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ICJ TOPIC 2

Guyana V. Venezuela - Arbitral award of 3rd October 1899.

International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

Case Introduction

For well over a century, the complicated and protracted territorial dispute between Guyana and Venezuela over the Essequibo region has influenced the history and interactions between these two South American nations. The Essequibo region, which makes up about two-thirds of Guyana's land area, is abundant in natural resources such as timber, oil, diamonds, gold, and, more recently, substantial offshore oil reserves. These resources have transformed the dispute from a mere border disagreement into a high-stakes battle over economic sovereignty and national identity. Both countries assert that they are the legitimate owners of the area and see it as crucial to the political stability and future prosperity of their respective nations.

The conflict has its roots in the late 19th century, when Venezuela was drawing its post-colonial borders following its independence from Spain and Guyana was a British colony known as British Guiana. Tensions at the time were caused by the two powers' hazy territorial boundaries. Britain and Venezuela agreed to submit the dispute to international arbitration when they signed the Treaty of Washington in 1897 in an effort to settle the issue amicably. This was an important moment because it demonstrated that both nations were prepared to follow the ruling of an impartial third party. Following extensive discussion, the tribunal met in Paris and rendered its decision on October 3, 1899. British Guiana was granted the majority of the disputed territory by the ruling. Both countries accepted the decision.

Following extensive deliberation, the tribunal met in Paris and rendered its decision on October 3, 1899. The ruling gave British Guiana the majority of the disputed territory. Following their acceptance of the decision, both nations started the formal border demarcation process, which was finished by 1905. This arbitration award established a framework for regional stability and was accepted and recognized globally for decades.

But in 1962, when Venezuela openly contested the validity of the 1899 award, things took a significant turn for the worse. The Venezuelan government asserted that Britain had manipulated the tribunal and conspired with some arbitrators to obtain a favorable result, claiming that the arbitration process had been seriously flawed. This accusation called into question the original ruling's fairness and served as the basis for Venezuela's reaffirmed claim to the Essequibo region. The timing of Venezuela's claim was crucial because Guyana was about to gain its independence and the dispute over sovereignty over the Essequibo was about to escalate into a major point of contention. The border dispute grew more intense after Guyana gained independence in 1966.

Due to significant offshore oil discoveries within the maritime borders of the Essequibo region, the dispute is now even more urgent. The resources offer Guyana a significant economic opportunity that has the potential to revolutionize the nation's development prospects. Therefore, territorial control is important for both economic survival and growth as well as for national pride. Venezuela, on the other hand, maintains that the original arbitration was void and that the territory is rightfully its, viewing the claim as a matter of historic justice and

territorial integrity. Due to the increased economic stakes, the conflict has evolved from a diplomatic dispute into a struggle for control of resources that could determine both nations' futures.

Definitions and Key Terms:

Schomburgk Line: A boundary line proposed by a British surveyor to mark territorial claims.

Monroe Doctrine: A U.S. policy opposing European colonialism or interference in the Americas.

Arbitration System: A legal process where a dispute is settled by an impartial third party whose decision is binding.

Memorandum: A written document recording information, opinions, or positions for reference.

Arbitral Award: The final decision issued by an arbitration tribunal in a legal dispute.

Geneva Agreement: A treaty outlining peaceful mechanisms for resolving a dispute between parties.

Tribunal: A panel of judges or arbitrators with authority to decide legal disputes.

Jurisdiction: The legal authority of a court or tribunal to hear and decide a case.

Sovereignty: The full right and power of a state to govern itself without external interference.

Good Offices: A diplomatic method where a third party helps disputing states reach a peaceful settlement.

ICJ (International Court of Justice): The main judicial organ of the United Nations that settles legal disputes between states.

Treaty: A formal, legally binding agreement between two or more states.

Boundary Demarcation: The process of physically marking or officially recording the limits of territorial borders.

Annexation: The act of a state unilaterally claiming and incorporating territory into its own jurisdiction.

Referendum: A direct vote in which a population decides on a specific political or legal issue.

Colonialism: The practice of acquiring and controlling territories by a foreign power, often for economic or strategic benefit.

Diplomatic Protest: A formal objection raised by one state against another's actions through official diplomatic channels.

Sovereignty Dispute: A disagreement between two or more states over rightful ownership and control of a specific territory.

Historical Context:

Colonial Roots and Competing Claims:

The territorial dispute between Venezuela and present day Guyana goes way back to the 17th century and is rooted in the colonial rivalry between the Spanish and the Dutch. The Dutch West India Company established settlements as early as 1616 along the Essequibo River,

which it used as a base to trade and expand its territory. Spain, ruling over what was called Venezuela proper, also laid claim to the same area, though it maintained only a slight presence to the west of the Orinoco.

The British took formal possession of Dutch Guiana through the 1814 Anglo-Dutch Treaty and renamed it British Guiana. Britain relied on Dutch maps and claims and contended that its territory lay further west of the Essequibo River. Venezuela, which attained its independence in 1830, rejected such an interpretation and maintained that the River Essequibo was the legitimate boundary between both nations.

The Schomburgk Line and Diplomatic Breakdown:

In 1840, Britain engaged the German-born British surveyor Robert Hermann Schomburgk to define its boundary. He sketched out what is now known as the Schomburgk Line, which extended British claims far into what Venezuela considered its territory. The addition is estimated to have been some 159,500 square kilometers brought under the British Guiana claims and would come to be the sole issue for contention.

Venezuela strongly protested against the Schomburgk Line and cut diplomatic relations with Britain several times throughout the 19th century. By the 1890s, tensions escalated to their extreme, and Venezuela called upon the United States for assistance, citing the Monroe Doctrine as the basis against British expansion in the Western Hemisphere.



Scottish Geographical Magazine 1896

U.S. Intervention and Agreement to Arbitrate:

During the 1895 Boundary Crisis between Venezuela and Britain, president Grover Cleveland backed Venezuelan claims and promoted

arbitration as a solution. At last, the British officials decided to approve the process. The Treaty of Washington which Britain and Venezuela signed in 1897 created an international arbitration system to resolve their dispute through binding decisions.

The arbitration tribunal would be composed of five members:

- Two appointed by Britain
- Two appointed by the United States on behalf of Venezuela
- One neutral presiding member, selected by the other four. This party was eventually filled by Friedrich Martens, a Russian legal scholar and diplomat.

The 1899 Arbitral Award:

The tribunal held its sessions in Paris before delivering its verdict on 3 October 1899. The ruling awarded British Guiana with about 90% of the disputed land while Venezuela obtained a small piece of territory at the Orinoco River delta.

The full explanation of the award remained unpublished yet the decision received general acceptance when it was made. A Joint Commission formed in 1905 to mark the boundary lines based on the award. The defined boundary line stayed stable and without much opposition throughout many years.

Post-Award Acceptance and the 1944 Mallet-Prevost Memorandum:

Venezuela gave its approval to the verdict before restoring diplomatic ties between Britain and itself. Nevertheless, the American legal professional Severo Mallet Prevost who functioned as secretary for

Venezuelan delegates during arbitration wrote a memorandum in 1944 which charged the award with political corruption but it was published only in 1949 following his death.

The document revealed that Martens as Russian tribunal leader had secretly held discussions with British arbitrators without involving Venezuelan representatives. According to Mallet-Prevost Venezuela was forced to accept a dishonest settlement because it faced a more unfavorable alternative.

The memorandum led Venezuela to modify its historical approach regarding the matter. The Venezuelan government accepted the arbitral award for six decades before starting to officially challenge its validity during the early 1960s.

Venezuela's Formal Challenge in 1962:

During United Nations proceedings of 1962 Venezuela presented its official declaration that the 1899 Arbitral Award stood invalid and used key evidence from Severo Mallet Prevost to back its claim. The ruling emerged from fraudulent circumstances and political manipulation alongside collusion which prevented it from being a legitimate legal decision. The Venezuelan government made its initial public dismissal of the award through this official statement.

After making this statement Venezuela rejected the Essequibo boundary as definitive and proceeded to claim control over the territory west of that river. The dispute appeared again at a vital point

when British Guiana neared independence leading to fresh discussions between nations and international apprehension.

Present Context:

Escalations and Attempts at Mediation

The UN Secretary-General received the matter through Article IV of the Geneva Agreement when the Mixed Commission proved unsuccessful in resolving the dispute. Multiple secretary generals maintained the Good Offices process between the two states for many years. The discussions failed to produce any substantial results even though both sides successfully avoided engaging in military conflict.

Venezuela routinely protested diplomatically as it prevented any development activities from occurring within the contested territory. The situation escalated when Venezuela issued naval threats in 2000 and again in 2013 while also detaining foreign-operated exploration vessels operating in Guyanese waters.

Discovery of Oil and Legal Action:

ExxonMobil revealed a major oil find in Guyana's offshore region during May 2015 near the disputed territory. The announcement revived an existing diplomatic conflict. Venezuela reacted by establishing a Presidential Decree which asserted control over maritime regions adjacent to Essequibo thus fueling concerns regarding economic interference.

After years of unsuccessful talks the UN Secretary-General António Guterres chose to send the dispute to the International Court of Justice (ICJ) for legal settlement, according to the Geneva Agreement, in January 2018.

Proceedings at the International Court of Justice:

The International Court of Justice (ICJ) received the case from Guyana in 2018 to confirm the 1899 Arbitral Award validity as binding. The Court faced jurisdictional challenges from Venezuela when it refused to join the proceedings but in 2020 the ICJ determined it possessed authority to conduct the case. The two parties delivered their written arguments to the court throughout the following years. Even though Venezuela continued to dispute the Court's jurisdiction it eventually participated in some parts of the proceedings which evaluated the award's validity. During the April 2024 oral hearings at the Hague, Venezuela presented evidence that the award resulted from fraud and collusion, yet Guyana upheld the settlement as final and binding and requested the Court to recognize its sovereignty.

Current Status:

Guyana holds complete administrative authority over the Essequibo region though Venezuela asserts sovereignty over the area. The two nations support different legal interpretations since Guyana considers the 1899 Arbitral Award final but Venezuela views the award as fraudulent and demands bilateral settlement according to the Geneva Agreement. The International Court of Justice will deliver its concluding decision regarding the dispute during the final months of 2025. The tensions between nations persist at elevated levels because of ongoing

oil activities in the disputed territory while regional powers call for diplomatic measures that honor international legal standards.

Timeline:

- February 1897

By the Treaty of Washington, Britain and Venezuela agreed to international arbitration in their boundary dispute.

- October 1899

The arbitral tribunal awarded the majority of the disputed territory, about 90%, to British Guiana.

- February 1905

The Joint Commission demarcated the boundary, thus finally consummating the demarcation under the arbitral award.

- 1944

Severo Mallet-Prevost drafted a damaging memorandum, charging political corruption during the arbitration.

- 1949

Publication following Mallet-Prevost's death emerged to question the legitimacy of the award.

- 1962

Venezuela held a proceeding at the UN and formally challenged the 1899 Arbitral Award as being fraudulent and collusive.

- February 1966

Venezuela officially rejected the boundary and claimed territory west of the Essequibo River.

- May 1966

Guyana attained independence and the Geneva Agreement was signed as a means to work towards a peaceful resolution of the dispute.

- 2000 & 2013

Venezuela issued naval threats and detained exploration vessels operated by foreigners in Guyanese waters.

- May 2015

ExxonMobil revealed an enormous offshore oil find adjacent to the contested Essequibo territory.

- January 2018

The matter was submitted by UN Secretary-General António Guterres to the International Court of Justice (ICJ) for adjudication through legal processes.

- March 2018

Guyana initiated legal proceedings at the ICJ to authenticate the legitimacy of the 1899 Arbitral Award.

- May 2020

The International Court of Justice declared its authority to proceed with the case in the face of Venezuelan opposition.

- November 2023

The International Court of Justice officially commenced the preliminary stages for judicial examination of the case.

- April 2024

The Hague served as the venue for conducting oral hearings. Venezuela declared the award fraudulent while Guyana sought complete sovereignty recognition.

- Late 2025 (to come)

The International Court of Justice plans to announce its conclusive verdict regarding the legitimacy of the 1899 Arbitral Award.

Challenges and Stakeholder Dynamics:

Jurisdictional Disputes

Venezuela contested the ICJ's authority to handle the case because it believed the Geneva Agreement of 1966 did not grant the Court power to assess the 1899 Arbitral Award. The dispute over jurisdiction slowed down the proceedings while shifting focus to procedural matters instead of substantive issues. The ICJ issued two rulings in December 2020 and April 2023 which confirmed it possessed jurisdiction according to Article IV(2) of the Geneva Agreement.

Evidentiary Limitations

The legal dispute bases its arguments mainly on historical documents from the nineteenth century through the early twentieth century which include diplomatic correspondence along with maps and arbitration transcripts. The legal presentation faces complications because parties contest both the trustworthiness and proper interpretation of historical documents. Venezuela challenged the impartiality of documents obtained from British sources while Guyana maintained the documents aligned with previous boundary agreements.

Security Concerns

Current tensions involving Venezuela's 2023 referendum about Essequibo sovereignty have sparked worries of possible military confrontation. The dispute has resulted in increased border protection and strained diplomatic ties while both sides boost their military deployment throughout the contested zones.

State Level Political Pressure

The disagreement maintains significant national value across the two nations. The ICJ case represents a vital matter to Guyana's government for protecting its sovereignty while upholding national legal systems. Under President Nicolás Maduro, Venezuela has used this territorial dispute to build nationalist support and shift attention away from internal problems. The case maintains strong connections to electoral dynamics as well as public attitudes in both nations which complicates settlement negotiations.

International and Regional Organizations

Organizations like CARICOM, the OAS, and the United Nations have clearly come out in favor of an amicable and legal settlement. CARICOM has consistently supported Guyana's legal posture, while the United Nations Secretary-General referred the matter to the ICJ upon determining that the parties had exhausted any remaining possibilities for amicable settlement through negotiations. Their intervention adds diplomatic weight on the side of the candidate, strengthening the imperative to respect international law.

Private Sector and Foreign Investment

The disputed Essequibo region contains major natural resources, including oil and minerals. Companies like ExxonMobil are investing in offshore drilling under licenses from Guyana. Venezuela has condemned these operations, claiming they violate its sovereignty. This introduces corporate stakeholders into the dispute, with economic and geopolitical implications.

Past International Actions:

Arbitral Award of 1899: An international tribunal sitting in Paris ruled in favor of British Guiana, thus awarding to her and her possession some 90% of the disputed territory. Both parties at that time accepted the Award.

Geneva Agreement 1966: The Treaty was made to secure a peaceful resolution. Signatories were the United Kingdom, Venezuela, and British Guiana. A Mixed Commission was created and procedures set forth in the event no agreement was reached.

UN Good Offices Process: When the Mixed Commission could no longer work, the UN Secretary-General set up a regime of Good Offices whereby some representatives of the Secretary-General attempted to mediate between Guyana and Venezuela. No solution, however, was reached after decades.

UN Secretary-General Referral to the ICJ : Following the failure of the Good Offices process, in accordance with the Geneva Agreement, the UN Secretary-General, António Guterres, referred the dispute to the International Court of Justice.

Implementation Considerations:

1. Enforcement of ICJ Ruling

The ICJ does not possess enforcement powers, and the decisions of the Court have to be implemented, through compliance of States, and/or with the support of the Security Council. If the Court found for Guyana, Venezuela may reject recognition and implementation of the decision, especially since it has so often rejected the jurisdiction of the ICJ.

2. Territorial Administration and Control of Resources

If the sovereignty of Guyana were to be confirmed, then the State ensures the continued governance, security, and economic development of the Essequibo region. This includes overseeing oil exploration, indigenous land rights, and environmental safeguards, without causing escalation.

3. Regional Stability and Diplomatic Response

As a consequence, the ruling could affect intergovernmental organizations CARICOM, UNASUR, and OAS. Diplomatic pressure may be necessary to prevent Venezuela from retaliating in the form of economic blockade or military posturing. Regional actors may even be engaged to mediate or oversee compliance.

4. Impact on Civilian Population

Changes in the present situation must thus consider border communities, especially those in the Essequibo area, where residents identify themselves as Guyanese. Any forcible alteration in territorial sovereignty or dual claims would cause significant issues in terms of identity, governance, or delivery of services.

5. International investment and legal certainty

The dispute has thus affected foreign investments, particularly in the oil and mining areas. A clear cut and enforceable decision must be arrived at, so as to bring about economic stability, contractual certainty, and investor confidence in the legal framework of the region.

Guiding questions:

1. To what extent can the 1899 Arbitral Award be considered legally binding under international law despite Venezuela's later objections?
2. Does the Geneva Agreement of 1966 provide a sufficient legal basis for the ICJ to exercise jurisdiction over this dispute?
3. How does the historical implementation and acceptance of the 1899 Award by both parties influence its legal standing today?
4. Can a state lawfully contest an international arbitral award over a century later, and what are the implications of doing so?
5. Which types of historical evidence are most critical to determining the legitimacy of the 1899 Award?
6. How do geopolitical developments, such as the discovery of natural resources in the disputed region, impact the interpretation and resolution of this territorial dispute?
7. What are the legal consequences if the ICJ were to declare the 1899 Award null and void?
8. Should the presence and actions of private corporations (e.g., ExxonMobil) in the Essequibo region influence the Court's deliberation on sovereignty?
9. To what extent should historical evidence, including colonial-era maps and treaties, be weighed in modern territorial disputes before the Court?

10. How might inconsistencies or gaps in the archival records from 1899 to 1905 affect the strength of each party's arguments before the Court?

Resources for delegates use:

1. ICJ Case Page: Guyana v. Venezuela

<https://www.icj-cij.org/case/171>

Provides official documentation on the case, including procedural history, oral pleadings, written submissions, press releases, and judgments. Covers key developments from 2018 to present.

2. UN Legal Arbitration Report (1899 Award Text)

https://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf

Contains the original 1899 arbitral award decision text, outlining the tribunal's reasoning, territorial allocation, and final judgment between Venezuela and British Guiana.

3. Guyana Ministry of Foreign Affairs: Historical Overview

<http://minfor.gov.gy/history-guyana-venezuela-border-conflict>

Outlines Guyana's official position and historical timeline of the border dispute, including maps, diplomatic events, and legal milestones from the colonial era to modern developments.

4. UNifeed Media Clip: UN Referral Announcement

<https://media.un.org/unifeed/en/asset/d259/d2594444>

A UN video briefing confirming Secretary-General António Guterres' referral of the Guyana-Venezuela dispute to the ICJ under the Geneva Agreement due to failed negotiations.

5. EJIL Talk Article: Legal Commentary on ICJ Jurisdiction

<https://www.ejiltalk.org/admissibility-vs-jurisdiction-in-guyana-v-venezuela-icj/>

Analyzes legal arguments about ICJ jurisdiction vs. admissibility in the case, discussing Venezuela's objections and the court's rationale for proceeding with the dispute.

Resources used by the chair:

<https://www.icj-cij.org/case/171>

https://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf

<http://minfor.gov.gy/history-guyana-venezuela-border-conflict>

<https://media.un.org/unifeed/en/asset/d259/d2594444>

<https://www.ejiltalk.org/admissibility-vs-jurisdiction-in-guyana-v-venezuela-icj/>

<https://dpi.gov.gy/icj-acknowledges-guyanas-requests-on-provisional-measures/>

<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/arbitral-award-of-3-october-1899-guyana-v-venezuela/E62B09050EB32DE77EA657EFE72EFADD>

<https://apps.dtic.mil/sti/tr/pdf/ADA254962.pdf>