



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

DM N° 000930

Caracas, July 24, 2020

Your Excellency
Abdulqawi Ahmed Yusuf
President of the International Court of Justice
The Hague,

Excellency,

In its Order dated 19 June 2018, the International Court of Justice decided, "pursuant to Article 79, paragraph 2, of its Rules, that, in the circumstances of the case, it must resolve first of all the question of the Court's jurisdiction, and that this question should accordingly be separately determined before any proceedings on the merits". Since, as Venezuela informed the Court, the Court manifestly lacks jurisdiction (hence the decision of Venezuela not to take part in the proceedings), there is indeed no need to address issues other than jurisdiction (be it admissibility or merits) in relation to Guyana's Application submitted to the Court in March 2018.

In 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, Venezuela wishes to inform the Court that it does not find in the transcript of the hearing held remotely by the Court with the representatives of Guyana on June 30, 2020, concerning the Jurisdiction of the Court to hear the case, any argument that requires Venezuela to reconsider what has been expressed in its Memorandum of November 29, 2019 and the Annex of the same date. Guyana's presentation appears to Venezuela to have been nothing but a repetition of the arguments in its Memorial. The objections by Venezuela to the jurisdiction of the Court remain wholly valid, effective and relevant and should lead the Court to declare that it does not have jurisdiction to entertain Guyana's Application.

This conclusion is confirmed by the following considerations.

1. The nature of the controversy and the purpose of the Agreement of February 17, 1966, are reflected in the very title of the instrument: "Agreement to resolve the controversy... over the frontier...". It deals with the settlement of a territorial controversy. That controversy, according to the preamble, should be "amicably resolved in a manner acceptable to both parties". This spirit must prevail in the interpretation of the articles. The parties have maintained contradictory positions as to the validity of the Award of October 3, 1899, and **instead of agreeing to an arbitral or judicial settlement of this issue, to which they did not devote a single word in Geneva, they agreed to overcome them, thus establishing a mechanism enabling them to reach a practical and**



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

mutually satisfactory settlement of the territorial controversy. Those words are hardly compatible with a judicial or arbitral settlement of the controversy.

2. Guyana's assertion that the only subject of the negotiation of the agreement was the validity of the 1899 Award stands in marked contrast with the fact that during the negotiations of the Agreement in London and Geneva, the United Kingdom and Guyana fiercely resisted the juridical means of the settlement, including the recourse to the Court, proposed as a last resort by Mr. Iribarren Borges, who was then Foreign Minister of Venezuela. **What Venezuela was proposing and was finally signed by the parties has been a detailed negotiation leading to an agreement that would supersede 1899 Award.**
3. The preparatory works of the Geneva Agreement are instructive in several ways. They demonstrate that:
 - 3.1 Venezuela desired to reach a settlement of the territorial contention with the United Kingdom (and Guyana) on the borders with British Guiana as soon as possible.
 - 3.2 **It was Venezuela that, for the purpose of reaching that solution, suggested arbitration and judicial settlement of the territorial controversy as a last resort, and that it was the United Kingdom and Guyana that objected the inclusion of any direct reference to such means of settlement** – an attitude that would have been inexplicable if what was at stake really was deciding upon the validity of the 1899 Award, rather than settling the border and more sensitive matters that might arise for resolution notwithstanding that Award;
 - 3.3 The Venezuelan Minister understood that, should the political means of political negotiation provided for in Article 33 of the Charter of the United Nations be eventually exhausted in a successive, gradual and progressive manner, **the procedures of arbitration or judicial settlement could not operate in a mechanical or a unilateral manner, but needed to be subject to an express and specific agreement negotiated between the Parties which would make equity a fundamental source of the decision to be reached, under an imperative of substantial justice.** Historical justice, morality and equitable rectification were the foundations of Venezuela's proposals in London and Geneva. In his March 17, 1966 presentation on the Geneva Agreement signed on 17 February 1966, before the Congress of the Republic of Venezuela, former Foreign Minister Iribarren Borges concluded his address, asserting as follows.



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

Evidently, the Geneva Agreement does not constitute the ideal solution to the problem, which is nothing else but to return back to Venezuela its territory. We did not go to the city of Lac Léman to dictate the terms of surrender of the adversary, placing on the scale of the dispute the sword of a warlike victory. We went there to find a satisfactory solution to the arduous territorial issue. As a fruit of the diplomatic dialogue, and not of the monologue of victors, the Geneva Agreement leads the extreme positions of those who demand the return back of the usurped territory under a null and void Award to a new situation and those who argued that harbouring no doubt of its sovereignty over the territory were not willing to take the case to any court.

4. Within the provisions of the Geneva Agreement, Article IV.2 put "the choice of the means of settlement" into the hands of the United Nations Secretary-General, providing that "if the means so chosen do not lead to a solution 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 here contemplated have been exhausted". The characteristic features of that provision are graduality, progressiveness, and the condition that the choice of a further means may not be made unless the previous "means so chosen do not lead to a solution of the controversy".
5. The fact that, in his letter of January 30, 2018 choosing the Court, the UN Secretary-General also referred to negotiations and to its good offices confirms that political means for the settlement of the controversy were and still are certainly not exhausted.
6. In purportedly choosing the Court as a means of settlement, after deeming that the Good Offices have failed, the Secretary-General has acted contrary to both the letter and the spirit of Article IV.2, which contemplated the use of other political means (such as mediation), as a genuine assistance to the parties in the negotiation of a practical, acceptable and mutually-satisfactory settlement, which is the purpose of the procedure set forth in that provision. Choosing the Court without verifying the exhaustion of the political means of settlement not yet attempted is a leap that is not consistent with the procedure agreed and equally is clearly not the most suitable way to achieve the purpose and the objective of the Geneva Agreement.



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

7. In addition, **it should be noted that the Secretary-General made his choices and the successive appointments for Good Offices always and in all cases after obtaining the agreement of both parties.** By contrast, in choosing the Court, the Secretary-General has departed from the principle of equilibrium of the parties, which had been followed until that moment, thus aligning with one of them, which is not compatible with the letter and spirit and the object and purpose of the Geneva Agreement.
8. Above all, Article IV.2 of the Geneva Agreement does not constitute the certain and unequivocal expression of the consent of Venezuela to accept the jurisdiction of the Court regarding Guyana's Application, which is required by international law. To guarantee, as the Geneva Agreement seeks to do, that the controversy is "amicably resolved in a manner acceptable to both parties", both parties must progressively use the political negotiation means provided in Article 33 of the Charter of the United Nations, and should they fail to reach a mutually acceptable and satisfactory settlement through these mechanisms, both parties could conclude that the political means have been developed and exhausted, and only then, they should not only voluntarily accept the jurisdiction of the Court but also proceed, in a consensual manner, to negotiate a special agreement, which is indispensable to establish the role of the Court, the subject-matter of the controversy, and the sources of law and elements of equity that have to be taken into account to settle the controversy in conformity with the Geneva Agreement. Such a compromising agreement could include provisions on procedural aspects, as well as on the language in which the case would be heard to safeguard the equality of the parties. **Absent any such special agreement, it is not possible to seize the Court.**
9. In short, **Article 33 of the United Nations Charter already obliges Guyana and Venezuela to resort to one or more of the pacific means of settlement listed there and, consequently, ultimately to resolve their controversy by one or more of those means.** But it is **indisputable that Article 33 is not a "specific provision" conferring jurisdiction on the Court.** The mere fact that the UN Secretary-General has a duty to choose from that same list of means of settlement cannot transform it into a provision validly conferring jurisdiction on the Court.
10. In the same vein, the choice made in January 2018 by the UN Secretary-General could not be self-executing in that regard, because it does not specify any of the elements mentioned above that are indispensable to settle the controversy before the Court in accordance with the Geneva Agreement.



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

11. The fact that the nomination of the Court by the UN Secretary-General as a means of settling the controversy is not self-executing and requires an additional agreement is confirmed by Guyana's oral pleadings. **Guyana has been unable to define the exact subject-matter of the controversy it sought to submit to the Court. To the contrary, its counsels elaborated on contradictory views on this point.** According to Professor Akhavan, the controversy would be only on the validity of the Award.¹ By contrast, according to Professor Pellet, the controversy is a "wider one" ("*plus vaste*"): it is a "territorial dispute", which requires the Court to "delimit the boundary between the two countries" ("*défini[r] la frontière entre les deux pays*"), and to decide on the validity of the Award only as a "preliminary issue" ("*à titre préliminaire*").² This contradiction in the definition of the controversy in the Applicant's own pleadings confirms that a special agreement is needed before resorting to the Court.

Excellency,

To conclude, may I be permitted to recall some of the paragraphs with which the November 29, 2019 Memorandum closed:

Should the Court assert its jurisdiction over Guyana's claims, Guyana's application would be breaching the Geneva Agreement, thus preventing it from satisfying its subject matter and purpose that motivated its conclusion: namely, the achievement of a practical, acceptable and satisfactory settlement of the territorial controversy. Deciding on the validity of the 1899 Award alone will not serve this purpose: on the contrary, it will make its settlement more difficult, and will involve the Court in a process that is in breach of the Geneva Agreement.

Conversely, should the Court decide, as Venezuela believes, that it lacks jurisdiction over the unilateral application made by Guyana, it will reinvigorate the Geneva Agreement, allowing direct negotiations and enabling political means to regain their role in assisting the search for a practical, acceptable and satisfactory settlement for the benefit of both Parties. The controversy over the Essequibo, in any of its dimensions, should be settled through reciprocal concessions and resort to cooperation mechanisms.

¹ See CR 2020/5, p. 20, para. 2: "The history of the controversy demonstrates that the dispute between the Parties was, and remains, about the legal validity and binding force of the 1899 Arbitral Award. (...) The Parties held "clearly opposite views" on the validity of the 1899 Award, and that was the dispute dividing them".

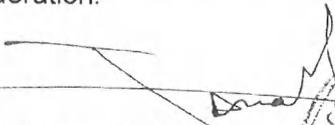
² CR 2020/5, pp. 67-69, paras. 31-35.



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

Venezuela will not resort to force, not only because it is prohibited by the current international law, but also, and specially, because of its own regional policy of peace, integration, and solidarity. Venezuela once again invites Guyana to the negotiating table, in the fraternal and supportive spirit that has always animated its policy of good neighbourliness and integration. The treatment of the territorial controversy by Venezuela will always be in accordance with the principles of the UN Charter and the maintenance of peace.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.


Jorge Arreaza
Minister



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MINISTERIO DEL PODER POPULAR PARA LAS RELACIONES EXTERIORES
ESPACIO DEL MINISTRO