INTERNATIONAL COURT OF JUSTICE
GUYANA v. VENEZUELA
HEARING ON JURISDICTION

The 1966 Geneva Agreement

Mr. Paul S. Reichler

30 June 2020

Mr. President, Members of the Court, Good Afternoon!

1. It is an honour for me to appear before you, and a privilege to speak on behalf of Guyana. We take this opportunity to express our deepest wishes for your health and safety, and we thank you for protecting ours, by allowing us to appear before you electronically.

2. Mr. President, it is Guyana's contention that the Court has jurisdiction over its claims in this proceeding, and that your jurisdiction is derived from two sources in combination: first, the *Agreement to resolve the controversy over the frontier between Venezuela and British Guiana*, signed at Geneva on 17 February 1966; and second, the decision of the Secretary General of the United Nations, pursuant to Article IV(2) of that Agreement, that the controversy shall be resolved by the International Court of Justice.

3. I will address the first of these sources of your jurisdiction, the 1966 Geneva Agreement. Professor Pellet will address the second source, the decision of the Secretary General. In between, Professor Sands will cover the period between 1966 and 2018, and the way the Geneva Agreement was faithfully implemented by the Parties, and by the Secretary-General, during that 52-year period, in accordance with its terms.

4. My presentation on the 1966 Agreement is in three parts. First, I will review the terms of the Agreement, in order to establish their ordinary meaning, in their context, and in light of the treaty's object and purpose, consistent with the customary law principles codified in Article 31 of the Vienna Convention on the Law of Treaties. Second, I will call your attention to the negotiation and ratification of the treaty, including, especially, the contemporaneous statements of the Parties as to its meaning. Third, I will compare Guyana's reading of the text

with Venezuela's current reading of it, as set out in its Memorandum of 28 November 2019, and demonstrate that Venezuela's current interpretation is erroneous, illogical and completely contrary to the way Venezuela itself understood the same text in 1966 and for decades thereafter.

A. The Text

5. I begin with the text of the 1966 Agreement, which is at Tab 5 of your Judges' Folders. The object and purpose of the Agreement is reflected in its Title. [SLIDE 1 UP] This tells us it is an "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."[1] [SLIDE 1 DOWN] The object and purpose of the Agreement is further reflected in the Preamble, paragraph 5, which declares that the Parties have "reached the following Agreement to resolve the present controversy," which it, like the Title, describes as "the controversy between Venezuela and the United Kingdom over the frontier with British Guiana."[2]

6. [SLIDE 2 UP] Article I further defines the "controversy between Venezuela and the United Kingdom" that the Agreement purports to resolve, as the controversy "which has arisen as a result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void."[3]

7. [SLIDE 2 DOWN] This text unambiguously establishes that the object and purpose of the 1966 Agreement was to resolve the controversy that arose as a result of Venezuela's contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void.

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[1] 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 Feb. 1966) ("Geneva Agreement"). Application of Guyana ("AG"), Annex 4.

[2] Geneva Agreement, Preamble. AG, Annex 4.

[3] Geneva Agreement, Article I. AG, Annex 4.

8. As Professor Akhavan has explained, Venezuela's contention was formally made for the first time in 1962, more than 60 years after the Arbitral Award was issued. This novel Venezuelan contention was immediately and emphatically rejected by Britain and British Guiana. However, in 1963, amidst concern about a possible armed conflict with Venezuela upon British Guiana's forthcoming independence, the U.K. agreed to engage with Venezuela in a mutual examination of archival documents pertaining to the validity of the 1899 Award. This process continued through the end of 1965, with each side holding fast to its initial position. This is the controversy they took with them to Geneva in February 1966, as Professor Akhavan has recounted, and which they agreed at Geneva to resolve. None of these facts about the antecedents to the Geneva Agreement are disputed by Venezuela in its written submissions in this case.

9. Beginning with its first Article, Article I, the Geneva Agreement sets out the procedures agreed by the Parties to resolve the controversy over the validity of the Arbitral Award. The first three Articles – Articles I, II and III – establish a mechanism by which the Parties agreed, in the first instance, to attempt to resolve the controversy diplomatically, through a Mixed Commission. By its text, Article I mandated the Mixed Commission to seek "satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom…"

10. Article II then provided that the Mixed Commission would consist of two representatives of each Party, to be appointed within two months of the Agreement's entry into force. And Article III required the Commission to issue interim reports every six months.

11. The Geneva Agreement does not end there, after Article III. Although the Parties agreed to seek a "practical settlement" in the first instance, they did not presume that they would be successful, especially after three years of failed negotiations leading up to Geneva that had seen no narrowing of their differences whatsoever. To the contrary, they agreed at Geneva on another procedure to assure a definitive resolution of the controversy, in the event the Mixed Commission failed to do so. This procedure was set out in Article IV.

12. Article IV is divided into two parts. It begins with Article IV(1) [SLIDE 4 UP]. This provides that, if the Mixed Commission has not arrived at "a full agreement for the solution

of the controversy" within four years, it shall refer "any outstanding questions" to the Governments of Guyana and Venezuela; and that the two Governments shall, without delay, "choose one of the peaceful means of settlement provided in Article 33 of the Charter of the United Nations."[4]

13. Two key facts in regard to Article IV(1) are undisputed by the Parties in these proceedings. First, the Mixed Commission did not arrive at an agreement for the solution of the controversy. Second, the two Governments did not reach an agreement on a means of peaceful settlement under Article 33 of the Charter. Venezuela helpfully confirmed these facts in its Memorandum of 28 November 2019, which is at Tab 6 of your Folders. [SLIDE 5 UP] At paragraph 24, Venezuela acknowledged that "The Mixed Commission, created in accordance with Article I of the Agreement, exhausted the four-year period granted to seek a satisfactory settlement of the dispute pursuant to Article IV.1, without achieving its objective."[5] And, at paragraph 32, Venezuela wrote that "Venezuela and Guyana failed to agree on the choice of a means of settlement…."[6]

14. [SLIDE 5 DOWN] But neither of these failures was able to prevent the resolution of the controversy, because, in Article IV(2), the Parties foresaw that this very situation might arise, and established a failsafe procedure for resolving the controversy in the event of an impasse under Article IV(1).

15. [SLIDE 6 UP] According to Article IV(2) of the 1966 Agreement, which is, again, at Tab 5, if the Parties are unable to reach agreement on a means of settlement under Article 33 of the Charter, they are required to refer "the decision as to the means of settlement"

[4] Geneva Agreement, Article IV(1). AG, Annex 4.

[5] Venezuela Memorandum of 28 November 2019, para. 24

[6] Venezuela Memorandum of 28 November 2019, para. 32.

either to "an appropriate international organ upon which they both agree, or failing agreement on this point, to the Secretary-General of the United Nations."[7]

16. [SLIDE 6 DOWN] In regard to this aspect of Article IV(2), the Parties agree on three more key facts. First, that they failed to reach agreement on "an 'appropriate international organ' to choose the means of settlement." Second, in compliance with Article IV(2), they did, jointly, refer the decision as to the means of settlement to the Secretary-General. And third, that the Secretary-General formally accepted the Parties' conveyance of authority to him to decide on the means of settlement under Article 33 of the Charter, and he agreed to exercise the responsibilities conferred upon him.

17. The Parties' agreements on these three facts are confirmed in Venezuela's Memorandum of 28 November 2019, at paragraph 32, which acknowledges their failure to agree on an "appropriate international organ,"[8] and in the Annex to that Memorandum, which is at Tab 7 of the Folders, [SLIDE 7 UP] , at pages 35 and 36. As shown on your screens now, Venezuela here confirms that, because of the Parties' failure to reach agreement on an "appropriate international organ": "[T]here is an unequivocal interpretation that the selection of the means of settlement will be made only by the Secretary General of the United Nations."[9] And, further: "In a letter dated April 4th, 1966, the Secretary General of the United Nations, U Thant, accepted the functions attributed to him by Article IV.2 of the Geneva Agreement, considering that 'those functions are of such nature that they can be properly performed by the Secretary General of the United Nations.'"[10]

18. [SLIDE 7 DOWN] In addition to providing that, failing an agreement on appropriate international organ, the Secretary General would decide on the means of settlement

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[7] Geneva Agreement, Article IV(2) . AG, Annex 4.

[8] Venezuela's Memorandum of 28 November 2019, para. 32.

[9] Annex to Venezuela's Memorandum of 28 November 2019, p. 35.

[10] Annex to Venezuela's Memorandum of 28 November 2019, p. 36.

of the Parties' controversy, Article IV(2) further provided [SLIDE 8 UP] that, "[i]f the means so chosen do not lead to a solution of the controversy…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."[11]

19. [SLIDE 8 DOWN] And, in relation to this provision, there are four more pertinent facts that are agreed by the Parties. These will be addressed in greater detail by Professor Sands and Professor Pellet. For present purposes it will suffice simply to identify those facts. First, the Secretary-General decided that the first means of peaceful settlement would be his good offices. Second, that choice, and the Secretary-General's authority to make it under Article IV(2), were not contested by either Party; indeed, they were positively accepted by Venezuela. Third, the good offices process took place, and continued for 27 years, under four successive Secretaries-General, but it failed to resolve the controversy. Fourth, after determining that the good offices process had failed to resolve the controversy, Secretary-General Antonio Guterres expressly invoked his authority under Article IV(2) and decided that the next means of peaceful settlement of the controversy, under Article 33 of the Charter, shall be judicial settlement by the ICJ. These four facts are all acknowledged by Venezuela in its Memorandum at paragraphs 33, 34-37, 48-50, 54, 67 and 69.

20. With all of these facts undisputed, the question now before the Court is this: under the terms of the 1966 Geneva Agreement, is a decision by the Secretary General choosing the Court as the means of peaceful settlement of the controversy binding upon the Parties, or are the Parties required first to express their agreement with the Secretary-General's decision before it becomes binding on them?

21. A review of the Geneva Agreement's terms, in their context, and in light of the agreement's object and purpose, makes clear that the answer to this question can only be that the Secretary General's decision on the means of settlement is binding upon the Parties, without the

[11] Geneva Agreement, Article 33. AG, Annex 4.

need for their further agreement. Article IV(2) states expressly that, if the Parties are unable to agree on the means of settlement, or an appropriate international organ to choose the means of settlement: "they shall refer *the decision* on the means of settlement … to the Secretary-General of the United Nations."[12] This makes clear that the Secretary-General was conferred with the power to make a "decision" on the means of settlement. What is also notable is what Article IV(2) does not say. It does not say that the "decision" of the Secretary General is subject to the subsequent agreement of the Parties, or that their agreement is required for his decision to be final or binding upon them.

22. The absence of any language subjecting the Secretary General's decision to the Parties' agreement is conclusive in its own right. But it takes on added significance when it is compared to the text regarding other, prior stages of the settlement process laid out in Article IV. [SLIDE 9 UP] For example, as underscored on this slide, Article IV(1) requires that, upon the Mixed Commission's failure to resolve the controversy, the Parties shall together, that is, by agreement, choose the means of settlement under Article 33. Article IV(2) then provides that, if the Parties "should not have reached agreement" on the means of settlement, they must refer the "decision" as to the means of settlement to an appropriate international organ "upon which they both agree."[13] Failing that agreement, they must refer the "decision" to the Secretary General. In this manner, the Parties to the 1966 Agreement provided that, whenever the agreement of the Parties is required to advance to the next stage in the dispute settlement process, the Agreement says so expressly. In this context, the only logical explanation for the absence of any requirement that the Parties agree to the Secretary General's decision on the means of settlement, is that this was deliberate: the Parties' agreement was not required because the Secretary-General's decision was intended to be final and binding, and not subject to their subsequent approval.

23. [SLIDE 9 DOWN] In fact, by agreement of the Parties, the Secretary-General was entrusted not only with the power to decide on the means of settlement, but with the duty to make a choice in order to resolve the controversy: Article IV(2) specifies that the Secretary-

[12] Geneva Agreement, Article IV(2). AG, Annex 4.

[13] Geneva Agreement, Article IV(2). AG, Annex 4.

General "*shall* choose". The language is mandatory; it creates mandatory "responsibilities" for the Secretary-General [SLIDE 10 UP], as Secretary-General U Thant recognized in his letter to the Parties of 4 April 1966. In that letter, which is at Tab 8 of your Folders, in both English and Spanish, he formally accepted those responsibilities, which he considered to be "of a nature… which may appropriately be discharged by the Secretary-General of the United Nations."[14] The Secretary-General's letter thus constitutes an express acceptance of obligations in writing, within the meaning of Article 35 of the 1969 Vienna Convention and general international law. That power and that duty, duly accepted by the Secretary-General and which are therefore part of United Nations law, are limited only by the requirement that the Secretary-General choose one of the means of settlement enumerated by Article 33.

24. [SLIDE 10 DOWN] Even more to the point, the context, and the object and purpose of the Agreement, also make it perfectly clear that the Secretary-General's decision was intended to be binding upon the Parties, without need for their subsequent approval. Article IV(2) was included in the Agreement precisely to ensure that there would be a final and complete resolution to the controversy, if the Parties themselves failed to agree on the means of settlement. The responsibilities of the Secretary-General under Article IV(2) are engaged when there is no agreement between the Parties; to suggest, as Venezuela now does, that the binding character of his decision on the means of settlement is conditioned on the Parties' agreement with that decision, when they actually agreed to empower him to break their deadlock and avoid a permanent impasse, stands the Geneva Agreement on its head; it defeats its very object and purpose.

25. Article IV, paragraph 2, ends with the words: "until the controversy has been resolved."[15] The terms of the Agreement make it plain that the Parties did not intend for the controversy to remain unresolved. Their object and purpose was precisely to avoid a permanent

[14] Letters of Secretary-General U Thant to Dr Ignacio Iribarren Borges, Minster of Foreign Affairs of the Republic of Venezuela, and The Rt. Hon. Lord Caradon, Permanent Representative of the United Kingdom to the United Nations, 4 April 1966. AG, Annex 5.

[15] Geneva Agreement, Article IV(2). AG, Annex 4.

impasse. This is reflected in the Title of the Agreement, "to resolve the controversy," and the preambular language that the Parties "have reached the following agreement to resolve the present controversy."[16] If, to the contrary, the Parties had left themselves free to disregard the "decision" of the Secretary-General on the means of settlement, there would have been no assurance that the controversy would ever be resolved. Either Party, by simply refusing to accept the Secretary-General's decision, could have single-handedly prevented the resolution of the controversy, and thwarted the object and purpose of the 1966 Agreement.

B. The Negotiations and Contemporaneous Statements of the Parties

26. This is confirmed by the negotiations that resulted in the 1966 Agreement, and the contemporaneous statements of the Parties as to its meaning, to which I now turn. To be sure, it is not necessary in these proceedings to invoke the *travaux preparatoires* or the conduct of the Parties, given the plain meaning of the terms of the Agreement. But it may still be worthwhile to examine them, if only to confirm that the terms of the treaty mean exactly what they say, that is, that the Parties empowered the Secretary-General to "decide" on the means of settlement of their controversy, that his "decision" would be binding on them, and that he was to continue to exercise his power to choose the means of settlement until a final resolution of the controversy was achieved.

27. This is reflected, first, in the Joint Statement issued by the Parties on 17 February 1966, immediately upon conclusion of the Geneva Agreement. This document is at Tab 9 of your Folders. [SLIDE 11 UP] It begins: "As a consequence of the deliberations an agreement was reached whose stipulations *will enable a definitive solution* of these problems…" and it concludes that the Agreement "provides *the means to resolve* the dispute which was harming relations between two neighbours…"[17]

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[16] Geneva Agreement, Preamble. AG, Annex 4.

[17] 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 Feb. 1966). Memorial of Guyana, Vol. II, Annex 31.

28. [SLIDE 11 DOWN] The purpose of Article IV(2), and the negotiations leading to its adoption, were described contemporaneously by the Foreign Minister of Venezuela, who led Venezuela's delegation in Geneva, in his address to the Venezuelan National Congress calling for ratification of the Agreement, on 17 March 1966. The address is at Tab 10 of your Folders.

29. As you can see there, Foreign Minister Iribarren underscored that Venezuela's objective at Geneva was to obtain an agreement that would assure a complete, final and binding resolution of the controversy. He had little faith that this would be accomplished by further negotiations, given the firmly entrenched positions of the parties on the validity of the 1899 Arbitral Award.[18] This is why, he explained, when the U.K. proposed that the Mixed Commission be given ten years to reach an agreement resolving the controversy, Venezuela responded that the Commission should have a very limited life of only three months, before advancing to the next stage of the dispute settlement process. The parties ultimately agreed on a four year mandate for the Commission, as a compromise.[19]

30. The Venezuelan Foreign Minister explained to the National Congress that his main goal in the negotiations was to make sure that, if, as expected, the Mixed Commission failed to resolve the controversy diplomatically, it would not remain unresolved indefinitely, but would be submitted to binding international dispute settlement so that a definitive solution would ultimately be achieved.

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[18] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 Mar. 1966), reprinted in *Republic of Venezuela, Ministry of Foreign Affairs, Claim of Guyana Esequiba: Documents 1962-1981* (1981) ("Statement by Dr. Borges, Minister of Foreign Affairs of Venezuela (17 Mar. 1966)"), p. 1 ("United Kingdom still would not enter negotiations whose aim would be the revision of the Award which they considered intangible…"). MG, Vol. II, Annex 33.

[19] *See* Government of the United Kingdom, *Record of Discussions between the Foreign Secretary, the Venezuelan Minister for Foreign Affairs and the Premier of British Guiana at the Foreign Office on 9 December, 1965*, No. AV 1081/326 (9 Dec. 1965), p. 4 ("Dr. Iribarren then put forward another proposal. A mixed commission should be set up …. Of the commission could not reach agreement, they were to refer within three months to one or more mediators…".). MG, Vol. II, Annex 28; *Note Verbale* from the Foreign Secretary of the United Kingdom to the U.K. Ambassador to Venezuela, No. AV 1081/116 (25 Feb. 1966), para. 6 ("My suggested term for the Mixed Commission the previous evening had been ten years: this was reduced by bargaining to four …".). MG, Vol. II, Annex 32.

31. In the speech he gave urging ratification of the Agreement, he described precisely how this goal was achieved: [SLIDE 12 UP] "Finally, in an attempt to seek a respectable solution to the problem, I put forward a third Venezuelan proposal that would lead to the 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) a Mixed Commission, b) Mediation, c) International Arbitration."[20]

32. This "third Venezuelan proposal" was rejected by the British at the London meeting in December 1965. But, according to the Foreign Minister, he made the same proposal in slightly different language at Geneva, which the U.K. and British Guiana ultimately came to accept. He explained the final stage of negotiations and the resulting agreement in the following terms: [SLIDE 13 UP] "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 not the [General] Assembly. Last, and in compliance with Article 4, if no satisfactory solution for Venezuela is reached, the Award of 1899 should be revised through *arbitration or a judicial recourse*."[21]

33. The Foreign Minister left no doubt about what Venezuela intended, and the Parties understood, by his insistence that "judicial recourse" be authorized under the 1966 Agreement. [SLIDE 14 UP] "After some informal discussions, our Delegation, chose to leave a proposal on the table similar to the 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, objected to the specific mention of recourse to arbitration and to the ICJ. 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 achieving

[20] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 Mar. 1966). MG, Vol. II, Annex 33, p. 9.

[21] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 Mar. 1966). MG, Vol. II, Annex 33, p. 17.

an agreement was again on the table. *It was on the basis of this Venezuelan proposal that the Geneva Agreement was reached.*"[22] Thus, it was Venezuela which proposed that Article IV be drafted so as to assure a definitive resolution of the controversy, ultimately, if so decided by the Secretary-General, by arbitration or recourse to the International Court of Justice.

34. [SLIDE 14 DOWN] There is thus no doubt, from either the terms of the Agreement, the negotiating history or the contemporaneous statements by the Parties immediately following its conclusion, that Article IV(2) was intended to assure that there would be a final resolution of the border controversy, that the Secretary General was empowered to decide on the means of settlement to be employed, choosing from among those listed in Article 33 of the Charter, and that the Parties understood and intended that, if the Secretary-General so decided, the controversy would be settled by the ICJ.

35. This was Venezuela's understanding of the Geneva Agreement, and of Article IV(2) in particular, at the time it signed and ratified the Agreement in 1966: that the Secretary-General was empowered to decide on the means of settlement, including recourse to the ICJ, and his decision would be final and binding on the parties, ensuring that there would be a definitive resolution of the controversy over the validity of the 1899 Arbitral Award. Indeed, as the Foreign Minister of Venezuela himself emphasized: "It was on the basis of this Venezuelan proposal that the Geneva Agreement was reached."[23]

C. Venezuela's Current Reading of the Agreement

36. That was how Venezuela understood the Agreement in 1966. Venezuela's current reading of the Agreement, to which I will now turn, is completely at odds with the interpretation given by its Foreign Minister, who negotiated and agreed to its terms, and explained their meaning to the National Congress upon ratification. This current reading is set out in three

[22] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 Mar. 1966). MG, Vol. II, Annex 33, p. 13.

[23] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 Mar. 1966). MG, Vol. II, Annex 33, p. 13.

documents that Venezuela has submitted to the Court: a letter from President Nicolas Maduro, dated 18 June 2018; the Memorandum submitted on 28 November 2019; and the Annex that accompanied that Memorandum. Notably, Venezuela has not submitted any contemporaneous documents to the Court, and, although its written pleadings occasionally quote from purported archival documents, none are provided, and no full or formal citations are given. In sum, Venezuela offers no *evidence* to support its assertions. There are only arguments. Three of them, to be exact. And they are all demonstrably wrong.

37. The first argument, which is set out in President Maduro's letter, at Tab 11 of your Folders, is that the Geneva Agreement provides for the resolution of the controversy between the Parties only by means of "friendly negotiations": [SLIDE 15 UP] "Venezuela reiterates its most strict adherence to what has been legally established for the solution of this controversy through the Geneva Accord which binds the Parties to reaching a practical and mutually satisfying agreement *through friendly negotiations.*"[24]

38. Guyana, of course, welcomes President Maduro's commitment to the Geneva Agreement, and his acknowledgment that it binds the Parties. However, his understanding of the Agreement appears to end at Article III. As we have seen, the first three Articles do indeed provide for friendly negotiations, through the vehicle of a Mixed Commission, "with the task of seeking satisfactory solutions for the practical settlement of the controversy…"[25]

39. [SLIDE 15 DOWN] But, with respect, Venezuela's current reading of the Agreement ends too soon. It is like they stopped reading the Book of Genesis after the fifth day, before the first humans were created. Maybe the world would have been better off, but that is not where the story ends. Likewise, the Geneva Agreement does not end after Article III. President Maduro's letter completely ignores Article IV. As we have seen, that Article establishes the procedure for resolving the controversy if the "friendly negotiations" conducted by the Mixed

[24] Letter from the President of the Bolivarian Republic of Venezuela to the President of the International Court of Justice (18 June 2018). MG, Vol. IV, Annex 132, p. 5.

[25] Geneva Agreement, Article I. AG, Annex 4.

Commission are unable to produce an agreement. Venezuela itself acknowledges this in its Memorandum of 28 November 2019, at paragraph 22(c), where it states, without equivocation, that the efforts of the Mixed Commission to seek "satisfactory solutions for practical settlement of the controversy", if unsuccessful after four years "finally should end with the intervention of the UN Secretary-General".[26]

40. Venezuela's second argument, apparently intended as a fallback in anticipated failure of its first one, is that: [SLIDE 16 UP] "Venezuela, in order to reach a settlement, did not rule out, on the contrary, it proposed, *as a last resort*, arbitration and judicial settlement, if a practical settlement could not be reached within a Mixed Commission *or other political means of settlement* …"[27] In this passage, at paragraph 114 of its Memorandum, Venezuela suggests that judicial settlement is only possible under the 1966 Agreement "as a last resort," which it goes on to define as after each of the other non-judicial means of settlement identified in Article 33 of the Charter has first been utilized.

41. To this end, [SLIDE 17 UP] Venezuela complains, at paragraph 46, that: "it was contrary to the letter and spirit of this Agreement, and particularly, of its Article IV.2, to bypass the political means mentioned in Article 33 of the United Nations Charter, and directly unilaterally impose what should be the last resort once the Parties mutually agree on the failure of those means."[28] According to Venezuela, at paragraph 71 of its Memorandum, in reference to the means mentioned in Article 33 [SLIDE 18 UP]: "Article IV.2 refers to a *successive* experimentation of them, indicative of a certain preferred sequence."[29]

42. [SLIDE 18 DOWN] No, Mr. President, it does not! There is nothing in Article IV(2) of the Geneva Agreement, or in Article 33 of the Charter, that requires the Secretary-

[26] Venezuela's Memorandum of 28 November 2019, para. 22(c).

[27] Venezuela's Memorandum of 28 November 2019, para 114(2).

[28] Venezuela's Memorandum of 28 November 2019, para. 46(e).

[29] Venezuela's Memorandum of 28 November 2019, para. 71.

General to choose the means of settlement of the controversy in any particular order, or to exhaust every one of the other means of settlement listed in Article 33 before he may choose adjudication by the Court. To the contrary, the only limitations on the power of the Secretary-General to decide on the means of settlement are: first, he must choose from among the means that are listed in Article 33; and second, if the means first chosen fail to resolve the controversy, he must choose another means from among those listed in Article 33, u the controversy is resolved, or, until all the means listed in Article 33 are exhausted. There is no requirement whatsoever in Article IV(2) or in Article 33 that he choose the means of settlement in any particular order. On Venezuela's approach, the Secretary-General could only decide on settlement by the Court after recourse to arbitration, which is absurd.

43. Indeed, Venezuela even refutes its own argument. It acknowledges that the first means of settlement actually chosen by the Secretary-General was "good offices," and that this was consistent with Article IV(2).[30] But then, at paragraph 78 of its Memorandum, it characterizes "good offices" as "covered by the generic reference to 'other means' of choice," which are the last means listed in Article 33, not the first.[31] So, instead of choosing the means of settlement in succession, starting from the first one listed, the Secretary-General began at the end of the list, and Venezuela made no protest. It accepted that the choice of means was left entirely to the Secretary-General's discretion, subject only to the requirement that the means chosen were among those enumerated in Article 33. He did not, therefore, choose adjudication "prematurely," as Venezuela erroneously contends.[32]

44. This brings us to Venezuela's third argument. I alluded to this one previously. They suggest that, even if the Secretary-General was empowered to decide upon the ICJ as the means of settlement, and even if he could make this decision before exhausting the other means listed in Article 33 of the Charter, his decision was not binding upon the Parties, because it

[30] Venezuela's Memorandum of 28 November 2019, paras. 33, 71.

[31] Venezuela's Memorandum of 28 November 2019, para. 78.

[32] Venezuela's Memorandum of 28 November 2019, para. 51.

required their mutual consent before it could take effect. For Venezuela, absent the Parties' agreement, the Secretary-General's decision, in their exact words: "can only be taken as a recommendation."[33]

45. This is an entirely new reading of Article IV(2). As we have already seen, it is inconsistent with the text of that Article – which refers explicitly to the Secretary-General's choice of the means of settlement as a "decision," not a mere recommendation. Venezuela's current reading is also contrary to what its Foreign Minister, in 1966, understood as the authority that the Parties vested in the Secretary-General under Article IV(2). That contemporaneous understanding can be found not only in the Foreign Minister's address to the National Congress, which I quoted previously, but in Venezuela's own Annex to its Memorandum of 28 November 2019, at page 35 [SLIDE 19 UP]: "[T]here 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." Plainly, the Foreign Minister did not understand there to be a need for a special agreement by the Parties following a decision by the Secretary-General that the means of settlement of the controversy shall be the ICJ.

46. It is not surprising, then, that Venezuela makes no reference to either the text of Article IV(2) or the contemporaneous statements of its Foreign Minister in support of its unsupportable argument that the only power the Secretary-General was given was to make a mere recommendation, and that any such proposal would be contingent on the Parties' subsequent approval.

47. In the absence of any support for its argument, Venezuela attempts to manufacture some, by attributing a false "understanding" of the Article IV(2) to Foreign Minister Iribarren, one that he never uttered and is contrary to what he did say [SLIDE 20 UP]. Venezuela erroneously argues, at paragraph 114 of its Memorandum, that "the Venezuelan Minister understood that arbitration or judicial settlement did not operate mechanically or unilaterally but

[33] Venezuela's Memorandum of 28 November 2019, para. 90.

were subjected to an agreement negotiated by the Parties, making equity a fundamental source of decision, in accordance with an imperative of substantial justice."[34]

48. Tellingly, there are no quotes around these words in Venezuela's Memorandum. Nor are there any citations. Nor do these words, or words to the same or similar effect, appear anywhere in the Foreign Minister's contemporaneous statements. Venezuela's argument is exactly the opposite of what the Foreign Minister did say, that "the only person participating in the selection of the means of solution will be the Secretary General of the United Nations."[35]

49. [SLIDE 20 DOWN] Mr. President, it is helpful that Venezuela has set out in detail its objections to the Court's exercise of jurisdiction in this case, even if it did so in an untimely manner and without complying with the Rules of Court and the Court's Order of 19 June 2018. It remains, however, that by submitting those objections in written form, in its letter of 18 June 2018, and more elaborately in its Memorandum and Annex of 28 November 2019, Venezuela has provided the Court with its arguments, and it has enabled Guyana to respond to them, and demonstrate that none of these objections to jurisdiction has any merit whatsoever. In Guyana's submission, the Court should therefore reject them and proceed to the merits phase of the case.

50. Mr. President, Members of the Court, this concludes my presentation. I thank you for your kind courtesy and patient attention. And I ask that you call Professor Sands to the podium.

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[34] Venezuela's Memorandum of 28 November 2019, para. 114(6).

[35] Statement by Dr. I. Iribarren Borges, Minister of Foreign Affairs of Venezuela, to the National Congress of Venezuela (17 Mar. 1966). MG, Vol. II, Annex 33, p. 17.