INTERNATIONAL COURT OF JUSTICE
GUYANA v. VENEZUELA
HEARING ON THE QUESTION OF THE COURT'S JURISDICTION

Response of the Co-operative Republic of Guyana
to the question posed by Judge Bennouna on 30 June 2020

6 July 2020

Question: "In paragraph 2 of article 4 of the Geneva Accord of the 17th of February 1966 concludes in an alternative according to which either the controversy has been resolved or indeed that all the means of peaceful settlement stipulated in Article 33 of the Charter of the United Nations have been exhausted. Now my question is as follows: Would it be possible to think of a situation in which all of the peaceful means for settlement have been exhausted without the controversy having been resolved?"

Response:

1. Guyana's answer to Judge Bennouna's question is "No".

2. The 1966 Geneva Agreement established a procedure to ensure that the controversy would be finally and completely resolved. This is clear from the text of the Agreement, its object and purpose, and the contemporaneous statements of the Parties reflecting their understanding of the Agreement.

3. The procedure is set out in Articles I through IV of the Agreement. Articles I through III provide for resolution of the controversy by diplomatic negotiations, conducted via a Mixed Commission composed of two representatives of each Party.

4. In the event of failure by the Mixed Commission to resolve the controversy within four years, Article IV(1) provides for the Parties to agree on another means of settlement. In the event of their failure to agree on another means of settlement, Article IV(2) then describes how the means of settlement will be chosen and the controversy will be resolved.

5. Pursuant to Article IV(2), the means of settlement of the controversy are to be chosen either by an appropriate international organ agreed by the Parties, or, failing their agreement on such an organ, by the Secretary-General of the United Nations. Article

IV(2) mandates that the Secretary-General (assuming there has not been an agreement on another appropriate international organ) shall choose the means of settlement from among those listed in Article 33 of the United Nations Charter. If the means so chosen fail to resolve the controversy, the Secretary-General is mandated to choose another means of settlement from among those listed in Article 33, until the controversy is finally resolved (or until all the means of settlement listed in Article 33 are exhausted).

6. Because arbitration and judicial settlement are among the means of settlement listed in Article 33, a final and complete resolution of the controversy arising from Venezuela's contention that the Arbitral Award of 3 October 1899 is null and void is ensured.

7. Under Article IV(2), the Secretary-General was empowered to choose other means of settlement before choosing arbitration or judicial settlement, in his discretion, and he did so. He decided, in the first instance, that the means of settlement shall be Good Offices, which Venezuela considers to be included within "other means" under Article 33[1]. But since, as he concluded, that means of settlement failed to resolve the controversy, he was mandated by Article IV(2) to choose another means of settlement until a final and complete resolution of the controversy could be achieved. In the event that no other means so chosen by him produced such a resolution, Article IV(2) required him ultimately to choose arbitration or judicial settlement, either one of which would ensure a final and complete resolution of the controversy.

8. Article IV(2) thus assures that the object and purpose of the Agreement will be achieved. The object and purpose are set forth in the title: "*to resolve* the controversy" between Venezuela and the United Kingdom over the frontier between Venezuela and British Guiana; and in the final preambular paragraph of the treaty, which states that the Parties "have reached the following agreement *to resolve*" that controversy[2].

9. The contemporaneous statements of the Parties make it unambiguously clear that the object and purpose of the Agreement was to achieve a final and complete resolution of the controversy, and that this was ensured by the inclusion of Article IV(2). In their

[1] Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana (28 November 2019), para. 78 (Judges' Folder, Tab 6).

[2] 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, 561 U.N.T.S. 323 (17 February 1966), Preamble (Annex 4 to Guyana's Application; Judges' Folder, Tab 5).

Joint Statement of 17 February 1966, issued upon signature of the Agreement, the Parties declared that the Agreement provided "the means to resolve" the controversy and that its "stipulations will enable a definitive solution."[3]

10. Of particular significance are the statements made by the Foreign Minister of Venezuela, who led the Venezuelan delegation at Geneva and directly negotiated its terms, during his address to the National Congress of Venezuela urging ratification, one month after the Agreement was signed. As noted by Guyana's counsel at the oral hearing, the Foreign Minister explained that "in an attempt to seek a respectable solution to the problem, I put forward a third Venezuelan proposal that would lead to a solution for the borderline issue in three successive stages, each with their respective timeframe, *with the requirement that there had to be an end to the process*: a) Mixed Commission, b) Mediation, c) International Arbitration."[4]

11. The Agreement that was ultimately reached was based on Venezuela's "third" proposal. According to the Foreign Minister: "In conclusion, due to Venezuelan objections accepted by Great Britain, there exists an unequivocal interpretation that the only person participating in the selection of the means of solution will be the Secretary General of the United Nations...and, *in compliance with Article 4, if no satisfactory solution for Venezuela is reached, the Award of 1899 should be revised through arbitration or judicial recourse.*"[5]

12. The Foreign Minister explained that, although the United Kingdom and British Guiana objected to including in the Agreement a specific reference to arbitration or judicial recourse: "The objection was bypassed by replacing that specific intention 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

[3] Minister of Foreign Affairs of Venezuela, Minister of Foreign Affairs of the United Kingdom, and Prime Minister of British Guiana, *Joint Statement on the Ministerial Conversations from Geneva on 16 and 17 February 1966* (17 February 1966) *reprinted in* Republic of Venezuela, Ministry of Foreign Affairs, *Claim of Guyana Esequiba: Documents 1962-1981* (Annex 31 to Guyana's Memorial; Judges' Folder, Tab 9).

[4] *Statement* by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 March 1966), *reprinted in* Republic of Venezuela, Ministry of Foreign Affairs, *Claim of Guyana Esequiba: Documents 1962-1981*, p. 9 (Annex 33 to Guyana's Memorial); Judges' Folder, Tab 10).

[5] *Ibid*, p. 17 (emphasis added).

achieving an agreement was again on the table. *It was on the basis of this Venezuelan proposal that the Geneva Agreement was reached.*"[6]

13. Accordingly, as the head of Venezuela's delegation at Geneva recognised, it was Venezuela's position that any agreement reached must provide for a final and complete resolution of the controversy, and that the only way to guarantee this was by ensuring that, if other means of settlement failed, recourse would ultimately be had to international arbitration or the ICJ. The vehicle for accomplishing this was the text as adopted of Article IV(2). By providing that the Secretary-General must choose the means of settlement from among those listed in Article 33, and that he must continue to choose the means from that list until the controversy is fully and finally resolved, the Agreement ensured that, if necessary to resolve the controversy, recourse would be had either to international arbitration or the ICJ. In Venezuela's own words: "It was on the basis of this Venezuelan proposal that the Geneva Agreement was reached."[7]

14. It is indisputable that, once the Secretary-General has decided on the ICJ as the means of settlement, a definitive resolution of the controversy is ensured. Indeed, Article 94 of the UN Charter and Articles 59 and 60 of the Statute of the Court make it clear that a Judgment of the Court concerning the legal status and effect of the 1899 Arbitral Award would be final and binding on Venezuela and Guyana. Accordingly, the decision by the Secretary-General to select judicial settlement as the means of settlement – by the very nature of that means – eliminates any possibility that the controversy will not be resolved.

[6] *Ibid*, p. 13 (emphasis added).

[7] *Ibid*, p. 13.