

INTERNATIONAL COURT OF JUSTICE
GUYANA v. VENEZUELA
HEARING ON JURISDICTION

*The Implementation of the Geneva Agreement and the Selection of the
Court as the Means of Settlement of the Controversy*

Professor Philippe Sands QC

30 June 2020

I. Introduction

1. Mr President, Members of the Court, it is a privilege to appear before you on behalf of the Cooperative Republic of Guyana. In this speech, I shall explain how the conditions established by the Geneva Agreement were fulfilled between the signing of the Agreement in 1966, and the decision of the Secretary-General of the United Nations, some 52 years later, to choose the Court as the next means of settling the controversy.
2. The survey of events, across more than half a century, is fully set out in our written pleading¹, so I can be concise. I will make four points. First, all the conditions established by the Geneva Agreement have been properly implemented. Second, in accordance with those conditions, from 1983 the Secretary-General of the United Nations was entrusted by the Parties with responsibility to select the means of settlement of the controversy. Third, after more than 25 years of unsuccessful attempts to resolve the controversy through a Good Offices Process (including a final year with a strengthened mandate of mediation) in 2018 the Secretary-General selected the Court as the means of settlement. The decision was carefully considered, unimpeachable, lawful, and fully effective. Fourth, the Secretary-General's decision was appropriate and inevitable, a recognition of the need to bring a fair and final end to a longstanding and destabilizing controversy.

II. The Mixed Commission (1966-1970)

3. I begin with the implementation of the Geneva Agreement, following its signature. In 1966 a Mixed Commission was established, in accordance with Articles I and II of the Agreement, as Mr. Reichler has explained, comprising two representatives from each

¹ MG, Vol. I, paras 2.50-2.108.

party. Its task was to seek “satisfactory solutions for the practical settlement of the controversy” arising from Venezuela’s contention of nullity.²

4. The members of the Commission were eminently qualified to perform that role: Guyana’s representatives were the former Chief Justice of British Guiana, Sir Donald Jackson, and the Solicitor General of Guyana, Dr. Mohamed Shahabuddeen (who later served as a Judge at this Court and then at the ICTY). Venezuela’s two representatives were no less illustrious: Luis Loreto (who would serve as a Justice of the Supreme Court of Venezuela) and Dr. Gonzalo Garcia Bustillos (who became Venezuelan Ambassador to Cuba and to the Organization of American States, then Minister of the General Secretariat of the Presidency of Venezuela). Between 1966 and 1970 the Commission held 16 meetings, and the Commissioners published biannual reports. Yet the work yielded no progress towards a practical solution. This was largely due to the parties’ inability to agree on the Commission’s mandate: Guyana focused on Venezuela’s contention of nullity of the arbitral award, whereas Venezuela addressed how much of Guyana’s Essequibo territory should be relinquished to it, or subjected to a programme of “joint development”.³ As Dr. Shahabuddeen put it, the process failed “because of Venezuela’s deliberate refusal to recognise the plain meaning of Article I of the Geneva Agreement”; this made it “impossible to grapple with the main burden of the task entrusted to the Mixed Commission”.⁴
5. The Venezuelan Commissioners understood what failure entailed. In 1966, they explicitly acknowledged that if the Commission was unable to resolve the controversy then:

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 Feb. 1966) (Annex 4 to Guyana’s Application).

³ Cooperative Republic of Guyana, Ministry of Foreign Affairs, *Memorandum on the Guyana/Venezuela Boundary* (2 Nov. 1981), reprinted in U.N. General Assembly, 36th Session, Review of the Implementation of the Declaration on the Strengthening of International Security, U.N. Doc A/C/1/36/9 (9 Nov. 1981), pp. 7-8.MG, Vol. III, Annex 54.

⁴ *Minutes of the Third Meeting, XI Session of the Mixed Commission* (16 Feb. 1970), p. 5.

“[T]he juridical examination of the question would if necessary, be proceeded with, in time, by some international tribunal in accordance with article IV of the Geneva Agreement.”⁵

6. The Commission’s progress was further impeded by Venezuela’s open hostility towards Guyana. In October 1966, for example, Venezuelan armed forces invaded and occupied Guyana’s half of Ankoko Island, then constructed military installations and an airfield there. Guyana protested against this flagrant breach of its sovereignty.⁶ Within two years of the invasion of Ankoko Island, the President of Venezuela, Raúl Leoni, issued a decree purporting to annex Guyana’s territorial sea up to the mouth of the Essequibo River.⁷ Guyana again protested.⁸ To this day, Ankoko Island remains under unlawful Venezuelan occupation, and Venezuela claims the maritime area off the coast of Guyana as its own.
7. In 1970, with the failure of the Mixed Commission to reach agreement, Article IV(1) of the Geneva Agreement became applicable. This required the Governments of Guyana and Venezuela to:

“without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations”⁹

8. Guyana and Venezuela were unable to reach agreement. In view of the impasse, the Prime Minister of Trinidad and Tobago, Dr. Eric Williams, moved to a moratorium on the dispute resolution process under Article IV of the Geneva Agreement. Guyana welcomed the initiative, given Venezuela’s escalating threats, which undermined Guyana’s stability, development and territorial integrity.

⁵ United Kingdom, Ministry of External Affairs, *First Interim Report of the Mixed Commission* (30 Dec. 1966), p. 3. MG, Vol. II, Annex 41.

⁶ *Note Verbale* from the Prime Minister and Minister of External Affairs of Guyana to the Minister of Foreign Relations of Venezuela, No. CP(66)603 (21 Oct. 1966). MG, Vol. II, Annex 40.

⁷ By note dated 19 July 1968, Guyana denounced a Decree by President Raúl Leoni which “purported to annex as part of the territorial waters and contiguous zone of Venezuela a belt of sea lying along the coast of Guyana between the mouth of the Essequibo River and Waini Point.” *Note Verbale* from the Ministry of External Affairs of Cooperative Republic of Guyana to the Embassy of the Bolivarian Republic of Guyana (19 July 1968). MG, Vol. II, Annex 43.

⁸ *Note Verbale* from the Ministry of External Affairs of Cooperative Republic of Guyana to the Embassy of the Bolivarian Republic of Venezuela in Guyana (19 July 1968). MG, Vol. II, Annex 43.

⁹ 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) (Annex 4 to Guyana’s Application).

III. The Protocol of Port of Spain (1970-1982)

9. On 18 June 1970, the parties concluded the Protocol of Port of Spain. Venezuela and Guyana agreed to “suspend[]” the operation of Article IV for an initial term of 12 years. During that period they would “explore all possibilities of better understanding between them and between their peoples”.
10. Four days after the Protocol entered into force, Venezuela acknowledged “the lack of any progress at the Mixed Commission”, and “the sad but unquestionable deterioration in relations between Venezuela and Guyana”. An official Venezuelan memorandum described the Protocol as a “happy outcome” and “a compromise” that was “closer to Venezuela’s original proposal than that of Guyana”.¹⁰
11. By Article II of the Protocol, Guyana and Venezuela agreed to refrain from making assertions of sovereignty over the territory of the other while the Protocol was in force. Nevertheless, in November 1981 Venezuela reasserted its “claims to the Essequibo territory”,¹¹ and sought to deter international investment in Guyana’s Essequibo region. Following Venezuela’s formal notice of termination, on 18 June 1982 the Protocol expired. As Venezuela’s Foreign Minister explained, this allowed “the full reactivation of the procedures indicated in the Geneva Agreement”.¹²

IV. Events following the expiry of the Protocol of Port of Spain

12. Article III of the Protocol provided that upon its expiry, the functioning of Article IV of the Geneva Agreement “shall be resumed at the point at which it has been suspended”. In mid-1982, Guyana and Venezuela were therefore once more required

¹⁰ Government of the Republic of Venezuela, *Exposition of Motives for the Draft Law Ratifying the Protocol of Port of Spain* (22 June 1970), reprinted in Republic of Venezuela, Ministry of Foreign Affairs, Claim of Guyana Esequiba, Documents 1962-1981 (1981). MG, Vol. II, Annex 47.

¹¹ Cooperative Republic of Guyana, Ministry of Foreign Affairs, *Memorandum on the Guyana/Venezuela Boundary* (2 Nov. 1981), reprinted in U.N. General Assembly, 36th Session, *Review of the Implementation of the Declaration on the Strengthening of International Security*, U.N. Doc A/C.1/36/9 (9 Nov. 1981), p. 12. MG, Vol. III, Annex 54.

¹² *Declaration* of the Minister of Foreign Affairs of the Republic of Venezuela (10 Apr. 1981), reprinted in Republic of Venezuela, Ministry of Foreign Affairs, Claim of Guyana Esequiba: Documents 1962-1981 (1981). MG, Vol. II, Annex 49.

by Article IV(1) of the Geneva Agreement to choose “one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations”.

13. The parties were unable to reach agreement. Guyana proposed judicial settlement; Venezuela insisted on diplomatic negotiations.¹³ With no consensus, Article IV(2) required the parties to “refer the decision as to the means of settlement to an appropriate international organ upon which they both agree”. Guyana proposed three possible bodies as the “appropriate international organ”: the ICJ, the UN General Assembly, or the UN Security Council.¹⁴ Venezuela rejected all three. In September 1982 it explained that:

“Venezuela has become convinced that the most appropriate international organ to choose a means of settlement is the Secretary General of the United Nations, which organ accepted this responsibility...and *whose role has been expressly agreed upon by the parties in the text itself of the Geneva Agreement.*”¹⁵

14. A month later, Venezuela reiterated that:

“in order to comply with the provisions of Article IV (2) of the Geneva Agreement...Venezuela wishes to reaffirm its conviction that it would be most practical and appropriate to entrust the task of choosing the means of settlement directly to the Secretary General of the United Nations. Since it is evident that no agreement exists between the parties in respect of the choice of an international organ to fulfil the functions provided for it in Article IV (2), *it is obvious that this function now becomes the responsibility of the Secretary General of the United Nations.*”¹⁶

15. In the absence of agreement, Article IV(2) required the parties to refer the decision as to the UN Secretary-General. This was clearly understood by both parties.¹⁷ On 31

¹³ Cooperative Republic of Guyana, Ministry of Foreign Affairs, *Press Release* (30 Mar. 1983). MG, Vol. III, Annex 62; U.N. General Assembly, 37th Session, *Agenda item 9*, U.N. Doc. A/37/PV.16 (4 Oct. 1982), paras 287-288. MG, Vol. III, Annex 57.

¹⁴ See U.N. General Assembly, 37th Session, *Agenda item 9*, U.N. Doc A/37/PV/.26 (11 Oct. 1982), paras 212-215. MG, Vol. III, Annex 58.

¹⁵ *Letter* from the Minister of Foreign Affairs of the Republic of Venezuela to the Minister of Foreign Affairs of the Cooperative Republic of Guyana (19 Sept. 1982). MG, Vol. III, Annex 56.

¹⁶ *Letter* from the Minister of Foreign Affairs of the Republic of Venezuela to the Minister of Foreign Affairs of the Cooperative Republic of Guyana (15 Oct. 1982). MG, Vol. III, Annex 59.

¹⁷ *Letter* from the Minister of Foreign Affairs of the Cooperative Republic of Guyana to the Minister of Foreign Affairs of the Republic of Venezuela (28 Mar. 1983). MG, Vol. III, Annex 61.

March 1983, Secretary-General Javier Pérez de Cuéllar confirmed that both Governments had asked him to act under Article IV(2), and that he would inform the parties on how he would discharge that responsibility.¹⁸

16. In August 1983, the Secretary-General despatched the Under-Secretary-General for Special Political Affairs, Diego Cordovez, to visit both countries. During the meetings, both parties “reaffirmed their readiness to cooperate fully with the Secretary-General in the discharge of his responsibility under the Geneva Agreement”. They also provided “a wide range of information” which was “most carefully studied” to ensure that “the choice of the means of settlement will facilitate a definitive and durable resolution of the controversy”.¹⁹
17. Between 1984 and 1989, the parties engaged in regular meetings and discussions at the diplomatic and ministerial levels, as Mr. Cordovez assisted the Secretary General under Article IV(2). In early 1990, the Secretary-General decided that a “Good Offices Process” would be used as the first means of settlement, to be conducted by his Personal Representative.
18. A “Good Offices Process” is not explicitly listed in Article 33 of the UN Charter. Nevertheless, as Venezuela expressly acknowledges in its recent Memorandum in respect of these proceedings,²⁰ it falls under the residual category of “other peaceful means” of dispute settlement. Thus, as Venezuela recognizes, the Secretary-General did not begin with the means in the order set out in Article 33, namely “negotiation, enquiry, mediation, conciliation” etc. It is noteworthy that Venezuela did not object to his choice of Good Offices on that basis, or any other basis. To the contrary, Venezuela welcomed the Secretary General’s decision.²¹ It is common ground that, in taking that decision, the Secretary-General acted in full compliance with the powers and responsibility conferred upon him by the parties under Article IV(2) of the Geneva

¹⁸ *Letter* from the Secretary-General of the United Nations to the Minister of Foreign Affairs of the Cooperative Republic of Guyana (31 Mar. 1983). MG, Vol. III, Annex 63.

¹⁹ *Telegram* from the Secretary-General of the United Nations to the Minister of Foreign Affairs of the Cooperative Republic of Guyana (31 Aug. 1983), p. 2. MG, Vol. III, Annex 64.

²⁰ See Venezuela’s Memorandum, para 78.

²¹ See Venezuela’s Memorandum, para 33.

Agreement. Venezuela accepted the choice he took, including its reasons, rationale and basis under the Agreement.

V. The Good Offices Process (1990-2014)

19. From 1990 onwards successive Secretaries-General appointed a series of distinguished Personal Representatives to conduct the Good Offices Process. The first was Professor Sir Alister McIntyre of Grenada, former Secretary-General of CARICOM, a renowned academic and statesman. He served until 1999, when he was succeeded by Oliver Jackman of Barbados, a distinguished jurist, diplomat and Judge of the Inter-American Court of Human Rights, who served for eight years until his death in 2007. Professor Norman Girvan of Jamaica, the former Secretary-General of the Association of Caribbean States, served as the third Personal Representative, from 2010 until his death in 2014.
20. Over 24 years, from 1990 to 2014, the parties and successive Personal Representatives and Secretaries-General engaged in intensive efforts to reach a satisfactory resolution of the controversy through the Good Offices process. Those endeavours included annual meetings between the parties' Foreign Ministers and the Secretary-General himself.
21. Throughout this period Guyana and Venezuela repeatedly reaffirmed their commitment to the process mandated by the Geneva Agreement. In 1993, for example, the parties issued a joint statement in which they "reiterated" their "deep and unswerving commitment to the peaceful resolution of issues within the framework of the 1966 Geneva Agreement".²² In 1998, they issued a further joint statement to express appreciation for the efforts of the Secretary-General's Personal Representative and "reaffirmed their decision to continue to avail themselves of the [Good Offices] Process, in order to reach a final settlement as called for by the Geneva Agreement".²³

²² Government of the Cooperative Republic of Guyana and Government of the Republic of Venezuela, *Joint Statement* (5 Apr. 1993). MG, Vol. III, Annex 67.

²³ Government of the Cooperative Republic of Guyana and Government of the Republic of Venezuela, *Joint Communiqué* (23 July 1998), p. 3. MG, Vol. III, Annex 70.

22. Notwithstanding its repeated assertions of its commitment to a peaceful resolution, the Good Offices Process was marred by armed military incursions from Venezuela into Guyanese territory on numerous occasions, including 2007²⁴, 2013²⁵ and 2014.²⁶ This resulted in the unlawful seizure and destruction of Guyanese property, and the unlawful detention and abduction of Guyanese citizens. Venezuela also objected to investment and infrastructure projects in the Essequibo region, undermining Guyana's development.²⁷
23. By 2014 the parties were no closer to a resolution than they had been when the Secretary General was first entrusted with selecting the means of settlement, some 31 years earlier. Five decades had now passed since the Geneva Agreement, with no meaningful progress. In the face of such failure, and confronted by a renewed Venezuelan campaign of threats, Guyana concluded there was no point in continuing the Good Office Process. It proposed that the Secretary-General use other means of settlement, as provided by Article IV(2) of the Geneva Agreement, with its *renvoi* to Article 33 of the U.N. Charter.
24. On 2 December 2014, Guyana notified Venezuela of its proposal.²⁸ Venezuela recognised that the controversy must be resolved in accordance with the Geneva Agreement.²⁹

VI. Events in 2015 - 2016

25. In September 2015, UN Secretary-General Ban Ki-moon met with the Presidents of Guyana and Venezuela. He wrote to the parties to outline proposals for "The Way

²⁴ See *Note Verbale* from the Ministry of Foreign Affairs of the Cooperative Republic of Guyana to the Embassy of the Bolivarian Republic of Venezuela in Guyana, No. DG/2/11/2007 (15 Nov. 2007). MG, Vol. III, Annex 74.

²⁵ See D. Scott Charbol, "Venezuelan soldiers weren't allowed entry-govt", *Demerara Waves* (13 Sept. 2013). MG, Vol. III, Annex 78.

²⁶ Note Verbale from the Ministry of Foreign Affairs of the Cooperative Republic of Guyana to the Ministry of People's Power for External Relations of the Bolivarian Republic of Venezuela, No. 815/2014 (1 July 2014). MG, Vol. III, Annex 83.

²⁷ See Guyana's Memorial, para 2.76.

²⁸ *Letter* from the Minister of Foreign Affairs of the Cooperative Republic of Guyana to the Minister of the People's Power for External Relations of the Bolivarian Republic of Venezuela (2 Dec. 2014). MG, Vol. III, Annex 86.

²⁹ *Letter* from the Minister of the People's Power for External Relations of the Bolivarian Republic of Venezuela to the Minister of Foreign Affairs of the Republic of Guyana (19 June 2015). MG, Vol. III, Annex 95.

Forward”. He explained that if a practical solution was 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”. Until then, the Secretary-General pledged, he would “do his utmost to assist the parties” to reach an agreement via the ongoing Good Offices process.³⁰

26. Following that announcement, the parties and the Secretary-General’s *Chef de Cabinet* met on several occasions. Once more the discussions were overshadowed by Venezuelan threats. In February 2016, for example, Venezuela’s Foreign Minister re-asserted “rights over the Essequibo” in a statement to the United Nations.³¹ In May that year, Guyanese officials monitoring the Essequibo region of Guyana were shot at by Venezuelan armed forces.³² Multiple other military incursions into Guyana’s territory were reported.³³ The evidence is set out in the pleadings.³⁴

27. Against a backdrop of escalating tensions, on 15 December 2016, Secretary-General Ban Ki-moon stated that it had proved impossible “to bridge the differences between the parties”; he announced “an extensive stocktaking” of the Good Offices Process, which would continue “for one final year”, with a new Personal Representative and “a strengthened mandate of mediation”. Thereafter, and significantly, the Secretary-General set out a clear condition to underpin a time limited extension:

“If, by the end of 2017, the Secretary-General concludes that significant progress has not been made toward arriving at a full agreement for the solution of the controversy, he will choose the International Court of

³⁰ *Letter* from Chef de Cabinet of the United Nations to the President of Guyana (12 Nov. 2015). MG, Vol. IV, Annex 100.

³¹ This was referred to by Hon. Carl Greenidge, Vice President and Minister of Foreign Affairs, in a statement before the National Assembly in February 2016. Government of the Cooperative Republic of Guyana, *Proceedings and Debates of the National Assembly of the First Session (2015-2016) of the Eleventh Parliament of Guyana under the Co-operative Republic of Guyana held in the Parliament Chamber, Public Buildings, Brickdam, Georgetown* (11 Feb. 2016). MG, Vol. IV, Annex 102. *Statement* of the Minister of Foreign Affairs of the Cooperative Republic of Guyana to the National Assembly (11 Feb. 2016). MG, Vol. IV, Annex 101.

³² *Note Verbale* from the Ministry of Foreign Affairs of the Cooperative Republic of Guyana to the Ministry of People’s Power for External Relations of the Bolivarian Republic of Venezuela, No. 1075/2016 (1 June 2016). MG, Vol. IV, Annex 104.

³³ *Letter* from the Minister of Foreign Affairs of the Cooperative Republic of Guyana to the Secretary-General of the United Nations (9 Nov. 2016). MG, Vol. IV, Annex 109.

³⁴ Guyana’s Memorial, paras 2.83-2.84.

Justice as the next means of settlement, unless both parties jointly request that he refrain from doing so.”³⁵

28. Secretary-General Ban Ki-moon added that his successor, António Guterres, had “expressed his concurrence with [the decision]”.³⁶ It was apparent that the decision was taken on the basis of advice given by the UN Legal Adviser.

29. In response, Venezuela expressed a preference for further negotiations. Nevertheless, it recognised that

“the Geneva Agreement...grants to the Secretary General of the United Nations the power to choose the means of pacific settlement of disputes within Article 33 of the United Nations Charter”³⁷

30. For its part, Guyana, acting in accordance with the Geneva Agreement, complied with the Secretary-General’s decision and pledged to engage wholeheartedly in the final year of the Good Offices Process with an enhanced mandate of mediation.³⁸

VII. The final year of the Good Offices Process with an enhanced mandate of mediation

31. On 1 January 2017, António Guterres succeeded Ban Ki-moon as UN Secretary-General. A month later the new Secretary-General appointed the distinguished Norwegian diplomat and jurist, Dag Nylander, as his Personal Representative. Detailed terms of reference were agreed, and he undertook to keep the Secretary-General “fully abreast” of the Good Offices Process.³⁹

32. Numerous meetings and exchanges took place throughout 2017. This included three rounds of intensive, multi-day, formal, bilateral and confidential meetings in Greentree,

³⁵ U.N. Secretary-General *Note to Correspondents: The Controversy between Guyana and Venezuela* (16 Dec. 2016). MG, Vol. IV, Annex 111.

³⁶ *Ibid.*

³⁷ Ministry of the People’s Power for External Relations of the Bolivarian Republic of Venezuela, *Press Release: Venezuela celebrates UN decision to continue Good Offices to resolve dispute with Guyana over the Essequibo* (16 Dec. 2016). MG, Vol. IV, Annex 112.

³⁸ *Letter from the President of the Cooperative Republic of Guyana to the Secretary-General of the United Nations* (22 Dec. 2016). MG, Vol. IV, Annex 116. See also Government of Guyana, *Statement on the Decision by the United Nations Secretary-General* (16 Dec. 2016). MG, Vol. IV, Annex 113.

³⁹ *Letter from the Secretary-General of the United Nations to the President of the Cooperative Republic of Guyana* (23 Feb. 2017). MG, Vol. IV, Annex 117.

New York attended by senior delegations, including the parties' Foreign Ministers. Mr President, I pause to indicate that we have noted what Venezuela asserts in its Memorandum as regards Guyana's attitude and approach to the Greentree meetings.⁴⁰ That claim is neither accurate nor fair, but since it was agreed by all that what passed would be kept strictly confidential we have nothing further to add. What matters most, and this is a matter of public record, is the conclusion of the Secretary-General: despite a full year of intensive efforts, there was no discernible progress towards a resolution of the controversy arising from Venezuela's contention of nullity.

Decision of the Secretary-General to Choose the Court as the Next Means of Settlement

33. On 30 January 2018, consistent with what he had communicated to the parties on 15 December 2016, the Secretary-General issued a public statement and sent letters to each of the parties, announcing he had chosen the Court as the next means of settlement. Despite the intensive efforts, the Secretary General had concluded that:

*“significant progress has not been made toward arriving at a full agreement for the solution of the controversy. Accordingly, the Secretary-General has fulfilled the responsibility that has fallen within the framework set by his predecessor in December 2016, and has chosen the International Court of Justice as the means to be used for the solution of the controversy.”*⁴¹

VIII. Conclusion

34. Mr. President, Members of the Court, the record is clear. More than fifty years have passed since the signing of the Geneva Agreement. Four years were fruitlessly spent before a Mixed Commission, from 1966 to 1970. Twelve years were then spent on an equally unavailing suspension of the Geneva Agreement, from 1970 to 1982. Thirty-seven years ago this week, Guyana and Venezuela jointly entrusted the Secretary-General with exclusive, unfettered and irrevocable responsibility for selecting “the means of settlement” of the controversy. After six years of further discussions between the parties and the Secretary-General's representative, the Good Offices Process was established in 1990, with an enhanced mandate of mediation in 2017. That means of

⁴⁰ Venezuela's Memorandum, para 58 and Annex, pages 143-146.

⁴¹ U.N. Secretary-General, *Statement attributable to the Spokesman for the Secretary-General on the border controversy between Guyana and Venezuela* (30 Jan. 2018). MG, Vol. IV, Annex 126.

settlement ran its course for more than a quarter of a century. It produced no progress whatsoever. Nothing. Rien.

35. The existence, basis, validity and nature of the Secretary-General's right to select that process has never been called into doubt. To the contrary, Venezuela and Guyana have repeatedly and consistently reaffirmed his exclusive responsibility and right under the Geneva Agreement to select the means of settlement. Venezuela has never previously disputed the Secretary-General's discretion to select the means of settlement from those listed in Article 33 of the UN Charter.
36. The Good Offices Process bore no fruit. In 2018, the Secretary-General concluded that "significant progress" had not been made towards resolving the controversy. That conclusion was reasonable and justified. In those circumstances, the Secretary-General was entitled – and indeed positively required by the words of Article IV(2) of the Geneva Agreement – to "choose another of the means stipulated in Article 33 of the Charter of the United Nations".
37. The Secretary-General's choice of judicial resolution by the Court was reasonable. It was based on legal advice, and it was lawful. The Secretary-General could not be expected to go on forever with a hopeless and useless exercise. He did not take an impermissible "shortcut[]", as Venezuela puts it in its recent Memorandum.⁴² Rather, after decades of futile negotiations and mediation, the Secretary-General concluded, in the exercise of the responsibility, rights and discretion granted to him by the Geneva Agreement, that the next means of settlement shall be judicial resolution by an independent tribunal applying international law. The Secretary-General proceeded with care and deliberation. He had a number of options available to him. He chose this Court, the principal judicial organ of the United Nations. That was a first. It was a reasonable choice, it was a sensible choice, and it fell within the discretion conferred upon him by the Parties under Article IV(2) of the Geneva Agreement.
38. Mr President, Guyana expresses the hope that the Court will not undercut the Secretary-General's careful and deliberative approach, one that was intended to assist in the process of bringing a long-standing dispute to an end. Guyana invites the Court to give

⁴² Venezuela's Memorandum, para 84.

effect to the Secretary-General's binding decision under the Geneva Agreement, to confirm that the Secretary-General acted lawfully and correctly. Guyana has full faith in the Court, acting under Article IV of the Geneva Agreement, and applying established principles of international law, to confirm that the Secretary-General got it right.

39. Mr. President, Members of the Court, I thank you for your kind courtesy and patient attention, and ask you to call Professor Pellet to the podium, to address in more detail the legal basis for the decision taken by the Secretary-General, the lawfulness and binding effect of that decision, and the jurisdiction this Court plainly has.