 1982. The parties then failed to agree a means within three months and failed to agree an "appropriate international organ".⁵⁵

The cascade then ran as written. The parties referred the decision to the Secretary-General, and it was Venezuela that framed the referral: "Since it is evident that no agreement exists between the parties in respect of the choice of an international organ to fulfil the functions provided for it in Article IV (2), it is obvious that this function now becomes the responsibility of the

⁵¹ *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Rejoinder of the Bolivarian Republic of Venezuela, vol I (11 August 2025) ('Rejoinder') table of contents, Part One, chs III ('The Decolonisation Imperative') and IV ('The Geneva Agreement as a Novation Instrument').

⁵² ICJ, *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Verbatim Record CR 2026/26 (6 May 2026) ('CR 2026/26') 19–20, paras 3–5 (Mbengue); CR 2026/28 (n 22) 33–34, paras 1–2 (Pellet).

⁵³ 2020 Judgment (n 3) paras 46–47.

⁵⁴ Protocol to 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 (Protocol of Port of Spain) (signed and entered into force 18 June 1970) 801 UNTS 184 (No 11410) arts II, III and V, and the signatures at 188; 2020 Judgment (n 3) para 48.

⁵⁵ 2020 Judgment (n 3) paras 49–50.

Secretary-General of the United Nations." Guyana, "proceeding regretfully", agreed "to refer the decision as to the means of settlement to [the] Secretary-General".⁵⁶ Javier Pérez de Cuéllar accepted the responsibility by letter of 31 March 1983, sent Diego Cordovez to Caracas and Georgetown, and in early 1990 chose good offices; three Personal Representatives followed, Alister McIntyre (1990–1999), Oliver Jackman (1999–2007) and Norman Girvan (2010–2014).⁵⁷

On 2 December 2014 Guyana's Foreign Minister wrote that after twenty-five years the process had not brought the parties any closer to a resolution; on 8 June 2015 Guyana asked the Secretary-General to determine a means that would "bring a definitive and conclusive end . . . to the controversy"; Venezuela, on 9 July 2015, asked him "to commence the process of appointing a Good Officer".⁵⁸ Ban Ki-moon's document "The Way Forward" of 12 November 2015 announced that if no practical solution were found before the end of his tenure he intended "to initiate the process to obtain a final and binding decision from the International Court of Justice", and his statement of 16 December 2016 set the term: one further year of good offices with a strengthened mandate of mediation, and then, absent significant progress, "he will choose the International Court of Justice as the next means of settlement, unless both parties jointly request that he refrain from doing so". Venezuela objected to "the intention . . . to recommend to the Parties that they resort to the Court"; Guyana committed itself to the final year and, "should it become necessary", to the Court.⁵⁹ António Guterres appointed Dag Nylander on 23 February 2017, and on 30 January 2018 wrote to both Presidents in identical terms:

"Consequently, I have fulfilled the responsibility that has fallen to me within the framework set by my predecessor and, significant progress not having been made toward arriving at a full agreement for the solution of the controversy, have chosen the International Court of Justice as the means that is now to be used for its solution."⁶⁰

Guyana filed its Application on 29 March 2018. Fifty-two years separate the signature at Geneva from the letter of 30 January 2018. In that time every rung of Article IV was climbed in sequence and none was skipped: a commission, a moratorium, a failed choice of means, a failed choice of organ, a referral, a means, and then, when that means had not led to a solution, another. A state that could not have defended the ground by force, and did not try, used the instrument as written. Everything in Section IX is built on that observation.

V. The first test: consent (the Judgment of 18 December 2020)

A. The absent respondent

Venezuela did not appear. On 18 June 2018 its Vice-President, at the meeting convened by the President of the Court, stated that the Court "manifestly lacked jurisdiction" and handed over a letter from the President of Venezuela, which said that his country had "never accepted the jurisdiction of [the] Court", that Article IV(2) contained no provision on the Court's jurisdiction or on the modalities of seisin, and that jurisdiction required "both the express consent granted by

⁵⁶ *ibid* para 51.

⁵⁷ *ibid* paras 52–54.

⁵⁸ *ibid* para 55.

⁵⁹ *ibid* paras 56–58.

⁶⁰ *ibid* paras 59–60.

both Parties . . . as well as joint agreement of the Parties notifying the submission of the said dispute to the Court".⁶¹ Venezuela filed no Counter-Memorial, but on 28 November 2019 it sent a "Memorandum" which the Court decided to take into account, and after the hearing of 30 June 2020 it sent written comments.⁶²

Article 53 of the Statute provides that whenever a party "does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim", and that the Court "must, before doing so, satisfy itself, not only that it has jurisdiction . . . but also that the claim is well founded in fact and law".⁶³ The Court expressed "its regret" at the decision not to participate and restated the settled consequences: non-appearance "has a negative impact on the sound administration of justice"; the absent party "forfeits the opportunity to submit evidence and arguments"; a judgment is nonetheless final and binding under Articles 59 and 60; "neither party should be placed at a disadvantage"; there is "no question of a judgment automatically in favour of the party appearing", but "the party which declines to appear cannot be permitted to profit from its absence".⁶⁴ Those sentences come from *Nicaragua*. They are the equality I described at the outset, written out as procedure.

B. The holdings

The Court applied the customary rules of interpretation reflected in Articles 31 and 32 of the Vienna Convention. Reading the first sentence of Article IV(2), it held that "shall" imposes an obligation, that "refer" "conveys the idea of entrusting a matter to a third party", and that "decision" "is not synonymous with 'recommendation' and suggests the binding character of the action taken by the Secretary-General"; taken together, "the Parties made a legal commitment to comply with the decision of the third party on whom they conferred such authority".⁶⁵ The conclusion was stated without qualification: "the Parties conferred on the Secretary-General the authority to choose, by a decision which is binding on them, the means to be used for the settlement of their controversy."⁶⁶ The circumstances of conclusion confirmed it. On 17 March 1966 the Venezuelan Foreign Minister, Ignacio Iribarren Borges, told the National Congress that "[t]he only role entrusted to the Secretary-General of the United Nations [was] to indicate to the parties the means of peaceful settlement of disputes . . . provided in Article 33", and that, the British proposal to give that role to the General Assembly having been rejected, "Venezuela [had] then suggested giving this role to the Secretary-General".⁶⁷

Because Article IV(2) refers to Article 33 of the Charter, "which includes judicial settlement as a means of dispute resolution", the Court held that "the Parties accepted the possibility of the controversy being settled by that means"; had they wished to exclude it they could have said so, or listed the means and omitted it. The willingness of the parties to resolve their controversy definitively was "indicated by the fact that the means listed include arbitration and judicial

⁶¹ *ibid* para 5.

⁶² *ibid* paras 12, 18 and 28.

⁶³ Statute (n 5) art 53.

⁶⁴ 2020 Judgment (n 3) paras 24–27, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14, 23–26.

⁶⁵ 2020 Judgment (n 3) paras 70–72.

⁶⁶ *ibid* para 74.

⁶⁷ *ibid* para 77.

settlement, which are by nature binding".⁶⁸ The Secretary-General was not required to follow the order of Article 33, nor to consult the parties: "choose" "denotes the action of deciding between a number of solutions", and a sequential reading "could prove contradictory to the object and purpose of the Geneva Agreement".⁶⁹ The Court, "being the 'principal judicial organ of the United Nations'", is a means of judicial settlement within Article 33, and the same Minister's account to the Congress — that the objection of the British and British Guianese delegations to "the specific mention of recourse to arbitration and to the International Court of Justice" was "bypassed by replacing that specific mention by referring to Article 33 of the United Nations Charter which includes those two procedures" — showed that recourse to the Court "was contemplated by the parties during their negotiations".⁷⁰

On the legal effect of the letter of 30 January 2018 the Court recalled that consent may be given in any form, but that there must be "an unequivocal indication of the desire of the parties to a dispute to accept the jurisdiction of the Court in a voluntary and indisputable manner". It found that a requirement of further consent after the Secretary-General's choice would be "contrary to this provision and to the object and purpose of the Geneva Agreement . . . since it would give either Party the power to delay indefinitely the resolution of the controversy by withholding such consent".⁷¹ Consent being established, either party could seize the Court by unilateral application under Article 40. The jurisdiction found was bounded: *ratione materiae*, the validity of the Award and "the related question of the definitive settlement of the land boundary dispute"; *ratione temporis*, the controversy that "had crystallized between them at the time of the conclusion of the Geneva Agreement", so that "Guyana's claims arising from events that occurred after the signature of the Geneva Agreement do not fall within the scope of the jurisdiction of the Court".⁷² The *dispositif* was adopted by twelve votes to four on the first point and unanimously on the second.⁷³

C. The dissents, stated fairly

Four judges voted against the finding of jurisdiction, and three of them appended dissenting opinions. Judge Abraham agreed that the Secretary-General's choice "is not a mere recommendation without binding effect" and that the Court was among the means he could choose, but held that "[i]t is one thing to say that the choice of a means . . . creates obligations for the parties; it is quite another to see in Article IV, paragraph 2, of the Agreement, combined with the Secretary-General's decision, the expression of both parties' consent to the settlement of their dispute by the Court"; in his view the Court "should have declined jurisdiction".⁷⁴ Judge Bennouna considered that the text relied upon "clearly shows that [the parties] did not intend to confer jurisdiction on the Court to decide their dispute merely at the request of one of them", that the Court had not allowed the second alternative in Article IV(2) — exhaustion of the means without resolution — "to produce fully [its] effects", and that "a rigorous interpretation of the consent of the Parties" was the more necessary in "a dispute with a high political and emotional

⁶⁸ *ibid* paras 82–84 and 88.

⁶⁹ *ibid* paras 96–97 and 100–101.

⁷⁰ *ibid* paras 106–108.

⁷¹ *ibid* paras 112–114.

⁷² *ibid* paras 120–121 and 135–136.

⁷³ *ibid* para 138.

⁷⁴ 2020 Judgment (n 3), Dissenting Opinion of Judge Abraham, paras 10–11, 13–14 and 20.

impact".⁷⁵ Judge Gevorgian found the decision "inconsistent with both the Court's Statute and its jurisprudence", resting as it did "on a treaty that does not even mention the Court, let alone contain a compromissory clause", and read the Agreement's object and purpose as the facilitation of "an agreed settlement".⁷⁶ Judge Gaja, in a declaration, accepted that the parties "are bound to submit their dispute to the Court" but held that "[p]ending consent to that effect, the Court does not yet have jurisdiction".⁷⁷ Judge Robinson, in the majority, put the matter the other way: "In the Geneva Agreement, sequence and stages are everything."⁷⁸ Winston Anderson's note is the Caribbean commentary on the Judgment.⁷⁹

The better view, respectfully, is the majority's, and for a reason the dissents do not fully meet. The mischief the Agreement addressed was not the absence of a settlement but the absence of a way to reach one when one party would not agree; each dissenting construction reintroduces that party's veto at the last rung. Venezuela's own letter of 15 October 1982 — "this function now becomes the responsibility of the Secretary-General" — and its Minister's account of the "Article 33" formula in 1966 are the parties' own reading of what they had done.⁸⁰ But the dissents are not to be waved away. Consent is the Court's foundation, a delegated consent is rare, and the Court itself insisted on an "unequivocal" indication. The point I take from it is narrower than the merits of that debate. A small state that had signed an instrument with a delegation in it, and had then waited thirty-five years for the delegate to act, was held to its bargain. So was its neighbour.

VI. The second test: the absent third party (the Judgment of 6 April 2023)

Venezuela then appeared. On 6 June 2022 it appointed an Agent, and on 7 June 2022, within the time-limit of Article 79bis(1) of the Rules, it raised what it characterised as objections to admissibility. Hearings were held on 17, 18, 21 and 22 November 2022; Venezuela's delegation was led by its Executive Vice-President, and its counsel included Professors Remiro Brotóns, Palchetti, Tams and Zimmermann.⁸¹ The Court understood 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".⁸²

The principle invoked is that of *Monetary Gold*, where the Court declined to adjudicate because Albania's legal interests "would not only be affected by a decision, but would form the very subject-matter of the decision", so that the Statute could not "be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania".⁸³ The Court's jurisprudence, it recalled, treats such an objection as going to the exercise of jurisdiction rather than its

⁷⁵ 2020 Judgment (n 3), Dissenting Opinion of Judge Bennouna, paras 1, 7–8 and 13.

⁷⁶ 2020 Judgment (n 3), Dissenting Opinion of Judge Gevorgian, paras 2, 10–11 and 27–29.

⁷⁷ 2020 Judgment (n 3), Declaration of Judge Gaja, paras 1, 5 and 9.

⁷⁸ 2020 Judgment (n 3), Declaration of Judge Robinson, para 2.

⁷⁹ Anderson (n 10).

⁸⁰ 2020 Judgment (n 3) paras 51, 107 and 113.

⁸¹ 2023 Judgment (n 27) paras 14–15 and 21, and the list of representatives at 266–268.

⁸² *ibid* para 27.

⁸³ *Monetary Gold Removed from Rome in 1943 (Italy v France, United Kingdom of Great Britain and Northern Ireland and United States of America) (Preliminary Question)* [1954] ICJ Rep 19, 32.

existence; the *res judicata* of the 2020 Judgment therefore "extends only to the question of the existence of the Court's jurisdiction and does not bar the admissibility of Venezuela's preliminary objection", which was held admissible unanimously.⁸⁴

Venezuela's argument was that a judgment on the merits "would necessarily involve, as a prerequisite, an evaluation of the lawfulness of certain 'fraudulent conduct' allegedly attributable to the United Kingdom"; that it had been "coerced and deceived by the United Kingdom to enter into the Washington Treaty"; that the improper communications and the "doctored" maps each engaged the United Kingdom's responsibility; and that Article VIII of the Geneva Agreement made Guyana a party "not in substitution of, but alongside the United Kingdom".⁸⁵ Guyana answered that the United Kingdom "has no current legal interest in, or claim to, the territory in question", that what would be evaluated was "the conduct of the arbitral tribunal" and not of the United Kingdom, and that in any event the United Kingdom had consented, by negotiating and becoming party to the Geneva Agreement, to a procedure conducted without it.⁸⁶

The Court's answer turned on the treaty. All three States are parties to the Geneva Agreement "on which the Court's jurisdiction is based", and the legal implications of the United Kingdom's being a party had therefore to be examined. The preamble records that the Agreement was made in consultation with the Government of British Guiana and took into account "the forthcoming independence of British Guiana"; Article II gives the appointment of commissioners to British Guiana and Venezuela and "no role for the United Kingdom", a scheme arrived at "notwithstanding that British Guiana was a colony which had not yet attained independence and was not yet a party to the treaty"; and neither paragraph of Article IV "contains any reference to the United Kingdom".⁸⁷ The scheme "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", and the United Kingdom accepted it knowing that 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" — the letter of February 1962, the statements of November 1962 and the Tripartite Examination all preceded Geneva.⁸⁸ Subsequent practice confirmed it: the United Kingdom did not seek to participate in the Mixed Commission or the good offices process, and neither party asked it to.⁸⁹ The conclusion followed:

"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

⁸⁴ 2023 Judgment (n 27) paras 60–70, 74 and 108(1), citing *East Timor (Portugal v Australia)* [1995] ICJ Rep 90, 105, para 35, and *Certain Phosphate Lands in Nauru (Nauru v Australia) (Preliminary Objections)* [1992] ICJ Rep 240, 262, para 55.

⁸⁵ 2023 Judgment (n 27) paras 75–79.

⁸⁶ *ibid* paras 81–84.

⁸⁷ *ibid* paras 86 and 89–95.

⁸⁸ *ibid* paras 96–102.

⁸⁹ *ibid* paras 104–106.

the application of the Geneva Agreement."⁹⁰

The objection was rejected by fourteen votes to one, and by the same majority the Court found that it could adjudicate the merits within the scope of paragraph 138(1) of the 2020 Judgment.⁹¹ Judge ad hoc Couvreur, chosen by Venezuela, dissented on this part: in his view the *Monetary Gold* jurisprudence "applies in principle to the present case" and there was "no compelling reason for the Court to depart from it", because the grounds of nullity invoked are said "directly to concern the United Kingdom's own conduct" and its subscription to Article IV was consent only "to the establishment of a general scheme for the settlement of the dispute", not to the Court's ruling on the lawfulness of its own acts in its absence.⁹² Judge Iwasawa's declaration explains why such objections go to admissibility rather than jurisdiction; Judge Robinson's separate opinion corrects the language of "grant", observing that independence "was not a gift, grant or concession of colonial Powers" but the discharge of an obligation under General Assembly resolution 1514 (XV); Judge ad hoc Wolfrum's declaration endorses the Court's reasoning on the relationship between the Agreement and the principle.⁹³

Here I take a position in the literature. Mollengarden and Zamir have argued that the *Monetary Gold* principle should be abandoned as inconsistent with the jurisdictional architecture of the Statute, because it privileges the consent of absent third parties over the consent of the parties actually before the Court.⁹⁴ The fuller treatment of third-party interests remains Chinkin's.⁹⁵ The 2023 Judgment did not take the abolitionist route, and it did not need to. The better reading, I suggest, is that 2023 is a consent case and not a *Monetary Gold* exception: the absent State was a party to the very treaty that founded jurisdiction, and the Court found in that treaty its acceptance of a procedure without it. For a State that signed its own dispute-settlement instrument three months before it was permitted to govern the territory in dispute, the drafting choice of 1966 — "British Guiana" in Article II, "Guyana" in Article IV, the United Kingdom in neither — turned out to be the provision that kept the door of the Court open. That is a point about design, not about the merits, and it belongs to the small state's argument.

VII. The third test: the peacetime shield (the Orders of 1 December 2023 and 1 May 2025)

A. The referendum and the Order of 1 December 2023

On 20 October 2023 the National Electoral Council of Venezuela published five questions for a "Consultative Referendum in defence of Guayana Esequiba" to be held on 3 December 2023. The third asked whether the voter agreed "with Venezuela's historic position of not recognizing the Jurisdiction of the International Court of Justice to resolve the territorial dispute over Guayana Esequiba"; the fifth asked whether the voter agreed "with the creation of the Guayana Esequiba

⁹⁰ *ibid* para 107.

⁹¹ *ibid* para 108.

⁹² 2023 Judgment (n 27), Partially Separate and Partially Dissenting Opinion of Judge ad hoc Couvreur [2023] ICJ Rep 305, 305–306 (summary of the opinion) and 327, paras 55–56.

⁹³ 2023 Judgment (n 27), Declaration of Judge Iwasawa, paras 1–3; Separate Opinion of Judge Robinson, para 2; Declaration of Judge ad hoc Wolfrum, paras 1–3.

⁹⁴ Mollengarden and Zamir (n 12) 41.

⁹⁵ Chinkin (n 12).

State and that an accelerated and comprehensive plan be developed for the present and future population of that territory, including, inter alia, the granting of Venezuelan citizenship and identity cards, . . . consequently incorporating that State into the map of Venezuelan territory".⁹⁶ On 30 October 2023 Guyana requested provisional measures directed, among other things, at the referendum's form and its first, third and fifth questions, and at any action "intended to prepare or allow the exercise of sovereignty or de facto control" over the territory awarded in 1899. Hearings were held on 14 and 15 November 2023; both parties appeared.⁹⁷

The Court found its *prima facie* jurisdiction established by its two Judgments, and held that "Guyana's right to sovereignty over the territory in question is plausible", because "a land boundary dispute exists between the Parties" and "the territory which forms the object of that dispute was awarded to British Guiana in the 1899 Award"; the requisite link ran to the fourth measure requested.⁹⁸ On urgency the Court recorded Venezuela's statement at the hearing that it "will not turn its back on what the people decide", the confirmation by Venezuela's Supreme Tribunal of the questions' constitutionality, the Defence Minister's appeal on 6 November 2023 to "go to combat", and announced measures to build an airstrip as "a logistical support point for the integral development of the Essequibo"; "in light of the strong tension that currently characterizes the relations between the Parties", these presented "a serious risk of Venezuela acquiring and exercising control and administration of the territory in dispute".⁹⁹

The measures indicated were not those requested. The Court "observe[d] that the situation that currently prevails in the territory in dispute is that Guyana administers and exercises control over that area", reserved the validity of the Award and the boundary to the merits, added a non-aggravation measure directed to both parties, recalled that its orders under Article 41 "have binding effect and thus create international legal obligations", and indicated, unanimously, that "[p]ending a final decision in the case, the Bolivarian Republic of Venezuela shall refrain from taking any action which would modify the situation that currently prevails in the territory in dispute, whereby the Co-operative Republic of Guyana administers and exercises control over that area", and that "[b]oth Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve".¹⁰⁰ Judge Sebutinde would have gone further: the status quo is that Guyana "currently exercises sovereignty over the disputed territory", not merely administration and control, and the measures "do not go far enough". Judge Robinson agreed with the result but found the Court's formulation "does a disservice to Guyana". Judge ad hoc Couvreur voted for the Order because it protected the territorial status quo *pendente lite*, while explaining that measures directed at the holding of the referendum would, in his view, have interfered with sovereign constitutional prerogatives and would not have satisfied the conditions for their indication.¹⁰¹

⁹⁶ *Arbitral Award of 3 October 1899 (Guyana v Venezuela) (Provisional Measures) Order of 1 December 2023* [2023] ICJ Rep 655 ('2023 Order') para 15.

⁹⁷ *ibid* paras 7–8 and 10.

⁹⁸ *ibid* paras 17–18, 23 and 25–26.

⁹⁹ *ibid* paras 34–37.

¹⁰⁰ *ibid* paras 40–45.

¹⁰¹ 2023 Order (n 96), Declaration of Judge Sebutinde [2023] ICJ Rep 669, 669, para 1; Separate Opinion of Judge Robinson [2023] ICJ Rep 672, 672–673, paras 1–6; Separate Opinion of Judge ad hoc Couvreur, as summarised in ICJ, 'Summary of the Order of 1 December 2023' Summary 2023/8 (1 December 2023) annex.

Two things about the Order. It was unanimous, the judge ad hoc chosen by Venezuela included. And it left the referendum alone: the Court protected the ground, not the ballot. The ground is the more durable protection, and the one least exposed to the objection that the Court has intruded on the reserved domain.

B. Argyle, 14 December 2023

Thirteen days later, at Argyle in Saint Vincent and the Grenadines, the Presidents of Guyana and Venezuela signed a Joint Declaration facilitated by the Prime Ministers of Saint Vincent and the Grenadines and of Dominica, with Brazil's Celso Amorim as a principal interlocutor and two officials attending as observers on behalf of the Secretary-General.¹⁰² The two States "[a]greed that Guyana and Venezuela, directly or indirectly, will not threaten or use force against one another in any circumstances, including those consequential to any existing controversies between the two States"; "[a]greed that any controversies between the two States will be resolved in accordance with international law, including the Geneva Agreement dated February 17, 1966"; "[n]oted Guyana's assertion that it is committed to the process and procedures of the International Court of Justice for the resolution of the border controversy" and "[n]oted Venezuela's assertion of its lack of consent and lack of recognition of the International Court of Justice and its jurisdiction in the border controversy"; and agreed that both "will refrain, whether by words or deeds, from escalating any conflict or disagreement arising from any controversy between them".¹⁰³ The Declaration is a political instrument, recorded here as an event; the Court has not pronounced on its legal weight, and neither do I. What it shows, for my purposes, is the same divergence the Court has heard since 2018 — one State's commitment to the forum, the other's denial of it — placed side by side in one document and signed by both.

C. The events of 2024 and the Order of 1 May 2025

The referendum was held on 3 December 2023. On 8 December 2023 the President of Venezuela signed six decrees which, as the Court later summarised them, created a "Comprehensive Defense Zone" in the territory in dispute, designated a "Sole Authority of the Guayana Esequiba", authorised two State-owned companies to grant oil and mineral concessions in disputed areas, ordered the territory's incorporation in Venezuela's official maps, declared protected areas within it, and established a "High Commission for the Defense and Recovery of the Guayana Esequiba". On 21 March 2024 the National Assembly adopted an "Organic Law for the Defense of Guayana Esequiba", in force on 3 April 2024, which creates the State of "Guayana Esequiba" within Venezuela's territorial and political organisation, vests Venezuela with executive, legislative and

¹⁰² 'The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela' (Argyle, Saint Vincent and the Grenadines, 14 December 2023) ('Argyle Declaration') preamble; text published by the Department of Public Information, Guyana (15 December 2023) <<https://dpi.gov.gy/the-joint-declaration-of-argyle-for-dialogue-and-peace-between-guyana-and-venezuela/>> accessed 4 September 2026, and in 'The joint declaration of Argyle for dialogue and peace between Guyana and Venezuela' *Stabroek News* (Georgetown, 15 December 2023). For the event: 'Guyana and Venezuela agree that neither will threaten or use force against the other' *Stabroek News* (Georgetown, 14 December 2023).

¹⁰³ Argyle Declaration (n 102) paras 1, 2, 4 and 6.

judicial prerogatives over it, and orders that every map of Venezuela include it.¹⁰⁴ On 15 April 2024 the members of the Security Council issued a press statement expressing concern "about the possible escalation of tensions between Venezuela and Guyana".¹⁰⁵ On 7 January 2025 the President of Venezuela announced elections in which "the people of Guayana Esequiba" would elect a governor; on 19 February 2025 the date was fixed for 25 May 2025. Guyana requested new measures on 6 March 2025.¹⁰⁶ Venezuela, by letters of 10 and 28 March 2025, stated that it "does not recognize the jurisdiction of the Court", described the request as "an abuse of process", and contended that the holding of periodic elections "fall[s] within the domaine réservé" of Venezuela; it filed no further observations within the time fixed.¹⁰⁷

The Court treated the request as one for modification under Article 76(1) of the Rules, which permits it to "revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification", and asked whether the situation that warranted the 2023 Order had changed and whether the general conditions of Article 41 were met. It found that "the serious risk of Venezuela acquiring and exercising control and administration over the territory in dispute has significantly increased", and that the decrees, the Organic Law and the announced elections "represent grave developments which constitute a change in the situation".¹⁰⁸ It could not revisit its 2020 finding on jurisdiction; it saw no reason to depart from its finding of plausibility; and it held that by adopting legislative measures and decrees and announcing elections "the Respondent has confirmed its intention of acquiring and exercising control and administration over the territory in dispute".¹⁰⁹

The Court unanimously reaffirmed the measures of 1 December 2023, "which should be immediately and effectively implemented", and by twelve votes to three indicated a further measure: "Pending a final decision in the case, the Bolivarian Republic of Venezuela shall refrain from conducting elections, or preparing to conduct elections, in the territory in dispute, which the Co-operative Republic of Guyana currently administers and over which it exercises control." It underlined that the Order "is without prejudice to any findings concerning the Respondent's compliance with the Order of 1 December 2023".¹¹⁰

The joint dissent of Judges Xue, Bhandari and Nolte must be summarised fairly, because it is not a dissent on substance. The three judges "agree that Venezuela must 'refrain from conducting elections, or preparing to conduct elections, in the territory in dispute'"; their objection was procedural: the measure "is, in our view, already included in the previous Order of the Court of 1 December 2023", so that it was "neither necessary nor prudent for the Court to 'specify' the scope of that Order by setting out a separate new measure". The Court, they said, should specify the scope of its previous measures "only when a change in the situation gives rise to serious doubts as to whether its previous provisional measures are applicable to or sufficient to address the new

¹⁰⁴ *Arbitral Award of 3 October 1899 (Guyana v Venezuela) (Request for the Modification of the Order Indicating Provisional Measures of 1 December 2023) Order of 1 May 2025* [2025] ICJ Rep 13 ('2025 Order') paras 27–28.

¹⁰⁵ 2025 Order (n 104) para 39. The statement is reported under the document symbol SC/15665 [VERIFY: confirm the symbol and quote the statement from the UN press release before print; the page at press.un.org did not load on 4 September 2026].

¹⁰⁶ 2025 Order (n 104) paras 12–13 and 29.

¹⁰⁷ *ibid* paras 15, 17, 19 and 25.

¹⁰⁸ *ibid* paras 20–21 and 30–31; Rules of Court, art 76(1).

¹⁰⁹ 2025 Order (n 104) paras 32, 34 and 38.

¹¹⁰ *ibid* paras 45–46.

situation"; unnecessary specification "may weaken the authority of its orders", may encourage "repeated requests for the modification of provisional measures", and risks the Court appearing "to be engaging in the enforcement of the provisional measures it has indicated, which is not its task", so that "more self-restraint on the part of the Court would have been warranted".¹¹¹ Judge Brant, who voted with the majority, records that he was at first of the same view and was persuaded otherwise by "the accumulation of several new facts which occurred directly after the Court had made its Order of 1 December 2023". Judge ad hoc Wolfrum treats the Organic Law as the decisive new situation; Judge ad hoc Couvreur, voting in favour, describes the new measure as "strictly within the material limits of the first measure indicated in 2023" and as "explanatory".¹¹²

D. Binding force, and the meaning of a shield

Since *LaGrand* it has been settled that "orders on provisional measures under Article 41 have binding effect", a conclusion the Court drew from the terms of Article 41 read in context, and which it found Article 94(1) of the Charter — under which each Member "undertakes to comply with the decision of the International Court of Justice in any case to which it is a party" — does not prevent. Both Orders in this case recall it, and the modern law is collected in Miles's monograph.¹¹³

I call the two Orders the peacetime shield for a reason that is specific to the small State. The judgment on the merits is the object of the case; but between the filing of an application and the delivery of the judgment there is a period — here already more than eight years — in which the party that cannot defend the ground by other means is exposed. Provisional measures are the only instrument of the Statute that operates in that period, and they operate by the same mechanism as everything else in the Peace Palace: a written obligation, addressed to a State by name, resting on consent given long before. The Court cannot enforce them; Article 94(2) of the Charter routes non-compliance to the Security Council, and the Security Council's statement of April 2024 was a statement. What the Orders did was to fix, in the Court's own words and with the vote of Venezuela's own judge ad hoc, the fact that "Guyana administers and exercises control over that area", and to attach to that fact a legal obligation not to change it. For a State of Guyana's size that is not nothing. It is the difference between a claim and a record.

VIII. The hearings of May 2026 and the questions for the merits

A. The record

¹¹¹ 2025 Order (n 104), Joint Dissenting Opinion of Judges Xue, Bhandari and Nolte [2025] ICJ Rep 25, paras 1, 7 and 11–12.

¹¹² 2025 Order (n 104), Declaration of Judge Brant [2025] ICJ Rep 28, para 3; Declaration of Judge ad hoc Wolfrum [2025] ICJ Rep 30 and Separate Opinion of Judge ad hoc Couvreur [2025] ICJ Rep 34, as summarised in ICJ, 'Summary of the Order of 1 May 2025' Summary 2025/1 (2 May 2025) annex.

¹¹³ *LaGrand (Germany v United States of America)* [2001] ICJ Rep 466, 505–506, paras 108–109; Charter (n 49) art 94(1); Statute (n 5) art 41; 2023 Order (n 96) para 44; 2025 Order (n 104) para 44; Miles (n 14).

The written proceedings on the merits comprised Guyana's Memorial of 8 March 2022, Venezuela's Counter-Memorial of 8 April 2024 (whose first volume bears the title "The Truth of the Bolivarian Republic of Venezuela on the Guayana Esequiba: Historic Position"), Guyana's Reply of 9 December 2024 and Venezuela's Rejoinder of 11 August 2025.¹¹⁴ Public hearings were held from 4 to 11 May 2026 in two rounds. Guyana's delegation was led by its Minister for Foreign Affairs and International Cooperation, Hugh Hilton Todd, with Carl B Greenidge as Agent; Venezuela's was led by Delcy Rodríguez Gómez, described in the Court's press release as Acting President, with Ambassador Samuel Reinaldo Moncada Acosta as Agent. The verbatim records are CR 2026/24 to 2026/29.¹¹⁵ Table 1 collects the decisions to date.

Decision	Date	Vote	Opinions appended
Judgment (Jurisdiction)	18 December 2020	12–4 on jurisdiction; unanimous on the exclusion of post-1966 events	Tomka (declaration); Abraham (dissent); Bennouna (dissent); Gaja (declaration); Robinson (declaration); Gevorgian (dissent)
Judgment (Preliminary Objection)	6 April 2023	unanimous on admissibility; 14–1 on rejection; 14–1 on adjudicating the merits	Bhandari (declaration); Robinson (separate); Iwasawa (declaration); Wolfrum ad hoc (declaration); Couvreur ad hoc (partly dissenting)
Order (Provisional Measures)	1 December 2023	unanimous on both measures	Sebutinde (declaration); Robinson (separate); Couvreur ad hoc (separate)
Order (Modification)	1 May 2025	unanimous on reaffirmation; 12–3 on the elections measure	Xue, Bhandari and Nolte (joint dissent); Brant (declaration); Wolfrum ad hoc (declaration); Couvreur ad hoc (separate)

B. The final submissions

Guyana's Agent read its submissions on 8 May 2026. They ask the Court to adjudge and declare "[t]hat the 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is the boundary between Guyana and Venezuela"; that Guyana "enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement"; "[t]hat Venezuela has failed to comply with the obligations set out in the Orders of 1 December 2023 and of 1 May 2025"; and that "as a consequence" Venezuela must withdraw from any part of Guyana's territory "including the part of Ankoko Island that the Award attributed to Guyana", refrain from asserting sovereignty over it, and revoke the laws, decrees and other acts that purport to annex, administer or control it.¹¹⁶ Venezuela's Agent, on 11 May 2026, asked the Court "to: 1) abstain from intervening in the territorial controversy between Venezuela and Guyana on Guayana Esequiba

¹¹⁴ 2025 Order (n 104) paras 6, 8 and 11; case page (n 2); *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Counter-Memorial of the Bolivarian Republic of Venezuela, vol I (8 April 2024) ('Counter-Memorial') title page; *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Reply of Guyana on the Merits, vol I (9 December 2024) ('Reply').

¹¹⁵ Press Release 2026/13 (n 1); case page (n 2), listing verbatim records CR 2026/24 to 2026/29 (4, 6, 8 and 11 May 2026).

¹¹⁶ CR 2026/28 (n 22) 66–67 (Greenidge).

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".¹¹⁷

C. The questions, stated and not answered

Reading the pleadings and the verbatim records together, I count eight questions before the Court. Each is contested. None is resolved here.

First, the effect of Article XIII of the 1897 Treaty and the presumption of validity. Guyana's Memorial devotes a chapter to the proposition that the Award "was intended to be final and binding, and is entitled to a presumption of validity", with the burden and standard of proof on the party alleging invalidity; Venezuela's position is that the validity of the Award is "irrelevant" since the conclusion of the Geneva Agreement, but it argues invalidity in the alternative.¹¹⁸

Second, the validity of the compromis itself. Venezuela's Counter-Memorial characterises the negotiation of the 1897 Treaty under a chapter heading that speaks of a "swindle disguised as an arbitration process", and pleads that Venezuela was "sidelined from negotiations", that "[t]he very idea of Venezuelan Arbitrators [was] ruled out", and that it faced a dilemma of "ratify or suffer"; Guyana's Reply answers that there was "no error by concealment or fraud", that Venezuela "freely signed" the Treaty, and that in any event "international law did not invalidate consent given under coercion at the end of the 19th century".¹¹⁹

Third, the absence of reasons. Venezuela's counsel identified "the lack of reasons in the award" as the second of its three grounds; Guyana's Reply addresses "The Absence of Reasons in the Award" as its first topic on validity, and its Memorial argues that an absence of reasons "does not render the Award a nullity".¹²⁰ The Court's own statements in 1960 and 1991 on what reasoning suffices will be in play.

Fourth, excess of power, in what Venezuela's counsel called its positive and "negative" forms — deciding what was not submitted, failing to decide what was, and deciding extra legem — under the test that a tribunal "must conform to the terms" of its mandate. Guyana's counsel answered what he called the six deadly sins alleged against the Award — injustice, want of reasons, decision infra petita, decision ultra petita, fraud in the manner of adoption, and error — grievance by grievance.¹²¹

Fifth, the memorandum and the allegation of collusion. For Venezuela's counsel, as Guyana's counsel quoted them, the memorandum "changed everything" and was "the missing link"; for

¹¹⁷ ICJ, *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Verbatim Record CR 2026/29 (11 May 2026) ('CR 2026/29') 63 (Moncada).

¹¹⁸ Memorial (n 4) table of contents, ch 6; CR 2026/27 (n 25) 23, paras 3–5 (Palchetti).

¹¹⁹ Counter-Memorial (n 114) table of contents, ch 5, s I; Reply (n 114) table of contents, ch 2.

¹²⁰ CR 2026/27 (n 25) 23, para 5 (Palchetti); Reply (n 114) table of contents, ch 3, s I; Memorial (n 4) table of contents, ch 8, s III.A.

¹²¹ CR 2026/27 (n 25) 36–38, paras 2–7 (Tams), citing *Guinea-Bissau v Senegal* (n 38) para 49; CR 2026/28 (n 22) 33–35, paras 1–5 (Pellet).

Guyana's it "is a fiction" that "does not and cannot explain the silence from 1949 to 1962".¹²² What the Court makes of a posthumous document is a question of evidence on which it has heard both sides.

Sixth, the 1905 demarcation and six decades of conduct. Guyana relies on what its counsel called "the six decades of conduct by Venezuela during which it freely accepted the validity of and meticulously complied with the 1899 Arbitration Award and the boundary established by the 1905 Boundary Agreement", and on the *King of Spain* judgment's treatment of recognition "by express declaration and by conduct"; Venezuela answers with "structural coercion" and with the argument that the Geneva Agreement leaves no room for a plea founded on Venezuela's conduct after 1899.¹²³

Seventh, the effect of the Geneva Agreement on the merits. Venezuela's Rejoinder and oral argument present the Agreement as a novation instrument and as the culmination of decolonisation, so that the "real issue" is a mutually satisfactory solution and the Court has no role; Guyana relies on the Court's finding of 2020 that the controversy "concerns the question of the validity of the 1899 Award, as well as its legal implications for the boundary line", which its counsel treated as settled.¹²⁴ How far those findings bind the Court on the merits, and how far the Agreement's substantive vocabulary survives them, are matters for the Court.

Eighth, the scope of the jurisdiction. The 2020 Judgment excluded the claims "arising from events that occurred after the signature of the Geneva Agreement". Guyana's third and fourth submissions nonetheless seek a finding of non-compliance with the Orders and consequential relief directed at the decrees and the Organic Law, and the 2025 Order expressly left findings on compliance open. Whether, and on what basis, the Court addresses compliance with its own orders, and how it relates that question to the temporal limit it set in 2020, is a question on which I take no position. As at 4 September 2026 the Court has answered none of these questions and has announced no date for doing so.¹²⁵

IX. The small state's argument

The argument advanced here is my own. It has three parts.

Start with the instrument. The Geneva Agreement is a treaty about procedure, and procedure is where a small State's chance lies. A treaty of settlement needs two consents at the end. A treaty about the means of settlement needs them only at the beginning, and then converts the larger party's later refusal into a timetable. The Court's reasoning in 2020 makes the mechanism explicit: a requirement of further consent "would give either Party the power to delay indefinitely the resolution of the controversy by withholding such consent". Venezuela understood the mechanism in 1982, when it wrote that the function "now becomes the responsibility of the

¹²² CR 2026/28 (n 22) 46, paras 2–4 (Sands), quoting counsel for Venezuela in CR 2026/27 (n 25); for the memorandum's origins as Guyana presents them see ICJ, *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, Verbatim Record CR 2026/25 (4 May 2026) ('CR 2026/25') 45–46, paras 2–7 (Craven).

¹²³ CR 2026/25 (n 122) 29, paras 2–5 (Oral); *King of Spain* (n 33) 213; CR 2026/27 (n 25) 12–13, paras 2–6 (Azaria) and 50, paras 2–4 (Thouvenin).

¹²⁴ Rejoinder (n 51) Part One, chs III–IV; CR 2026/26 (n 52) 19–20, paras 3–5 (Mbengue); CR 2026/29 (n 117) 33–34, paras 1–5 (Zimmermann); 2020 Judgment (n 3) para 66; CR 2026/28 (n 22) 33–34, paras 1–2 (Pellet).

¹²⁵ 2020 Judgment (n 3) para 138(2); CR 2026/28 (n 22) 66–67; 2025 Order (n 104) para 45; case page (n 2).

Secretary-General"; Guyana understood it in 2015, when it asked for a means that would bring "a definitive and conclusive end".¹²⁶ The delegation to the Secretary-General is, in the vocabulary of the literature on international organisations as law-makers, an instance of an institution's officer taking a decision that is legally operative between States;¹²⁷ its distinctive feature here is that it was designed by the parties to operate against whichever of them later withheld agreement, and that it was the smaller party which, in the event, invoked it.

The second part is the sentence I began with: the tribunal is the one room in the world where Guyana and its neighbour are the same size. I do not mean that the Court is kind to small States. Its reasoning in 2020 was contested by four of its members, its Order of 2025 by three, and its Order of 2023 did not give Guyana the measures it asked for. I mean that the Court's procedure is the only forum in which the disparity recorded in Guyana's Memorial — four times the territory, thirty-five times the population — has no legal weight. Each party names a judge ad hoc under Article 31; each has the same rounds; the absent party is neither rewarded nor punished for absence;¹²⁸ and when Venezuela chose to appear in 2022 it received a full hearing on an objection that it could not have raised in the same terms anywhere else. The equality is formal, and the formality is the point. Lauterpacht argued in 1933 that international disputes are justiciable;¹²⁹ I read that argument from the small end of the line and find it truer there.

The third part is the price, and the price is time. The contention was asserted in 1962, the instrument signed in 1966, the moratorium ended in 1982, the Secretary-General seised in 1983, the Court chosen in 2018, jurisdiction found in 2020, the objection rejected in 2023, and the hearings closed in 2026. A State that chooses law over leverage chooses to be answered slowly, and to be exposed while it waits; the Orders of 2023 and 2025 exist because the exposure was real. The literature on why nations obey international law asks its question from the standpoint of the State that could do otherwise;¹³⁰ for the small State obedience is not the puzzle. The puzzle is why it chooses the forum when the forum cannot compel. My answer is that the forum is the only place where its consent is worth exactly as much as its neighbour's, and that a State without leverage rationally buys the one asset that leverage cannot outbid — a record, made by an organ both parties accepted, of what the law is between them.

I do not claim that the choice guarantees the result. I have said nothing about the result and I will not. What the record from 1966 to 2026 shows is a State that, at every point where the Agreement gave it a step, took the step, and at no point took any other. Whatever the Court decides, that record is complete, and the small state's argument rests on it and on nothing else.

X. Conclusion

I asked at the outset what kind of instrument the Geneva Agreement is. It is not a settlement. It is an agreement about the means of settlement, with a binding delegation to the Secretary-General at the point where the parties' own agreement runs out and a reservation clause that holds claims in place while the process runs. That is what the record of 1966 to 2018 shows. The Court, for its

¹²⁶ 2020 Judgment (n 3) paras 51, 55 and 114.

¹²⁷ José E Alvarez, *International Organizations as Law-Makers* (OUP 2005).

¹²⁸ 2020 Judgment (n 3) paras 25–27; Statute (n 5) art 31.

¹²⁹ Hersch Lauterpacht, *The Function of Law in the International Community* (Clarendon Press 1933; reissued OUP 2011).

¹³⁰ Harold Hongju Koh, 'Why Do Nations Obey International Law?' (1997) 106 Yale LJ 2599.

part, has held that the delegation is binding, that the means the Secretary-General may choose include judicial settlement, and that his choice of the Court on 30 January 2018 founded jurisdiction on Guyana's unilateral application. It has held that the colonial predecessor's absence is no bar, because that predecessor agreed to a procedure without it. And it has held twice, each time with the vote of the judge ad hoc chosen by Venezuela, that Guyana's right to the territory awarded in 1899 is plausible and that the situation in which Guyana administers and controls that territory is not to be modified pending judgment.

None of these holdings decides the validity of the Award. The questions that do — Article XIII and the presumption of validity, the validity of the compromis, the absence of reasons, excess of power, the memorandum, the 1905 demarcation and six decades of conduct, the effect of the Geneva Agreement itself, and the reach of the Court's jurisdiction — were argued over two rounds in May 2026 and are under deliberation. As at 4 September 2026 no judgment has been delivered and no date has been announced.

My argument does not wait on the answer. It rests on the record: fifty-two years in which a small State used an unusual instrument exactly as written, and eight years in which it put the territory it administers to the judgment of a tribunal it cannot influence, because the tribunal is the one room in the world where it and its neighbour are the same size.

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