

DECLARATION OF JUDGE IWASAWA

Like other objections based on the Monetary Gold principle considered by the Court in previous cases, Venezuela's objection is not an objection to the Court's jurisdiction but an objection to admissibility.

1. In the present case, the Court considers that Venezuela's preliminary objection that the United Kingdom is an indispensable third party is not barred by the force of *res judicata* of the 2020 Judgment on jurisdiction and concludes that it is admissible (Judgment, paras. 70 and 74). The Court explains that its jurisprudence on the Monetary Gold principle is premised on a distinction between the *existence* and the *exercise* of its jurisdiction, and that Venezuela's objection is an objection to the *exercise* of its jurisdiction and does not constitute an objection to jurisdiction (*ibid.*, para. 64).

2. Venezuela contends that its objection is an objection to the admissibility of the Application and not to the Court's jurisdiction (Preliminary Objections of Venezuela, para. 12; CR 2022/21, pp. 24-25, paras. 16-18 (Zimmermann); CR 2022/23, pp. 21-26, paras. 2-28 (Zimmermann)). By contrast, Guyana argues that it is an objection to jurisdiction and not to admissibility. The Court rejects this argument of Guyana.

3. The Court has considered objections based on the Monetary Gold principle as concerned with admissibility and not the Court's jurisdiction. In the *Monetary Gold* case, the Court found that although the parties had conferred jurisdiction upon the Court, it could not "*exercise this jurisdiction*" (*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, Judgment, I.C.J. Reports 1954*, p. 33; emphasis added). In the *Nauru* case, the Court first examined Australia's objection to jurisdiction and only subsequently considered its objection based on the Monetary Gold principle. The Court rejected the latter objection, stating that it could not decline to "*exercise its jurisdiction*" (*Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 262, para. 55; emphasis added). In the *East Timor* case, after determining that it had jurisdiction, the Court concluded that it could not "*exercise the jurisdiction it has*" (*East Timor (Portugal v. Australia)*, *Judgment, I.C.J. Reports 1995*, p. 105, para. 35; emphasis added).

4. The Court has elucidated the character of objections to admissibility in the following terms:

“Objections to admissibility normally take the form of an assertion that, even if the Court has jurisdiction and the facts stated by the applicant State are assumed to be correct, nonetheless there are reasons why the Court should not proceed to an examination of the merits.” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120, citing *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Judgment, I.C.J. Reports 2003*, p. 177, para. 29.)

An objection based on the Monetary Gold principle is one such objection calling for the Court not to exercise its jurisdiction and not to proceed to an examination of the merits. In the *Military and Paramilitary Activities* case, the Court expressly described the objection of the United States based on the Monetary Gold principle as one concerning the admissibility of the application (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 429, para. 84, and p. 431, para. 88)¹. In discussing an objection based on the Monetary Gold principle before the Court, parties have likewise treated it as one concerned with admissibility². Venezuela’s objection that the United Kingdom is an indispensable third party is not an objection to the Court’s jurisdiction but an objection to admissibility.

(Signed) IWASAWA Yuji.

¹ See also *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, separate opinion of Judge Tomka, p. 899, para. 41; dissenting opinion of Judge Crawford, p. 1107, para. 33.

² E.g. Counter-Memorial of the United States (Jurisdiction and Admissibility), *I.C.J. Pleadings, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Vol. II, pp. 133-135, paras. 437-443; Oral arguments of Nicaragua on jurisdiction and admissibility, *ibid.*, Vol. III, p. 84 (Reichler); Preliminary Objections of Australia, as reflected in *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 255, para. 39; Counter-Memorial of Australia, *I.C.J. Pleadings, East Timor (Portugal v. Australia)*, Vol. I, pp. 393-412, paras. 177-232; Reply of Portugal, *ibid.*, pp. 693-733, paras. 7.01-7.63; Preliminary Objections of Nigeria, as reflected in *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 286, para. 18.