



**APPLICATION
INSTITUTING PROCEEDINGS
IN THE INTERNATIONAL COURT OF JUSTICE**

**CO-OPERATIVE REPUBLIC OF GUYANA
v.
BOLIVARIAN REPUBLIC OF VENEZUELA**

MARCH 29, 2018

APPLICATION INSTITUTING PROCEEDINGS

To the Registrar of the International Court of Justice.

The undersigned, duly authorized by the Government of the Cooperative Republic of Guyana, has the honour to submit to the International Court of Justice, in accordance with Articles 36(1) and 40(1) of the Statute of the Court and Article 38 of the Rules of Court, this Application instituting proceedings against the Bolivarian Republic of Venezuela.

I. INTRODUCTION

1. By this Application, Guyana requests the Court to confirm the legal validity and binding effect of the Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899¹ (“1899 Award”).

2. Pursuant to the Treaty of Arbitration Between Great Britain and the United States of Venezuela, signed 2 February 1897 at Washington² (“Washington Treaty”), the 1899 Award was “a full, perfect, and final settlement” of all questions relating to determining the boundary line between the colony of British Guiana and Venezuela.

3. Between November 1900 and June 1904, an Anglo-Venezuelan Boundary Commission identified, demarcated and permanently fixed the boundary established by the 1899 Award. On 10 January 1905, the Commissioners signed a Joint Declaration and accompanying maps in accordance with the 1899 Award³ (“1905 Agreement”).

4. At all times following the 1899 Award and 1905 Agreement, until the independence of Guyana in 1966, the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) accepted that the Award and the Agreement finally settled all territorial claims and permanently fixed the land boundary between British Guiana and Venezuela. At all times since its independence in 1966, Guyana has accepted that the 1899 Award and 1905 Agreement are valid and legally binding on both Guyana – as successor to the United

¹ Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, decision of 3 October 1899 (1899) XXVIII RIAA 331-340 (Annex 2).

² 5 UKTS 67 (Annex 1).

³ The 1905 Agreement was recorded in the official record of the Ministry of Foreign Affairs of Venezuela under “treaties and international agreements in force” as the “Acts of the Mixed Border Commission that involve international agreement (1900-1905)”. Ministerio de Relaciones Exteriores, *Tratados Públicos y Acuerdos internacionales de Venezuela: Volumen 3 (1920-25)* [1927] p. 604 (Annex 3).

Kingdom – and Venezuela, and that the boundary has always been and remains that which was fixed by the 1899 Award and 1905 Agreement.

5. For its part, between 1899 and 1962 Venezuela consistently and repeatedly expressed its unconditional acceptance of the legal validity and binding force of the 1899 Award and 1905 Agreement, and respected the boundary with British Guiana that was fixed thereby.

6. Venezuela changed its position in 1962, as the United Kingdom was making final preparations for the independence of British Guiana. Sixty-three years after the 1899 Award was issued, Venezuela formally asserted for the first time that the Award was “arbitrary”, and therefore “null and void”. Venezuela threatened not to recognize the new State, or its boundaries, unless the United Kingdom agreed to set aside the 1899 Award and the 1905 Agreement, and cede to Venezuela all of the territory west of the Essequibo River, which was awarded to British Guiana in 1899.

7. Negotiations between the United Kingdom and Venezuela led to 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, signed at Geneva on 17 February 1966⁴ (“Geneva Agreement”). It provided for recourse to a series of dispute settlement mechanisms to finally resolve the controversy caused by Venezuela’s reversal of position on the validity of the 1899 Award, and its refusal to continue its acceptance of the boundary demarcated in 1905. Guyana acceded to the Geneva Agreement following its independence on 26 May 1966.

8. For more than fifty years, since the entry into force of the Geneva Agreement, the Parties have had recourse to the means of settlement specified in the Agreement, but have failed to resolve the controversy. Throughout this period, until the present day, Guyana’s sovereignty, security, and development have been jeopardized by Venezuela’s refusal to recognize the long-settled boundary, and its claim to more than two-thirds of Guyana’s land territory, which is home to more than one-quarter of its population.

9. Venezuela has never produced any evidence to justify its belated repudiation of the 1899 Award. Its prolonged acceptance of the Award, from 1899 until 1962, recalls the

⁴ 561 UNTS 323 (Annex 4).

Case Concerning the Arbitral Award by the King of Spain, where the Court rejected Nicaragua’s similar contention that a 1906 Award on the boundary between Nicaragua and Honduras was “null and void”, because:

*... Nicaragua by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award. Nicaragua’s failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion at which the Court as arrived.*⁵

10. The Geneva Agreement authorized the United Nations Secretary-General, in the absence of an agreement between the Parties, to “decide” which means of dispute settlement under Article 33 of the United Nations Charter they must pursue to achieve a final resolution of the controversy. On signature, the Agreement was sent to Secretary-General U Thant, who responded on 4 April 1966:

*I have made note of the obligations that eventually can fall on the Secretary General of the United Nations by virtue of para 2 of Article IV of the Agreement and it pleases me to inform you that the functions are of such a nature that they can be appropriately carried out by the Secretary General of the United Nations.*⁶

11. Successive Secretaries-General likewise accepted the authority conferred and the obligations imposed on them by the Geneva Agreement. As detailed below, between January 1990 and January 2018, they each chose a Good Offices Process, carried out under their supervision, as the means of peaceful settlement of the controversy between Guyana and Venezuela over the validity of the 1899 Award and the finality of the boundary established thereunder.

12. On 30 January 2018, nearly 52 years after the signing of the Geneva Agreement, Secretary-General António Guterres determined that the Good Offices Process had failed to achieve a peaceful settlement of the controversy. He then took a formal and binding decision, under Article IV, paragraph 2 of the Agreement, to choose a different

⁵ ICJ Reports 1960 p192, at pp213-214.

⁶ Letters of Secretary-General U Thant to Dr Ignacio Iribarren Borges, Minister 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 (Annex 5).

means of settlement under Article 33 of the Charter. In identical letters to both Parties, he communicated the terms of his decision that, pursuant to the authority vested in him by the Geneva Agreement, the controversy shall be settled by recourse to the International Court of Justice. A public statement issued on his behalf, on the same date, declared that the Secretary General “has chosen the International Court of Justice as the means to be used for the solution of the controversy. [...]”.⁷

13. Guyana files this Application pursuant to the Secretary-General’s decision. In so doing, it places its faith in the Court to resolve the controversy in accordance with its Statute and jurisprudence, based on the fundamental principles of international law, including the sanctity of boundary treaties, the binding force of arbitral awards, and respect for the sovereignty and territorial integrity of States.

II. JURISDICTION OF THE COURT

14. The Court has jurisdiction over the controversy addressed in this Application under Article 36, paragraph 1, of its Statute, pursuant to the mutual consent of Guyana and Venezuela, given by them in Article IV, paragraph 2, of the 1966 Geneva Agreement. In that provision of the Agreement, they mutually conferred upon the Secretary-General of the United Nations the authority to choose the means of settlement of the controversy and, on 30 January 2018, the Secretary-General exercised his authority by choosing judicial settlement by the Court.

15. The Geneva Agreement is in force between the Parties, Guyana having acceded to it upon its independence in 1966.⁸ Venezuela, too, accepts that the Geneva Agreement is an “international treaty signed by Venezuela and Guyana which governs as Law the territorial controversy on the Essequibo”.⁹

⁷ <<https://www.un.org/sg/en/content/sg/statement/2018-01-30/statement-attributable-spokesman-secretary-general-border>>

⁸ Article VIII of the Geneva Agreement provides that:

Upon the attainment of independence by British Guiana, the Government of Guyana shall thereafter be a party to this Agreement, in addition to the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Venezuela.

⁹ Ministry of Foreign Affairs of Venezuela, Note Verbale, N° 000322, 28 February 2018.

16. Article IV, paragraph 2, of the Geneva Agreement provides, in relevant part, that if the Parties are unable to arrive at a full agreement for the solution of the controversy over the validity and binding force of the 1899 Award, and are further unable to agree on the means of its settlement:

they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, 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.

17. In conformity with Article IV, paragraph 2, having failed to resolve the controversy, Guyana and Venezuela called upon Secretary-General Javier Pérez de Cuéllar to “choose” a means stipulated in Article 33 of the Charter for the peaceful settlement of their dispute. On 31 August 1983, he responded by sending the Under-Secretary-General for Special Political Affairs, Diego Cordovez, to visit Caracas and Georgetown “for the purpose of ascertaining the position which the parties might wish to provide relevant to the choice of means for a peaceful settlement”. He did so “in order to facilitate the discharge of his responsibility under the terms of article IV(2) of the Agreement on 17 February 1966 concerning the controversy between Guyana and Venezuela”.

18. Following these consultations, the Secretary-General chose a “Good Offices Process” as the initial means of settlement. Between 1990 and 2016, successive Personal Representatives were appointed by the Secretary-General for this purpose, including Alister McIntyre of Grenada (1990-1999, appointed by Secretary-General Pérez de Cuéllar), Oliver Jackman of Barbados (1999-2007, appointed by Secretary-General Kofi Annan), and Norman Girvan of Jamaica (2010-2014, appointed by Secretary-General Ban Ki-moon). Despite a quarter century of effort, however, the Good Offices Process failed to produce any progress in arriving at a settlement of the controversy.

19. Faced with these unsuccessful efforts, in December 2016,¹⁰ after consultations with Guyana and Venezuela, Secretary-General Ban Ki-moon recalled that under Article IV, paragraph 2, of the Geneva Agreement, the Parties had entrusted him with “the power to choose means for the settlement of the controversy from among those contemplated in Article 33 of the Charter of the United Nations”. In the exercise of this authority, he decided that: “Initially, the Good Offices Process will continue for one final year, until the end of 2017, with a strengthened mandate of mediation”, and that:

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 Justice as the next means of settlement...

20. In conformity with his predecessor’s decision, on 23 February 2017, Secretary-General António Guterres decided to continue the Good Offices Process for an additional year, and appointed Dag Nylander of Norway as his Personal Representative. During 2017, the Parties held regular exchanges with the Personal Representative including three formal meetings at Greentree Estate in New York. By the end of 2017 however, there had been no significant progress – indeed no progress at all – toward a solution of the controversy.

21. Secretary-General Guterres, recognizing that the Good Offices Process had failed to produce significant progress, decided, in conformity with Article IV, paragraph 2 of the Geneva Agreement and Article 33 of the Charter, that the next means of settlement would be adjudication by the International Court of Justice. His decision was communicated in letters to the Parties dated 30 January 2018, and made public on the same date.

22. The letters confirm that Article IV, paragraph 2 of the Geneva Agreement “confers upon the Secretary-General of the United Nations the power and responsibility to choose, from among those means of peaceful settlement contemplated in Article 33 of the Charter of the United Nations, the means of settlement to be used for the resolution of the controversy” and that “[i]f the means so chosen does not lead to a solution of the controversy, Article IV, paragraph 2 of the Geneva Agreement goes on to confer upon the Secretary-

¹⁰ Letter of Secretary-General Ban Ki-moon to H.E Mr David Arthur Granger President of the Republic of Guyana, 15 December 2016 (Annex 6).

General the responsibility to choose another means of peaceful settlement contemplated in Article 33 of the Charter.” The letters then inform the Parties of his decision:

Consistently with the framework set my predecessor, I have carefully analyzed the developments in the good offices process during the course of 2017.

Consequently, I have fulfilled the responsibility that has fallen to me within the framework set by my predecessor and, significant progress not having been made toward arriving at a full agreement for the solution of the controversy, have chosen the International Court of Justice as the next means that is now to be used for its solution.¹¹

23. Guyana welcomed the Secretary-General’s decision that, after more than fifty years of unsuccessful dispute settlement efforts, the Court would be “the next means” for solution of the controversy with Venezuela. In the words of Guyana’s Foreign Minister, Hon. Carl Greenidge:

Guyana has always held the view that the ICJ is the appropriate forum for the peaceful and definitive settlement of the controversy, and is pleased that that view has prevailed under the process developed by both Secretary General Ban Ki Moon and Secretary General Antonio Guterres.

Guyana will not allow factors extraneous to the controversy to influence its referral to the Court; but it will continue the advancement of peaceful relations with Venezuela whose people are the brothers and sisters of Guyanese. In this context, Guyana acknowledges the Secretary General’s suggestions for the immediate future.

That Guyana has stood firm against Venezuela’s attempt to reopen a territorial boundary settled and recognised for half a century before its independence, and done so despite the manifest unequal strengths between the two countries, is to our national credit. Guyana, as one of the world’s small developing countries, is pleased that its reliance on the rule of law internationally has been the underpinning of its national sovereignty.¹²

¹¹ Letter of Secretary-General António Guterres to H.E Mr David Arthur Granger President of the Republic of Guyana, 30 January 2018 (Annex 7).

¹² Statement by the Ministry of Foreign Affairs on the Decision by the United Nations Secretary-General on the Border Controversy Between Guyana and Venezuela, 30 January 2018.

24. Although Venezuela has expressed dissatisfaction with the Secretary-General's decision, it has reaffirmed that the Geneva Agreement is a valid and binding treaty, and that the obligations assumed by Guyana and Venezuela thereunder remain in full force. A Venezuelan Communiqué of 31 January 2018, the day after the Secretary-General's decision, declared:

Venezuela ratifies the full validity of the Geneva Agreement of February 17, 1966, signed and ratified between our country and the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana, an international treaty that governs as Law the Territorial Controversy between the parties, validly recognized and registered before the UN, the only way to the final solution of this opprobrious heritage of British colonialism.

25. Accordingly, with the Secretary-General having decided, pursuant to the authority mutually conferred upon him by the Parties in Article IV, paragraph 2 of the 1966 Geneva Agreement, that the controversy between Guyana and Venezuela shall now be settled by the International Court of Justice, the Court has jurisdiction over the controversy that is the subject of this Application.

III. STATEMENT OF FACTS

A. The 1899 Award

26. During the late 19th Century, conflicting territorial claims by the United Kingdom and Venezuela led to the brink of war. Each State claimed the entire territory between the mouth of the Essequibo River in the east, and the Orinoco River in the west. The United States of America, in the person of President Grover Cleveland, pressed for settlement of the dispute by means of international arbitration. This led to the signature of the Washington Treaty by the United Kingdom and Venezuela on 2 February 1897.¹³ Its Preamble set out its object and purpose:

... to provide for an amicable settlement of the question which has arisen between their respective Governments concerning

¹³ Ratifications exchanged at Washington, June 14 1897 and subsequently published in the *Gaceta Oficial* N° 7071 on 24 July 1897.

the boundary between the Colony of British Guiana and the United States of Venezuela, having resolved to submit to arbitration the question involved...

27. Article I provided that:

An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela.

28. Article II provided that:

The Tribunal shall consist of five jurists; two on the part of Great Britain, nominated by the members of the Judicial Committee of Her Majesty's Privy Council, namely, the Right Honourable Baron Herschell, Knight Grand Cross of the Most Honourable Order of Bath, and the Honourable Sir Richard Henn Collins, Knight, one of the Justices of Her Britannic Majesty's Supreme Court of the Judicature; two on the part of Venezuela, nominated, one by the President of the United States of Venezuela, namely, the Honourable Melville Weston Fuller, Chief Justice of the United States of America, and one nominated by the Justices of the Supreme Court of the United States of America, namely, the Honourable David Josiah Brewer, a Justice of the Supreme Court of the United States of America; and of a fifth jurist to be selected by the four persons so nominated, or in the event of their failure to agree within three months from the exchange of ratification of the present Treaty, to be so selected by His Majesty the King of Sweden and Norway. The jurist so selected shall be the President of the Tribunal.¹⁴

29. Pursuant to Article II, the distinguished Russian jurist Fyodor de Martens was selected as the President of the Tribunal.

30. Article III set out the jurisdiction of the Tribunal:

The Tribunal shall investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana, and shall determine the

¹⁴ Baron Herschell died shortly after his appointment and was replaced by the Right Hon. Lord Russell of Killowen, Lord Chief Justice of England.

boundary-line between the Colony of British Guiana and the United States of Venezuela.

31. Article XIII provided for the binding force of the Arbitral Award:

The High Contracting Parties engage to consider the result of the proceeds of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators.

32. Following extensive written pleadings and documentary evidence submitted by the parties, the Arbitral Tribunal held hearings in Paris between 15 June and 27 September 1899 in 54 sessions of four hours each. After deliberations, the Tribunal delivered a unanimous Award on 3 October 1899. The Award fixed the land boundary between British Guiana and Venezuela as commencing, in the north, on the Atlantic Coast at Punta Playa, and extending southward to the border with Brazil.

33. The Award gave Venezuela the entire mouth of the Orinoco River, and the land on both sides. Venezuela treated this as a success, because the mouth of the Orinoco was considered by it to be the most important territory in dispute. On 7 October 1899, four days after the Award was issued, the Venezuelan Minister to London, José Andrade, described it as follows:

Greatly indeed did justice shine forth when, in spite of all, in the determining of the frontier the exclusive dominion of the Orinoco was granted to us, which is the principal aim which we set ourselves to obtain through arbitration. I consider well spent the humble efforts which I devoted personally to this end during the last six years of my public life.

34. Having lost its claim to the mouth of the Orinoco River, the United Kingdom received and accepted what it considered to be the less valuable territory to the east extending to the Essequibo River. On 5 December 1899, in his State of the Union Message to the Congress of the United States, President William McKinley, who succeeded President Cleveland, celebrated the Award and its acceptance by both Parties:

The International Commission of Arbitration appointed under The Anglo-Venezuelan Treaty of 1897 rendered an award on October 3 last whereby the boundaries line between Venezuela and British Guiana is determined; thus ending a controversy which had existed for the greater part of the century. The

award, as to which the Arbitrators were unanimous, while not meeting the extreme contention of either party, gives to Great Britain a large share of the interior territory in dispute and to Venezuela the entire mouth of the Orinoco, including Barima Point and the Caribbean littoral for some distance to the eastwards. The decision appears to be equally satisfactory to both parties.

35. Consistent with the 1897 Washington Treaty and the 1899 Award, between 1900 and 1904 the land boundary between British Guiana and Venezuela was demarcated by a Joint Boundary Commission consisting of British and Venezuelan representatives. The Commission drew up and signed an Official Boundary Map, and on 10 January 1905, issued a Joint Declaration stating in relevant part:

- (1) That they regard this Agreement as having a perfectly official character with respect to the acts and rights of both Governments in the territory demarcated; that they accept the positions of the points mentioned below as correct, the result of the mean of the observations and calculations made by both Commissioners together or separately as follows...*
- (2) That the two maps mentioned in this Agreement, signed by both Commissioners, are exactly the same ... containing all the enumerated details relating to the aforesaid demarcation, with a clear specification of the Boundary line according with the Arbitral Award of Paris.*

36. In his Report of 20 March 1905, the Venezuelan Commissioner, Abraham Tirado, declared that:

The honourable task is ended and the delimitation between our Republic and the Colony of British Guiana an accomplished fact. I, satisfied with the part which it has been my lot to play, congratulate Venezuela in the person of the patriotic Administrator who rules her destinies and who sees with generous pride the long-standing and irritating dispute that has caused his country so much annoyance settled under his regime.¹⁵

37. In a Diplomatic Note to the British Foreign Office dated 4 September 1907, Venezuela rejected a request by the United Kingdom, originally proposed in the Report of the Joint Commissioners, for a slight adjustment of the boundary, and in doing so confirmed the validity and finality of the 1899 Award and the 1905 Agreement:

¹⁵ F.M Hodgson to A. Lyttelton, Colonial Office, London, October 12, 1905 (CO. 111/546).

... I have the honour to inform you that the question of the modification of the boundary-line ... was laid before Congress ... and that Congress, concurring in the opinion of the Federal Executive, ... declared the modification proposed to be unacceptable, principally because it amounts to a veritable cession of territory.

*The ratification of the Federal Executive is thus limited to the work done by the Mixed Delimitation Commissions in accordance with the Paris Award ...*¹⁶

38. Venezuela further confirmed its recognition of the 1899 Award and the 1905 Agreement, *inter alia*, in working with the Commissioners of Brazil and the United Kingdom during the demarcation of the boundary between Brazil and British Guiana to ensure accuracy at the tri-junction point where the boundaries of Brazil, British Guiana, and Venezuela meet, based on the southern terminal point of the boundary established by the 1899 Award and the 1905 Agreement.¹⁷

39. Prior to 1962, Venezuela never altered its official position that its boundary with British Guiana was definitively and permanently determined by the 1899 Award and Agreement of 1905. For example, in diplomatic exchanges between 1941 and 1943, Venezuela's Minister of Foreign Affairs, Esteban Gil Borges, responded to concerns by the United Kingdom about certain Venezuelan press reports with the reassurance that the boundary between British Guiana and Venezuela was "*chose jugée*" and that the views expressed by the press "were not shared by him or his Government".¹⁸

B. Venezuela's Change of Position

40. On 18 December 1961, the Prime Minister of British Guiana, Cheddi Jagan, speaking before the United Nations General Assembly's Special Political and Decolonization (Fourth) Committee, called for the prompt independence of the colony. This was followed, on 14 February 1962, by a letter from the Permanent Representative of Venezuela to the Fourth Committee officially claiming, for the first time since the 1899 Award, that "there is a

¹⁶ Señor de J. Paul to Mr. O'Reilly, British Embassy, Caracas, September 4, 1907 (FO. 420/245) 31846.

¹⁷ Exchange of Notes between the United Kingdom and Brazil approving the General Report of the Special Commissioners Appointed to Demarcate the Boundary-Line between British Guiana and Brazil, 15 March 1940 (51 UKTS 1946) at para 12.

¹⁸ D St Clair Gainer to JV T W T Petowne, Foreign Office, London, November 3, 1944 (FO. 371) 38814.

dispute between my country and the United Kingdom concerning the demarcation of the frontier between Venezuela and British Guiana”. In a complete reversal of Venezuela’s historic position on the validity of the 1899 Award, he claimed in a memorandum annexed to his letter:

The award was the result of a political transaction carried out behind Venezuela’s back and sacrificing its legitimate rights. The frontier was demarcated arbitrarily, and no account was taken of the specific rules of the arbitral agreement or of the relevant principles of international law.

Venezuela cannot recognize an award made in such circumstances. ...

41. Contemporaneous evidence demonstrates that Venezuela’s change of position, at the same time that British Guiana was preparing for independence, was not a mere coincidence. A dispatch of 15 May 1962 from the American Ambassador in Caracas, C. Allan Stewart, to the United States Department of State concerning the “border question” reported that:

President Betancourt [of Venezuela] professes to be greatly concerned about an independent British Guiana with Cheddi Jagan as Prime Minister. He suspects that Jagan is already too committed to communism and that his American wife exercises considerable influence over him... This alarm may be slightly simulated since Betancourt’s solution of the border dispute presupposes a hostile Jagan.

His plan: Through a series of conferences with the British before Guiana is awarded independence a cordon sanitaire would be set up between the present boundary line and one mutually agreed upon by the two countries (Venezuela and Britain). Sovereignty of this slice of British Guiana would pass to Venezuela. ...

42. Venezuela sought to justify its claim for a major “slice of British Guiana” on the basis of a secret memorandum, purportedly written in 1944 by Severo Mallet-Prevost – a junior counsel for Venezuela in the 1899 arbitration – with instructions that it be made public only upon his death, which it was in 1949. The memorandum alleged, without claiming or setting forth any evidence of direct knowledge, that the 1899 Award had been the result of some form of collusion between the two British arbitrators and the Russian President of the Tribunal. Venezuela did not invoke this “posthumous document” until 1962, when it raised it as a pretext for seeking territorial concessions on the eve of Guyana’s independence.

43. With a view to resolving this controversy, the United Kingdom and Venezuela agreed at the United Nations Fourth Committee in November 1962 to examine documentary material relevant to the 1899 Award. A Joint Press Communiqué of 7 November 1963 reported that British and Venezuelan experts would examine each other's archives and submit reports on their findings to their respective Governments as the basis for further discussions. The representative of the United Kingdom in the Fourth Committee emphasized however that this did not imply any recognition of Venezuela's contentions in regard to changing the boundary determined by the 1899 Award:

*In making this offer, I must make it very clear that it is in no sense an offer to engage in substantive talks about revision of the frontier. That we cannot do; for we consider that there is no justification for it.*¹⁹

44. The experts subsequently made their respective examinations. According to the United Kingdom, there was no evidence whatsoever to support Venezuela's contention that the 1899 Award is null and void, or of the alleged facts upon which it purported to rely. Nonetheless, by February 1965 Venezuela had issued an official map labeling the territory west of the Essequibo River that had been awarded to the United Kingdom as "Guayana Esequiba" identifying it as the "Zona en Reclamación".

C. The 1966 Geneva Agreement

45. The talks between the United Kingdom and Venezuela resulted in the adoption of the 1966 Geneva Agreement, which was registered with the United Nations on 5 May 1966. Guyana achieved independence three weeks later, on 26 May 1966, and expressed its accession to the Agreement. That accession has always been recognised by Venezuela.

46. Article I of the Agreement called for the establishment of a Mixed Commission "with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void."

47. Article IV, paragraph 1 of the Agreement provided that:

¹⁹ United Nations General Assembly, 17th Session, Special Political Committee, 349th Meeting, 13 November 1962, agenda item 88, Document A/SPC/72.

If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions. Those Governments shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations.

48. The Mixed Commission's four-year mandate expired on 17 February 1970 without an agreement for the solution of the controversy. The Parties then signed a Protocol to the Geneva Agreement reaffirming their commitment to it but agreeing to a moratorium on dispute settlement efforts, which lasted for 12 years. At the end of that period, the Parties again attempted to reach agreement "on the means of peaceful settlement provided in Article 33 of the Charter," as required by Article IV, paragraph 1 of the Geneva Agreement, but were unable to do so.

49. Accordingly, pursuant to Article IV, paragraph 2 of the Geneva Agreement, the Parties referred the decision as to the means of settlement to the Secretary-General. It was in response thereto that successive Secretaries-General decided upon settlement by the Good Offices Process, until, finally, on 30 January 2018, after that means had failed to achieve progress in arriving at a settlement of the controversy, Secretary-General Guterres decided that the next means of settlement is the International Court of Justice.

D. Violations of Guyana's Sovereignty and Territorial Integrity

50. From Guyana's independence in 1966 until the present, Venezuela has repeatedly violated Guyana's sovereignty and territorial integrity, including by sending its military and other officials across the border into Guyanese territory in violation of the 1899 Award and the 1905 Agreement. These and other actions have been aimed at pressuring Guyana, a much smaller and weaker neighbour, to cede the so-called "Guayana Esequiba" territory west of the Essequibo River to Venezuela.

51. In October 1966, Venezuelan military forces seized the eastern half of Ankoko Island in the Cuyuni River, which is on the Guyana side of the boundary established by the 1899 Award and the 1905 Agreement. Venezuela subsequently built military installations and an airstrip on this Guyanese territory, and, despite Guyana's clear objections and protests, continues to occupy it unlawfully to the present day.

52. There have been numerous other incursions into and overflights over Guyana's sovereign territory by Venezuelan military forces. These include, to provide just a few examples:

- a. Repeated overflight of Guyanese territory by Venezuelan F-15 fighter jets, including in October 1999, on the 100th anniversary of the 1899 Award;
- b. The incursion by Venezuelan soldiers and bombing of two Guyanese pontoons on the Cuyuni River in November 2007;
- c. The landing of Venezuelan soldiers at Eteringbang in August 2013;
- d. The landing of Venezuelan officials at Eteringbang in November 2013 to assert a claim of Venezuelan sovereignty;
- e. The incursion and seizure of property by Venezuelan soldiers at Bruk-up in June 2014.
- f. The incursion of Venezuelan soldiers near Eteringbang in May 2016, and their firing of weapons at officials of the Guyana Geology and Mines Commission.

53. Venezuela has also taken or threatened action to interfere with, discourage and prevent economic development activities authorized by Guyana in the territory west of the Essequibo River. It has repeatedly blocked Guyanese and foreign investors from carrying out projects in the territory and its adjacent maritime area, and threatened to take further similar actions. Examples include:

- a. On 15 June 1968, the notice placed by Venezuela in the *London Times* expressing strong exception to and warning against any "concessions either granted or to be granted by the Guyana Government over the territory stretching to the West of the Esequivo [sic] River..."
- b. In July 1968, the Decree by President Raúl Leoni asserting Venezuela's sovereignty over the land territory west of the Essequibo River, and its concomitant sovereignty over the territorial waters adjacent to the coast of that territory, between the boundary fixed by the 1899 Award in the west, and the mouth of the Essequibo River in the east, a distance of some 250 kilometres beyond the land boundary terminus at Punta Playa;
- c. In June 1981, the letter by Venezuela to the President of the World Bank objecting to financing for Guyana's Mazuruni hydroelectric project;

- d. In June 1982, the demarche by Venezuela to the European Economic Community to refrain from participation in Guyana's economic development;
- e. In August 1993, the note from Venezuela's Foreign Ministry protesting Guyana's issuance of concessions in the maritime area directly adjacent to the territory between the boundary fixed by the 1899 Award in the west, and the mouth of the Essequibo River in the east;
- f. In July 2000, the intervention by Venezuela with the People's Republic of China to object to the issuance of a forestry concession by Guyana to Jilin Industries, Ltd, a Chinese company;
- g. In August 2013, the seizure by the Venezuelan Navy of the *RV Teknik Perdana* research vessel, which had been contracted by Guyana's United States licensee, Anadarko Petroleum Corporation, while the vessel was conducting transitory seismic activities off Guyana's Essequibo coast. The vessel and its crew were arrested and detained in Venezuela, resulting in the cessation of all further exploration activities in Guyana's waters by the licensee;
- h. In April 2014, the objections from Venezuela against a joint hydroelectric project planned by Guyana and Brazil;
- i. In September 2014, a diplomatic note from Venezuela warning Guyana to refrain from all economic activity west of the Essequibo River;
- j. In July 2015, the Decree issued by President Nicolás Maduro asserting Venezuela's sovereignty over the entire Guyanese coast between the boundary established by the 1899 Award and the mouth of the Essequibo River, and the assertion of exclusive jurisdiction in all the waters adjacent to that coast out to a distance beyond 200 nautical miles;
- k. In August 2015, the objection by Venezuela to mining concessions issued by the Guyana Geology and Mines Commission;
- l. In February 2018, the objection by Venezuela to Guyana's issuance of petroleum licenses to Exxon in waters adjacent to the mouth of the Essequibo River, and

Venezuela's warning that Guyana and its licensee should not take any actions under that license; and

- m. In February 2018, the protest by Venezuela regarding the issuance of concessions on Guyana's land territory by the Guyana Forestry Commission to Rong-An Inc. and RL Sudhram.

54. Guyana has reason to fear further violations of its sovereignty by its more powerful neighbour, absent a definitive settlement of the controversy by the Court. According to Venezuela's 31 January 2018 Communiqué:

The President of the Bolivarian Republic of Venezuela, Nicolás Maduro Moros, guarantees the Venezuelan people that they will continue defending the sovereign rights over the Guayana Esequiba and calls for national unity to protect the most sacred interests of the Nation.

Venezuela's sun rises in the Essequibo.

IV. DECISION REQUESTED

55. Based on the foregoing, and as further developed in the written pleadings in accordance with any Order that may be issued by the Court, Guyana requests the Court to adjudge and declare that:

- (a) The 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is valid and binding upon Guyana and Venezuela;
- (b) Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela enjoys full sovereignty over the territory west of that boundary; Guyana and Venezuela are under an obligation to fully respect each other's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;
- (c) Venezuela shall immediately withdraw from and cease its occupation of the eastern half of the Island of Ankoko, and each and every other territory which is recognized as Guyana's sovereign territory in accordance with the 1899 Award and 1905 Agreement;

- (d) Venezuela shall refrain from threatening or using force against any person and/or company licensed by Guyana to engage in economic or commercial activity in Guyanese territory as determined by the 1899 Award and 1905 Agreement, or in any maritime areas appurtenant to such territory over which Guyana has sovereignty or exercises sovereign rights, and shall not interfere with any Guyanese or Guyanese-authorized activities in those areas;
- (e) Venezuela is internationally responsible for violations of Guyana's sovereignty and sovereign rights, and for all injuries suffered by Guyana as a consequence.

V. RESERVATION OF RIGHTS

- 56. Guyana reserves its rights to supplement or amend the present Application.

VI. APPOINTMENT OF AGENT AND CO-AGENT

57. Guyana has appointed the Honourable Carl Greenidge, Minister of Foreign Affairs of Guyana, as Agent for the proceedings, and Sir Shridath Ramphal and Audrey Waddell as Co-Agents.

58. It is requested that all communications be notified to the Agent and Co-Agents at the following postal and email addresses:

a. Postal Address:

Ministry of Foreign Affairs, Cooperative Republic of Guyana,
Takuba Lodge,
254 South Road,
Georgetown, Guyana.

b. Email Addresses:

- i. Agent: carlbg@minfor.gov.gy
- ii. Co-Agent Sir Shridath Ramphal: ssramphal@msn.com
- iii. Co-Agent Ambassador Audrey Waddell: awaddell@minfor.gov.gy

Respectfully,

Hon. Carl B.Greenidge
Vice President and Minister of Foreign Affairs
Cooperative Republic of Guyana
Agent

29 March 2018

CERTIFICATION

I certify that the annexes are true copies of the documents reproduced therein.

Hon. Carl B. Greenidge
Vice President and Minister of Foreign Affairs
Cooperative Republic of Guyana
Agent

LIST OF ANNEXES

1. Treaty of Arbitration Between Great Britain and the United States of Venezuela, signed at Washington, 2 February 1897.
2. Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, decision of 3 October 1899.
3. Agreement Between the British and Venezuelan Boundary Commissioners with Regard to the Map of the Boundary, 10 January 1905.
4. Agreement to Resolve the Controversy Between Venezuela and the United Kingdom of Great Britain and Northern Ireland Over the Frontier Between Venezuela and British Guiana, signed at Geneva, 17 February 1966;
5. Letters of Secretary-General U Thant to Dr Ignacio Iribarren Borges Minister 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.
6. Letter of Secretary-General Ban Ki-moon to H.E Mr David Arthur Granger President of the Republic of Guyana, 15 December 2016.
7. Letter of Secretary-General António Guterres to H.E Mr David Arthur Granger President of the Republic of Guyana, 30 January 2018.