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

History of the proceedings (paras. 1-22)

The Court recalls that, on 29 March 2018, the Government of the Co-operative Republic of Guyana (hereinafter "Guyana") filed in the Registry of the Court an Application instituting proceedings against the Bolivarian Republic of Venezuela (hereinafter "Venezuela") with 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" (hereinafter the "1899 Award" or the "Award"). 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".

On 18 June 2018, Venezuela stated that it considered that the Court lacked jurisdiction to hear the case and that Venezuela would not participate in the proceedings. The Court was of the view 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.

I. INTRODUCTION (PARAS. 23-28)

As a preliminary, the Court expresses its regret at the decision taken by Venezuela not to participate in the proceedings before it. The non-appearance of a party obviously has a negative impact on the sound administration of justice. 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.

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, whilst recalling that, 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.

The Court further explains that, 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. It notes that, in this instance, Venezuela sent the Court a Memorandum, which the Court takes into account 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.

II. HISTORICAL AND FACTUAL BACKGROUND (PARAS. 29-60)

The Court then turns to the historical and factual background of the case. In this regard, it observes that, 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 Court next explains that the dispute between Guyana and Venezuela dates back to a series of events that took place during the second half of the nineteenth century, each of which it describes in turn.

A. The Washington Treaty and the 1899 Award (paras. 31-34)

The Court recalls that 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.

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.

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

B. Venezuela's repudiation of the 1899 Award and the search for a settlement of the dispute (paras. 35-39)

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

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

On 16 November 1962, with the authorization of the representatives of the United Kingdom and Venezuela, the Chairman of the Fourth Committee of the United Nations General Assembly declared that the Governments of the two States (the Government of the United Kingdom acting with the full concurrence of the Government of British Guiana) would examine the "documentary material" relating to the 1899 Award (hereinafter the "Tripartite Examination"). This 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. On meeting in London in December 1965 to discuss a settlement of the dispute, each party maintained its position on the matter.

C. The signing of the 1966 Geneva Agreement (paras. 40-44)

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

The Geneva Agreement provides, first, for the establishment of a Mixed Commission to seek a settlement of the controversy between the parties (Articles I and II). Article IV, paragraph 1, further 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. Finally, in accordance with Article IV, paragraph 2, should those Governments fail to reach agreement, the decision as to the means of settlement shall be made by an appropriate international organ upon which they both agree, or, failing that, by the Secretary-General of the United Nations.

D. The implementation of the Geneva Agreement (paras. 45-60)

1. The Mixed Commission (1966-1970) (paras. 45-47)

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. However, 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 (paras. 48-53)

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 (the "Protocol of Port of Spain"), 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.

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

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

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

After the matter was referred to him by the Parties, the Secretary-General, Mr. Javier Pérez de Cuéllar, agreed by a letter of 31 March 1983 to undertake the responsibility conferred upon him under Article IV, paragraph 2, of the Geneva Agreement.

After one of his representatives had held meetings and discussions with the Parties, 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 (paras. 54-60)

Between 1990 and 2014, the good offices process was led by three Personal Representatives appointed by successive Secretaries-General. Regular meetings were held during this period between the representatives of both States and the Secretary-General.

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

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

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

of the controversy", he had "chosen the International Court of Justice as the means that is now to be used for its solution".

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

III. INTERPRETATION OF THE GENEVA AGREEMENT (PARAS. 61-101)

The Court recalls the three-stage process established by the Geneva Agreement and notes that 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, pursuant to Article IV, paragraph 2, of the Agreement. The Court must thus 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 first examines the use of the term "controversy" in this provision.

A. The "controversy" under the Geneva Agreement (paras. 64-66)

For the purpose of identifying the "controversy" for the resolution of which the Geneva Agreement was concluded, the Court examines the use of this term in this instrument.

The Court notes, in particular, that in the conclusion and implementation of the Geneva Agreement, the parties have expressed divergent views as to the validity of the 1899 Award 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.

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 refers to the preservation of the parties' respective rights and claims to such territorial sovereignty.

Following its analysis, the Court concludes 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 (paras. 67-88)

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 therefore begins by ascertaining 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.

1. Whether the decision of the Secretary-General has a binding character (paras. 68-78)

To interpret the Geneva Agreement, the Court applies the rules on treaty interpretation to be found in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. 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, the Court recalls that it is well established that these articles reflect rules of customary international law.

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 considers that this wording indicates 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. It then notes that the object and purpose of the Geneva Agreement is to ensure a definitive resolution of the controversy between the Parties.

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. 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, which recognizes the possibility that "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". It is further supported by the circumstances in which the Geneva Agreement was concluded. 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, 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".

2. Whether the Parties consented to the choice by the Secretary-General of judicial settlement (paras. 79-88)

The Court then 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".

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.

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.

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.

The Court then notes that this conclusion 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.

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 (paras. 89-100)

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. It must therefore 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.

Noting that 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 interprets 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).

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.

The Court considers that 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.

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.

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.

The Court finally notes that it emerges from the Parties' subsequent practice that 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.

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 that the sole aim of such consultation was to gather information from the Parties in order to choose the most appropriate means of settlement.

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 (PARAS. 102-115)

As the Court has established, the Parties, by virtue of Article IV, paragraph 2, of the Geneva Agreement, accepted the possibility of the controversy being resolved by means of judicial settlement. The Court therefore examines 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 that provision. 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 (paras. 103-109)

Having recalled the content of the letters that the Secretary-General addressed on 30 January 2018 to the Presidents of Guyana and Venezuela in relation to the settlement of the controversy, the Court first notes that, in announcing that he had chosen the International Court of Justice as the next means of settlement to be used for the resolution of the controversy, 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.

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. 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.

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), 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.

The Court notes that, moreover, the circumstances surrounding the conclusion of the Geneva Agreement, which include ministerial statements and parliamentary debates, indicate that recourse to the International Court of Justice was contemplated by the parties during their negotiations.

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.

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. 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 (paras. 110-115)

The Court then 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".

The Court recalls that "its jurisdiction is based on the consent of the parties and is confined to the extent accepted by them".

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. 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.

The Court recalls that it 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.

The Court explains 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 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.

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. 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 (PARAS. 116-121)

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

In this regard, it recalls that its seisin is "a procedural step independent of the basis of jurisdiction invoked and, as such, is governed by the Statute and the Rules of Court". 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.

In the present case, the Court is of the view that 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.

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 (PARAS. 122-137)

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

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. Consequently, the Court first ascertains 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, it 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*.

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. As stated 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.

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. 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.

The Court considers that this interpretation is also confirmed by the circumstances surrounding the conclusion of the Geneva Agreement, and by the statement of the Minister for Foreign Affairs of Venezuela before the Venezuelan National Congress shortly after the conclusion of that 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".

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.

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. 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*.

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 dispute regarding the land boundary between the territories of the Parties.

VII. OPERATIVE CLAUSE (PARA. 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.

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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.

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Declaration of Judge Tomka

Having voted in favour of the conclusions reached by the Court, Judge Tomka wishes to offer some remarks on this case which is rather unusual. Although the 1966 Geneva Agreement, and in particular Article IV, paragraph 2, thereof, do not fit the usual moulds of special agreements or compromissory clauses providing for dispute resolution by the Court, the fact remains that the Geneva Agreement provides for a set of procedures and mechanisms aiming at the resolution of the dispute opposing Guyana and Venezuela.

In the opinion of Judge Tomka, the Parties consented to the jurisdiction of the International Court of Justice by concluding the Geneva Agreement, should the Secretary-General choose it as a means of settlement. The Court's jurisdiction *ratione materiae*, being based on that Agreement, encompasses the controversy over the frontier, including the issue of the validity of the 1899 Arbitral Award.

By upholding its jurisdiction, the Court provides an opportunity for the Respondent to substantiate its contention that the 1899 Arbitral Award is null and void. The issue of the validity of the 1899 Arbitral Award is a legal question *par excellence* and no organ other than a judicial one is more appropriate to determine it. In the view of Judge Tomka, the Secretary-General of the United Nations made a sound decision when he chose the Court as a means of settlement of the dispute opposing Guyana and Venezuela.

It is important for the Parties to understand that, should the 1899 Arbitral Award be declared null and void by the Court, it will be in need of further submissions about the course of the land boundary, in the form of evidence and arguments, in order for it to fully resolve the dispute opposing them.

Dissenting opinion of Judge Abraham

Judge Abraham considers that there is no title of jurisdiction allowing the Court to entertain the dispute between Venezuela and Guyana upon the unilateral application of the latter. In his view, the majority is correct in holding that the Secretary-General had the authority to choose the International Court of Justice as the next means of settlement within the meaning of Article IV, paragraph 2, of the Geneva Agreement, and indeed that he was not obliged to follow any particular order in his choice of successive means. Nor is there any doubt, according to Judge Abraham, that the Secretary-General's choice is not a mere recommendation without binding effect, but that it creates certain obligations for the parties to the Agreement.

Judge Abraham believes, however, that these elements do not permit the finding that there is, in this instance, "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". He disagrees in particular with the majority's understanding of the object and purpose of the Agreement. To his mind, Article IV, paragraph 2, does indeed express the parties' acceptance of the idea that their dispute may ultimately be resolved by means of judicial settlement; but it does not establish a binding mechanism aimed at ensuring that such a resolution will be obtained, by negotiation if possible, or by judicial means if necessary. On the contrary, it is clear from several provisions of the Agreement that the parties accepted the possibility that its implementation would not necessarily result in the settlement of their dispute. That is true of Article IV, paragraph 2, according to which the Secretary-General must choose means of settlement one after another, "and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted". In concluding the Agreement, the parties therefore did not intend to give their consent in advance to judicial settlement. In the absence of such consent, the Court should have declined jurisdiction.

Dissenting opinion of Judge Bennouna

In the case brought by Guyana against Venezuela concerning a dispute on the validity of the Arbitral Award of 3 October 1899, the Court declared itself competent to entertain Guyana's Application on the basis of Article IV, paragraph 2, of the Geneva Agreement of 17 February 1966. According to Judge Bennouna, this provision cannot establish the jurisdiction of the Court, since the Parties have not clearly and unequivocally consented to the settlement of their dispute by the Court. Rather, it is a provision on the choice of means. Under this provision, the Parties vested in the Secretary-General the power to choose one of the means for the settlement of their dispute, from among those provided for in Article 33 of the Charter of the United Nations, "until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted". Judge Bennouna is of the opinion that the Court's interpretation favoured the object and purpose of the Agreement, namely that of reaching a final settlement of the dispute, over the ordinary meaning of the second alternative of this provision, depriving the latter of its *effet utile*. In so doing, the Court concluded that the Secretary-General could consent in lieu of the Parties to the jurisdiction of the Court. This is a delegation without precedent in international practice and one that would not be subject to any temporal limitation. The Secretary-General himself was not persuaded by the authority conferred on him by the Parties, as is clear from his letter to them of 30 January 2018, in which he identified the Court as the next means of settlement, while offering his good offices as a complementary procedure which "could contribute to the use of the selected means of peaceful settlement". Also in the context of its teleological interpretation of the Geneva Agreement, the Court concluded that it had jurisdiction not only over the dispute concerning the validity of the Arbitral Award of 3 October 1899, but also over another quite distinct dispute, namely that concerning the delimitation of the land boundary between the two States. Judge Bennouna does not share this conclusion which, in his view, ignores the ordinary meaning of the terms contained in the Geneva Agreement, in so far as the only dispute envisaged by that instrument concerns the validity of the Arbitral Award of 3 October 1899.

Declaration of Judge Gaja

Judge Gaja concurs with the view of the majority that the Parties are bound to submit their dispute to the Court in pursuance of Article IV, paragraph 2, of the 1966 Geneva Agreement and of the Secretary-General's choice of judicial settlement as the means to be used. However, according to Judge Gaja, the Secretary-General's decision is not sufficient to confer jurisdiction on the Court. Article IV, paragraph 2, empowers the Secretary-General to select any of the means of settlement referred to in Article 33 of the United Nations Charter, but leaves the implementation of this decision to the Parties. The inclusion of judicial settlement among the means of settling the dispute under the Geneva Agreement cannot be construed as implying the Parties' consent to the Court's jurisdiction.

Declaration of Judge Robinson

1. In his declaration, Judge Robinson states that he is in agreement with the finding in the *dispositif* of the Judgment but wished to make some brief comments on the case.

2. According to Judge Robinson, in the Geneva Agreement, sequence and stages are everything. He states that the sequence follows a path along the stages of various means of settlement and that, in this process, the failure of a particular means of settlement to resolve the controversy sets the stage for the employment of another means of settlement for the same purpose. For Judge Robinson, in the circumstances of this case, this approach leads to two results. First, in the final stage, the means of settlement selected is such that it will resolve the controversy. Second, by the time the final stage of Article IV (2) has been reached, the Parties have consented to accept

the means of settlement selected by the Secretary-General, that is, the International Court of Justice, thereby consenting to the jurisdiction of the Court over the controversy.

3. According to Judge Robinson, this result has a special significance since the Geneva Agreement does not have the usual compromissory clause in a treaty empowering a party to submit to the Court, a dispute concerning its interpretation or application. He states that a compromissory clause reflects the consent of the parties to a treaty to the jurisdiction of the Court. However, Judge Robinson notes that it is settled that consent to the jurisdiction of the Court does not have to be expressed in a particular form. Consequently, he concludes that, in the instant case, the Court has to satisfy itself that on the basis of the Geneva Agreement and any other relevant material that the Parties have consented to its jurisdiction. Judge Robinson states that Article I of the Geneva Agreement provides for the establishment of a Mixed Commission to find a solution for the practical settlement of the controversy between the two countries arising from Venezuela's argument that the Award of 1899 was null and void. He also refers to Article II which sets out the procedure for the establishment of the Mixed Commission and Article III which provides that the Commission was to submit reports at six-month intervals over a period of four years.

4. Judge Robinson cites Article IV (I) which provides that, if within a period of four years the Mixed Commission had not arrived at "a full agreement for the solution of the controversy", it was to refer any outstanding questions to the two countries, which were obliged to choose one of the means of settlement in Article 33 of the Charter of the United Nations.

5. According to Judge Robinson, the important paragraph 2 may be divided into two stages. In accordance with the first stage, failing agreement between the Parties within three months of receiving the final report on the choice of one of the means of settlement in Article 33, the Parties were obliged to "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, the means to the Secretary-General of the United Nations". He observes that significantly, in the circumstances of this case, what has been referred to the Secretary-General is not simply the decision as to the means of settlement but rather, the decision as to the choice of the means of settlement. He states that since the Parties failed to agree on referring the decision as to the means of settlement to an appropriate international organ, that decision was referred to the Secretary-General. He notes that, in the ordinary meaning of the word "decide", to decide a matter is to bring that matter to a definitive resolution and that consequently, the effect of the referral of the decision as to the means of settlement to the Secretary-General is to confer on him the power to bring to a definitive resolution the question of the means of settlement. For Judge Robinson, implicit in the word "decision" is the notion of an outcome that is binding, and not merely recommendatory.

6. Judge Robinson comments that in the second stage of the process, paragraph 2 stipulates that, in the event that the means chosen by the Secretary-General does not lead to a solution of the controversy, he was obliged to "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". He notes that the means of good offices was employed by four Secretaries-General over a period of 27 years, without producing a solution to the controversy. Consequent on that failure, the Secretary-General, acting on the authority vested in him by the Parties, stated on 30 January 2018 that in light of the lack of progress in resolving the controversy, he had "chosen the International Court of Justice as the means to be used for the solution of the controversy". Judge Robinson makes four points in this regard.

7. The first point is that, Articles I, II, III and IV establish a sequence in the use of various means for the settlement of the controversy. Following the failure of the various means of settlement in Articles I, II, III and the first stage of Article IV (2), Judge Robinson observes that we are left, in the second stage of Article IV (2), with a Secretary-General on whom the Parties have conferred the power to make a binding decision as to the means of settlement.

8. The second point is that, by agreeing in the first stage of Article IV (2) to refer the decision as to the means of settlement to the Secretary-General, the Parties not only empower and require the Secretary-General to make a decision on the choice of the means of the settlement, but also express their agreement with the choice made by the Secretary-General, and thereby confer, on the particular means selected by him: the International Court of Justice, jurisdiction over the controversy. Consequently, Judge Robinson concludes that the Court's jurisdiction is therefore established pursuant to Article 36 (1) of the Statute which provides for its jurisdiction on the basis of "treaties", the Geneva Agreement being the relevant treaty. Thus, according to Judge Robinson, the Court has satisfied the requirement under Article 53 (2) of the Statute of ensuring that it has jurisdiction in a case where a party does not appear.

9. The third point made by Judge Robinson is that a proper reading of Article IV (2), and indeed Article IV as a whole, does not yield the conclusion that the agreement of both Parties is needed for the institution of proceedings before the Court. He states that this is so because, when in the first stage of Article IV (2) the Parties refer the decision as to the means of settlement to the Secretary-General, they are agreeing that the decision of the Secretary-General is binding on both of them; consequently, it is a decision on the basis of which either of them can unilaterally institute proceedings before the Court. Judge Robinson observes that reading Article IV (2) as requiring the other Party to agree to the institution of proceedings would run counter to the object and purpose of the Agreement to find a solution for the controversy, since it is very likely that the other Party would not agree to such a course.

10. Judge Robinson therefore concludes that, once the Secretary-General had identified the International Court of Justice as the means of settlement, it was perfectly proper for either Guyana or Venezuela to file an application before the Court in accordance with Article 40 (1) of the Statute. In this case it was Guyana that filed an application.

11. The fourth point made by Judge Robinson is that there is nothing in the second stage of Article IV (2) that obliges the Secretary-General to exhaust some or all of the non-judicial means of settlement in Article 33 before he is entitled to choose judicial settlement by the Court for the resolution of the controversy. Judge Robinson observes that consequent on the failure of good offices to provide a solution, the Secretary-General was entitled and required to choose any other of the means in Article 33 in his search for a solution to the controversy. He notes that it is logical and understandable that, following the failure of good offices, used over a period of 27 years, the Secretary-General would choose a means of settlement that would produce a result that was binding on the Parties. He comments that, in choosing the International Court of Justice, the Secretary-General settled on a means of settlement, the result of which would be binding on the Parties. This choice is consistent with the intention of the Parties in adopting the Geneva Agreement to provide for a dispute settlement procedure that would lead to a final and complete resolution of the controversy.

12. According to Judge Robinson, the real issue for the Court is whether, in choosing the International Court of Justice as a form of judicial settlement under Article 33 of the Charter, the Secretary-General acted within the scope of his powers under Article IV (2) of the Geneva Agreement. For example, was he obliged to choose a means of settlement other than judicial settlement, or was he obliged to choose a means of settlement in a particular order, and it was not the turn of judicial settlement to be chosen? According to Judge Robinson, the answer is no. The Secretary-General was empowered to "choose another of the means" of settlement in Article 33 of the Charter. He was left with the choice of any other means of settlement from the suite of means set out in Article 33. The second stage of Article IV (2) obliges the Secretary-General to "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". Judge Robinson observes that it has been argued that the Secretary-General may have recourse to all the means of settlement set out in Article 33 without the dispute being resolved. That argument is fallacious because the means of settlement included two that were capable of definitively resolving the dispute, namely arbitration and judicial settlement. Therefore, once the Secretary-General chose the International Court of Justice, there was no need for him to have recourse to any of the other means set out in Article 33, because the International Court of Justice as a judicial body would settle the dispute by arriving at a decision that would be binding on the Parties. Judge Robinson concludes that, intriguing though the questions raised by that argument might be, the phrase "or until all the means of peaceful settlement there contemplated have been exhausted", having been rendered inoperative, has no practical consequences in the circumstances of this case.

13. In light of the foregoing, Judge Robinson respectfully disagrees with the inclusion of paragraph 86 in the Judgment. In his view, the cautionary note sounded by the paragraph is not warranted in the circumstances of this case.

Dissenting opinion of Judge Gevorgian

Judge Gevorgian disagrees with the Court's conclusion that it has jurisdiction to entertain Guyana's claims.

In his view, the Court's Judgment undermines the fundamental principle of consent of the parties to the Court's jurisdiction. The Court has made the unprecedented decision to exercise jurisdiction on the basis of a treaty that does not even mention the Court and contains no clause referring disputes to it. This is especially problematic as one of the Parties has consistently refused to submit the present dispute to the Court, and the dispute concerns national interests of the highest order, such as territorial sovereignty.

In particular, Judge Gevorgian considers that Article IV (2) of the Geneva Agreement does not empower the Secretary-General of the United Nations to issue a legally binding decision as to the means of settlement to be employed by the Parties. The contrary conclusion reached by the Court is not supported by the text of the Geneva Agreement or by the Agreement's object and purpose.

In Judge Gevorgian's view, the object and purpose of the Geneva Agreement is to help the Parties reach an agreed settlement to their dispute. As such, the Secretary-General has a non-binding role similar to that of a conciliator or mediator, entrusted with facilitating the Parties' attempts to reach an agreed solution, but not empowered to impose a means of settlement on them.

Finally, Judge Gevorgian considers that the Court gives inadequate attention to Venezuela's current and historical position regarding third-party dispute settlement, including the fact that Venezuela had, on several occasions prior to 1966, manifested its unwillingness to have issues related to its territory decided by third parties without its clear consent.

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