18 DECEMBER 2020

JUDGMENT

ARBITRAL AWARD OF 3 OCTOBER 1899

(GUYANA *v.* VENEZUELA)

SENTENCE ARBITRALE DU 3 OCTOBRE 1899

(GUYANA c. VENEZUELA)

18 DÉCEMBRE 2020

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JUDGMENT

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; *Judge* ad hoc CHARLESWORTH; *Registrar* GAUTIER.

In the case concerning the Arbitral Award of 3 October 1899,

between

the Co-operative Republic of Guyana,

represented by

Hon. Carl B. Greenidge,

as Agent;

Sir Shridath Ramphal, OE, OCC, SC,

H.E. Ms Audrey Waddell, Ambassador, CCH,

as Co-Agents;

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

Mr. Alain Pellet, Emeritus Professor at the University Paris Nanterre, former Chairman of the International Law Commission, member of the Institut de droit international,

Mr. Philippe Sands, QC, Professor of International Law, University College London (UCL) and Barrister, Matrix Chambers, London,

Mr. Payam Akhavan, LLM, SJD (Harvard University), Professor of International Law, McGill University, member of the Bar of the State of New York and the Law Society of Ontario, member of the Permanent Court of Arbitration,

as Counsel and Advocates;

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

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

Mr. Edward Craven, Barrister, Matrix Chambers, London,

Mr. Ludovic Legrand, Researcher, Centre de droit international de Nanterre (CEDIN) and Adviser in international law,

Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bars of England and Wales and the State of New York, Twenty Essex Chambers, London,

as Counsel;

H.E. Mr. Rashleigh E. Jackson, OR, former Minister for Foreign Affairs,

Ms Gail Teixeira, Representative, People's Progressive Party/Civic,

H.E. Mr. Cedric Joseph, Ambassador, CCH,

H.E. Ms Elisabeth Harper, Ambassador, AA,

Ms Oneka Archer-Caulder, LLB, LEC, LLM, Legal Officer, Ministry of Foreign Affairs,

Ms Donnette Streete, LLB, LLM, Senior Foreign Service Officer, Ministry of Foreign Affairs,

Ms Dianna Khan, LLM, MA, Legal Officer, Ministry of Foreign Affairs,

Mr. Joshua Benn, LLB, LEC, Nippon Fellow, Legal Officer, Ministry of Foreign Affairs,

as Advisers;

Mr. Raymond McLeod, DOAR Inc.,

as Technical Adviser;

Mr. Oscar Norsworthy, Foley Hoag LLP,

as Assistant,

and

the Bolivarian Republic of Venezuela,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 29 March 2018, the Government of the Co-operative Republic of Guyana (hereinafter "Guyana") filed in the Registry of the Court an Application instituting proceedings against the Bolivarian Republic of Venezuela (hereinafter "Venezuela") with regard to a dispute concerning "the legal validity and binding effect of the Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899".

In its Application, Guyana seeks to found the jurisdiction of the Court, under Article 36, paragraph 1, of the Statute of the Court, on Article IV, paragraph 2, of the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana" signed at Geneva on 17 February 1966 (hereinafter the "Geneva Agreement"). It explains that, pursuant to this latter provision, Guyana and Venezuela "mutually conferred upon the Secretary-General of the United Nations the authority to choose the means of settlement of the controversy and, on 30 January 2018, the Secretary-General exercised his authority by choosing judicial settlement by the Court".

2. In accordance with Article 40, paragraph 2, of the Statute, the Registrar immediately communicated the Application to the Government of Venezuela. He also notified the Secretary-General of the United Nations of the filing of the Application by Guyana.

3. In addition, by letter dated 3 July 2018, the Registrar informed all Member States of the United Nations of the filing of the Application.

4. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text of that document.

5. On 18 June 2018, at a meeting held, pursuant to Article 31 of the Rules of Court, by the President of the Court to ascertain the views of the Parties with regard to questions of procedure, the Vice-President of Venezuela, H.E. Ms Delcy Rodríguez Gómez, stated that her Government considered that the Court manifestly lacked jurisdiction to hear the case and that Venezuela had decided not to participate in the proceedings. She also handed to the President of the Court a letter dated 18 June 2018 from the President of Venezuela, H.E. Mr. Nicolás Maduro Moros, in which he stated, *inter alia*, that his country had "never accepted the jurisdiction of [the] Court . . . due to its historical tradition and fundamental institutions [and still less] would it accept the unilateral presentation of the request made by Guyana nor the form and content of the claims expressed therein". He further noted in the letter that not only had Venezuela not accepted the Court's jurisdiction "in relation with the controversy referred to in the so-called 'application' presented by Guyana", it also had not "accept[ed] the unilateral presentation of the mentioned dispute", adding that "there exists no basis that could establish . . . the Court's jurisdiction to consider Guyana's claims". The President of Venezuela continued as follows:

> "In the absence of any disposition in Article IV, paragraph 2 of the Geneva Accord of 1966 (or in Article 33 of the UN Charter, to which the said disposition makes reference) on (i) the Court's jurisdiction and (ii) the modalities for resorting to the Court, the establishment of the jurisdiction of the Court requires, according to a well-established practice, both the express consent granted by both parties to the controversy in order to subject themselves to the jurisdiction of the Court, as well as joint agreement of the Parties notifying the submission of the said dispute to the Court.
>
> The only object, purpose, and legal effect of the decision of January 30, 2018 of the United Nations Secretary-General, in accordance with paragraph 2, Article IV of the Geneva Accord, is to 'choose' a specific means for the friendly resolution of the controversy.
>
> On the other hand, the Court's jurisdiction in virtue of Article 36 of the Statute and the modalities to resort to it in accordance with Article 40 of the Statute, are not regulated by the Geneva Accord. In the absence of an agreement of the Parties expressing their consent to the jurisdiction of the Court under Article 36, and in the absence of an agreement by the Parties accepting that the dispute can be raised unilaterally, and not jointly, before the Court, as established by Article 40, there is no basis for the jurisdiction of the Court with regard to the so-called 'Guyana application'.
>
> Under these circumstances, and taking into account the aforementioned considerations, the Bolivarian Republic of Venezuela will not participate in the proceedings that the Cooperative Republic of Guyana intends to initiate through a unilateral action."

During the same meeting, Guyana expressed its wish for the Court to continue its consideration of the case.

6. By an Order of 19 June 2018, the Court held, pursuant to Article 79, paragraph 2, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, that in the circumstances of the case, it was necessary first of all to resolve the question of its jurisdiction, and that this question should accordingly be separately determined before any proceedings on the merits.

To that end, the Court decided that the written pleadings should first address the question of jurisdiction, and fixed 19 November 2018 and 18 April 2019 as the respective time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela. Guyana filed its Memorial within the time-limit prescribed.

7. The Court did not include upon the Bench a judge of the nationality of either of the Parties. Guyana proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Ms Hilary Charlesworth. Following its decision not to participate in the proceedings (see paragraph 5 above), Venezuela, for its part, did not, at this stage, exercise its right to choose a judge *ad hoc* to sit in the case.

8. By a letter of 12 April 2019, the Minister of People's Power for Foreign Affairs of Venezuela, H.E. Mr. Jorge Alberto Arreaza Montserrat, confirmed the decision of his Government "not to participate in the written procedure". He recalled that, in a letter dated 18 June 2018 (see paragraph 5 above), the President of Venezuela, H.E. Mr. Nicolás Maduro Moros, had expressly informed the Court that Venezuela "would not participate in the proceedings initiated by . . . Guyana's suit, due to the manifest lack of a jurisdictional basis of the Court on [this] claim". He added, however, that "out of respect for the Court", Venezuela would provide the Court, "in a later timely moment, with information in order to assist [it] in the fulfillment of its [duty] as indicated in Article 53.2 of its Statute".

9. By a letter of 24 April 2019, Guyana indicated that it was of the opinion that, in the absence of a counter-memorial by Venezuela, the written phase of the proceedings should "be considered closed" and oral proceedings "should be scheduled as soon as possible".

10. By letters of 23 September 2019, the Parties were informed that the hearings on the question of the Court's jurisdiction would take place from 23 to 27 March 2020.

11. By a letter of 15 October 2019, the Registrar, referring to Venezuela's letter of 12 April 2019, informed the latter that, should it still intend to provide information to assist the Court, it should do so by 28 November 2019 at the latest.

12. On 28 November 2019, Venezuela submitted to the Court a document entitled "Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29th, 2018" (hereinafter the "Memorandum"). This document was immediately communicated to Guyana by the Registry of the Court.

13. By a letter of 10 February 2020, H.E. Mr. Jorge Alberto Arreaza Monserrat, Minister of People's Power for Foreign Affairs of Venezuela, indicated that his Government did not intend to attend the hearings scheduled for March 2020.

14. By letters of 16 March 2020, the Parties were informed that, owing to the COVID-19 pandemic, the Court had decided to postpone the oral proceedings to a later date. On 19 May 2020, the Parties were further informed that the oral proceedings would take place by video link on 30 June 2020.

15. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the Memorial of Guyana and documents annexed thereto would be made accessible to the public on the opening of the oral proceedings. It also decided, in light of the absence of objection by the Parties, that the Memorandum submitted on 28 November 2019 by Venezuela would be made public at the same time.

16. A public hearing on the question of the jurisdiction of the Court was held by video link on 30 June 2020, at which the Court heard the oral arguments of:

For Guyana: Sir Shridath Ramphal,
Mr. Payam Akhavan,
Mr. Paul Reichler,
Mr. Philippe Sands,
Mr. Alain Pellet.

17. At the hearing, a question was put to Guyana by a Member of the Court, to which a reply was given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Venezuela was invited to submit any comments that it might wish to make on Guyana's reply, but no such submission was made.

18. By a letter of 24 July 2020, Venezuela transmitted written comments on the arguments presented by Guyana at the hearing of 30 June 2020, indicating that the comments were submitted "[i]n the framework of the assistance that Venezuela has offered to provide to the Court in the performance of its duty set forth in Article 53.2 of its Statute". By a letter of 3 August 2020, Guyana provided its views on this communication from Venezuela.

*

19. In the Application, the following claims were presented by Guyana:

> "Guyana requests the Court to adjudge and declare that:
>
> *(a)* The 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is valid and binding upon Guyana and Venezuela;
>
> *(b)* Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela enjoys full sovereignty over the territory west of that boundary;

Guyana and Venezuela are under an obligation to fully respect each other's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;

(c) Venezuela shall immediately withdraw from and cease its occupation of the eastern half of the Island of Ankoko, and each and every other territory which is recognized as Guyana's sovereign territory in accordance with the 1899 Award and 1905 Agreement;

(d) Venezuela shall refrain from threatening or using force against any person and/or company licensed by Guyana to engage in economic or commercial activity in Guyanese territory as determined by the 1899 Award and 1905 Agreement, or in any maritime areas appurtenant to such territory over which Guyana has sovereignty or exercises sovereign rights, and shall not interfere with any Guyanese or Guyanese-authorized activities in those areas;

(e) Venezuela is internationally responsible for violations of Guyana's sovereignty and sovereign rights, and for all injuries suffered by Guyana as a consequence."

20. In the written proceedings, the following submissions were presented on behalf of the Government of Guyana in its Memorial on the question of the jurisdiction of the Court:

"For these reasons, Guyana respectfully requests the Court:

1. to find that it has jurisdiction to hear the claims presented by Guyana, and that these claims are admissible; and

2. to proceed to the merits of the case."

21. At the oral proceedings, the following submissions were presented on behalf of the Government of Guyana at the hearing of 30 June 2020:

"On the basis of its Application of 29 March 2018, its Memorial of 19 November 2018, and its oral pleadings, Guyana respectfully requests the Court:

1. To find that it has jurisdiction to hear the claims presented by Guyana, and that these claims are admissible; and

2. To proceed to the merits of the case."

22. Since the Government of Venezuela filed no pleadings and did not appear at the oral proceedings, no formal submissions were presented by that Government. However, it is clear from the correspondence and the Memorandum received from Venezuela that it contends that the Court lacks jurisdiction to entertain the case.

*

* *

I. INTRODUCTION

23. The present case concerns a dispute between Guyana and Venezuela that has arisen as a result of the latter's contention that the Arbitral Award of 3 October 1899 regarding the boundary between the two Parties (hereinafter the "1899 Award" or the "Award") is null and void.

24. The Court wishes first of all to express its regret at the decision taken by Venezuela not to participate in the proceedings before it, as set out in the above-mentioned letters of 18 June 2018, 12 April 2019 and 10 February 2020 (see paragraphs 5, 8 and 13 above). In this regard, it recalls that, under Article 53 of its Statute, "[w]henever one of the parties 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 "[t]he Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law".

25. The non-appearance of a party obviously has a negative impact on the sound administration of justice (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 23, para. 27, referring, *inter alia*, to *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 257, para. 15; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 54, para. 13). In particular, the non-appearing party forfeits the opportunity to submit evidence and arguments in support of its own case and to counter the allegations of its opponent. For this reason, the Court does not have the assistance it might have derived from this information, yet it must nevertheless proceed and make any necessary findings in the case.

26. The Court emphasizes that the non-participation of a party in the proceedings at any stage of the case cannot, in any circumstances, affect the validity of its judgment (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 23, para. 27). A judgment on jurisdiction, as on the merits, is final and binding on the parties under Articles 59 and 60 of the Statute (*ibid.*, p. 24, para. 27; *Corfu Channel (United Kingdom* v. *Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 248). Should the examination of the present case extend beyond the current phase, Venezuela, which remains a Party to the proceedings, will be able, if it so wishes, to appear before the Court to present its arguments (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 142-143, para. 284).

27. The intention of Article 53 of the Statute is that in a case of non-appearance neither party should be placed at a disadvantage (*ibid.*, p. 26, para. 31). While there is no question of a judgment automatically in favour of the party appearing (*ibid.*, p. 24, para. 28), the party which declines to appear cannot be permitted to profit from its absence (*ibid.*, p. 26, para. 31).

28. Though formally absent from the proceedings, non-appearing parties sometimes submit to the Court letters and documents in ways and by means not contemplated by its Rules (*ibid.*, p. 25, para. 31). In this instance, Venezuela sent a Memorandum to the Court (see paragraph 12 above). It is valuable for the Court to know the views of both parties in whatever form those views may have been expressed (*ibid.*, p. 25, para. 31). The Court will therefore take account

of Venezuela's Memorandum to the extent that it finds it appropriate in discharging its duty, under Article 53 of the Statute, to satisfy itself as to its jurisdiction to entertain the Application (*Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 7, para. 14).

II. HISTORICAL AND FACTUAL BACKGROUND

29. Located in the north-east of South America, Guyana is bordered by Venezuela to the west. At the time the present dispute arose, Guyana was still a British colony, known as British Guiana. It gained independence from the United Kingdom on 26 May 1966. The dispute between Guyana and Venezuela dates back to a series of events that took place during the second half of the nineteenth century.

30. The Court will begin by relating in chronological order the relevant events pertaining to the dispute between the two States.

A. The Washington Treaty and the 1899 Award

31. In the nineteenth century, the United Kingdom and Venezuela both claimed the territory comprising the area between the mouth of the Essequibo River in the east and the Orinoco River in the west.

32. In the 1890s, the United States of America encouraged both parties to submit their territorial claims to binding arbitration. The exchanges between the United Kingdom and Venezuela eventually led to the signing in Washington of a treaty of arbitration entitled the "Treaty between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary between the Colony of British Guiana and the United States of Venezuela" (hereinafter the "Washington Treaty") on 2 February 1897.

33. According to its preamble, the purpose of the Washington Treaty was to "provide for an amicable settlement of the question . . . concerning the boundary". Article I provided as follows:

> "An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela."

Other provisions set out the arrangements for the arbitration, including the constitution of the tribunal, the place of arbitration and the applicable rules. Finally, according to Article XIII of the Washington Treaty,

> "[t]he 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".

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

B. Venezuela's repudiation of the 1899 Award and the search for a settlement of the dispute

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

> "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."

In a statement before the Fourth Committee of the United Nations General Assembly delivered shortly thereafter, on 22 February 1962, Venezuela reiterated its position.

36. The Government of the United Kingdom, for its part, asserted on 13 November 1962, in a statement before the Fourth Committee, that "the Western boundary of British Guiana with Venezuela [had been] finally settled by the award which the arbitral tribunal announced on 3 October 1899", and that it could not "agree that there [could] be any dispute over the question settled by the award". The United Kingdom also stated that it was prepared to discuss with Venezuela, through diplomatic channels, arrangements for a tripartite examination of the documentary material relevant to the 1899 Award.

37. On 16 November 1962, with the authorization of the representatives of the United Kingdom and Venezuela, the Chairman of the Fourth Committee declared that the Governments of the two States (the Government of the United Kingdom acting with the full concurrence of the Government of British Guiana) would examine the "documentary material" relating to the 1899 Award (hereinafter the "Tripartite Examination"). Experts appointed by the two Governments thus examined the archives of the United Kingdom in London and the Venezuelan archives in Caracas, searching for evidence relating to Venezuela's contention of nullity of the 1899 Award.

38. The Tripartite Examination took place from 1963 to 1965. It was completed on 3 August 1965 with the exchange of the experts' reports. While Venezuela's experts continued to consider the Award to be null and void, the experts of the United Kingdom were of the view that there was no evidence to support that position.

39. On 9 and 10 December 1965, the Ministers for Foreign Affairs of the United Kingdom and Venezuela and the new Prime Minister of British Guiana met in London to discuss a settlement of the dispute. However, at the close of the meeting, each party maintained its position on the matter. While the representative of Venezuela asserted that any proposal "which did not recognise that Venezuela extended to the River Essequibo would be unacceptable", the representative of British Guiana rejected any proposal that would "concern itself with the substantive issues".

C. The signing of the 1966 Geneva Agreement

40. Following the failure of the talks in London, the three delegations agreed to meet again in Geneva in February 1966. After two days of negotiations, they signed, on 17 February 1966, the Geneva Agreement, the English and Spanish texts of which are authoritative. In accordance with its Article VII, the Geneva Agreement entered into force on the same day that it was signed.

41. The Geneva Agreement was approved by the Venezuelan National Congress on 13 April 1966. It was published as a White Paper in the United Kingdom, i.e. as a policy position paper presented by the Government, and approved by the House of Assembly of British Guiana. It was officially transmitted to the Secretary-General of the United Nations on 2 May 1966 and registered with the United Nations Secretariat on 5 May 1966 (United Nations, *Treaty Series*, Vol. 561, No. 8192, p. 322).

42. On 26 May 1966, Guyana, having attained independence, became a party to the Geneva Agreement, alongside the Governments of the United Kingdom and Venezuela, in accordance with the provisions of Article VIII thereof.

43. The Geneva Agreement provides, first, for the establishment of a Mixed Commission to seek a settlement of the controversy between the parties (Articles I and II). Article I reads as follows:

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

In addition, Article IV, paragraph 1, states that, should this Commission fail in its task, the Governments of Guyana and Venezuela shall choose one of the means of peaceful settlement provided for in Article 33 of the United Nations Charter. In accordance with Article IV, paragraph 2, should those Governments fail to reach agreement, the decision as to the means of settlement shall be made by an appropriate international organ upon which they both agree, or, failing that, by the Secretary-General of the United Nations.

44. On 4 April 1966, by letters to the Ministers for Foreign Affairs of the United Kingdom and Venezuela, the Secretary-General of the United Nations, U Thant, acknowledged receipt of the Geneva Agreement and stated as follows:

> "I have taken note of the responsibilities which may fall to be discharged by the Secretary-General of the United Nations under Article IV (2) of the Agreement, and wish to inform you that I consider those responsibilities to be of a nature which may appropriately be discharged by the Secretary-General of the United Nations."

D. The implementation of the Geneva Agreement

1. The Mixed Commission (1966-1970)

45. The Mixed Commission was established in 1966, pursuant to Articles I and II of the Geneva Agreement. During the Commission's mandate, representatives from Guyana and Venezuela met on several occasions.

46. A difference of interpretation regarding the Commission's mandate came to light from the time its work began. In Guyana's view, the task of the Mixed Commission was to find a practical solution to the legal question raised by Venezuela's contention of the nullity of the Award. According to Venezuela, however, the Commission was tasked with seeking practical solutions to the territorial controversy.

47. The discussions within the Mixed Commission took place against a backdrop of hostile actions which aggravated the controversy. Indeed, since the signature of the Geneva Agreement, both Parties have alleged multiple violations of their territorial sovereignty in the Essequibo region. The Mixed Commission reached the end of its mandate in 1970 without having arrived at a solution.

2. The 1970 Protocol of Port of Spain and the moratorium put in place

48. Since no solution was identified through the Mixed Commission, it fell to Venezuela and Guyana, under Article IV of the Geneva Agreement, to choose one of the means of peaceful settlement provided for in Article 33 of the United Nations Charter. However, in view of the disagreements between the Parties, a moratorium on the dispute settlement process was adopted in a protocol to the Geneva Agreement (hereinafter the "Protocol of Port of Spain" or the "Protocol"), signed on 18 June 1970, the same day that the Mixed Commission delivered its final report. Article III of the Protocol provided for the operation of Article IV of the Geneva Agreement to be suspended so long as the Protocol remained in force. The Protocol was, pursuant to its Article V, to remain in force for an initial period of twelve years, which could be renewed thereafter. According to Article I of the Protocol, both States agreed to promote mutual trust and to improve understanding between themselves.

49. In December 1981, Venezuela announced its intention to terminate the Protocol of Port of Spain. Consequently, the application of Article IV of the Geneva Agreement was resumed from 18 June 1982 in accordance with Article V, paragraph 3, of the Protocol.

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

51. The Parties therefore proceeded to the next step, referring the decision on the means of settlement to the Secretary-General of the United Nations. In a letter dated 15 October 1982 to his Guyanese counterpart, the Minister for Foreign Affairs of Venezuela stated as follows:

> "Venezuela is convi[nced] that in order to comply with the provisions of Article IV (2) of the Geneva Agreement, the most appropriate international organ is the Secretary-General of the United Nations . . . Venezuela wishes to reaffirm its conviction that it would be most practical and appropriate to entrust the task of choosing the means of settlement directly to the Secretary-General of the United Nations. 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 Secretary-General of the United Nations."

Later, in a letter dated 28 March 1983 to his Venezuelan counterpart, the Minister for Foreign Affairs of Guyana stated that,

> "proceeding regretfully on the basis that [Venezuela] is unwilling to seriously endeavour to reach agreement on any appropriate international organ whatsoever to choose the means of settlement, [Guyana] hereby agrees to proceed to the next stage and, accordingly, to refer the decision as to the means of settlement to [the] Secretary-General of the United Nations".

52. After the matter was referred to him by the Parties, the Secretary-General, Mr. Javier Pérez de Cuéllar, agreed by a letter of 31 March 1983 to undertake the responsibility conferred upon him under Article IV, paragraph 2, of the Geneva Agreement. Five months later, he sent the Under-Secretary-General for Special Political Affairs, Mr. Diego Cordovez, to Caracas and Georgetown in order to ascertain the positions of the Parties on the choice of the means of settlement of the controversy.

53. Between 1984 and 1989, the Parties held regular meetings and discussions at the diplomatic and ministerial levels. In view of the information provided by Mr. Cordovez, in early 1990 the Secretary-General chose the good offices process as the appropriate means of settlement.

3. From the good offices process (1990-2014 and 2017) to the seisin of the Court

54. Between 1990 and 2014, the good offices process was led by three Personal Representatives appointed by successive Secretaries-General: Mr. Alister McIntyre (1990-1999), Mr. Oliver Jackman (1999-2007) and Mr. Norman Girvan (2010-2014). The Parties, for their part,

appointed facilitators to assist the different Personal Representatives in their work and to serve as a focal point with them. Regular meetings were held during this period between the representatives of both States and the Secretary-General, particularly in the margins of the annual session of the General Assembly.

55. In a letter to her Venezuelan counterpart dated 2 December 2014, the Minister for Foreign Affairs of Guyana observed that, after 25 years, the good offices process had not brought the Parties any closer to a resolution of the controversy. She stated that her Government was "reviewing the other options under Article 33 of the United Nations Charter, as provided for by the 1966 Geneva Agreement, that could serve to bring to an end the controversy". In response to that statement, on 29 December 2014, Venezuela invited the Government of Guyana to "agree, as soon as possible, [to] the designation of the Good Officer". On 8 June 2015, the Vice-President of Guyana asked the Secretary-General,

> "within the context of [his] responsibility . . . and more specifically, [his] mandate under the Geneva Agreement of 1966, to determine a means of . . . settlement which[,] in [his] judgement, w[ould] bring a definitive and conclusive end . . . to the controversy".

In a letter dated 9 July 2015, the President of Venezuela asked the Secretary-General "to commence the process of appointing a Good Officer".

56. In September 2015, during the 70th Session of the United Nations General Assembly, the Secretary-General, Mr. Ban Ki-moon, held a meeting with the Heads of State of Guyana and Venezuela. Thereafter, on 12 November 2015, the Secretary-General issued a document entitled "The Way Forward", in which he informed the Parties that "[i]f a practical solution to the controversy [were] not found before the end of his tenure, [he] intend[ed] to initiate the process to obtain a final and binding decision from the International Court of Justice".

57. In his statement of 16 December 2016, the Secretary-General said that he had decided to continue the good offices process for a further year, with a new Personal Representative with a strengthened mandate of mediation. He also announced that

> "[i]f, by the end of 2017, the Secretary-General concludes that significant progress has not been made toward arriving at a full agreement for the solution of the controversy, 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".

58. The President of Venezuela, H.E. Mr. Nicolás Maduro Moros, replied to the Secretary-General in a letter of 17 December 2016, in which he underlined Venezuela's objection to "the intention . . . to recommend to the Parties that they resort to the Court", while at the same time stating its commitment to reaching a negotiated solution within the strict framework of the Geneva Agreement. In a letter dated 21 December 2016, the President of Guyana,

H.E. Mr. David A. Granger, for his part, assured the President of Venezuela of his country's commitment

> "to fulfilling the highest expectations of the 'Good Office' process in the coming twelve-month period in accordance with the decision of the Secretary-General, to conclude a full settlement of the controversy and, should it become necessary, to thereafter resolve it by recourse to the International Court of Justice".

He reaffirmed this position in a letter to the Secretary-General on 22 December 2016.

59. After taking office on 1 January 2017, the new Secretary-General, Mr. António Guterres, continued the good offices process for a final year, in conformity with his predecessor's decision. In this context, on 23 February 2017, he appointed Mr. Dag Nylander as his Personal Representative and gave him a strengthened mandate of mediation. Mr. Dag Nylander held several meetings and had a number of exchanges with the Parties. In letters dated 30 January 2018 to both Parties, the Secretary-General stated that he had "carefully analyzed the developments in the good offices process during the course of 2017" and announced:

> "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. On 29 March 2018, Guyana filed its Application in the Registry of the Court (see paragraph 1 above).

III. INTERPRETATION OF THE GENEVA AGREEMENT

61. As described in paragraph 43 above, the Geneva Agreement establishes a three-stage process for settling the controversy between the Parties. The first step, set out in Article I, consists in establishing a Mixed Commission "with the task of seeking satisfactory solutions for the practical settlement of the controversy" arising from Venezuela's contention that the 1899 Award is null and void. Should the Mixed Commission fail to secure a full agreement on the resolution of the controversy within four years of the conclusion of the Geneva Agreement, Article IV provides for two additional steps in the dispute settlement process. That provision reads as follows:

> "(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."

62. According to Article 33 of the United Nations Charter:

"1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

63. As already noted (see paragraph 50 above), the Parties failed to reach agreement on the choice of one of the means of peaceful settlement set out in Article 33 of the Charter, as provided for by Article IV, paragraph 1, of the Geneva Agreement. They then proceeded to the next step and referred this decision to the Secretary-General of the United Nations (see paragraph 51 above), pursuant to Article IV, paragraph 2, of the Agreement. The Court will interpret this provision in order to determine whether, in entrusting the decision as to the choice of one of the means of settlement provided for in Article 33 of the Charter to the Secretary-General, the Parties consented to settle their controversy by, *inter alia*, judicial means. If it finds that they did, the Court will have to determine whether this consent is subject to any conditions. As part of the interpretation of Article IV, paragraph 2, of the Geneva Agreement, the Court will first examine the use of the term "controversy" in this provision.

A. The "controversy" under the Geneva Agreement

64. For the purpose of identifying the "controversy" for the resolution of which the Geneva Agreement was concluded, the Court will examine the use of this term in this instrument. The Court observes that the Geneva Agreement uses the term "controversy" as a synonym for the word "dispute". According to the established case law of the Court, a dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In this regard, the Court notes that Article IV of the Washington Treaty used the term "controversy" when referring to the original dispute that was submitted to the arbitral tribunal established under the Treaty to determine the boundary line between the colony of British Guiana and the United States of Venezuela. The Court further notes that, in the conclusion and implementation of the Geneva Agreement, the parties have expressed divergent views as to the validity of the 1899 Award rendered by the tribunal and the implications of this question for their frontier. Thus, Article I of the Geneva Agreement defines the mandate of the Mixed Commission as 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 frontier between British Guiana and Venezuela is null and void". That contention by Venezuela was consistently opposed by the United Kingdom in the period from 1962 until the adoption of the Geneva Agreement on 17 February 1966, and subsequently by Guyana after it became a party to the Geneva Agreement upon its independence, in accordance with Article VIII thereof.

65. It follows, in the view of the Court, that the object of the Geneva Agreement was to seek a solution to the frontier dispute between the parties that originated from their opposing views as to the validity of the 1899 Award. This is also indicated in the title of the Geneva Agreement, which is 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", and from the wording of the last paragraph of its preamble. The same idea is implicit in Article V, paragraph 1, of the Geneva Agreement which provides that

> "nothing contained in this 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 in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such 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 to such territorial sovereignty".

By referring to the preservation of their respective rights and claims to such territorial sovereignty, the parties appear to have placed particular emphasis on the fact that the "controversy" referred to in the Geneva Agreement primarily relates to the dispute that has arisen as a result of Venezuela's contention that the 1899 Award is null and void and its implications for the boundary line between Guyana and Venezuela.

66. Consequently, the Court is of the opinion that the "controversy" that the parties agreed to settle through the mechanism established under the Geneva Agreement concerns the question of the validity of the 1899 Award, as well as its legal implications for the boundary line between Guyana and Venezuela.

B. Whether the Parties gave their consent to the judicial settlement of the controversy under Article IV, paragraph 2, of the Geneva Agreement

67. The Court notes that, unlike other provisions in treaties which refer directly to judicial settlement by the Court, Article IV, paragraph 2, of the Geneva Agreement refers to a decision by a third party with regard to the choice of the means of settlement. The Court must first ascertain whether the Parties conferred on that third party, in this instance the Secretary-General, the authority to choose, by a decision which is binding on them, the means of settlement of their controversy. To this end, it will interpret the first sentence of Article IV, paragraph 2, of the Geneva Agreement, which provides that "[the parties] shall refer the decision . . . to the Secretary-General". If it finds that this was their intention, the Court will then determine whether

the Parties consented to the choice by the Secretary-General of judicial settlement. It will do so by interpreting the last sentence of this provision, which provides that the Secretary-General "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".

1. Whether the decision of the Secretary-General has a binding character

68. Guyana considers that the decision of the Secretary-General cannot be regarded as a mere recommendation. It argues that it is clear from the use of the term "shall" in the English text of Article IV, paragraph 2, of the Geneva Agreement ("shall refer the decision") that there is an ensuing obligation. It adds that the use of the term "decision" in English shows that the Secretary-General's authority to choose the means of settlement was intended to produce a legally binding effect.

69. In its Memorandum, Venezuela contends that the Secretary-General's decision can only be taken as a recommendation. It relies on the preamble to the Geneva Agreement to argue that Guyana's proposed interpretation is inconsistent with the object and purpose of this instrument because "[i]t is not just a question of settling the dispute, but of doing it by means of a practical, acceptable and satisfactory settlement agreed by the Parties". Venezuela further argues that a choice on the means of settlement to be used by the Parties is not in itself sufficient to "materialize the recourse to a specific means of settlement".

* *

70. To interpret the Geneva Agreement, the Court will apply the rules on treaty interpretation to be found in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention") (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 237, para. 47). Although that convention is not in force between the Parties and is not, in any event, applicable to instruments concluded before it entered into force, such as the Geneva Agreement, it is well established that these articles reflect rules of customary international law (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 116, para. 33).

71. In accordance with the rule of interpretation enshrined in Article 31, paragraph 1, of the Vienna Convention, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. These elements of interpretation are to be considered as a whole (*Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 29, para. 64).

72. The first sentence of Article IV, paragraph 2, of the Geneva Agreement provides that the Parties "shall refer the decision . . . to the Secretary-General". The Court previously observed in its

Judgment on the preliminary objections in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)* that the use of the word "shall" in the provisions of a convention should be interpreted as imposing an obligation on States parties to that convention (*I.C.J. Reports 2018 (I)*, p. 321, para. 92). The same applies to the paragraph of the Geneva Agreement cited above. The verb "refer" in the provision at hand conveys the idea of entrusting a matter to a third party. As regards the word "decision", it is not synonymous with "recommendation" and suggests the binding character of the action taken by the Secretary-General as to his choice of the means of settlement. These terms, taken together, indicate that the Parties made a legal commitment to comply with the decision of the third party on whom they conferred such authority, in this instance the Secretary-General of the United Nations.

73. As the Court has noted in a number of cases, the purpose of a treaty may be indicated in its title and preamble (see, for example, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 118, para. 39; *Certain Norwegian Loans (France* v. *Norway), Judgment, I.C.J. Reports 1957*, p. 24). In the present case, the Agreement is entitled "Agreement to Resolve the Controversy . . . over the Frontier between Venezuela and British Guiana" and its preamble states that it was concluded "to resolve" that controversy. The Agreement also refers, in Article I, to the task of "seeking satisfactory solutions for the practical settlement of the controversy". This indicates that the object and purpose of the Geneva Agreement is to ensure a definitive resolution of the controversy between the Parties.

74. In view of the foregoing, the Court considers that 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.

75. This conclusion is also supported by the position of Venezuela set out in its Exposition of Motives for the Draft Law Ratifying the Protocol of Port of Spain of 22 June 1970, in which it is stated that

> "the possibility existed that . . . an issue of such vital importance . . . as the determination of the means of dispute settlement, would have left the hands of the two directly interested Parties, to be decided by an international institution chosen by them, or failing that, by the Secretary-General of the United Nations".

76. In these proceedings, the Court need not, in principle, resort to the supplementary means of interpretation mentioned in Article 32 of the Vienna Convention. However, as in other cases, it may have recourse to these supplementary means, such as the circumstances in which the Geneva Agreement was concluded, in order to seek a possible confirmation of its interpretation of the text of the Geneva Agreement (see, for example, *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 30, para. 66; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 21, para. 40; *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 27, para. 55).

77. In this regard, the Court observes that, in his statement of 17 March 1966 before the National Congress on the occasion of the ratification of the Geneva Agreement, the Venezuelan Minister for Foreign Affairs, Mr. Ignacio Iribarren Borges, in describing the discussions that had taken place at the Geneva Conference, asserted 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". He went on to state that, having rejected the British proposal to entrust that role to the General Assembly of the United Nations, "Venezuela [had] then suggested giving this role to the Secretary-General".

78. For the Court, the circumstances in which the Geneva Agreement was concluded support the conclusion that the Parties conferred on the Secretary-General the authority to choose, by a decision which is binding on them, the means of settlement of their controversy.

2. Whether the Parties consented to the choice by the Secretary-General of judicial settlement

79. The Court now turns to the interpretation of the last sentence of Article IV, paragraph 2, of the Geneva Agreement, which provides that the Secretary-General

> "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".

* *

80. According to Guyana, "[t]he unqualified *renvoi* to Article 33 empowers the Secretary-General to decide that the parties shall have recourse to judicial settlement". It adds that an interpretation of Article IV, paragraph 2, of the Geneva Agreement which excludes the possibility of judicial settlement would deprive the treaty of its effectiveness and would lock the Parties "into a never-ending process of diplomatic negotiation, where successful resolution could be permanently foreclosed by either one of them". The Applicant further contends that the circumstances surrounding the conclusion of the Geneva Agreement "confirm that the parties understood and accepted that their deliberate *renvoi* to Article 33 made it possible that the controversy ultimately would be resolved by judicial settlement".

81. In its Memorandum, Venezuela acknowledges that Article 33 of the Charter includes judicial settlement. However, it argues that since Article I of the Geneva Agreement refers to "seeking satisfactory solutions for the practical settlement of the controversy", this excludes judicial settlement unless the Parties consent to resort to it by special agreement.

* *

82. Given that Article IV, paragraph 2, of the Geneva Agreement refers to Article 33 of the Charter of the United Nations, which includes judicial settlement as a means of dispute resolution, the Court considers that the Parties accepted the possibility of the controversy being settled by that means. It is of the opinion that if they had wished to exclude such a possibility, the Parties could have done so during their negotiations. Equally, instead of referring to Article 33 of the Charter, they could have set out the means of settlement envisaged while omitting judicial settlement, which they did not do either.

83. The Court notes that, according to the wording of Article IV, paragraph 2, of the Geneva Agreement, the Parties conferred on the Secretary-General the authority to choose among the means of dispute settlement provided for in Article 33 of the Charter "until the controversy has been resolved". It observes that Article 33 of the Charter includes, on the one hand, political and diplomatic means, and, on the other, adjudicatory means such as arbitration or judicial settlement. The willingness of the Parties to resolve their controversy definitively is indicated by the fact that the means listed include arbitration and judicial settlement, which are by nature binding. The phrase "and so on until the controversy has been resolved" also suggests that the Parties conferred on the Secretary-General the authority to choose the most appropriate means for a definitive resolution of the controversy. The Court considers that the Secretary-General's choice of a means that leads to the resolution of the controversy fulfils his responsibility under Article IV, paragraph 2, of the Geneva Agreement, in accordance with the object and purpose of that instrument.

84. In light of the above analysis, the Court concludes that the means of dispute settlement at the disposal of the Secretary-General, to which the Parties consented under Article IV, paragraph 2, of the Geneva Agreement, include judicial settlement.

85. It is recalled that, during the oral proceedings (see paragraph 17 above), the following question was put by a Member of the Court:

> "Article IV, paragraph 2, of the Geneva Agreement of 17 February 1966 concludes with an alternative, according to which either the controversy has been resolved or the means of peaceful settlement provided in Article 33 of the Charter of the United Nations have been exhausted. My question is the following: is it possible to conceive of a situation where all means of peaceful settlement have been exhausted without the controversy having been resolved?"

In its reply to that question, Guyana argued that a situation in which all the means of peaceful settlement had been exhausted without the controversy being resolved was inconceivable. In its view, "[t]he 1966 Geneva Agreement established a procedure to ensure that the controversy would be finally and completely resolved" and "[b]ecause arbitration and judicial settlement are among the means of settlement listed in Article 33, a final and complete resolution of the controversy . . . is ensured".

86. The Court notes that its conclusion that the Parties consented to judicial settlement under Article IV of the Geneva Agreement is not called into question by the phrase "or until all the means of peaceful settlement there contemplated have been exhausted" at paragraph 2 of that Article, which might suggest that the Parties had contemplated the possibility that the choice,

by the Secretary-General, of the means provided for in Article 33 of the Charter, which include judicial settlement, would not lead to a resolution of the controversy. There are various reasons why a judicial decision, which has the force of *res judicata* and clarifies the rights and obligations of the parties, might not in fact lead to the final settlement of a dispute. It suffices for the Court to observe that, in this case, a judicial decision declaring the 1899 Award to be null and void without delimiting the boundary between the Parties might not lead to the definitive resolution of the controversy, which would be contrary to the object and purpose of the Geneva Agreement.

87. In this regard, the Court notes that the joint statement on the ministerial conversations held in Geneva on 16 and 17 February 1966 between the Venezuelan Minister for Foreign Affairs, his British counterpart and the Prime Minister of British Guiana declares that "[a]s a consequence of the deliberations an agreement was reached whose stipulations will enable a definitive solution for [the] problems [relating to the relations between Venezuela and British Guiana]". Similarly, the Venezuelan law ratifying the Geneva Agreement of 13 April 1966 states as follows:

> "Every single part and all parts of the Agreement signed in Geneva on 17 February 1966 by the Governments of the Republic of Venezuela and [the] United Kingdom of Great Britain and Northern Ireland in consultation with the Government of British Guiana, in order to solve the issue between Venezuela and [the] United Kingdom over the border line with British Guiana have been approved for any relevant legal purposes."

88. In light of the above, the Court concludes that the Parties consented to the judicial settlement of their controversy.

C. Whether the consent given by the Parties to the judicial settlement of their controversy under Article IV, paragraph 2, of the Geneva Agreement is subject to any conditions

89. The Court observes that, in treaties by which parties consent to the judicial settlement of a dispute, it is not unusual for them to subject such consent to conditions which must be regarded as constituting the limits thereon (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, pp. 124-125, paras. 130-131; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 39, para. 88). The Court must therefore now ascertain whether the Parties' consent to the means of judicial settlement, as expressed in Article IV, paragraph 2, of the Geneva Agreement, is subject to certain conditions.

90. The Parties do not dispute that the Secretary-General is required to establish that the means previously chosen have not "le[d] to a solution of the controversy" before "choos[ing] another of the means stipulated in Article 33 of the Charter of the United Nations". The Court will therefore interpret only the terms of the second sentence of this provision, which provides that,

if the means chosen do not lead to a resolution of the controversy, "the Secretary-General . . . 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*" (emphasis added).

* *

91. Guyana maintains that the Secretary-General's decision to choose the judicial means of settlement of the controversy constitutes a proper exercise of his authority under Article IV, paragraph 2, of the Geneva Agreement. It contends that the use of the definite article "the" (one of "the" means) is "indicative of comprehensiveness" and implies that the Secretary-General can choose any of those means without following a particular order. It adds that "[i]f the means were to be applied mechanically, in the order in which they appear in Article 33, the role of a third party in the 'decision as to the means' would be unnecessary".

92. While Guyana acknowledges that, in the past, some Secretaries-General have consulted with the Parties during the process of choosing the means of settlement, it emphasizes that consultation with the Parties to ascertain their willingness to participate in such a process in no way detracts from the Secretary-General's authority to decide unilaterally on the means of settlement to be used.

*

93. In its Memorandum, Venezuela contends that the Secretary-General's decision is not consistent with his mandate under Article IV, paragraph 2, of the Geneva Agreement. It argues that the proper exercise of those powers consists in following the order in which the means of settlement appear in Article 33 of the Charter. It bases this interpretation on the expression "and so on" (in the equally authoritative Spanish text: "y así sucesivamente"), which appears in the last sentence of Article IV, paragraph 2, of the Geneva Agreement.

94. Venezuela adds that the practice whereby the Parties are consulted and give their consent to the choice contemplated by the Secretary-General must not be ignored.

* *

95. The Court must determine whether, under Article IV, paragraph 2, of the Geneva Agreement, the Parties' consent to the settlement of their controversy by judicial means is subject to the condition that the Secretary-General follow the order in which the means of settlement are listed in Article 33 of the United Nations Charter.

96. The Court observes that the use of the verb "choose" in Article IV, paragraph 2, of the Geneva Agreement, which denotes the action of deciding between a number of solutions, excludes the idea that it is necessary to follow the order in which the means of settlement appear in Article 33 of the Charter. In its view, the Parties understood the reference to a choice of "the" means and, should the first fail, of "another" of those means as signifying that any of those means could be chosen. The expression "and so on", on which Venezuela bases its argument ("y así sucesivamente" in the Spanish text), refers to a series of actions or events occurring in the same manner, and merely conveys the idea of decision-making continuing until the controversy is resolved or all the means of settlement are exhausted. Therefore, the ordinary meaning of this provision indicates that the Secretary-General is called upon to choose any of the means listed in Article 33 of the Charter but is not required to follow a particular order in doing so.

97. In the view of the Court, an interpretation of Article IV, paragraph 2, of the Geneva Agreement whereby the means of settlement should be applied successively, in the order in which they are listed in Article 33 of the Charter, could prove contradictory to the object and purpose of the Geneva Agreement for a number of reasons. First, the exhaustion of some means would render recourse to other means pointless. Moreover, such an interpretation would delay resolution of the controversy, since some means may be more effective than others in light of the circumstances surrounding the controversy between the Parties. In contrast, the flexibility and latitude afforded to the Secretary-General in the exercise of the decision-making authority conferred on him contribute to the aim of finding a practical, effective and definitive resolution of the controversy.

98. The Court also recalls that the Charter of the United Nations does not require the exhaustion of diplomatic negotiations as a precondition for the decision to resort to judicial settlement (see, for example, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 303, para. 56).

99. Furthermore, regarding the Parties' subsequent practice, the Court observes that both Guyana and Venezuela accepted that good offices were covered by the phrase "other peaceful means of their own choice", which appears at the end of the list of means set out in Article 33, paragraph 1, of the Charter. Yet both Parties welcomed the Secretary-General's decision to choose that means of settlement rather than begin with negotiation, enquiry or conciliation. In so doing, they acknowledged that the Secretary-General was not required to follow the order in which the means of settlement are listed in Article 33 of the Charter but instead had the authority to give preference to one means over another.

100. Regarding the question of consultation, the Court is of the view that nothing in Article IV, paragraph 2, of the Geneva Agreement requires the Secretary-General to consult with the Parties before choosing a means of settlement. It also observes that, although the successive Secretaries-General consulted with the Parties, it is clear from the various communications of the Secretaries-General (in particular the telegram of 31 August 1983 from the Secretary-General, Mr. Javier Pérez de Cuéllar, to the Minister for Foreign Affairs of Guyana) that the sole aim of such consultation was to gather information from the Parties in order to choose the most appropriate means of settlement.

*

101. The Court concludes that, having failed to reach an agreement, the Parties entrusted to the Secretary-General, pursuant to Article IV, paragraph 2, of the Geneva Agreement, the role of choosing any of the means of settlement set out in Article 33 of the Charter. In choosing the means of settlement, the Secretary-General is not required, under Article IV, paragraph 2, to follow a particular order or to consult with the Parties on that choice. Finally, the Parties also agreed to give effect to the decision of the Secretary-General.

IV. JURISDICTION OF THE COURT

102. As the Court has established above (see paragraphs 82 to 88), by virtue of Article IV, paragraph 2, of the Geneva Agreement, the Parties accepted the possibility of the controversy being resolved by means of judicial settlement. The Court will therefore now examine whether, by choosing the International Court of Justice as the means of judicial settlement for the controversy between Guyana and Venezuela, the Secretary-General acted in accordance with Article IV, paragraph 2, of the Geneva Agreement. If it finds that he did, the Court will have to determine the legal effect of the decision of the Secretary-General of 30 January 2018 on the jurisdiction of the Court under Article 36, paragraph 1, of its Statute.

A. The conformity of the decision of the Secretary-General of 30 January 2018 with Article IV, paragraph 2, of the Geneva Agreement

103. The Court recalls that on 30 January 2018, the Secretary-General addressed two identical letters to the Presidents of Guyana and Venezuela in relation to the settlement of the controversy. The letter addressed to the President of Guyana reads as follows:

> "I have the honour to write to you regarding the controversy between the Co-operative Republic of Guyana and the Bolivarian Republic of Venezuela which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void ('the controversy').
>
> As you will be aware, Article IV, paragraph 2 of the Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed at Geneva on 17 February 1966 (the 'Geneva Agreement'), confers upon the Secretary-General of the United Nations the power and the responsibility to choose from among those means of peaceful settlement contemplated in Article 33 of the Charter of the United Nations, the means of settlement to be used for the resolution of the controversy.
>
> If the means so chosen does not lead to a solution of the controversy, Article IV, paragraph 2 of the Geneva Agreement goes on to confer upon the Secretary-General the responsibility to choose another means of peaceful settlement contemplated in Article 33 of the Charter.
>
> As you will also be aware, former Secretary-General Ban Ki-moon communicated to you and to the President of the Bolivarian Republic of Venezuela a framework for the resolution of the border controversy based on his conclusions on what would constitute the most appropriate next steps. Notably, he concluded that the Good Offices Process, which had been conducted since 1990, would continue for

one final year, until the end of 2017, with a strengthened mandate of mediation. He also reached the conclusion that if, by the end of 2017, I, as his successor, concluded that significant progress had not been made toward arriving at a full agreement for the solution of the controversy, I would choose the International Court of Justice as the next means of settlement, unless the Governments of Guyana and Venezuela jointly requested that I refrain from doing so.

In early 2017, I appointed a Personal Representative, Mr. Dag Halvor Nylander, who engaged in intensive high-level efforts to seek a negotiated settlement.

Consistently with the framework set by my predecessor, I have carefully analyzed the developments in the good offices process during the course of 2017.

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.

At the same time, it is my considered view that your Government and that of the Bolivarian Republic of Venezuela could benefit from the continued good offices of the United Nations through a complementary process established on the basis of my power under the Charter. A good offices process could be supportive in at least the different ways set out below.

Firstly, should both Governments accept the offer of a complementary good offices process, I believe this process could contribute to the use of the selected means of peaceful settlement.

In addition, should both Governments wish to attempt to resolve the controversy through direct negotiations, in parallel to a judicial process, a good offices process could contribute to such negotiations.

Thirdly, as the bilateral relationship between your Government and that of the Bolivarian Republic of Venezuela is broader than the controversy, both Governments may wish to address through a good offices process any other important pending issues that would benefit from third-party facilitation.

I trust that a complementary good offices process would also contribute to the continuation of the friendly and good-neighbourly relations that have characterized exchanges between the two countries.

In closing, I should like to inform you that I will be making this way forward public. I have sent an identical letter to the President of the Bolivarian Republic of Venezuela, and I enclose a copy of that letter."

104. The Court first notes that, in taking his decision, the Secretary-General expressly relied upon Article IV, paragraph 2, of the Geneva Agreement. The Court further notes that, if the means of settlement previously chosen does not lead to a solution of the controversy, this provision calls

upon the Secretary-General to choose another of the means of settlement provided for in Article 33 of the Charter of the United Nations, without requiring him to follow any particular sequence (see paragraph 101 above).

105. The Court is of the view that the means previously chosen by the Secretary-General "d[id] not lead to a solution of the controversy" within the terms of Article IV, paragraph 2. By 2014, the Parties had already been engaged in the good offices process within the framework of the Geneva Agreement for over twenty years, under the supervision of three Personal Representatives appointed by successive Secretaries-General, in order to find a solution to the controversy (see paragraph 54 above). As a result, in his decision of 30 January 2018, the Secretary-General stated that, no significant progress having been made towards arriving at a full agreement for the solution of the controversy in the good offices process, he had "chosen the International Court of Justice as the means that is now to be used for its solution", thereby fulfilling his responsibility to choose another means of settlement among those set out in Article 33 of the Charter of the United Nations.

106. Neither Article IV, paragraph 2, of the Geneva Agreement nor Article 33 of the Charter of the United Nations expressly mentions the International Court of Justice. However, the Court, being the "principal judicial organ of the United Nations" (Article 92 of the Charter of the United Nations), constitutes a means of "judicial settlement" within the meaning of Article 33 of the Charter. The Secretary-General could therefore choose the Court, on the basis of Article IV, paragraph 2, of the Geneva Agreement, as the judicial means of settlement of the controversy between the Parties.

107. Moreover, the circumstances surrounding the conclusion of the Geneva Agreement, which include ministerial statements and parliamentary debates (see *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 454, para. 49, and p. 457, para. 60; *Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 29, para. 69), indicate that recourse to the International Court of Justice was contemplated by the parties during their negotiations. In particular, the Court notes that, on the occasion of the ratification of the Agreement, the Minister for Foreign Affairs of Venezuela stated the following before the Venezuelan National Congress:

> "After some informal discussions, our Delegation chose to leave a proposal on the table similar to that third formula which had been rejected in London, adding to it recourse to the International Court of Justice. The Delegations of Great Britain and British Guiana, after studying in detail the proposal, and even though they were receptive to it by the end, objected to the specific mention of recourse to arbitration and to the International Court of Justice. *The objection was bypassed by replacing that specific mention by referring to Article 33 of the United Nations Charter which includes those two procedures, that is arbitration and recourse to the International Court of Justice*, and the possibility of achieving an agreement was again on the table. It was on the basis of this Venezuelan proposal that the Geneva Agreement was reached. Far from this being an imposition, as has been maliciously said, or a British ploy which surprised the naivety of the Venezuelan Delegation, it is based on a Venezuelan proposal which was once rejected in London and has now been accepted in Geneva." (Emphasis added.)

The Court considers that the words of the Venezuelan Minister for Foreign Affairs demonstrate that the parties to the Geneva Agreement intended to include the possibility of recourse to the International Court of Justice when they agreed to the Secretary-General choosing among the means set out in Article 33 of the Charter of the United Nations.

108. In light of the foregoing, the Court is of the view that, by concluding the Geneva Agreement, both Parties accepted the possibility that, under Article IV, paragraph 2, of that instrument, the Secretary-General could choose judicial settlement by the International Court of Justice as one of the means listed in Article 33 of the Charter of the United Nations for the resolution of the controversy. The decision of the Secretary-General of 30 January 2018 was therefore taken in conformity with the terms of Article IV, paragraph 2, of the Geneva Agreement.

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109. The Court observes that the fact that the Secretary-General invited Guyana and Venezuela, if they so wished, "to attempt to resolve the controversy through direct negotiations, in parallel to a judicial process" and his offer of good offices to that end do not affect the conformity of the decision with Article IV, paragraph 2, of the Geneva Agreement. The Court has already explained in the past that parallel attempts at settlement of a dispute by diplomatic means do not prevent it from being dealt with by the Court (see, for example, *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 20, para. 35). In the present case, the Secretary-General simply reminded the Parties that negotiations were a means of settlement that remained available to them while the dispute was pending before the Court.

B. The legal effect of the decision of the Secretary-General of 30 January 2018

110. The Court now turns to the legal effect of the decision of the Secretary-General on its jurisdiction under Article 36, paragraph 1, of its Statute, which provides that "[t]he jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force".

111. The Court recalls that "its jurisdiction is based on the consent of the parties and is confined to the extent accepted by them" (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 39, para. 88).

112. Both this Court and its predecessor have previously observed in a number of cases that the parties are not bound to express their consent to the Court's jurisdiction in any particular form (*ibid.*, p. 18, para. 21; see also *Corfu Channel (United Kingdom* v. *Albania), Preliminary Objection, Judgment, 1948, I.C.J. Reports 1947-1948*, p. 27; *Rights of Minorities in Upper Silesia (Minority Schools), Judgment No. 12, 1928, P.C.I.J., Series A, No. 15*, pp. 23-24). Consequently, there is nothing in the Court's Statute to prevent the Parties from expressing their consent through the mechanism established under Article IV, paragraph 2, of the Geneva Agreement.

113. The Court must however satisfy itself that there is 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 (*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008,* p. 204, para. 62).

114. The Court recalls that Venezuela has argued that the Geneva Agreement is not sufficient in itself to found the jurisdiction of the Court and that the subsequent consent of the Parties is required even after the decision of the Secretary-General to choose the International Court of Justice as the means of judicial settlement. However, the decision taken by the Secretary-General in accordance with the authority conferred upon him under Article IV, paragraph 2, of the Geneva Agreement would not be effective (see paragraphs 74 to 78 above) if it were subject to the further consent of the Parties for its implementation. Moreover, an interpretation of Article IV, paragraph 2, that would subject the implementation of the decision of the Secretary-General to further consent by the Parties would be contrary to this provision and to the object and purpose of the Geneva Agreement, which is to ensure a definitive resolution of the controversy, since it would give either Party the power to delay indefinitely the resolution of the controversy by withholding such consent.

115. For all these reasons, the Court concludes that, by conferring on the Secretary-General the authority to choose the appropriate means of settlement of their controversy, including the possibility of recourse to judicial settlement by the International Court of Justice, Guyana and Venezuela consented to its jurisdiction. The text, the object and purpose of the Geneva Agreement, as well as the circumstances surrounding its conclusion, support this finding (see paragraph 108 above). It follows that the consent of the Parties to the jurisdiction of the Court is established in the circumstances of this case.

V. SEISIN OF THE COURT

116. The Court now turns to the question whether it has been validly seised by Guyana.

117. The seisin of the Court is, as observed in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain),* "a procedural step independent of the basis of jurisdiction invoked and, as such, is governed by the Statute and the Rules of Court" (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995,* p. 23, para. 43). Thus, for the Court to be able to entertain a case, the relevant basis of jurisdiction needs to be supplemented by the necessary act of seisin *(ibid.)*.

* *

118. Guyana submits that "[t]he decision of the Secretary-General is . . . a legal act materialising the parties' *a priori* consent to judicial settlement", therefore allowing the unilateral seisin of the Court by either Party to the dispute. The Applicant contends in particular that the seisin of the Court is independent of the basis of jurisdiction, and that Venezuela, having consented to the Court's jurisdiction, cannot object to Guyana's unilateral seisin of the Court.

119. In its Memorandum, Venezuela insists on the difference between Article IV of the Geneva Agreement and a compromissory clause. In Venezuela's view, in the absence of an explicit provision in the Geneva Agreement allowing the Court to be seised unilaterally, it must be presumed that the Court can only be validly seised by a "joint agreement" of the Parties.

* *

120. In the view of the Court, an agreement of the Parties to seise the Court jointly would only be necessary if they had not already consented to its jurisdiction. However, having concluded above that the consent of the Parties to the jurisdiction of the Court is established in the circumstances of this case, either Party could institute proceedings by way of a unilateral application under Article 40 of the Statute of the Court.

121. In light of the foregoing, the Court concludes that it has been validly seised of the dispute between the Parties by way of the Application of Guyana.

VI. SCOPE OF THE JURISDICTION OF THE COURT

122. Having concluded that it has jurisdiction to entertain Guyana's Application and that it is validly seised of this case, the Court must now ascertain whether all the claims advanced by Guyana fall within the scope of its jurisdiction.

* *

123. Guyana contends that the Court's jurisdiction *ratione materiae* extends to all the claims submitted in its Application, on the grounds that the Court's jurisdiction is determined by the text of the Geneva Agreement in light of its object and purpose and the Parties' practice thereunder.

124. Relying on the title and preamble of the Geneva Agreement, and its Article I, Guyana argues that the controversy encompasses the dispute between the Parties regarding the validity of the 1899 Award as well as "any dispute 'which has arisen *as a result of* the Venezuelan contention'" (emphasis added by Guyana) that the 1899 Award is "null and void". In Guyana's view, this comprises any territorial or maritime dispute between the Parties resulting from the Venezuelan contention of the nullity of the Award, including any claims concerning the responsibility of Venezuela for violations of Guyana's sovereignty.

125. Specifically, Guyana argues that the wording of the Geneva Agreement, notably Article I, presents the controversy as being the "result" of Venezuela's contention that the 1899 Award about the frontier between British Guiana and Venezuela is null and void. According to Guyana, since the 1899 Award delimited the boundary between Venezuela and the colony of

British Guiana, the controversy between the Parties is territorial and the Court must therefore necessarily determine the boundary between Venezuela and Guyana, which implies first deciding whether the Award is valid. Guyana further argues that the Court would not be in a position to reach "a full agreement for the solution" of this dispute by addressing "*any* outstanding questions" (emphasis added by Guyana), which is the objective set forth under Article IV of the Geneva Agreement, without first ruling on the validity of the Award.

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126. In its Memorandum, Venezuela alleges that the question of the validity of the 1899 Award is not part of the controversy under the Geneva Agreement. According to Venezuela, the Geneva Agreement was adopted on the basis that the merits of the contention of nullity of the Award could not be discussed between the Parties as the "validity or nullity of an arbitral award is non-negotiable". Venezuela considers that "the subject-matter of the Geneva Agreement is the territorial dispute, not the validity or nullity of the 1899 Award".

127. Venezuela adds that a legal dispute such as one regarding the validity of the 1899 Award is not susceptible to a "practical" settlement. In its view, the "countless references to a practical, acceptable and satisfactory settlement" in the Geneva Agreement would be deprived of legal effect if the controversy contemplated thereunder were considered as including the question of the validity of the 1899 Award.

* *

128. The Court notes that, in its Application, Guyana has made certain claims concerning the validity of the 1899 Award and other claims arising from events that occurred after the conclusion of the Geneva Agreement (see paragraph 19 above). Consequently, the Court will first ascertain whether Guyana's claims in relation to the validity of the 1899 Award about the frontier between British Guiana and Venezuela fall within the subject-matter of the controversy that the Parties agreed to settle through the mechanism set out in Articles I to IV of the Geneva Agreement, and whether, as a consequence, the Court has jurisdiction *ratione materiae* to entertain them. Secondly, the Court will have to determine whether Guyana's claims arising from events that occurred after the conclusion of the Geneva Agreement fall within the scope of the Court's jurisdiction *ratione temporis*.

129. With regard to its jurisdiction *ratione materiae*, the Court recalls that Article I of the Geneva Agreement refers to the controversy that has arisen between the parties to the Geneva Agreement as a result of Venezuela's contention that the 1899 Award about the frontier between British Guiana and Venezuela is null and void (see paragraphs 64 to 66 above). As stated in paragraph 66 above, the subject-matter of the controversy which the parties agreed to settle under the Geneva Agreement relates to the validity of the 1899 Award and its implications for the land boundary between Guyana and Venezuela. The opposing views held by the parties to the Geneva Agreement on the validity of the 1899 Award is demonstrated by the use of the

words “Venezuelan contention” in Article I of the Geneva Agreement. The word “contention”, in accordance with the ordinary meaning to be given to it in the context of this provision, indicates that the alleged nullity of the 1899 Award was a point of disagreement between the parties to the Geneva Agreement for which solutions were to be sought. This in no way implies that the United Kingdom or Guyana accepted that contention before or after the conclusion of the Geneva Agreement. The Court therefore considers that, contrary to Venezuela’s argument, the use of the word “contention” points to the opposing views between the parties to the Geneva Agreement regarding the validity of the 1899 Award.

130. This interpretation is consistent with the object and purpose of the Geneva Agreement, which was to ensure a definitive resolution of the dispute between Venezuela and the United Kingdom over the frontier between Venezuela and British Guiana, as indicated by its title and preamble (see paragraphs 64 to 66, and 73 above). Indeed, it would not be possible to resolve definitively the boundary dispute between the Parties without first deciding on the validity of the 1899 Award about the frontier between British Guiana and Venezuela.

131. This interpretation is also confirmed by the circumstances surrounding the conclusion of the Geneva Agreement. It may be recalled that the discussions between the parties as to the validity of the 1899 Award commenced with a Tripartite Examination of the documentary material relating to the Award, with the objective of assessing the Venezuelan claim with respect to its nullity. This was initiated by the Government of the United Kingdom, which asserted numerous times that it considered the Award to be valid and binding on the parties. As the Minister for Foreign Affairs of Venezuela reported, only two days before the Tripartite Examination concluded its work, the United Kingdom reaffirmed its position that the Award had settled the question of sovereignty in a valid and final manner.

132. In the discussions held on 9 and 10 December 1965 between British Guiana, the United Kingdom and Venezuela, which preceded the conclusion of the Geneva Agreement, the first item on the agenda was to “exchange [their] views on the experts’ report on the examination of documents and discuss[] the consequences resulting therefrom”, whereas the second item was “[t]o seek satisfactory solutions for the practical settlement of the controversy which has arisen as a result of the Venezuelan contention that the 1899 Award is null and void”. During these discussions, Venezuela reasserted its conviction that “the only satisfactory solution of the frontier problem with British Guiana lay in the return of the territory which by right belonged to her”, while the United Kingdom and British Guiana rejected the Venezuelan proposal on the basis that it implied that the 1899 Award was null and void and that there was no justification for that allegation. British Guiana reiterated in the discussions that “the first question under discussion was the validity of the 1899 Award” and that it “could not accept the Venezuelan contention that the 1899 Award was invalid”. The United Kingdom recalled that “the two sides had been unable to agree on the question of the 1899 Award’s validity”. Finally, the representative of British Guiana said that “it had never been his understanding that the territorial claim would be discussed unless the invalidity of the 1899 Award had first been established”.

133. It is on that basis that the subsequent meetings took place in Geneva in February 1966, culminating in the adoption of the Geneva Agreement. In a Note Verbale dated 25 February 1966, the United Kingdom Foreign Secretary stated to the British Ambassador to Venezuela that

> "[t]he Venezuelans also tried hard to get the preamble to the Agreement to reflect their fundamental position: first, that we were discussing the substantive issue of the frontier and not merely the validity of the 1899 Award and secondly, that this had been the basis for our talks both in London and in Geneva. With some difficulty I persuaded the Venezuelan Foreign Minister to accept a compromise wording which reflected the known positions of both sides."

134. The Court further notes that Venezuela's argument that the Geneva Agreement does not cover the question of the validity of the 1899 Award is contradicted by the statement of the Minister for Foreign Affairs of Venezuela before the Venezuelan National Congress shortly after the conclusion of the Geneva Agreement. He stated in particular that "[i]f the nullity of the Award of 1899, be it through agreement between the concerned Parties or through a decision by any competent international authority as per Agreement, is declared then the question will go back to its original state". This confirms that the parties to the Geneva Agreement understood that the question of the validity of the 1899 Award was central to the controversy that needed to be resolved under Article IV, paragraph 2, of the Geneva Agreement in order to reach a definitive settlement of the land boundary between Guyana and Venezuela.

135. The Court therefore concludes that Guyana's claims concerning the validity of the 1899 Award about the frontier between British Guiana and Venezuela and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela fall within the subject-matter of the controversy that the Parties agreed to settle through the mechanism set out in Articles I to IV of the Geneva Agreement, in particular Article IV, paragraph 2, thereof, and that, as a consequence, the Court has jurisdiction *ratione materiae* to entertain these claims.

136. With respect to its jurisdiction *ratione temporis*, the Court notes that the scope of the dispute that the Parties agreed to settle through the mechanism set out in Articles I to IV of the Geneva Agreement is circumscribed by Article I thereof, which refers to "the controversy . . . which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 . . . is null and void". The use of the present perfect tense in Article I indicates that the parties understood the controversy to mean the dispute which had crystallized between them at the time of the conclusion of the Geneva Agreement. This interpretation is not contradicted by the equally authoritative Spanish text of Article I of the Geneva Agreement, which refers to "la controversia entre Venezuela y el Reino Unido surgida como consecuencia de la contención venezolana de que el Laudo arbitral de 1899 sobre la frontera entre Venezuela y Guayana Británica es nulo e írrito". It is reinforced by the use of the definite article in the title of the Agreement ("Agreement to resolve *the* controversy"; in Spanish, "Acuerdo para resolver *la* controversia"), the reference in the preamble to the resolution of "any *outstanding* controversy" (in Spanish, "cualquiera controversia *pendiente*"), as well as the reference to the Agreement being reached "to resolve the *present* controversy" (in Spanish, "para resolver la *presente* controversia") (emphases added). The Court's jurisdiction is therefore limited *ratione temporis* to the claims of either Party that existed on the date the Geneva Agreement was signed, on 17 February 1966. Consequently, 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 *ratione temporis*.

137. In light of the foregoing, the Court concludes that it has jurisdiction to entertain Guyana's claims concerning the validity of the 1899 Award about the frontier between British Guiana and Venezuela and the related question of the definitive settlement of the land boundary dispute between the territories of the Parties.

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138. For these reasons,

THE COURT,

(1) By twelve votes to four,

Finds that it has jurisdiction to entertain the Application filed by the Co-operative Republic of Guyana on 29 March 2018 in so far as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the definitive settlement of the land boundary dispute between the Co-operative Republic of Guyana and the Bolivarian Republic of Venezuela;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Cançado Trindade, Donoghue, Sebutinde, Bhandari, Robinson, Crawford, Salam, Iwasawa; *Judge* ad hoc Charlesworth;

AGAINST: *Judges* Abraham, Bennouna, Gaja, Gevorgian;

(2) Unanimously,

Finds that it does not have jurisdiction to entertain the claims of the Co-operative Republic of Guyana arising from events that occurred after the signature of the Geneva Agreement.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighteenth day of December, two thousand and twenty, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Co-operative Republic of Guyana and the Government of the Bolivarian Republic of Venezuela, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a declaration to the Judgment of the Court; Judges ABRAHAM and BENNOUNA append dissenting opinions to the Judgment of the Court; Judges GAJA and ROBINSON append declarations to the Judgment of the Court; Judge GEVORGIAN appends a dissenting opinion to the Judgment of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.G.