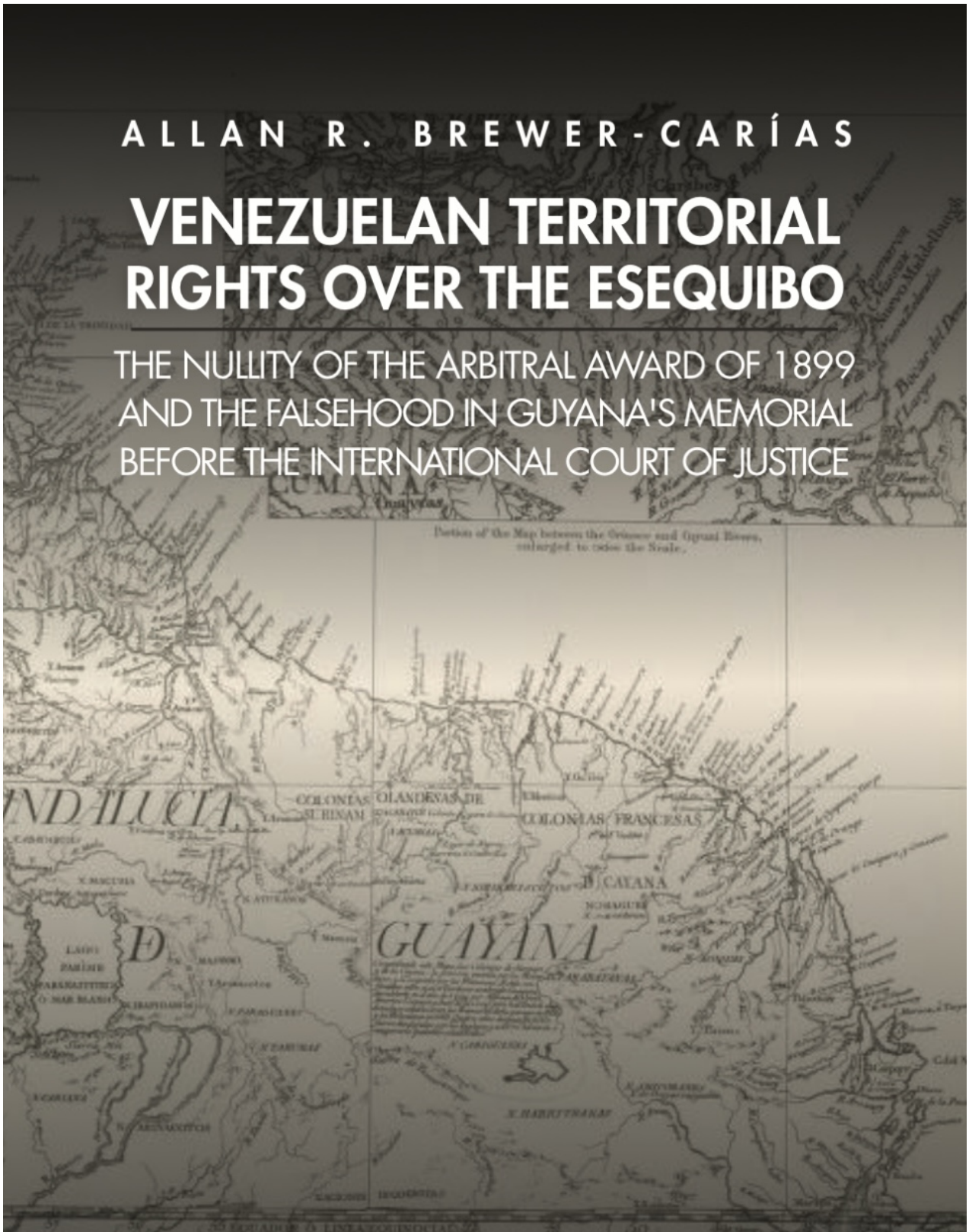
ALLAN R. BREWER-CARÍAS

VENEZUELAN TERRITORIAL RIGHTS OVER THE ESEQUIBO

THE NULLITY OF THE ARBITRAL AWARD OF 1899 AND THE FALSEHOOD IN GUYANA'S MEMORIAL BEFORE THE INTERNATIONAL COURT OF JUSTICE



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VENEZUELAN TERRITORIAL RIGHTS OVER THE ESEQUIBO, THE NULLITY OF THE ARBITRAL AWARD OF 1899 AND THE FALSEHOOD IN GUYANA'S *MEMORIAL* BEFORE THE INTERNATIONAL COURT OF JUSTICE

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Detail of the *Mapa Geográfico de América Meridional* by Juan de la Cruz Cano y Olmedilla (1795), Published after 1799 under the supervision of Francisco de Miranda.
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CONTENT

CONTENT

INTRODUCTIVE NOTE

After more than half a century of complaints from Venezuela that the Arbitration Award related to the border between the former Colony of British Guiana and the United States of Venezuela, of October 3, 1899, is null; by virtue of a decision by the Secretary General of the United Nations in January 2018, referring the definitive solution of the Guayana Esequiba controversy to a judgment by the International Court of Justice in accordance with the express provision of the 1966 Geneva Agreement; Venezuela, at last, has now the opportunity and the duty to present its case and defend its rights before said International Court of Justice.

Based on the decision of the Secretary General of the UN, Venezuela was, in fact, formally sued in 2018 by the Cooperative Republic of Guyana before the International Court of Justice, which issued a judgment on December 18, 2020 deciding to have jurisdiction to rule on the validity of the Arbitration Award of 1899 and the related question of the delimitation of the border between both countries.

This judgment is mandatory, as will be the Court´s judgment on the merits of the controversy, namely, the annulment -or not- of the Arbitral Award of 1899 as well as the determination of the border between Venezuela and Guyana. The Charter of the

United Nations, as well as the Statute of the International Court of Justice and Public International Law, are clear on the nature and effects of the judgments of the aforementioned Court.

Venezuela has no other alternative but to defend her rights, since the trial would continue even without her involvement. Defending the rights of Venezuela as a defendant before the Court that will hear such claim is a duty that the Government must assume, cannot hesitate to comply with, nor can it subject to a so-called "popular consultation," as was suggested in some occasion.

The judicial defense of the country´s rights is to be exercised before the court of the case, consulting, yes, the best specialists in law in Venezuela and the world, but this cannot be subject to the results of any "popular consultation", among other reasons because the judicial process is ongoing and Venezuela has already appeared.

At the trial, Guyana submitted its *Memorial* on March 8, 2022, and the Court has set a period that elapses on April 8, 2024, for Venezuela´s *Counter-Memorial*.

From the careful reading of the judgments of the International Court of Justice, dated December 18, 2020 and April 6, 2023, as well as Guyana´s *Memorial* (Volume 1, 287 pp.), Venezuela has to answer before the Court, filing her *Counter-Memorial* before April 8, 2024, as established by the Court.

As the matter is of interest to all Venezuelans, we all have the duty to participate, from each one's point of view, to this process, and this is what motivated me to publish these notes, as a contribution to what I believe could be part of the arguments that could be taken into account by those who, on behalf of the

country, will have to present at the International Court of Justice the arguments to defend the territorial rights of Venezuela.

This book contains three parts that have been prepared at two different moments of:

The *First Part* is my contribution to the work of the Academy of Political and Social Sciences of Venezuela in 2021, and is a study on "The creation of the Republic and her territory in the Venezuelan constitutions of the 19th century. A legacy of the constitutional process that began with the "Fundamental Law of the Republic of Colombia" enacted by Simón Bolívar, in Angostura, on December 17, 1819" ("*La formación de la República y de su territorio en las constituciones de Venezuela del siglo XIX. Un legado del proceso constitucional que comenzó con la "Ley Fundamental de la República de Colombia" promulgada por Simón Bolívar, en Angostura, el 17 de diciembre de 1819*"). Said work was presented at the "Second Meeting on the issue of Guayana Esequiba," organized by the Academy on May 20, 2021; and was printed in the *Boletín de la Academia de Ciencias Sociales y Políticas. Homenaje al Dr. Alfredo Morles Hernández*, No. 164, April-June 2021, Caracas 2021, pp. 121-162. It was also included in the book coordinated by Héctor FAÚNDEZ LEDEZMA and Rafael BADELL, *La controversia del Esequibo***,** Academia de Ciencias Políticas y Sociales, Editorial Jurídica Venezolana, Caracas 2022, pp. 89-138.

The *Second* and *Third Parts* are studies I prepared after having read (i) the judgment of the International Court of Justice dated December 18, 2020, whereas, in response to the Guyana lawsuit against Venezuela filed on March 29, 2018, the Court decided on her jurisdiction to judicially decide the disagreement between Guyana and Venezuela, with jurisdiction to rule on the validity or nullity of the 1899 Arbitration award and on the determination of the border between both countries; (ii) the

Memorial submitted by Guyana before the International Court of Justice on March 8, 2022, supporting her claim against Venezuela; and (iii) the judgment of the International Court of Justice dated April 6, 2023, declaring inadmissible the preliminary objection that Venezuela raised before the Court seeking to include the United Kingdom in the proceedings.

After the latter, the International Court of Justice set Venezuela´s *Counter-Memorial* until April 8, 2024, which must be prepared by those responsible for the country's defense in the next eleven months.

New York, May 2023

PART ONE

THE FORMATION OF THE REPUBLIC AND ITS TERRITORY IN THE VENEZUELAN CONSTITUTIONS OF THE XIX CENTURY

A legacy of the constitutional process that began with the "Fundamental Law of the Republic of Colombia" enacted by Simón Bolívar, in Angostura, on December 17, 1819 when the territory of the same was shaped with what corresponded to the General Captaincy of Venezuela created by Carlos III on September 8, 1777

I

THE LEGAL-POLITICAL FORMATION OF THE TERRITORY OF THE VENEZUELAN PROVINCES DURING THE COLONY (1528-1810)

The territory of what began to be the State of Venezuela in 1811 was formed during a long period of 260 years of territorial occupation by the Spanish Crown of Tierra Firme; that is, of the northern part of South America. After the beginning of the exploitation of pearls in the island of Cubagua and the creation of the city of Nueva Cádiz (1508), based on Capitulations that were granted to various conquerors or Adelantados, between 1525 and 1786, the Provinces of Margarita, Venezuela (or Caracas), Nueva Andalucía (or Cumaná), Guayana, Maracaibo and Barinas were created.

These Provinces, as territorial demarcations, responded to the basic territorial structure for the military, the administration and the government and the administration of justice that the Spanish monarchy developed especially for the government and administration of America´s territories, not existing in the Peninsula a similar territorial institution; not having the term itself in the Metropolis even a defined meaning. Actually, in Spain, the province was created only after the Constitution of Cádiz of 1812 was sanctioned, aiming at the uniform organization of the territory.

On the other hand, as the basic territorial unit in America, the Province was the territorial domain where an "Adelantado" exercised his authority at the beginning of the discovering and conquest process, and later a governor, who exerted military power as captain general, being in charge of administrative, government and justice administration functions within the Province.

That territorial organization also led to the creation of Viceroyalties that were formed by a grouping of Provinces in certain territories, or to which others outside their immediate limits were assigned; and the creation of Royal Courts (Reales Audiencias) for the administration of justice, to which various provinces were also assigned. Also, in certain parts of less important Provinces, they were organized into General Captaincies for military purposes.

In the case of the Provinces of the territory of what is now Venezuela, between 1525 and 1777 they developed in isolation, without having any type of integration with each other, in the territory known as *Tierra Firme,* in the north of the river Amazonas. They were organized by the Spanish conquerors based on capitulations or licenses that were successively granted to them by the Crown, with the duty to set up both Spanish and Indigenous towns and cities, encomienda towns, doctrinal towns, and Missions.[1]

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[1] See Allan R. Brewer-Carías, *La Ciudad Ordenada. Estudio sobre "el orden que se ha de tener en descubrir y poblar*" *o sobre el trazado regular de la ciudad hispanoamericana) (Una historia del poblamiento de la América colonial a través de la fundación ordenada de ciudades)*, Segunda edición (Con Presentación de Tomás Ramón Fernández y Prólogos de Graziano Gasparini, Carlos Gómez de Llarena, Federico Vegas y Tony Brewer-Carías), Editorial Jurídica Venezolana, Caracas / New York, 2017.

Those Provinces that shaped what, since 1811, is Venezuela,[2] were the following:

1. *Province of Margarita (1525)*

The Isla de Margarita was granted to Marcelo de VILLALOBOS through capitulations of settlement signed in Madrid on March 18, 1525. The province was attached for political, military and judicial matters, to the then recently created Real Audiencia of Santo Domingo of the Isla Española, and to the Viceroyalty of New Spain (Mexico).[3]

However, by that time the Island had already been populated as a support for the operation and existence of the city of Nueva Cádiz, which since 1508 was the center of the most important pearl exploitation in the Caribbean, located in the island of Cubagua.[4]

In 1739, the Isla de Margarita began to be under the jurisdiction of the Viceroyalty of Nueva Granada, which had been reestablished on August 20 of that year. Judicially, however, it continued under the jurisdiction of the Royal Court (Real Audiencia) of Santo Domingo, until 1786 when the Royal Court (Real Audiencia) of Caracas was created. In addition, since 1777, the Province of Margarita was integrated with the other

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[2] See Allan R. Brewer-Carías, "La formación de Venezuela a través del proceso de poblamiento de las Provincias que dieron origen a su territorio," en Enrique Viloria (Coordinador), *Los Ruidos de la Calle. Homenaje a Guillermo Morón*, Ediciones Pavilo, 2020, pp. 37-112. Available at: http://www.crearensalamanca.com/wp-content/uploads/2020/12/Los-Ruidos-de-la-Calle.-Homenaje-Guillermo-Morón.pdf

[3] See *Recopilación de Leyes de los Reynos de Indias*, Madrid 1943, Volume II, p. 115.

[4] See regarding the detailed study of the history of the Province of Margarita: Guillermo Morón, *Historia de Venezuela*, *op. cit*., Volume I, pp. 265 y ss., Volume II, pp. 7 a 110.

provinces of Venezuela, in the General Captaincy of Venezuela, as a separate political-military unit from the Viceroyalty of New Granada.

2. *Province of Venezuela (1528)*

The province of Venezuela was created through Capitulations signed on March 27, 1528 between King Carlos V and Enrique EINGUER and Gerónimo SAILLER, whereas they were granted or, in their absence, Ambrosio DE ALFINGER and Jorge EINGER, the privilege to discover, conquer, pacify and populate at their "cost and mission" the lands inland from the coasts located to the east of Santa Marta, "which is Cabo de la Vela and the Gulf of Venezuela and Cabo de San Román and other lands as far as Cape Marcapana."[5] The capital was the city of Coro, founded in 1527, until it was moved to Caracas, which had been founded years later (1567). The city of Maracaibo was part of the Province of Venezuela until 1676 when the Province of Maracaibo was created, including the Corregimiento of Mérida and La Grita.

The Province of Venezuela or Caracas was subject to the Viceroyalty of New Spain and in judicial matters to the Royal Audience of Santo Domingo [6] until 1717, when it became part of the Viceroyalty of New Granada and the Royal Audience of Santa Fe. In 1731 it was again transferred to the jurisdiction of the Audiencia de Santo Domingo, but only for a few years, until 1739 when the Viceroyalty of Santa Fe was reorganized and the Province of Venezuela was added to it once again, remaining nonetheless under the jurisdiction of the Audiencia de Santa Fe.

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5 See the text of the Capitulations in G. Morón, *Historia...*, Volume III, pp. 23 a 28; *Cfr.* J. F. Blanco y R. Azpúrua, *op. cit.*, Volume I, p. 36.

6 See *Recopilación de Leyes de los Reynos de Indias*, Madrid 1943, Volume II, p. 115.

In 1742, by Royal Decree of February 12, it was decided to "relieve and exempt the Government and General Captaincy of the Province of Venezuela," from all association with the Viceroyalty of Nueva Granada, as well as ordered and commanded "that the announced Province of Venezuela was to remain from now on with total independence from that Viceroyalty." The Royal Decree also assigned to the Governors of the Province of Venezuela "to ensure compliance with the obligation of those of Maracaibo, Cumaná, Margarita, La Trinidad and La Guayana with respect to illicit trade."[7]

Through this Royal Decree, the Province of Venezuela was transferred to the jurisdiction of the Royal Audience of Santo Domingo, to which it remained linked until 1786, when the Royal Audience of Caracas was created. Before, however, since 1777, the Province of Caracas was integrated with the other provinces of Venezuela, in the General Captaincy of Venezuela, as a separate political-military unit from the Viceroyalty of Nueva Granada with her capital precisely in the city of Caracas.

Later, in 1786, the city of Trujillo was detached from the government of Caracas and added to the Province of Maracaibo; and in 1811, Coro was parted from the Province.

By 1810, the territory of the Province of Caracas covered approximately the territory of the current Falcón, Lara, Portuguesa, Yaracuy, Cojedes, Carabobo, Aragua, Guárico, Miranda States and the Capital District of the Republic of Venezuela.

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[7] See the text of the Capitulations in G. Morón, *Historia*..., Volume III, pp. 23 a 28; *Cfr*. J. F. Blanco y R. Azpúrua, *op. cit*., Volume I, p. 36

3. *Province of Nueva Andalucía or Cumaná (1568)*

The province of Nueva Andalucía or Cumaná was formally established through the Capitulations granted by Felipe II to Diego FERNÁNDEZ DE SERPA on May 5, 1568, by Royal Decree of May 27, 1568, remaining as Governor and Captain General of the Province,[8] dependent of the Royal Audience of Santo Domingo to which it was always subject[9] until 1786, when the Royal Audience of Caracas was created.

This Province was the most important in eastern Venezuela and on several occasions included the provinces of Trinidad and Guayana, extending her original domains until the Amazon River. From 1591 to 1731, the Island of Trinidad was part of a Province of Guayana, under the jurisdiction of the Audiencia de Santa Fe, which from 1731 to 1762 joined that of Nueva Andalucía.[10] The Province of Trinidad de la Guayana continued, however, separated by a Governor and Captain General,[11] joined from 1739 to the Viceroyalty of Nueva Granada and then in 1777, to the General Captaincy of Venezuela. But this was only for two years, since in 1797 Spain lost her domain to England.[12]

In 1810 the territory of the province of Nueva Andalucía or Cumaná covered approximately the territory of the current Anzoátegui, Sucre and Monagas States and part of the current Delta Amacuro State. That same year of 1810, the Province of Barcelona was created separately.

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8 See the text in G. Morón, *op.cit*., Volume II, pp. 357 y 358.

9 See *Recopilación de Leyes de los Reynos de Indias*, Madrid 1943, Volume II, p. 115

10 *Cfr*. G. Morón, *op. cit*., Volume II, p. 113.

11 *Idem*., p. 66.

12 *Cfr*. J. F. Blanco y R. Azpúrua, *op. cit*., Volume II, p. 177.

4. *Province of Guayana (1568)*

The province of Guayana was established by Royal Decree of November 18, 1568 by which the Royal Court of Santa Fe was ordered to grant Capitulation to Gonzalo JIMÉNEZ DE QUESADA to discover and populate the plains, provinces and lands to the east of the Nuevo Reyno de Granada from the Orinoco to the Amazon.[13] This became effective in 1569, and was accomplished by his nephew-in-law, Antonio de BERRÍO[14] who, from 1582, inherited from him the Governorship of Guayana. The Province came under the jurisdiction of the Viceroyalty of New Spain and the Audiencia of Santa Fe,[15] reaching as far as Trinidad on the north eastside, an island that remained integrated (Province of Trinidad and Guayana) until 1731, becoming part, between 1733 and 1762, of the Province of Nueva Andalucía and consequently subjected to the Audiencia of Santo Domingo.

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13 As was said by José del Rey Fajardo S.J, "from the Pauto del Orinoco-Meta-Candelaria up to the Papamene del Amazonas and its hidrograpic nascent complex." *See* José del Rey Fajardo, *La República de las letras en la babel Étnica de la Orinoquia*, Academia Venezolana de la Lengua, Caracas 2015, p. 38.

14 See the text of the Capitulation in G. Morón, *op. cit*., Volume II, pp. 215-216.

15 See *Recopilación de Leyes de los Reynos de Indias*, Madrid 1943, Volume II, p. 115.

Carta de las Presidencias de Santa Fe y Quito 1564

The territory of the Province reached the Amazon, because since the decision of the Council of the Indies on October 12, 1595, the Crown had handed over to BERRÍO all the Amazon capitulations carried out up to that date, that is, "all the Provinces included and comprised between the Orinoco and Marañón Rivers."[16]

In 1762 the Province acquired autonomy, and was subjected to the jurisdiction of the Audiencia de Santa Fe. This situation lasted until 1776, when it once again was subject to the Audiencia de Santo Domingo through the military jurisdiction that had been granted to the Government of the Province of Venezuela. In 1768 the Province of the General Command of Orinoco and Río Negro was added to the Province of Guayana, whose boundaries reached the Amazon to the south. In 1771, by Real Cédula of October 28, the end of the subjection of the Province of Guayana to the orders of the Governor and General

16 *See the reference* in José del Rey Fajardo S.J., *Los hombres de los ríos. Jesuitas en Guayana*, Editorial Jurídica Venezolana, Caracas 2019, p. 63.

Captain of Venezuela was ordered, and with the subsequent subordination to the viceroyalty of Nueva Granada and its Real Audiencia. This lasted only six years, until 1777, when it was subject to the General Captaincy of Venezuela in military matters, and until 1786, in judicial matters, when it passed to the jurisdiction of the Royal Audience of Caracas.[17]

In 1810 the province of Guayana covered approximately the territory of the current Bolívar and Amazonas States and the territory to the east up to the Essequibo River.[18]

5. *Province of Maracaibo (1676)*

The province of Maracaibo was established by Royal Decree of December 31, 1676, when the city of Nueva Zamora de la Laguna de Maracaibo was added to the Government of Mérida and La Grita, and consequently, to the Royal Audience of Santa Fe.[19]

In this way, the Province of Maracaibo was formed, on the one hand, at the expense of the western territory of the Province of Venezuela or Caracas, and on the other, integrating said territory to the Province of Mérida and La Grita. The latter had its origin in the work carried out by Governor Francisco de Cáceres, of the Governorate of Espíritu Santo whose capital was La Grita, founded in 1576, and the subsequent establishment of the Corregimiento of Mérida and La Grita in 1607, which included, also, San Cristóbal and San Antonio.

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17 *Cfr*. G. Morón, *op. cit*., Volume II, pp. 230-231; J. F. Blanco y R. Azpúrua, *op. cit*., Volume I, pp. 105-107.

18 Be means of Decree of 15 October 1817, after the conquest of the Province of Guayana, it was formally incorporated into the Republic, defining her territory with almost all of the east border in the Esequibo river. Text available at http:// www.archivodellibertador; gob.ve/es critos/buscador/spip.php?article2283.

19 *Cfr*. G. Morón, *op. cit.*, Volume III, p. 400.

The Province of Mérida and La Grita,[20] with the rank of Governorate and General Captaincy, was created in 1622, with her capital in Mérida, subject to the Real Audiencia of Santa Fe.[21]

As of 1678, the capital of the Province of Mérida, La Grita and Maracaibo was transferred to the city of Maracaibo; in 1777 the Province was integrated into the General Captaincy of Venezuela and from 1786, it passed to the jurisdiction of the Real Audiencia of Caracas. On that same date, by virtue of the Royal Decree of February 15, 1786, the city of Trujillo, which since her foundation belonged to the Province of Venezuela or Caracas, was added to the Province of Maracaibo. In the same Royal Cédula the territory of the Barinas Command was segregated from the Province to conform a the new Province of Barinas.[22]

By 1810 the territory of the province of Maracaibo covered approximately the territory of the current Venezuelan States of Zulia, Mérida, Táchira and Trujillo. That same year, the provinces of Mérida (including La Grita and San Cristóbal) and Trujillo were established as separate provinces.

6. *Province of Barinas (1786)*

The province of Barinas was created by Real Cédula (Royal Decree) of February 15, 1786[23] whose territory was within the General Captaincy of Venezuela and in the jurisdiction of the Royal Court of Caracas, which had been created that same year.

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[20] See *Recopilación de Leyes de los Reynos de Indias*, Madrid 1943, Volume II, p. 115.

[21] See the document in G. Morón, *op. cit*., vol. 3, p. 380.

[22] See the text in J. F. Blanco y R. Azpúrua, *op. cit*., Volume I. pp. 210-212.

[23] *Idem*.

The territory of the same comprised, approximately, what today are the territories of the States of Barinas and Apure that had been segregated from the Province of Maracaibo to which they belonged.

II

THE INTEGRATION OF THE PROVINCES OF VENEZUELA, FOR THE FIRST TIME, IN THE *CAPITANIA GENERAL DE VENEZUELA* (1777-1793)

As we said before, the aforementioned six provinces developed as isolated and autonomous entities over a period of more than 260 years, subject in terms of their government, to a Governor and Captain General, who was subject to the Crown.

Unlike what happened in other parts of America, where, for example, Viceroyalties were created integrating several provinces (the case, for example, of the Viceroyalty of Nueva España or the Viceroyalty of Peru), those established in *Tierra Firme* did not have any link to each other. Some of them were even governed by different Viceroyalties (the Provinces of Margarita, Venezuela and Nueva Andalucía, for example, were attached to the Viceroyalty of New Spain; and the Provinces of Guayana and Maracaibo, Mérida la Grita to the Viceroyalty of New Granada) and in the legislative and judicial spheres to different Audiencias (the Provinces of Margarita, Venezuela and Nueva Andalucía, for example, to the Real Audiencia of Santo Domingo; and the Provinces of Guayana and Maracaibo, Mérida and La Grita to the Real Audiencia of Santa Fe).

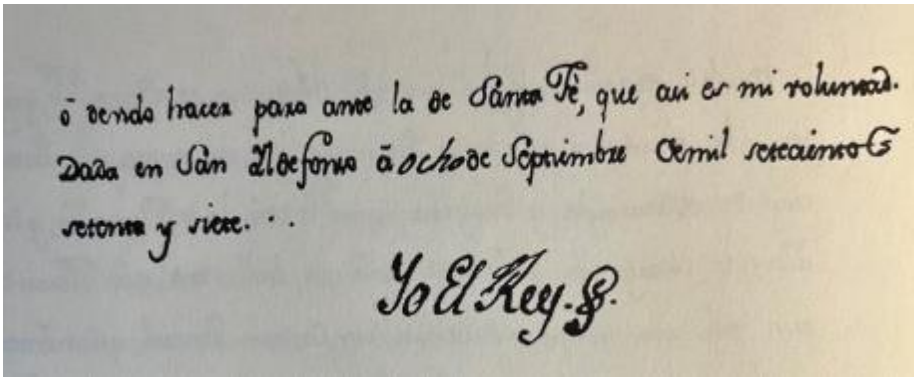
The integration of the territories of these provinces into a single governmental entity was a late process in American history. As mentioned, it began with the foundation of the *Intendencia del Ejército y Real Hacienda* (Army and Royal Treasury Administration) formed by the provinces of Venezuela, Maracaibo, Guayana, Cumaná and the Islands of Margarita and Trinidad, by Real Orden (Royal Order) of king Carlos III of December 8, 1776, for the management of the fiscal administration, and for the policy and promotion of the economic life of the provinces, in charge of an Intendente.

This was followed by the creation of the *Capitanía General de Venezuela* (General Captaincy of Venezuela) established by Royal Decree of September 8, 1777,[24] to unite, from the governmental and military point of view, under the command of a General Captain based in Caracas, a group of scattered provinces that until then, as previously mentioned, had been under the jurisdiction of two different Viceroyalties (Nueva España y Nueva Granada) and two different Audiencias (Santo Domingo and that of the Nuevo Reino de Granada), which "because of the distance they were from their capital Santa Fe, caused the delay in the orders, with serious damages for the Royal service."

For this reason, in 1777 "the absolute separation of the Provinces of Cumaná, Guayana and Maracaibo and the Islands of Trinidad and Margarita from the Viceroyalty and Captaincy

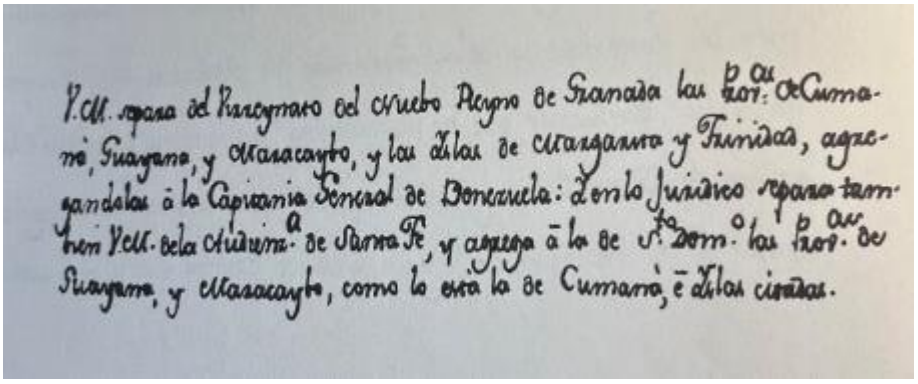
[24] See the text in J. F. Blanco y R. Azpúrua, *Documentos para la historia de la vida pública del Libertador*, Caracas, Ediciones de la Presidencia de la República, 1876, Volume I, p. 129. See F. González Guinán, *Historia Contemporánea de Venezuela*, Volume I, Caracas, 1954, p. 11. See also the text in *La Capitanía General de Venezuela 1777*, Edición de la Presidencia y del Concejo Municipal del Distrito Federal, Caracas, 1977.

General of the Nuevo Reino de Granada" was resolved, with their subsequent addition "…in the governmental and military aspects to the General Captaincy of Venezuela, in the same way that are regarding the management of my Royal Audience, the new Intendancy erected in said Province, and the city of Caracas, its capital."[25]



ō vendo hacer para ante la de Santa Fe, que asi es mi voluntad. Dada en San Ildefonso à ocho de Septiembre de mil setecientos G setenta y siete. . .

Yo El Rey.-S.



Y. All. reparo del Virreynato del dicho Reyno de Granada las Prov.as de Cumaná, Guayana, y Maracaybo, y las Islas de Margarita y Trinidad, agregandolas à la Capitania General de Venezuela: En lo Judicio reparo tambien Y. All. dela Audiencia de Santa Fe, y agrego à la de S.to Dom.o las Prov.as de Guayana, y Maracaybo, como lo está la de Cumaná, ē dhas ciudades.

With this, the provinces of Venezuela, Cumaná, Guayana, Maracaibo, Islas de Margarita and Trinidad were left under the command of a single military governmental unit under the command of a General Capitan based in Caracas, capital of the Province of Venezuela, to whom the various governors owed obey in the military, keeping their political command in each of

25 Véase en J.F. Blanco y R. Azpurua, *op. cit*., p. 129.

their provinces. The integration was of course due to the inconveniences that resulted from the distance between said Provinces and Santa Fe, where the headquarters of the Viceroyalty of New Granada was located. For this reason, in the Royal Decree of September 8, 1777, all judicial matters and appeals were also integrated before the Royal Audience of Santo Domingo, thus ceasing the functions that had been assigned to the Audiencia of Santa Fe.

Subsequently, in 1786, the Real Audiencia of Caracas was created as the highest judicial authority of the provinces, ceasing the functions of the Court of Santo Domingo; and in 1793 the *Real Consulado of Caracas* was created to be in charge of commercial justice, and also, commercial industrial development, public works, and matters concerning navigation and roads, with jurisdiction in all the same provinces of the General Captaincy.[26] All this must be considered, as Caracciolo Parra León observed, "historically and legally, as the territorial and political foundation of the Venezuelan State."[27]

From then on, that General Captaincy of Venezuela had a very extensive territorial scope, reaching the Amazon River to the east, as was always the eastern border of, initially the Provinces of Nueva Andalucía and later the Province of Guayana.

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[26] See the text of the of the Reales Cédulas in the book: *La capitanía General de Venezuela 1777 - 8 de septiembre -1977,* Presidencia de la República, Concejo Municipal del Distrito Federal, Caracas, 1977. See the references in Tulio Chiossone, *Formación Jurídica de Venezuela en la Colonia y la República*, Caracas 1980, p. 89; Guillermo Morón, "El proceso de Integración", *El Nacional*, 26-8-76, p. A-4.

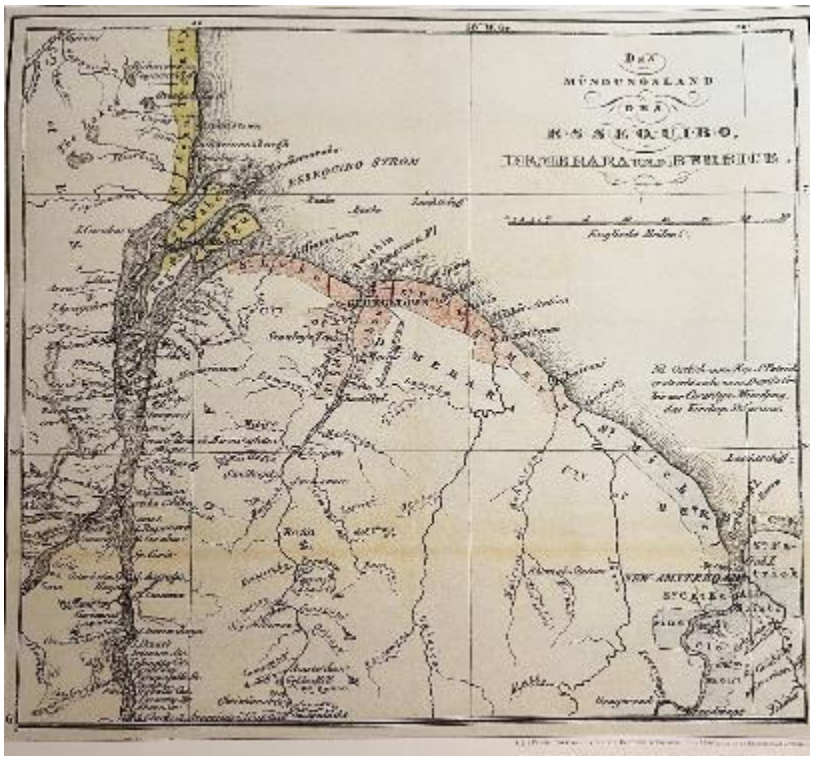
[27] See Caracciolo Parra León, in the "Preliminar"to the book: *La Constitución federal de 1811 y documentos afines,* Academia Nacional de la Historia, Caracas 1959, p. 23-24.

Mapa corográfico de la Nueva Andalucía, Provincias de Cumaná y Guayana, vertientes del Orinoco. Su origen cierto, comunicación con el Amazonas, situación de la Laguna de Parine y nuevas poblaciones, Luis de Surville, 1778

Mapa Geográfico de América Meridional de Juan de la Cruz Cano y Olmedilla (1795), originally prepared under the direction of the Spanish government based on all the cartographic material existing at the time, specifically collected by José de Ayala and the reports of the Missions of the Jesuits and other missionaries. It is perhaps the most important map of South America printed in the twentieth century. Its production was initially commissioned by Thomas Jefferson in 1786 and given the political interest for England and North America for the process of independence of Latin America, it was only published a decade later in 1799, modified by John Faden, with the supervision of Francisco de Miranda, with follow-up in correspondence, among others, with Alexander Hamilton and James Madison. The initial purpose was to delineate the border between Spain and the Portuguese colonies, clearly identifying the area of the Province of Nueva Andalucía and Province of Guayana with extension to the Amazon River; and the border between Venezuela and the Colonies called Surinan on the Essequibo River.

It should be mentioned, however, that on the Atlantic coast of said Guayana Province, since 1648, on the occasion of the Peace Treaties of Münster and Westphalia, through which Spain

recognized the independence of the United Provinces of the Netherlands after the Flanders War or the eighty years wars, it also recognized the existence of Dutch colonies or settlements of a commercial nature in Spanish territories, among them in South America. They were located to the east of the Essequibo River, and exclusively constituted three perfectly delineated settlements on the Berbice, Demarera and Essequibo rivers, with the commitment by the Netherlands not to occupy new territories. With the Treaty, in any case, the border between those Dutch commercial settlements and the Guayana Province of Venezuela was located on the Essequibo. River.



Das Mündungsland des Essequibo, Demerara und Berbice 1847

III

THE TERRITORY OF THE CONFEDERATION OF THE VENEZUELAN PROVINCES DEFINED WITH THEIR NAMING IN THE CONSTITUTIONS OF DECEMBER 21, 1811 AND AUGUST 11, 1819

At the time of the foundation of the *Junta Conservadora de los Derechos de Fernando VII* (Conservative Board of the Rights of Fernando VII) in Caracas, on April 19, 1810,[28] and the beginning of the process of Independence of Venezuela, the territorial framework that existed, according to the provisions of the General Captaincy of Venezuela of 1777, was the following compared in general terms with the current states of the Venezuelan federation:

The Province of Margarita, the territory of the Nueva Esparta State;

The Province of Venezuela or Caracas, the territories of the States of Falcón, Lara, Portuguesa, Yaracuy, Cojedes, Carabobo, Aragua, Guárico, Miranda, and the Capital District; The Province of Cumaná or Nueva Andalucía, the territories of the States of Anzoátegui, Sucre, Monagas and part of the territory of the Delta Amacuro State;

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[28] See in Allan R. Brewer-Carías, *Las Constituciones de Venezuela*, Academia de Ciencias Políticas y Sociales, Caracas 2008, Volume I, pp. 531-533.

The Province of Guayana, the territories of the States of Bolívar, Amazonas and part of the Delta Amacuro State;

The Province of Maracaibo, the territories of the States of Zulia, Mérida, Táchira and Trujillo; and

The Province of Barinas, the territories of the States of Barinas and Apure.

In the months subsequent to April 19, 1810, three new provinces were established: on April 27, a Provincial Board was established in Barcelona, giving rise to the Province of Barcelona, with part of the territory of what was the *Province of Nueva Andalucia or Cumaná*;[29] On September 16, 1810, in the city of Mérida, a Board was constituted that assumed sovereign authority, constituting the Province of Mérida with part of the territory of the Province of Maracaibo, adding the cities of La Grita (11- 10-1810) and San Cristóbal (10-28-1810); and on October 9, 1810, when a Board was constituted, the *Province of Trujillo* was established, with part of the territory that corresponded to the Province of Maracaibo.[30]

Consequently, by the end of 1810, the territory of Venezuela was integrated by the following nine Provinces*: Margarita, Caracas, Cumaná, Guayana, Maracaibo, Barinas, Barcelona, Mérida and Trujillo*.

The solemn declaration of Independence on July 5, 1811[31] was adopted by the representatives of the Provinces of Caracas, Cumaná, Barinas, Margarita, Barcelona, Mérida and Trujillo. Likewise, it was those same representatives, gathered in the

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29 See in J. F. Blanco y R. Azpúrua, *op.cit.,* Volume II, p. 411.

30 See the text in the book: *Las Constituciones Provinciales*, Biblioteca de la Academia Nacional de la Historia, Caracas 1959, pp. 341 a 350.

31 See in Allan R. Brewer-Carías, Las Constituciones de Venezuela, *op. cit*., Volume I, pp. 545-548.

General Congress, who later passed the Federal Constitution of the United Provinces of Venezuela on December 21, 1811.[32] Since the representatives of the Provinces of Guayana and Maracaibo did not participate in these acts, as well as Coro that, although belonging to the Province of Caracas, did not join the declaration of independence and remained subject to the Crown, article 128 of the said Constitution declared that:

> "Once free from the oppression they are subject to, the provinces of Coro, Maracaibo and Guayana, if they can and want to join the Confederation, they will be admitted, and the violent separation in which, to their regret and ours, they have remained, will not alter the principles of equality, justice, fraternity that they shall enjoy, of course, like all the other provinces of the Union."

Based on this provision, once the Province of Guayana had been conquered, by virtue of the fact that it was "for the first time" "under the protection of the arms and laws of the Republic," Bolívar issued a Decree on October 1817, formally declaring that this province "in all its extension is reunited with the territory of Venezuela, and from today will form an integral part of the Republic" (art. 1), dividing it into three departments: the Department of Alto Orinoco, the Department of the Center, and the Department of the Lower Orinoco; identifying the latter with the following boundaries:

> "To the North: the Orinoco currents from the mouth of the Caroní to the mouth of the sea by the big river, and the sea coast up to the Muruca fort exclusive. To the East and South:

[32] *Ídem*, Volume I, pp. 553-579.

> the limits with the foreign possessions. To the West: those that have been indicated to the Department of the center by the East."[33]

That eastern limit of the province "with foreign possessions" was none other than the Essequibo River on whose eastern bank the region known as "Essequibo" of Dutch Guiana had developed; and along the Atlantic coast it continued to "fort Muruca" (Moruco), that had been established in 1726 at the mouth of the Moruco river located in the western part of the mouth of the Pomeroon (Poumaron) river; which was the border with the region known as Pomeroon of Dutch Guiana, where the town of Nieuw Middelburg and the fortress called Nieuw Zeeland (1658) were located.

That territorial demarcation, in any case, was the only one that was made in the Republic, before the sanction of the Constitution of Angostura on August 10, 1819,[34] whereas in the same orientation of the Constitution of 1811, was decreed "by our representatives, *deputies to that effect for the provinces of our territory that have already freed themselves from Spanish despotism*," defining its scope in Title II, Section One, Article 2, by listing the following 10 provinces into which it was divided:

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[33] See "Decreto del Libertador Simón Bolívar fechado en Angostura el 15 de octubre de 1817, por el cual incorpora la Provincia de Guayana a la República de Venezuela y señala sus departamentos." Available at: http://www.archivodellibertador.gob.ve/escritos/buscador/spip.php?article2283

[34] *Ídem*, Volume I, pp. 619-641.

"The territory of the Republic of Venezuela is divided into ten Provinces which are: Barcelona, Barinas, Caracas, Coro, Cumaná, Guayana, Maracaibo, Margarita, Mérida and Trujillo. Its limits and demarcations will be fixed by the Congress".

Carte de la Capitainerie Générale de Caracas,
Francisco de Pons, 1805

IV

THE DEFINITION OF THE TERRITORY OF THE STATE IN THE FUNDAMENTAL LAW OF THE REPUBLIC OF COLOMBIA AS FORMED BY THE OLD CAPITANIA GENERAL OF VENEZUELA OF 1777

Four months after the 1819 Constitution was passed, the same Congress of Angostura, at the proposal of the Liberator Simón Bolívar, who was returning from New Granada after having fought the battles of Pantano de Vargas and Boyacá, approved the Fundamental Law of the Republic of Colombia on December 17, 1819,[35] providing in article 2 that the territory of the new "Republic of Colombia" that was created, was made with the merging of the territories of the "the Republics of Venezuela and New Granada" (art. 1), including the territory of:

> "the former General Captaincy of Venezuela and the Viceroyalty of the New Kingdom of Granada, embracing an extension of 115,000 square leguas (leagues, whose precise terms will be established in better conditions)."

With this Fundamental Law, Venezuelan constitutionalism began to define its territory, not by listing the provinces that had formed it, but with reference to the territory that had belonged to the General Captaincy of Venezuela created in 1777 as a political unit.

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35 *Ídem*, Volume I, pp. 643-644.

With this constitutional formula, therefore, the tacit repeal of the decree of the Liberator of October 15, 1817 took place, whereas, as has already been said, by fixing the eastern border of the province of Guayana on the Essequibo River, had left out a small portion in the line of the beach of the Atlantic Sea to the west of the mouth of the Essequibo river to the Moruco river, not in accordance with the limits of the Province of Guayana in the scope of the Captaincy General of Venezuela, which ran along the entire length of the Essequibo river.

With the enactment of the Fundamental Law of 1819, the Congress of Angostura declared itself in recess to convene a General Congress to meet in the Villa de Nuestra Señora del Rosario in the valleys of Cúcuta. Once the Congress met, this time with representatives not only of the provinces of Venezuela but also of New Granada, it passed its own Fundamental Law of the Union of the people of Colombia dated July 12, 1821,[36] whereas, in the same sense as the Fundamental Law of 1819, on the territory it stated:

> "Art. 5. The territory of the Republic of Colombia will be understood within the limits of the former Captaincy General of Venezuela and the Viceroyalty and Captaincy of the New Kingdom of Granada. But the assignment of its precise terms is reserved for a more opportune time".

Subsequently, in the Constitution of the Republic of Colombia of August 30, 1821 sanctioned by the Congress of Cúcuta, and in accordance with the orientation of the Fundamental Laws of 1819 and 1821, the territory of the Republic was also defined as follows:

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36 *Ídem*, Volume I, pp. 645-646.

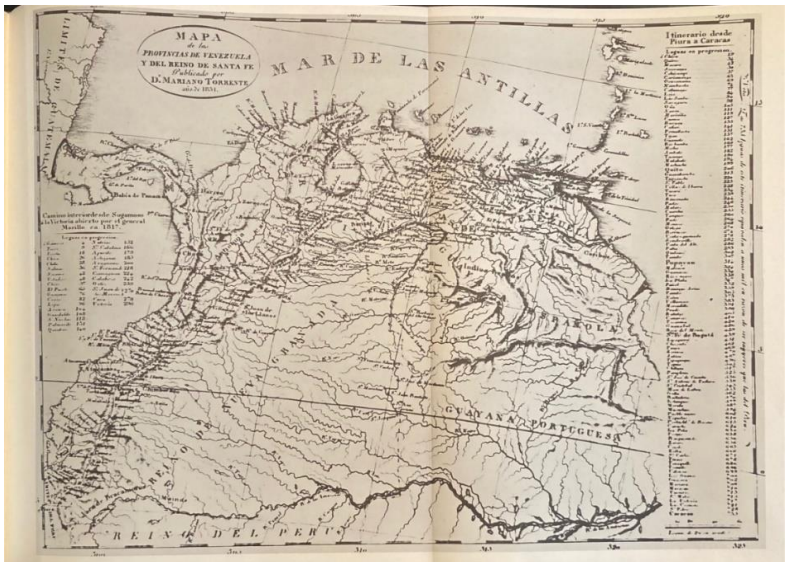
> "Art. 6. The territory of Colombia is the same as that comprised by the former Viceroyalty of New Granada and the General Captaincy of Venezuela."

In this way, as has been said, in the demarcation of the territory the principle of American public international law known as *uti possidetis juris* was followed, according to which the Republic of Colombia had rights over the territories that corresponded, in 1810 to the General Captaincy of Venezuela and the Viceroyalty of New Granada, in such a way that the territorial limits of Venezuela were the same that corresponded in that year to said colonial entities.[37]

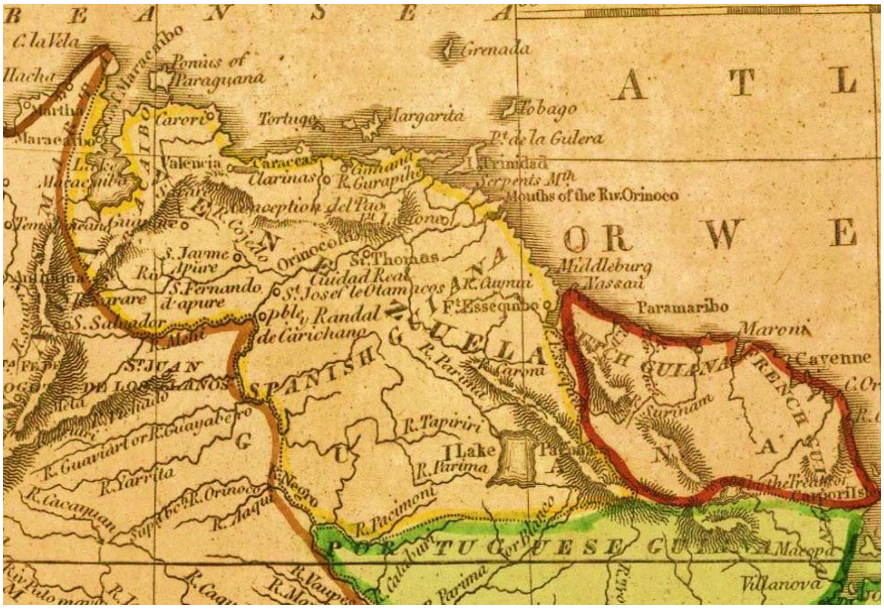
Those territories, as far as the Province of Guayana is concerned, extended to the Essequibo River, as expressed, for example, in the Map of the provinces of the Viceroyalty of Nueva Granada and of the General Captaincy of Venezuela as they were in 1742.

[37] See Ernesto Wolf, *Tratado de Derecho Constitucional Venezolano*, Volume I, Caracas, 1945, p. 40.

Carta del Virreinato de Santa Fe y de la Capitanía General de Venezuela



Mapa de las Provincias de Venezuela y del Reino de Santa Fe, por Mariano Torrente 1831



Mapa de Venezuela, la Guayana Británica (Guayana Inglesa), la Guayana Holandesa (Hoy Surinam) y la Guayana Francesa, published in Boston, 1821 (Cummings & Hilliard). Shows the Esequibo River as the oriental border of Venezuela

V

THE DEFINITION OF THE TERRITORY OF THE VENEZUELAN DEPARTMENTS, ACCORDING TO THE LAWS OF TERRITORIAL DIVISION OF THE REPUBLIC OF COLOMBIA OF 1821 AND 1824

Pursuant to the Constitution of the Republic of Colombia of August 30, 1821, the territories of the provinces of the former General Captaincy of Venezuela and the New Kingdom of Granada, began to be legally defined the following month, through the "Law on the organization and political regime of the departments, provinces and cantons into which the Republic is divided" of October 2, 1821.[38]

In said Law, as per Venezuela´s territory, among the seven Departments into which the NEW Republic was divided, the following three were identified, integrating ten provinces:

Department of the Orinoco, including the provinces of Guayana, Cumaná. Barcelona and Margherita;

Department of Venezuela, including the provinces of Caracas and Barinas; and

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[38] See the text in *Cuerpo de Leyes de la República de Colombia 1821-1827,* (Introducción: J. M. Siso Martínez), Consejo de Desarrollo Científico y Humanístico, Universidad Central de Venezuela, Caracas 1961, pp. 76-81.

Department of Zulia, including the provinces of Coro, Trujillo, Mérida and Maracaibo.

Subsequently, the Congress issued the first Law on the Territorial Division of the Republic of Colombia on June 25, 1824,[39] ordering the division of its territory, identifying the four Departments located in what had been the territory of Venezuela among the twelve of the Republic, integrating twelve provinces:

Department of the Orinoco, including the provinces of Cumaná, Guayana, Barcelona and Margarita;

Department of Venezuela, including the provinces of Caracas and Carabobo;

Department of Apure, including the provinces of Barinas and Apure; and

Department of Zulia, including the provinces of Maracaibo, Coro, Mérida and Trujillo.

The Territorial Division Law of 1824 was very detailed in terms of subdivisions of the provinces´ territory of each department, defining the cantons.

Regarding the twelve provinces of the territories of Venezuela (Cumaná, Guayana, Barcelona, Margarita, Caracas, Carabobo, Barinas, Apure, Maracaibo, Coro, Mérida and Trujillo), grouped into four Departments, their composition was specified in Cantons in the following way:

39 Véase el texto en Cuerpo *de Leyes de la República de Colombia 1821-1827, op. cit*, Caracas 1961, pp. 191-195.

Mapa del Departamento de Venezuela de la República de Colombia (1821-1830), with the easter border in the Esequibo River.

Department of the Orinoco (four provinces)

Province of Cumaná: with capital Cumaná, and the following eight cantons: Cumaná, Cumanacoa, Aragua cumanés, Maturín, Cariaco, Carúpano, Río Caribe and Güiria.

Province of Guayana: with capital Santo Tomé de Angostura, and the following nine cantons: Santo Tomé de Angostura, Río Negro (Atabapo headwaters), Alto Orinoco (Caicara headwaters), Caura (Moitaco headwaters), Guayana Vieja, Caroní, Upata (whose eastern border was the Essequibo river), La Pastora, and La Barceloneta.

Province of Barcelona: with capital Barcelona, and the following six Cantons: Barcelona, Píritu, Pilar, Aragua, Pao and San Diego.

Province of Margarita: with capital La Asunción, and the following two cantons: La Asunción and El Norte.

Department of Venezuela (two provinces)

Province of Caracas: with the capital Caracas, and the following twelve Cantons: Caracas, Guira, Caucagua, Rio Chico, Sabana de Ocumare, La Victoria, Maracay, Cura, San Sebastián, Santa María de Ipire, Chaguaramas and Calabozo.

Province of Carabobo: with capital Valencia, and the following nine cantons: Valencia, Puerto Cabello, Nirgua, San Carlos, San Felipe, Barquisimeto, Carora, Tocuyo and Quíbor.

Department of Apure (two provinces)

Province of Barinas: with capital Barinas, and the following ten cantons: Barinas, Obispos, Mijagual, Guanarito, Nutrias, San Jaime, Guanare, Ospino, Araure and Pedraza.

Province of Apure: with capital Achaguas, and the following four cantons: Achaguas, San Fernando Mantecal and Guadualito.

Department of Zulia (four provinces)

Province of Maracaibo: with capital Maracaibo and the following five cantons: Maracaibo, Perijá, San Carlos del Zulia, Jibraltar and Puerto de Altagracia.

Province of Coro: with capital Coro and the following five cantons: Coro, San Luis, Paraguaná (Pueblo Nuevo capital), Casigua and Cumarebo.

Province of Mérida: with the capital Mérida and the following seven cantons: Mérida, Mucuchíes, Ejido, Bailadores, La Grita, San Cristóbal and San Antonio del Táchira.

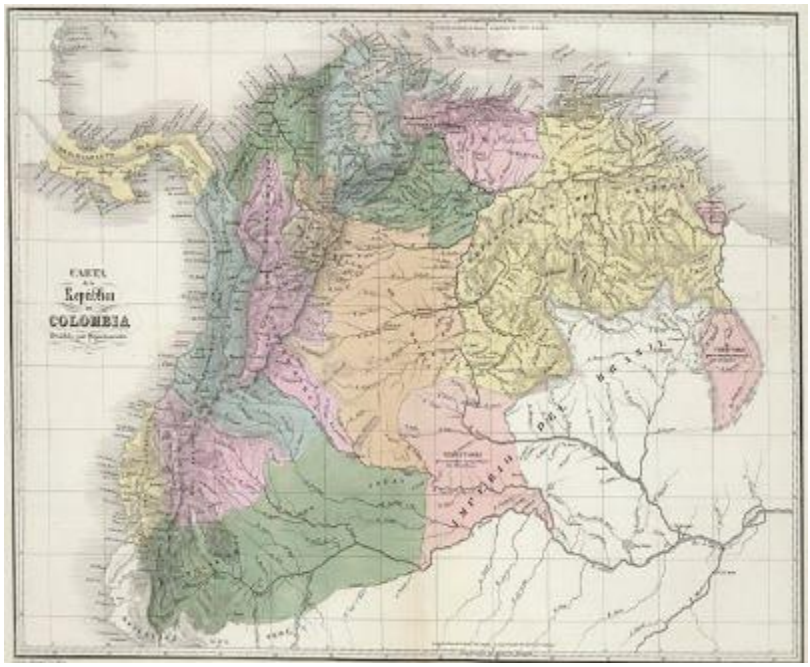
Province of Trujillo: with capital Trujillo and the following four cantons: Trujillo, Escuque, Boconó and Carache.

Subsequently, the "Additional Law to that of the year 14 on the territorial division of the Republic" of April 18, 1826[40] rearranged the Departments of the territory of Venezuela as follows:

Art. 1. The department of Apure will hereinafter be called the department of Orinoco. It will comprise the province of Guayana, in addition to those of Barinas and Apure into which it is divided by article 4 of the law of June 23, 1824, year 14 on territorial division of the Republic.

Art. 2. The provinces of Cumaná, Barcelona and Margarita, will form a Department in the name of Department of Maturín.

[40] Véase en el Cuerpo de *Leyes de la República de Colombia 1821-1827*, *op. cit*. pp. 440 y 441.



Carta de la República de Colombia dividida en 12 departamentos en 1824. By Agustín Codazzi, published in the Atlas físico y político de la República de Venezuela, 1840.

VI

THE DEFINITION OF THE TERRITORY OF THE REPUBLIC OF VENEZUELA IN THE 1830 CONSTITUTION OF THE STATE, AS PER THE OFFICIAL ATLAS OF AGUSTÍN CODAZZI

Upon the separation of Venezuela from the Republic of Colombiapursuant to the principles established since 1819, the Venezuelan Constitution of 1830[41] defined the Venezuelan territory as follows:

> Art. 5. The territory of Venezuela includes everything that before the political transformation of 1810 was called the General Captaincy of Venezuela. For her better administration it will be divided into provinces, cantons and parishes, which limits will be established by law.

This norm of the Constitution of 1830 remained with the same basic wording in the subsequent Venezuelan Constitutions, but with an important addition in the sense that the territory of the Republic was not only the same as the former Captaincy General of Venezuela, but the same that existed "before the political transformation of 1810." With this, once again, and pertaining the Venezuelan State, the Bolívar decree

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41 See in Allan R. Brewer-Carías, *Las Constituciones de Venezuela*, *op. cit.*, Volume I, pp. 707-730.

of October 15, 1817 was tacitly abrogated, as regards to part of the eastern limit of the province of Guayana that was complete along the entire length of the Essequibo River.

In this way, the new reconstituted State of Venezuela began its existence in 1830 with the territorial division that had been established in the Law of territorial division of the Republic of Colombia of June 25, 1824 for the twelve provinces of the Departments of Orinoco, Venezuela, Apure and Zulia of the former Republic of Colombia.

The graphic evidence of the territorial division of Venezuela by 1840 was reflected in the Physical and Political Atlas of the Republic of Venezuela dedicated by its author, the Engineer Colonel, Agustín Codazzi to the Constituent Congress of 1830.[42] The Executive Branch entrusted him, in an express and official way and in compliance with the Congress decree of October 13, 1830, with the "formation of the plans of the provinces of Venezuela, that must gather notices of geography, physics and statistics" (art. 1).[43]

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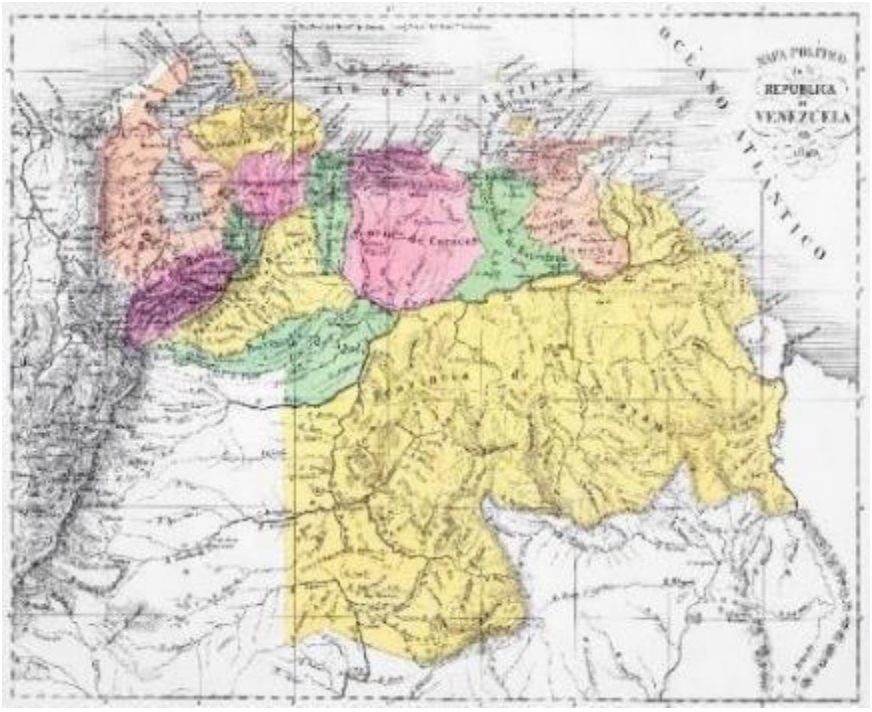
[42] The integral reproduction of the *Atlas* with all its charts is available at: http://www.cervantesvirtual.com/obra-visor/atlas-fisico-y-politico-de-la-republica-de-venezuela--0/html/ff6060ac-82b1-11df-acc7-002185ce6064_19.html

[43] See Agustín Codazzi, *Atlas Físico y Político de la República de Venezuela dedicado por su autor, el Coronel de Ingenieros, Agustín Codazzi al Congreso Constituyente de 1830*, Caracas 1840.

Detail of the Cover of the Atlas of Agustín Codazzi

The "Viñeta", the work of Carmelo Fernández, as explained in the Atlas, "represents Venezuela sitting on a rock in the shade of the plane tree: the majestic Orinoco runs at its feet near a large rock in which the days of Venezuelan regeneration and the names of the most famous battles of the war of independence are crudely engraved. But neither the lavishness and military trophies that are at his side, nor those weapons that broke his chains, attract exclusively attention. The code of her rights is her strength and her hope: leaning on it, she looks elsewhere for the purest source of her glory and happiness. The tiger, the alligator and the turtle, characterize the Orinoco. The great ceiba, palms, lianas, parasitic swamps and many others, indicate the copy and variety of wealth that the plant kingdom holds in the intertropical lands. In the plains you can see the horse cerril, symbol of independence: the canoe that crosses the Orinoco, indicates the peace that reigns with the indigenous tribes that live on that great river, and the background of the perspective manifests our great mountains and the perpetual snows that crown the high mountain range of Mérida."

In said *Atlas* the *Mapa Político de la República de Venezuela en 1840* is published, in which the Republic appears divided into eleven provinces:



***Mapa político de la República de Venezuela en 1840,* Published in the *Atlas físico y político de la República de Venezuela*, *Agustín Codazzi,* 1840**

1. Province of Maracaibo

2. Province of Coro

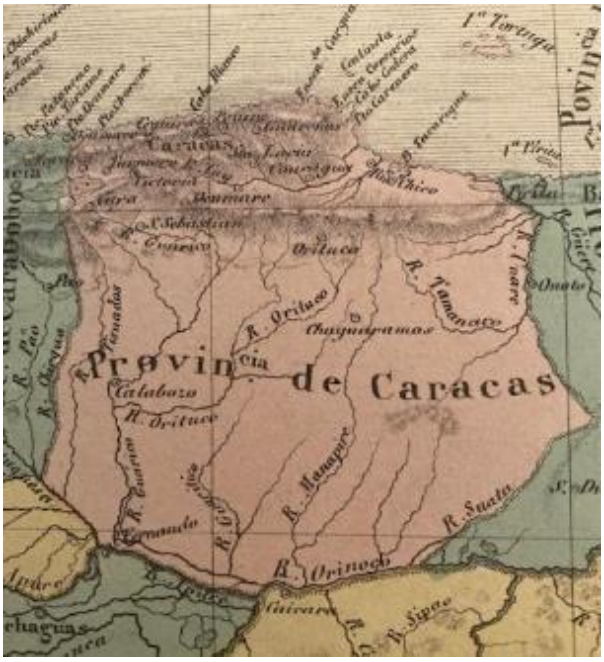
3. Province of Mérida

4. Province of Trujillo

5. Province of Barinas

6. Province of Apure

7. Province of Caracas

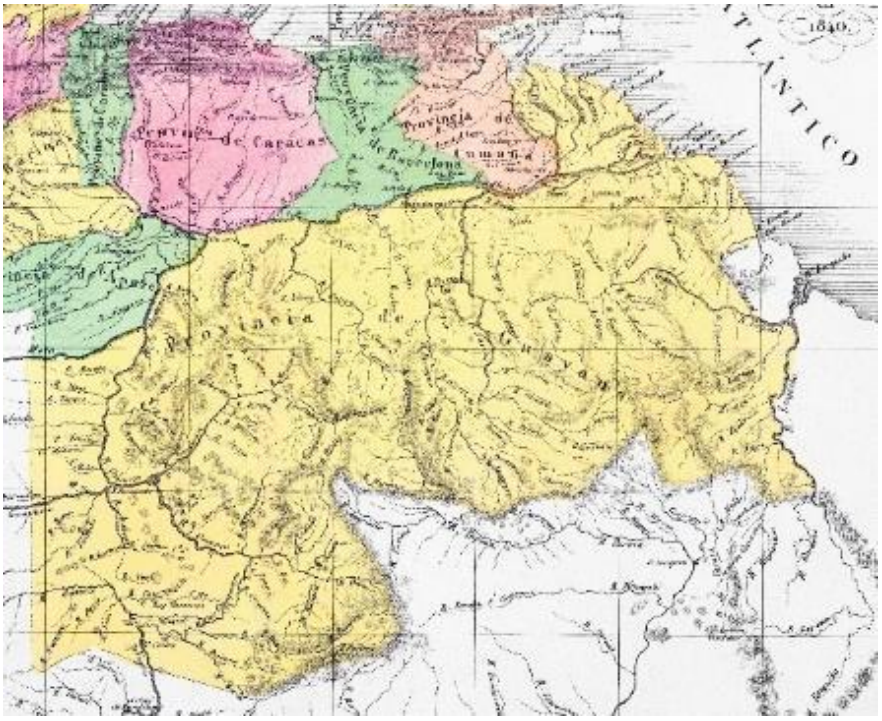


8. Province of Barcelona

9. Province of Margarita

10. Province of Cumaná

11. Province of Guayana



It should be noted that in the *Charter of the Republic of Colombia divided into 12 departments in 1824*, published by Agustín Codazzi in the Physical and Political Atlas of the Republic of Venezuela in 1840, to which we have already referred, the territory of Cantón of Upata in the Province of Guayana extends to the Esequibo River, excluding the area between the mouth of the Moruco River and the Esequibo River, that appears with the indication: "TERRITORY CONSIDERED USURPED BY THE ENGLISH," which is repeated in the area of the west bank of the Essequibo river sources.

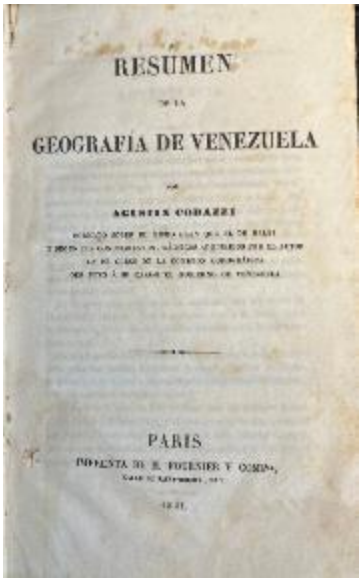
Detail of the Mapa de la Republica de Colombia de Codazzi (1824), with the indication of the zones occupied by the British in the Cantón Upata of the Province of Guayana. From the Atlas físico y político de la República de Venezuela, Agustín Codazzi, 1840

For this reason, in the book by Agustín Codazzi, *Resumen de la geografía de Venezuela. Formado sobre el mismo plan que el de Balbi y según los conocimientos prácticos adquiridos por el autor en el curso de la Comisión Corográfica que puso a su cargo el Gobierno de Venezuela*, Imprenta de H. Fournier y Compañía, Calle de Saint-Benoit. No. 7 Paris 1841, he describes the eastern border of the Guiana Province, with English Guiana, from the point of the mouth of the Rupununi River into the Essequibo River in the south, and from there:

> "The line is demarcated by the left bank of the Essequibo until its confluence with the Caroní. Along the course of this

river you will find the mouth of the Tupurú river, whose waters rise. It goes to the headwaters of the Moroco, and going down it will end up in the Atlantic Ocean, in front of Cabo Nasan at the mouth of the Pomerón river. The border with English Guiana ends here." (pp. 5, 607-608).

When describing the extension of the province of Guayana, Codazzi explains


RESUMEN

GEOGRAFÍA DE VENEZUELA

AGUSTIN CODAZZI

PARIS

"The maximum from E. to W. taken from the mouth of the Cuyuní, in the Essequibo, to the point of Apostadero, in the Meta River, has an extension of 211 leagues. Its width from N. to S is 150, from the middle of the Maturaca pipe (where in winter it is embarked from Cababuri to Barima and Pacimoni) to the town of Caicara on the Orinoco. [...] Calculated the square leagues of this province, they are 20,149, enormous extension compared to the other provinces of the republic, because all of them together have only 15,802 square leagues; thus, the area of Guayana cedes to the rest of Venezuela in 4547, and it can be said that this province is as large as the other twelve that make up the republic, and moreover, a space equal to that occupied by those of Caracas, Carabobo, Barquisimeto and Trujillo" (p. 605).

Codazzi added in his *Resumen* that the extension of the Province of Guayana would be "increased in extension if the headwaters of the Esequibo and the Rupununi were taken as limits; In this case, the neighboring nations would have to be challenged by 2,400" (p. 606).

VII

THE DEFINITION OF THE TERRITORY OF THE REPUBLIC OF VENEZUELA IN THE TERRITORIAL DIVISION LAW OF 1856

The territorial division embodied in the Codazzi Atlas Maps of 1840 was the one that existed until the Venezuelan Congress sanctioned the Territorial Division Law of April 28, 1856 by which the division of the territory was totally altered,[44] providing for its division, not in the twelve provinces that had been established in the Law of the Republic of Colombia of 1824, but in twenty-one Provinces (Cumaná, Maturín, Margarita, Barcelona, Guayana, Amazonas, Apure, Caracas, Guárico, Aragua, Carabobo, Cojedes, Portuguesa , Barinas, Barquisimeto, Yaracuy, Coro, Trujillo, Maracaibo, Mérida and Táchira) (art. 1).

As it happened with the Law of 1826, the one of 1856 was also detailed and exhaustive in the precise indication of all the cantons into which each province was divided, and in that of the parishes into which each canton was divided. This was the division into cantons of the provinces pursuant to the 1856 law:

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[44] See in *Leyes y Decretos Reglamentarios de los Estados Unidos de Venezuela*, Volume X, Ministerio de Relaciones Exteriores, Caracas 1943, pp. 69-75.

Province of Cumaná: capital Cumaná, with six cantons: Cumaná, Cumanacoa, Cariaco, Carúpano, Río Caribe and Güiria (art. 2).

Province of Maturín: capital Maturín, with four cantons: Maturín, Aragua, Bermúdez and Montes (art. 3).

Province of Margarita: capital Asunción, with two cantons: South and North (art. 4).

Province of Barcelona: capital Barcelona, with eight cantons: Barcelona, Píritu, Onoto, Freites, Aragua, Pao, San Diego and Soledad (art. 5).

Province of Guayana: capital Ciudad Bolívar, with three cantons: Héres, Upata (whose eastern border was the Essequibo River) and Alto Orinoco (art. 7) which included all the islands of the Orinoco Delta (art. 8).

Province of Amazonas: capital San Fernando de Atabapo, with one canton: Río Negro (art. 9).

Province of Apure: capital San Fernando, with four cantons: San Fernando, Achaguas, Mantecal and Guasdualito (art. 10).

Apure Province: corresponds to the territory between the Apure and Apurito rivers (art. 11).

Province of Caracas: capital Caracas, with eleven cantons: Caracas, Guaicaipuro, Guaira, Maiquetía, Curiepe, Río Chico, Caucagua, Ocumare del Tuy, Guarenas, Petare and Santa Lucía (art. 12).

Province of Guárico: capital Calabozo, with six cantons: Calabozo, Sombrero, Chaguaramas, Unare, Orituco and Ortiz (art. 13).

Province of Aragua: capital La Victoria, with six cantons: Victoria, Turmero, Maracay, San Sebastián, Cura and Mariño (art. 14).

Province of Carabobo: its capital Valencia, with four cantons: Valencia, Puerto Cabello, Montalban and Ocumare (art. 16).

Province of Cojedes: capital San Carlos, with four cantons: San Carlos, Tinaco, Pao and Giraldot (art. 18).

Province of La Portuguesa: capital Guanare, with four cantons: Guanare, Ospino, Araure and Guanarito (art. 19).

Province of Barinas: capital Barinas, with five cantons: Barinas, Pedraza, Obispos, Libertad and Nutrias (art. 20).

Province of Barquisimeto: capital Barquisimeto, with five cantons: Barquisimeto, Cabudare, Quíbor, Tocuyo and Carora (art. 22).

Province of Yaracuy: capital San Felipe, with five cantons: San Felipe, Yaritagua, Nirgua, Urachiche and Sucre (art. 23).

Province of Coro: capital Coro, with six cantons: Coro, San Luis, Casigua, Costa Arriba, Cumarebo and Paraguaná (art. 24).

Province of Trujillo: capital Trujillo, with four cantons: Trujillo, Escuque, Boconó and Carache (art. 25)

Province of Maracaibo: capital Maracaibo, with five cantons: Maracaibo, Zulia, Perijá, Gibraltar and Altagracia (art. 27).

Province of Mérida: capital Mérida, with five cantons: Mérida, Mucuchíes, Egido, Timotes and Bailadores (art. 28).

Province of Táchira: capital San Cristóbal, with four cantons: San Cristóbal, Táchira, La Grita and Lovatera (art. 20).

After the federal wars and the triumph of the Federation, these Provinces gave rise to the States that declared union with the Constitution of the United States of Venezuela of March 28, 1864,[45] that began by identifying the territory, divided into nineteen States:

> Article 1. The provinces of Apure, Aragua, Barcelona, Barinas, Barquisimeto, Carabobo, Caracas, Coro, Cumaná, Guárico, Guayana, Maracaibo, Maturín, Mérida, Margarita, Portuguesa, Táchira, Trujillo and Yaracuy, declare themselves independent States and unite to form a free and sovereign Nation, with the name of UNITED STATES OF VENEZUELA."
>
> Article 2. Of the Constitution also specified that the limits of each of those States would be those that had been indicated to the provinces in "the Law of April 28, 1856, that set the last territorial division."

[45] See in Allan R. Brewer-Carías, *Las Constituciones de Venezuela*, *op. cit*., Volume I, pp. 787.

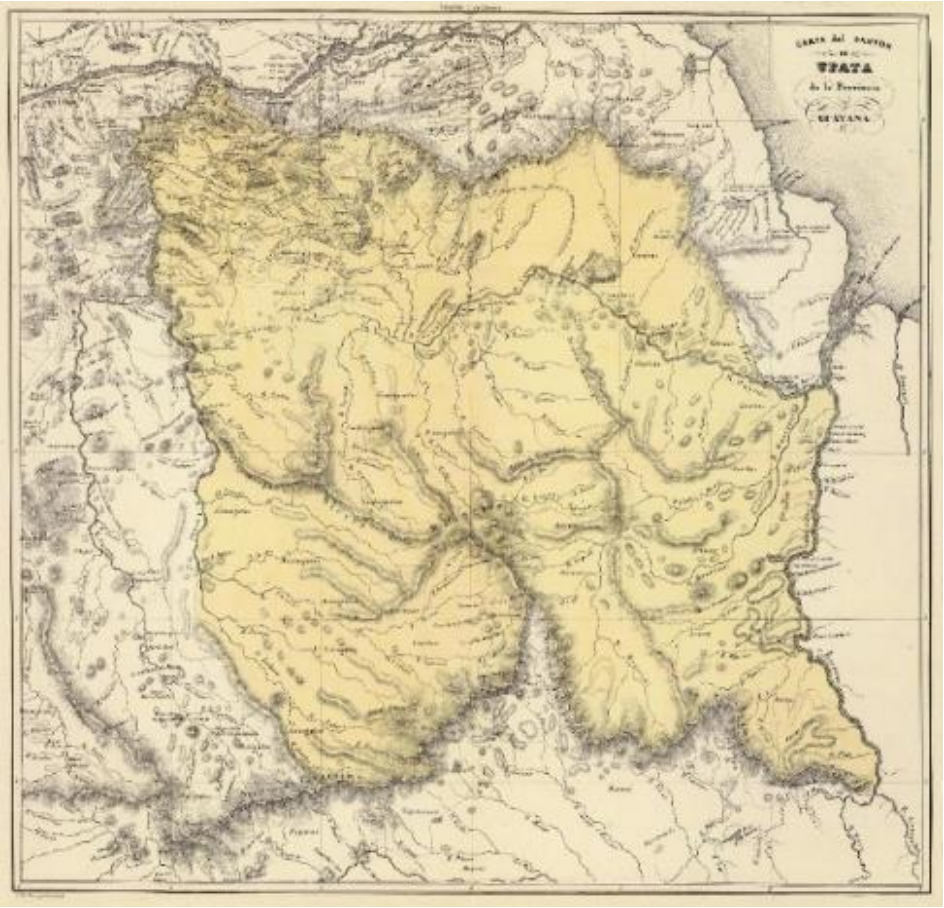
VIII

SPECIAL REFERENCE TO THE TERRITORIAL OCCUPATION OF THE EASTERN PART OF THE PROVINCE OF GUAYANA (UPATA CANTON AND PICAROA CANTON)

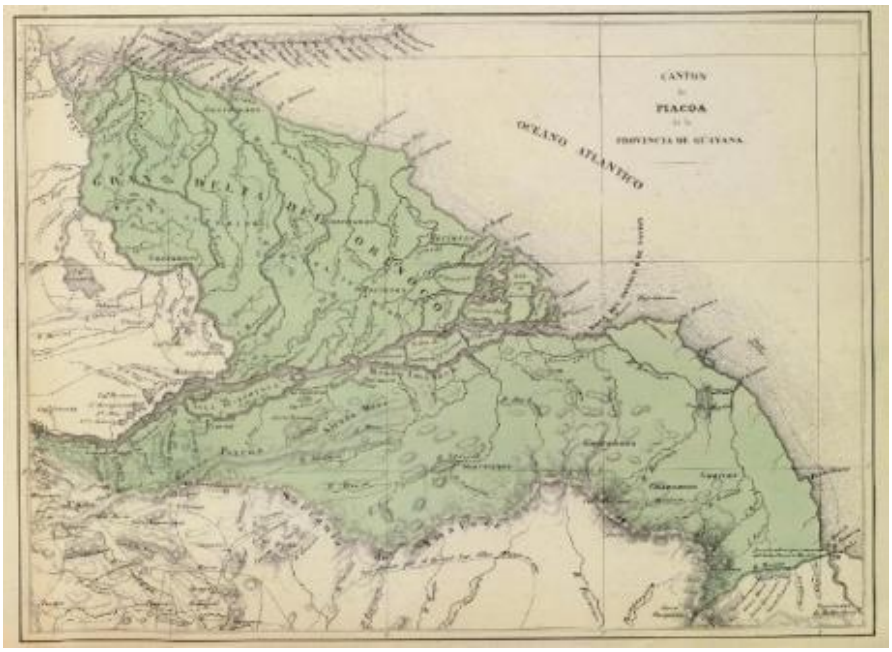
Both in the *Carta de la República de Colombia dividida en 12 departamentos en 1824*, (Charter of the Republic of Colombia divided into 12 departments in 1824), and in the Mapa Político de la República de Venezuela en 1840, (Political Map of the Republic of Venezuela in 1840), included by Agustín Codazzi in his *Atlas físico y político de la República de Venezuela* (Physical and Political Atlas of the Republic of Venezuela), 1840, the Province of Guayana , which included the entire area of the Orinoco Delta, as we have said, on its eastern limit, had most of its eastern border bordering the Essequibo River, as was specifically demarcated in the Map of the Upata Canton of the same, also in the Codazzi Atlas.

Detalle del límite Este de la Provincia de Guayana en el río Esequibo

Specifically, the eastern limit of the Province of Guayana in the same Codazzi Atlas, was represented in two detailed charts of the Cantons of Picaroa and Upata, as follows:



Carta del Cantón de Upata de la Provincia de Guayana, published in the Atlas físico y político de la República de Venezuela, Agustín Codazzi, 1840



Carta del Cantón de Piacoa de la Provincia de Guayana. **Tomado del** ***Atlas físico y político de la República de Venezuela, Agustín Codazzi, 1840***

This situation was also reflected, for example, in the *Carte Géographique, Statistique et Historique de la Republicque Colombienne (J. CAREZ, Paris, 1825),* that established, in accordance with the Decree of the Liberator, the limit between the Province of Guayana and the possessions of the Netherlands located along the course of the Essequibo River; except in the north in the area of the coast between the Moruco River and the mouth of the Essequibo River, that was attributed to the *Guyane Hollandaise*:

Detail of the Charter of J.A.C Buchon, Carte Géographique, Statistique et Historique de la Republicque Comombienne, J. Carez, Paris, 1825

On the other hand, this situation, as previously stated, was also reflected in the *Maps of the Canton of Upata and the Canton of Picaroa* of the Province of Guayana contained in the *Physical and Political Atlas of the Republic of Venezuela* of 1840, by Agustín Codazzi, whereas the province of Guayana is shown in an extension that reaches the Essequibo river, excluding the same line of the Atlantic coast towards the east of the Pomeron area, between the mouth of the Moruco river and the mouth of the Essequibo river.

This was the result, not only of the fact that this was the general limit between the possessions of Spain and the Netherlands in the northern part of Terra Firme since the 18th century (Peace of Münster), but was also caused by the process of territorial occupation developed in that area by the Spanish, with the location of a few forts and, mainly, as an outcome of the work of the religious missions.

Indeed, within the systems of the process of conquest and settlement of the American territory during the Colony, in addition to the founding of cities and towns, of Spaniards and Indigenous, the reduction and attraction of indigenous tribes and groups to citizenship life, which was carried out through the establishment of Missions assigned by the Spanish Crown to certain religious communities, as was the case of the Jesuits and the Capuchins in the provinces of Orinoquia in Venezuela.

In this way the geographical extent of the colonial Provinces in the remote areas of their territories was defined; and this is precisely what happened with the Province of Guayana. As it has been said, Guayana was established in 1568 in the Capitulation given to Gonzalo JIMÉNEZ DE QUESADA with an extension from the Orinoco to the Amazon, having nevertheless reached its territory as far as the Essequibo River, precisely because of the successive location of Spanish forts and Capuchin Missions (for example: *Cura, Tumeremo, Wenamu, Mutanambo, Curumo, at Mawakken, in Queribura*), even though many of their settlements had been destroyed by attacks by Carib Indigenous.[46]

[46] On the existence of these mission settlements and their meaning as signs of occupation of the territory see Severo Mallet Prevost, en *British Guyana Venezuelan Boundary, Arbitration Between the Government of her Britannic Majesty and the United States of Venezuela, Proceedings*. Volume 6, Speeches of S. Mallet Prevost for Venezuela (August 1899), Paris, Typography Chamerot et Rornouafd, 1899, p. 1548 ss. Available at: https://books.google.com/books?id=cHMtAQAAMAAJ&pg=PA1565&lpg=PA1565&dq=mission+in+queribura&source=bl&ots=s0QiCYVfCy&sig=ACfU3U0by-F05bWlEv_gq12-XOVEc3UeuA&hl=es-419&sa=X&ved=2ahUKEwi_kYS5tsLwAhWhg-AKHRpABGUQ6AEwAHoECAQQAw#v=onepage&q=mission%20in%20queribura&f=false

A reference to those sites is found in the following Map of the collection on the Orinoco-Essequibo Region that was part of the *Report of the Commission appointed by the President of the United States to investigate and report on the true division of the border between the Republic of Venezuela and British Guiana* of 1897:

Historical map showing European Occupation 1597-1803 (1814) A general View with dates of occupation and abandonment),* by George Lincoln Burr, in the volume: *Maps of the Orinoco-Essequibo Region, South America, Compiled for the Commission Appointed by the President of the United States to Investigate and report upon the True divisional Line between the Republic of Venezuela and British Guyana*, Commissioners: *David J. Brewer, Richard H Alvet, Frederic R. Coudert, Andrew D. White, Daniel C., Gilman; Secretary: Severo Mallet-Prevost) Washington, February 1897

In that process of territorial occupation and settlement the "Province of Guayana" was assigned to the Capuchins, with the limits definitively set on March 24, 1734 in the so-called "Concordia de Guayana," ratified by Royal Decree on September 16, 1736, whose jurisdiction, as explained by José del Rey Fajardo S.J.:

> "…started from the Angostura and followed the course of the Orinoco River on the right side to the sea. On the west, its border was artificial and an imaginary line was drawn between Angostura and the Portuguese possessions. The rest of its territory was made up of the possessions of French Guyana and Dutch Guyana."[47]

This definition of the boundaries of the missionary jurisdiction responded, as has been said, to the territorial demarcation that had been established since 1648 in the Peace of Münster, that was part of the Peace of Westphalia of the same year, which put an end to the Thirty Years and the Eighty Years Wars. In such treaty Spain recognized the independence of the Netherlands, and as regards the territorial possessions in the northern part of South America, it was established that the boundary between the Spanish and Dutch possessions was the Essequibo River.

Regarding that Province of Guayana, in any case, the fundamental factor for its territorial configuration, as has been said, was the territory occupation by the Capuchin Missions, which over the years managed to establish important agricultural companies made up of herds and several indigenous towns. For this reason, her territory, in terms of the Canton of Upata,

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[47] See in José del Rey Fajardo S.J., *La República de las letras en la Babel Étnica de la Orinoquia*, Academia Nacional de la Lengua, Caracas 2015, p. 56.

extended to the Essequibo River. And so it was, as mentioned, despite the fact that many of the settlements of Indigenous towns and missions did not manage to survive the attacks of the Caribs.

Moreover, since the Missions in the Province of Guayana were essential in the conformation of its vast territory, Simón Bolívar, who commanded the military campaign for the liberation of the province of Guayana in 1817 with the help of General Manuel Piar, began the campaign by seizing and controlling the Mission´s territory. This allowed to "advance in the siege of Angostura, the capital, and Guayana La Vieja, and gain space in Guayana until its total occupation and liberation."[48] Furthermore, Bolívar even appointed the General Vicar of the Army, priest José Félix Blanco, as General Commissioner of the Caroní Missions, with extensive powers regarding their political and economic regime.

As for the Missions, they not only continued to operate in the Republican era, but were institutionalized by the State as a fundamental factor for the reduction and settlement, having been regulated in the Law of Missions of May 1, 1841, reformed by the Law of Missions of 1915.[49] As for the province of Guayana, the Missions were also regulated in the "Organic Regulation for the Reduction and Civilization of indigenous people in the Province of Guayana" of October 15, 1842.[50]

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48 See Hildelisa Cabello Requena, "Contribución de la Campaña Libertadora de Guayana a la consolidación de la guerra e instauración de la República, Venezuela, 1817-1824," in *Procesos Históricos*, No. 36, Universidad de los Andes, Mérida 2019, pp. 114-134,

49 See in *Leyes y Decretos Reglamentarios de los Estados Unidos de Venezuela*, Volume XIV, Ministerio de Relaciones Exteriores, Caracas 1943, p, 479.

50 *Idem*, Volume XIV, pp. 488-495.

In this Regulation, not only the missionary District of Upata, which included the Canton of Upata, was accurately identified, but also the work of the missionaries, the Poblador Captains and the Doctrineros to attract population to the indigenous tribes. Furthermore, through Resolutions of the Ministry of Interior and Justice of February 9, 1893 and May 12, 1894, the scope of the Capuchins´ Missions with their capital in Upata, Guasipati and Tumeremo was specifically defined in the Upata Canton.[51]

[51] *Idem*, Volume XIV, pp. 484-485.

IX

THE CONTRIBUTION OF THE CREATION OF FEDERAL TERRITORIES, BEGINNING WITH THE 1864 CONSTITUTION, TO THE TERRITORIAL DEFINITION OF VENEZUELAN GUAYANA

In the Federal Constitution of 1864, following a guideline that started in the Constitution of 1858 on "uninhabited territories destined for colonies and those occupied by indigenous tribes" (art. 4),[52] it was expressly provided as one of the roles of the National Legislature, "establishing with the denomination of territories the special regime with which unpopulated regions or inhabited by uncivilized indigenous people must temporarily exist," depending "immediately on the Executive of the Union" (art. 44.21).[53]

With such norm as the basis for their foundation, successively federal territories began to be founded, ,[54] starting with *Amazonas Territory*, created on July 27, 1864 and

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52 See: Allan R. Brewer-Carías, "El régimen de los Territorios Dependencias Federales," in *Revista de Derecho Público,* No. 18, Editorial Jurídica Venezolana, Caracas 1984, pp. 85 ss.

53 See: Mario Valero Martínez, "Territorios Federales en Venezuela en el siglo XIX," in: Jadson Luís Rebelo orto y Alejandro; SCHWEITZER, Estrategias territoriales para la ocupación del continente sudamericano: inserción de la periferia e institucionalización espacial. Macapá/ Rio Gallegos, UNIFAP/UNPA-UARG, 2018. p. 12-54.

54 See in Allan R. Brewer-Carías, *Las Constituciones de Venezuela*, *op. cit*., Volume I, pp. 757.

organized by Law of October 21, 1873,[55] later amended by Decree of February 1876.[56] These instruments were later amended by the Organic Code of the *Alto Orinoco and Amazonas Territories* of December 10, 1880, on the occasion of the subdivision of the *Amazonas Territory* in two.[57]

Next, under the Constitutions of 1871 and 1874, other Federal Territories were organized (*Colón Territory*, including the Islands of the Caribbean Sea; *Mariño Federal Territory*; *Goagira Territory*; *Tucacas Federal Territory*; *Maracay Federal Territory*).[58] Later, pursuant to the Constitution of 1881, by Decree of September 3 of the same year, 1881, the *Yuruary Federal Territory* was created, including part of the former Province of Guayana encompassing the entire eastern zone of said Province, demarcated as follows: to the west, the course of the Caroní River in its entirety, and to the east, with a more extended limit to the south, along the entire course of the Essequibo River.[59]

The following year the *Caura Federal Territory* was created[60] and on August 23, 1882 the Organic Code of the *Yuruary, El Caura, La Goagira, Colón, Alto Orinoco and*

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55 See the text in thr *Recopilación de Leyes y Decretos de Venezuela*, Volume VIII (1878-1880), Caracas, 1884 pp. 185 y 182.

56 *Ibídem*; Volume VIII, p. 176.

57 *Ibídem*, pp. 146 y ss.

58 Territorio Colón: Decreto de 22-8-71, *Ídem*, p. 209; Territorio Federal Mariño: Decreto de 3-9-72, *Ibídem*, p. 327; Territorio Goagira: Decreto de 25-8-74, *Ibídem*, p. 305; Territorio Federal Tucacas Decreto de 24-3-79, *Ibídem*, p. 331 Territorio Federal Maracay Decreto de 12-3-79, *Ibídem*, p. 309.

59 Decree of 9-3-81, *Ibídem*, p. 367.

60 Decree of 2-9-82, *Ibídem*, p. 203.

Amazonas Federal Territories was issued.[61] Likewise, in 1882 under the 1881 Constitution, the *Federal Armistice Territory* was created in Táchira, on the border with Colombia.[62] *Colón* and *Amazonas Territories* were later regulated in the 1893 Constitution (art. 44.21), the first by Decree of July 4, 1895,[63] and the second, by Decree of October 10, 1893, merging again, into one, the old *Alto Orinoco and Amazonas Territories*. [64]

On February 27, 1884, the *Delta Federal Territory*[65] was created, organized by means of the Organic Code of the Delta Federal Territory of July 23, 1884,[66] stating the following limits:

> "To the North and East, the Gulf of Paria and the Atlantic Ocean; to the West, the dividing line between what were the States of Guayana and Maturín; to the South the Yuruari Territory, and to the Southeast the English Guiana."

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61 Including and reforming the Decrees of creation of the Territories, *Ibídem*, pp. 97 y ss.

62 *Ibídem*, p. 196.

63 Decreto 4-7-1895, el texto en la Recopilación de Leyes y Decretos de Venezuela, tomo VIII (1878-1880), Caracas, 1884, p. 210.

64 Decree of 10-23-93, *Ibídem*, p. 91.

65 Decree of 2-27-84, *Ibídem*, p. 913.

66 See Decree of July 23, 1884, in *Recopilación de Leyes y decretos de Venezuela, reimpresa por orden del Gobierno Nacional*, Volume XI, Second Edition, Imprenta de la Patria Caracas, 1891, pp. 211 ss.

Mapa de los Estados Unidos de Venezuela, por L. Robelín, representing the Federal Territories ceated in 1884

In this way, by 1884 in all the Venezuelan Territory there were six Federal Territories: *Armistice, Caura, Alto Orinoco, Amazonas, Yuruari and Delta*; and the Yuruani and Delta Territories extended eastward to the Essequibo River, on whose eastern bank began the territory of British Guiana, formerly Dutch Guiana.

Such was the constitutional or internal law situation of Venezuela at the end of the 19th century over her territory in the Guayana Esequiba area, when in 1895 an international conflict began between Venezuela and the United Kingdom over claims regarding illegitimate British occupations of the Venezuelan area west of the Essequibo River, leading to the interruption of diplomatic relations.

This conflicting situation caused the intervention of the United States of America invoking the Monroe Doctrine in protection of Venezuelan interests, leading to the conclusion of the international conflict through an Arbitration Treaty executed in Washington, on February 2, 1897, between the United States of Venezuela, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, whereas it was agreed to submit to an Arbitration Tribunal the issue of determining "the dividing line between the United States of Venezuela and the Colony of British Guiana."

New York, May 2021

PART TWO

CONSIDERATIONS ON THE GUAYANA ESEQUIBA CONTROVERSY AFTER ANALYZING THE *MEMORIAL* PRESENTED BY GUYANA IN 2020, WITHIN THE LAWSUIT AGAINST VENEZUELA BEFORE THE INTERNATIONAL COURT OF JUSTICE AND THE JUDGMENTS GIVEN BY THE LATTER IN 2020 AND 2023

I

MEANS OF SOLUTION PROVIDED IN ARTICLE 33 OF THE UNITED NATIONS CHARTER UNDER THE 1966 GENEVA AGREEMENT

The contemporary position of Venezuela on the Arbitral Award rendered on October 3, 1899 relative to the border between the Colony of British Guiana and the United States of Venezuela, was expressed on February 14, 1962, by Carlos SOSA RODRÍGUEZ as Permanent Representative of Venezuela before the United Nations Organization, through a communication to the Secretary General of the same whereas he informed that there was a dispute between Venezuela and the United Kingdom "concerning the demarcation of the frontier between Venezuela and British Guiana."

As was later quoted by the International Court of Justice in her jurisdiction ruling, rendered on December 18, 2020 (par. 35), and highlighted by Guyana in her *Memorial* (Guyana's Memorial on the Merits, Volume I, 8 March 2022) (par. 5.4), in this letter to the Secretary General Venezuela declared the following:

> "***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***."

A few months later, in a statement before the Fourth Committee of the United Nations General Assembly on November 12, 1962, the Venezuelan Minister of Foreign Affairs, reiterated the position that the 1899 Award:

> ***"arose in circumstances clearly detrimental to the rights of Venezuela." […] looking back, there was no arbitral award as such. There was an arrangement. There was a political compromise. And through this decision, the three magistrates who had the majority alienated Venezuelan territory; because the two British judges were not... acting as judges. They acted as representatives of the government, as lawyers instead of judg***es."

Based on the claims, representatives of the two countries in the Fourth Committee agreed to examine the documentary material, and after four years of negotiations between Venezuela and the United Kingdom within the United Nations Organization, on February 17, 1966, both Parties signed the so-called "Geneva Agreement," which is an "Agreement to resolve the controversy over the frontier between Venezuela and and the United Kingdom of Great Britain and Northern Ireland over the frontier between Venezuela and British Guiana." Both parties agreed thereto to settle the dispute between them in the manner provided in Articles I to IV of said Agreement, specifically paragraph 2 of Article IV, which refers to the means of dispute settlement provided for in Article 33 of the Charter of the Nations United, which are:

> "***negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, recourse to regional bodies or agreements or other peaceful means of their choice***."

The Geneva Agreement provided in Article IV.2 that if the means chosen did not lead to a solution to 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."

This mechanism for choosing the means provided for in the UN Charter, was precisely the one used by the new UN Secretary General Antonio GUTERRES, the year after taking office, when on January 30, 2018 he sent two separate letters to both Parties to the Geneva Agreement (Venezuela and Guyana), stating that his predecessor, Mr. Ban Ki-moon, had determined that "the good offices procedure, carried out since 1990, would continue for one more year, that is, until the end of 2017, with a reinforced mediation mandate;" and that if the new Secretary General came to the conclusion of "absence of significant progress towards a complete agreement on the solution of the dispute," then "he would choose the International Court of Justice as the next means of solution, unless otherwise requested jointly by the Governments of Guyana and Venezuela."

The Secretary General, as highlighted by the International Court of Justice in her judgment of December 18, 2020 (par. 103) declared that he had "carefully analyzed the developments in the good offices process during the course of 2017," announcing:

> "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 means that is now to be used for its solution.".

This election of the Secretary General was made within the framework of the provisions of the Geneva Agreement of February 17, 1966, the purpose of which, in the opinion of the International Court of Justice expressed in the judgment of December 18, 2020 regarding his jurisdiction in the case of the Arbitral Award of October 3, 1899, aimed:

> "to seek a solution to the frontier dispute between the parties that originated from their opposing views as to the validity of the 1899 Award" (CIJ Judgment 12-18-2020, par. 65).

From this, the International Court deduced that:

> "the "controversy" that the parties agreed to settle through the mechanism established under the Geneva Agreement concerns the question of the validity of the 1899 Award, as well as its legal implications for the boundary line between Guyana and Venezuela" (Judgment ICJ 12-18-2020, paragraph 66).

As a consequence, of the choice made by the UN Secretary General for the judicial settlement for the definitive resolution of the controversy between the two countries, on March 29, 2018, the Government of Guyana filed a formal complaint before the International Court of Justice against Venezuela with respect to the controversy related to "the legal validity and binding effect of the Award regarding the border between the colony of British Guiana and the United States of Venezuela, of October 3, 1899."

II

THE MATTER TO BE DECIDED BY THE INTERNATIONAL COURT OF JUSTICE

We must not forget that the controversy between Venezuela and Guyana originated from the declaration made by Carlos SOSA RODRÍGUEZ as Permanent Representative of Venezuela to the UN, on February 14, 1962, stating that Venezuela could not "recognize" the Arbitration Award of 1899, because it had not only been "*the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights*," but also because 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*."

That is to say, Venezuela, since 1962, has sustained that the 1899 Arbitral Award is null and void, therefore, when the matter came to the knowledge of the International Court of Justice under the terms of the Geneva Agreement, and the Court declared its own competence to definitively resolve the dispute, the Court considered as the basis of the Agreement, that the parties:

> "understood that the question of the validity of the 1899 Award was central to the controversy that needed to be resolved under Article IV, paragraph 2, of the Geneva Agreement in order to reach a definitive settlement of the land boundary between Guyana and Venezuela". (CIJ Judgment, 12-18- 2020, par. 134)

This has placed the issue, now, in 2023, in the way that Foreign Minister Ignacio IRIBARREN BORGES envisioned it before the National Congress shortly after the adoption of the 1966 Geneva Agreement, pointed that:

> "the nullity of the Award of 1899, be it through agreement between the concerned Parties or through a decision by any competent international authority as per Agreement, is declared then the question will go back to its original state" (CIJ Judgment 18- 12-2020, paragraph 134).

In other words, as the International Court of Justice pointed out in its jurisdiction judgment dated December 18, 2020, in addition to ruling on the validity or nullity of the Arbitral Award of 1899, the Court will have to decide on the "definitive settlement of the land boundary dispute between Guyana and Venezuela." (par. 135)

This implies then, as expressed by the Minister of Venezuela in 1966, as aforementioned, that the issue would be raised again in "its original state," which means, in the terms in which the Arbitral Award should have been rendered in 1899, that the Tribunal failed to consider.

In particular, in accordance with the provisions of Article III of the Washington Arbitration Treaty of February 2, 1897, which established that the Arbitral Tribunal should resolve the border dispute between the British Colony of Guyana and Venezuela, based on the following fundamental rule established in its Article III:

> "The Tribunal shall investigate and ascertain the extent of the territories belonging to, or that might lawfully 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 the British Guiana…."

The arbitrators said nothing in their Award about how they interpreted and applied this rule, which they actually ignored.

The Arbitrators were also to consider, but to discard it, another of the rules of the Treaty, which was whether, pursuant to the principles of international law, the postulate of whether "adverse holding or prescription during a period of fifty years shall make a good title" could be applicable to the case (considering "exclusive political control of a district, as well as the actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription") (Article IV.a).

On this, as has been said, no "fifty-year prescription" could have operated in 1899 in the Essequibo territory based on an alleged possession by Great Britain, as in no case could such possession have been legitimate or peaceful in the fifty precedent years; as through the Agreement reached by Great Britain and Venezuela precisely in 1850, both promised not to occupy or usurp the claimed territory, since if it happen, it would not be recognized.

III

THE INTERNATIONAL COURT OF JUSTICE JUDGMENTS (2020, 2023) IN THE PROCESS TO RESOLVE THE DISPUTE IN A DEFINITIVE WAY

On December 18, 2020, within Guyana's claim against Venezuela, the International Court of Justice, issued the aforementioned judgment on jurisdiction, considering that in addition to the question of the validity of the 1899 Award formulated by Guyana, the case submitted for sentencing also covered "the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela" (par 135). The Court stated these issues were the

> "subject-matter of the controversy that the Parties agreed to settle through the mechanism set out in Articles I to IV of the Geneva Agreement, in particular Article IV, paragraph 2,..." (CIJ Judgment 12-18-2020, paragraph 135).

In this way, in her judgment the International Court of Justice rejected the allegation made by Venezuela in a Memorandum dated November 28, 2019, submitting that the decision of the Secretary General to refer the controversy to judicial settlement by the Court could only be taken "as a recommendation," because the object of the Geneva Agreement was not only "a question of settling the dispute, but of doing it by means of a practical, acceptable and satisfactory settlement agreed by the

Parties" (par. 69), which implied the exclusion of "judicial settlement unless the Parties consent to resort to it by special agreement" (CIJ Judgment 12-18-2020, par. 81).

As the Court also noted:

> "In its Memorandum, Venezuela alleges that the question of the validity of the 1899 Award is not part of the controversy under the Geneva Agreement." For Venezuela this instrument was adopted based on the principle that the position of maintaining that the Award in question is null "could not be the discussed between the parties, as the "validity or nullity of an arbitral sentence is not negotiable." Venezuela considers that "the subject-matter of the Geneva Agreement is the territorial dispute, not the validity or nullity of the 1899 Award" (CIJ Judgment 12-18-2020, par. 126).

The Court considered, however, that in said Geneva Agreement (Article IV, paragraph 2), the Parties had attributed to the Secretary General "the authority to choose, by a decision which is binding on them, the means to be used for the settlement of their controversy." (ICJ Judgment 12-18-2020, par. 74, 83); and among those means listed by Article 33 of the Charter of the United Nations, judicial settlement was included as a means of dispute resolution (CIJ Judgment 12-18-2020, par. 88, 101, 108).

The Court, in its judgment, was meticulous when interpreting the text of paragraph 2 of Article IV of the Geneva Agreement, through which the Parties granted the Secretary General the authority to choose between the means of dispute settlement provided for in Article 33 of the Charter, "until the controversy has been resolved;" namely, for a "definitive resolution of the dispute", noting that said rule of the Charter.

> "includes, on the one hand, political and diplomatic means, and, on the other, adjudicatory means such as arbitration or judicial settlement. The willingness of the Parties to resolve their controversy definitively is indicated by the fact that the means listed include arbitration and judicial settlement, which are by nature binding" (ICJ Judgment 12-18-2020, art. 83).

From this, the Court deduced its jurisdiction to resolve the controversy that refers to "the question of the validity of the 1899 Award, as well as its legal implications for the boundary line between Guyana and Venezuela" (CIJ Judgment 12-18-2020, par. 66), because as it expressly stated:

> "a judicial decision declaring the 1899 Award to be null and void without delimiting the boundary between the Parties might not lead to the definitive resolution of the controversy, which would be contrary to the object and purpose of the Geneva Agreement." (CIJ Judgment 18-12-2020, par. 86).

In other words, as the International Court of Justice concluded:

> "it would not be possible to resolve definitively the boundary dispute between the Parties without first deciding on the validity of the 1899 Award about the frontier between British Guiana and Venezuela". (ICJ Judgment 12-18-2020, par 130)

Based on these arguments, the International Court of Justice rejected the argument submitted by Venezuela that allegedly "the Geneva Agreement does not cover the question of the validity of the 1899 Award" (par. 134), considering, furthermore, as already stated, that this contradicted:

> "the statement of the Minister for Foreign Affairs of Venezuela before the Venezuelan National Congress shortly after the conclusion of the Geneva Agreement. He stated in particular that "[i]f the nullity of the Award of 1899, be it through agreement between the concerned Parties or through a decision by any competent international authority as per Agreement, is declared then the question will go back to its original state"." (ICJ Judgment 12-18-2020, par. 134).

From this, the International Court deduced, as previously noted, that:

> "This confirms that the parties to the Geneva Agreement understood that the question of the validity of the 1899 Award was central to the controversy that needed to be resolved under Article IV, paragraph 2, of the Geneva Agreement in order to reach a definitive settlement of the land boundary between Guyana and Venezuela." (ICJ Judgment 12-18-2020, par. 134)

The result of the judgment, was the declaration by the Court of its own jurisdiction:

> "to entertain Guyana's claims concerning the validity of the 1899 Award about the frontier between British Guiana and Venezuela and the related question of the definitive settlement of the dispute regarding the land boundary between the territories of the Parties" (ICJ Judgment 12-18-2020, par. 137).

This was ratified by the International Court of Justice, in its other judgment of April 6, 2023 (par. 11) when declaring inadmissible the preliminary question formulated by Venezuela, stating that:

> "In its Judgment of 18 December 2020, the Court found that it had jurisdiction to entertain the Application filed by Guyana on 29 March 2018 in so far as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela. The Court also found that it did not have jurisdiction to entertain the claims of Guyana arising from events that occurred after the signature of the Geneva Agreement" (CIJ Judgment 12-18-2020, par. 18).

One may or may not agree with the ruling of the International Court of Justice to assume jurisdiction to resolve the dispute between Guyana and Venezuela, and whether or not this was contrary to the object and purpose of the Agreement Geneva of 1966. These Notes are not intended to critically evaluate what has already been ruled by the Court, a matter on which prominent internationalists and the Academy of Political and Social Sciences have expressed their opinions. I refer to those opinions.

What is now interesting to highlight is that as a consequence of these judicial decisions, and of the declaration by the International Court of Justice its own competence to judicially decide both on the validity or nullity of the Arbitral Award of 1899 and on the border between both countries, it can be said that in fact, the Geneva Agreement –which was the Law to which the Court referred to declare its jurisdiction– has been exhausted; submitting the matter to the attention of the International Court of Justice that must now resolve the controversy – as the parties to the Agreement ultimately agreed – not with eventual "practical" criteria but as a judge, in a judicial process aimed at establishing the "judicial settlement" in a dispute between parties who no longer have, of their own

free will, another way to settle it among themselves. The text of the Geneva Agreement, however, was the basis for the International Court of Justice to assume jurisdiction in the matter from a temporal point of view, to resolve only on:

> "the claims of either Party that existed on the date the Geneva Agreement was signed, on 17 February 1966. Consequently, Guyana's claims arising from events that occurred after the signature of the Geneva Agreement do not fall within the scope of the jurisdiction of the Court *ratione temporis*" (ICJ, judgment 18-1-2020, par. 136).

In other words, the parties exhausted all means of seeking a "practical settlement" between them in accordance with the UN Charter, and by mutual agreement, in the Geneva Agreement itself, they left open as a way of resolving the controversy, the judicial option (judicial settlement), within the framework of which the International Court of Justice has assumed full jurisdiction.

IV

THE BORDER DEFINED IN THE ARBITRAL AWARD OF 1899 AND THE DEFENSIVE LINES OF VENEZUELA IN TRIAL

The Arbitral Tribunal appointed in accordance with the provisions of the Washington Treaty of February 2, 1897, was composed of two of the highest judges of the United Kingdom: Lord Chief Justice RUSSELL (Charles Baron RUSSELL OF KILLOWEN) and Lord Justice COLLINS (Sir Richard Henn Collins); by two of the highest judges of the Supreme Court of the United States of America, Chief Justice FULLER (Melville WESTON FULLER) and Justice BREWER (David Josiah BREWER), and as President, Professor F. de MARTENS (Frederic de MARTENS).

The Tribunal issued its Award on October 3, 1899, determining the border between the Colony of British Guiana and Venezuela, without any reasoning or motivation, and especially, without any reference to having previously determined 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 the British Guiana," as required by the Washington Arbitration Treaty.

The border that was defined in the Arbitral Award was, therefore, totally arbitrary and, hence, irrational, limiting the Tribunal, without any motivation, as summarized by the International Court of Justice in its judgment of April 6, 2023, to grant "the entire mouth of the Orinoco River and the land on either side to Venezuela;" and to grant "to the United Kingdom the land to the east extending to the Essequibo River" (CIJ Judgment 4-6-2023, par. 34).

"Arbitrary," as described by the International Court of Justice itself "is willful disregard of due process of law, an act which shock, or at least surprises a sense of judicial property" (in the Elettronica Sicul SpA (ELSI) case (US v. Italy 1989 ICJ Reports 15 at p. 76), which applied to the 1899 Award renders it null and void due to denial of justice by the Arbitral Tribunal.

At the time, certainly, as Guyana has repeatedly highlighted in its March 8, 2022 Memorial, the fact that the Award had assured Venezuela of sovereignty over the mouths of the Orinoco River was considered a "victory" (Guyana Memorial par. 1.29; 1.39, 3.61, 3.62, 4.2, 4.4, 4.5, 4.8), particularly in the face of the claims of the United Kingdom which were, as Guyana's Memorial also recalls, that all the territory east of the Orinoco River belonged to her (Guyana Report par. 3.51), which was not true.

That alleged "victory" was precisely the "playing card" used so the Arbitral Tribunal, as a reflection of a compromise and blackmail to achieve a unanimous decision, designed as a procedural fraud, by assuring Venezuela sovereignty over the mouth of the Orinoco River, which without a doubt always corresponded to it, and at the same time stripping from her the sovereignty it had in the territories to the west of the Essequibo River as far as the Orinoco River. The consequence was the settling of an arbitrary border between the Colony of British Guiana and Venezuela, without taking into account, among other factors, of 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 the British Guiana," as required by the 1897 Washington Treaty (Article III).

The consequence of all this, and while the trial is in progress before the International Court of Justice, having been determined by it its own competence to decide on " the validity of the 1899 Award about the frontier between British Guiana and Venezuela and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela," (ICJ, Judgment 2023, par. 135), the argumentation and allegations that Venezuela is compelled to file in her *Counter-Memorial* in this case before April 8, 2024, must necessarily focus on two issues to be treated, clearly differentiated:

On the one hand, the allegations on the nullity of the Award of 1899;

And on the other, the allegations about the legal and historical titles of Venezuela over the Territory of Guayana Esequiba to establish the land border between the parties.

Guyana already presented its *Memorial* to the International Court of Justice on March 8, 2022, addressing both issues; Venezuela has until April 8, 2024 to file her *Counter-Memorial* on both issues, responding to Guyana's allegations.

V

ON THE NULLITY OF THE 1899 ARBITRAL AWARD AND THE MEMORANDUM OF MALLET-PREVOST

On the nullity of the Arbitral Award of 1899, among the multiple elements of evidence that Venezuela has available and will have to use before the International Court of Justice, there is that left by the Venezuelan lawyer before the Arbitral Tribunal of Paris, Severo MALLET-PREVOST, first expressed as soon as the Award was rendered, which was even echoed by a French writer in 1900, and then in a posthumous document.

In fact, a few weeks after the Arbitral Award of October 3, 1899 was rendered, MALLET-PREVOST addressed a communication, dated in New York on October 26, 1899, to Professor George L. BURR of Cornell University, in Ithaca N.Y, whereas he stated his desire to confer with him to tell him a "long story" signaling about the Award that:

> "The decision was forced upon our arbitrators and, in strict confidence, I have no hesitation in telling you that the British Arbitrators were not brought in by any consideration of law or justice and that the Russian Arbitrator was probably compelled to make a decision that he made for reasons unrelated to the matter.
>
> I know this will whet your appetite, but I can't do more at the moment. The result is, in my opinion, a blow to

arbitration." (reference in: Ministerio de Relaciones Exteriores, *La Reclamación Esequiba. Documentos.* Caracas, 1984, p. 163

Subsequently, in a written testimony by the former judge and lawyer Otto SCHOENRICH, about the conversation he had in New York, in 1944, with Severo MALLET-PREVOST, this topic was again touched upon, making also public the text of a statement that the MALLET-PREVOST himself had prepared about the rendered Arbitration Award. After MALLET-PREVOST passed away both texts were printed in the *The American Journal of International Law*, Vol. 43, No. 3, New York July 1949, pp. 523-530.

The text of these SCHOENRICH and MALLET-PREVOST documents is the following:

THE VENEZUELA-BRITISH GUIANA BOUNDARY DISPUTE

The recent death of Severo MALLET-PREVOST, a distinguished international lawyer of New York, has removed from the scene the last of the men who intervened in the adjustment of the Venezuela-British Guiana boundary dispute just fifty years ago, While recalling the tension then existing between the United States and Great Britain, it also permits the publication of an incident which indicates how the Arbitration Tribunal reached its disappointing award.

The tract in dispute between Venezuela and Great Britain covered an area of 50,000 square miles, somewhat more than that of the State of New York, somewhat less than that of England. Venezuela claimed as successor in title to Spain by virtue of its revolution against Spain in the year 1810. Great Britain claimed

by conquest from the Dutch, whose rights in turn rested on their occupation of Spanish territory. While subjects of Spain the Dutch had revolted and, during their long war, had established several settlements in Guiana as far west as the Essequibo River, and when at length a treaty of peace was signed in 1648, Spain allowed them to retain such places as they then held. Dutch traders later sometimes penetrated westward, occasionally even to the Orinoco, but were promptly driven back by the Spaniards. Gradually the Dutch authorities regarded the Moruca River, about 125 miles east of the Orinoco, as the utmost boundary of their colony, although Spain continued to deny their claim and considered the Essequibo, about 185 miles east of the Orinoco, as the boundary. During the Napoleonic wars, Great Britain, at war with Holland as well as France, took possession of Demarara and Essequibo and by the treaty of peace of 1814 Holland ceded to Great Britain the settlements of Demarara, Essequibo and Berbice.

The tendency to colonial expansion which marked the nineteenth century soon became evident in Guiana, where Great Britain began to assert claims to territory far beyond the Essequibo and even the Moruca. In 1834 the British Government sent Robert Herman Schomburgk, a distinguished German naturalist, to explore Guiana, and in view of his brilliant report he was commissioned in 1840 to make a survey of the country. In doing so, he naturally kept the interests of his employers in mind. Without consulting the Venezuelan authorities, and without considering that any rights of the Dutch, under whom Great Britain claimed, must be rights established by occupation and

not by furtive visits, he set up boundary marks in the jungle even to Point Barima at the mouth of the Orinoco, the possession of which he deemed of importance to Great Britain as a strategic place commanding the entrance to that river. When Venezuela protested and insisted on the removal of these boundary marks, Great Britain consented to do so, explaining that they had merely been the indication of a claim. Schomburgk also submitted a map showing a boundary line between British Guiana and Venezuela. A considerable dispute later arose as to the identity of this map and the location of the original Schomburgk line.

When British subjects gradually infiltrated into the territory so claimed, Venezuela, weak and torn by civil strife, could only protest. In 1877 an official map of British Guiana was published, dated 1875, showing as the boundary a line designated as the Schomburgk line, including Point Barima and the entire territory then claimed by Great Britain, but with a note to the effect that it must not be taken as authoritative as it had not been adjusted by the respective governments. When gold deposits were discovered in this region, a new map was published in 1886, still dated 1875, but showing the Schomburgk boundary pushed far to the west, adding a huge tract to British Guiana and omitting any indication that it was tentative or subject to adjustment. Venezuela thereupon in 1887 formally demanded the evacuation of the territory held by Great Britain from a point east of the Moruca River and broke off diplomatic relations with Great Britain when the demand was rejected.

Lord Salisbury, the British Foreign Minister, refused Venezuela's requests for arbitration and brushed aside the offers of mediation made by the United States. His attitude aroused indignation in the United States, and the consequence was Cleveland's famous message to Congress of December, 1895, recommending the appointment of a commission so that the United States might determine for its own purposes where the true divisional line lay. Congress unanimously acceded to the request. In January, 1896, the American Government appointed as members of the Boundary Commission authorized by Congress: David J. BREWER, Associate Justice of the Supreme Court; Richard L. ALBEY, Chief Justice of the Court of Appeals of the District of Columbia, a Spanish scholar; F. R. COUDERT, a distinguished member of the New York Bar; Dr. D. C. GILMAN, President of Johns Hopkins University; and Dr. Andrew D. WHITE, of Cornell University. Severo MALLET-PREVOST, a Spanish scholar and expert in Latin American law, was appointed Secretary. The Commission immediately began a thorough work of investigation.

It was evident that the report to be made by the Commission might be very embarrassing for Great Britain. The British Foreign Office, realizing the situation, receded from its former stand, and in February, 1897, Great Britain and Venezuela signed a treaty of arbitration submitting the boundary question to an arbitration tribunal which was to hold its sessions in Paris. The United States Boundary Commission thereupon disbanded and its work was passed on to the new tribunal.

Under the arbitration treaty between Great Britain and Venezuela, five judges were appointed: Lord Chief Justice RUSSELL and Lord Justice COLLINS of Great Britain, Chief Justice Fuller and Justice Brewer of the United States Supreme Court, and, as president, Professor F. de Martens, a distinguished Russian writer on international law. In March, 1898, each party submitted its case with accompanying papers: Venezuela, three volumes and an atlas; Great Britain, seven volumes and an atlas. In July, 1898, the counter-case was submitted: Venezuela, three volumes and an atlas; Great Britain, two volumes and maps. In November, 1898, the parties submitted printed arguments: Venezuela, two volumes, Great Britain, one volume. After a brief inaugural session in January, 1899, formal sessions for arguments began in Paris in June, 1899, and lasted for fifty-four sessions of four hours each, ending September 27, 1899. Great Britain was represented by four counsel: Sir Richard E. "Webster, Attorney General; Sir Robert T. REID, ex-Attorney General; Mr. G. R. ESKWITH and Mr. ROWLATT. Venezuela was represented by four distinguished American counsel: exPresident Benjamin HARRISON; ex-Secretary of War, General Benjamin S. TRACY; Mr. Severo MALLET-PREVOST; Mr. James RUSSELL SOLEY. Attorney General "Webster, on behalf of Great Britain, opened with a speech lasting thirteen days; Mr. MALLET-PREVOST, on behalf of Venezuela, followed with a speech of thirteen days. The debates were closed by a speech of Attorney General "Webster for Great Britain and by a brilliant speech of ex-President Harrison for Venezuela. The speeches, the questions asked by the judges, and the answers given by counsel,

were all reported in shorthand. The proceedings were later printed and issued in eleven volumes.

On October 4, 1899, the Arbitration Tribunal handed down a unanimous award. It was exceedingly short, gave no reasons whatsoever for the decision, and merely described the boundary line approved by the Tribunal. The line so designated began at Point Playa, about 45 miles east of Point Barima, thence continued to the junction of the Barima and Mururuma Rivers and south along the Amacura River. The award granted Great Britain almost ninety per cent of the territory in dispute, but the mouth of the Orinoco and a region of about 5000 square miles on the southeastern headwaters of the Orinoco went to Venezuela.

The award created general surprise and disappointment. Students of international law regretted the absence of any reasons or arguments in the award. Students of the Venezuelan side of the controversy were shocked at the excessive grant of territory to British Guiana, clearly beyond any line to which the colony could justly be entitled. However, there was nothing to do about it. The friends of arbitration pointed out that a war had been avoided, the cost of the arbitration was less than the cost of a single day of war, and, after all, Venezuela had retained the mouth of the Orinoco and a region in the interior on the headwaters of that river. The award was recognized to be a compromise. Justice Brewer himself conceded this to be the case when he said:

Until the last moment I believed a decision would be quite impossible, and it was only by the greatest conciliation and mutual concession that a compromise

was arrived at. If any of us had been asked to give an award, each would have given one differing in extent and character. The consequence of this was that we had to adjust our differing views, and finally draw a line running between what each thought was right.

The Venezuelans were particularly embittered by the result and have never become reconciled, although they have honored the counsel who defended their rights. In January, 1944, the Venezuelan Government conferred the Order of the Liberator on Severo Mallet-Prevost in recognition of his services in connection with the boundary dispute, but even in his speech of presentation, the Venezuelan Ambassador expressed his indignation at the injustice suffered by his country.

Mr. Mallet-Prevost had in the course of the years become the senior partner of a New York law firm of which I have the honor to be a member. A few days after receiving the Venezuelan decoration, he happened to remark in the course of conversation that, despite the criticism, the award was of enormous value to Venezuela because it granted Venezuela the mouth of the Orinoco and thereby the control of that great river and the country dependent upon it. He added that the American members of the Arbitration Tribunal had favored granting Venezuela much more territory and had resented the pressure brought upon them to avoid such an award. The word "pressure" aroused my astonishment, for the only pressure I could imagine was pressure by the American Government, and it was inconceivable that the American Government would exert pressure on the judges or that they would tolerate it. I inquired what he meant by the term, and also how

the Tribunal could have been induced to render an award so greatly at variance with the evidence.

Mr. MALLET-PREVOST then gave an amazing explanation from which it appeared that the American Government had nothing to do with the pressure. He said that after the arguments had been heard by the Tribunal and when the matter was ready for decision, Justice BREWER, one of the American judges, requested him to come to an interview at the hotel where the Justice was staying. Justice BREWER then stated that Professor MARTENS, the Russian President of the Tribunal, had called on the two American members to say that he and the two British members were anxious to have the Tribunal give a unanimous award. He proposed as a compromise that the award designate a boundary line east of the mouth of the Orinoco, the line which was in fact adopted. If the American judges agreed to this line, he and the British judges would also vote for it and the award of the Tribunal would be unanimous. If the American judges did not agree to it, he would vote with the British judges for the line claimed by Great Britain, which would thus become the boundary line by majority vote of the Tribunal. Justice Brewer said that he and Justice FULLER, the other American judge, were greatly disturbed by the proposal, for they thought the evidence clearly showed Venezuela's right to considerable territory east of the Orinoco. He and Justice FULLER were ready to reject the Russian's proposal and issue a strong minority opinion in favor of the line they thought the proper one. However, the result would be an award by majority vote granting Great Britain a valuable territory of

which Venezuela would thus be deprived. The two American judges had therefore determined to lay the matter before the legal counsel representing Venezuela and let counsel decide whether they should accept the proposed compromise or file a minority opinion.

Mr. MALLET-PREVOST answered that he must consult with ex-President HARRISON, the Chief Counsel. When he returned to his hotel and reported the conversation, General HARRISON was incensed. Swearing roundly, he walked up and down the room saying that the only proper course was a strong minority opinion. On further reflection, however, he arrived at the conclusion that such a course would entail consequences which counsel for Venezuela could not and should not permit. It would deprive Venezuela of very valuable territory, and, what was more important, of the mouth of the great Orinoco River, which traverses such a large portion of the country. However disgusted they might be, the counsel for Venezuela and the American judges could not do otherwise than agree to the compromise proposal, by which they would save important advantages for Venezuela, including a great expanse of territory and the control of the Orinoco.

Mr. MALLET-PREVOST stated he felt sure that the stand of the British members and the Russian member of the Arbitration Tribunal was the result of some deal between Great Britain and Russia by which the two Powers induced their representatives on the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in some other part of the globe. Three circumstances, especially, led him to this opinion.

One was the fact that the justice of the Venezuelan case had been overwhelmingly demonstrated. Another was the attitude of Lord Russell, one of the British judges, as expressed in a conversation with Mr. MALLET-PREVOST. When Mr. MALLET-PREVOST remarked that the judges were expected to consider only the evidence submitted to them, Lord Russell replied very decidedly that he was of a different opinion and that they should also be influenced by broad considerations of policy. The third circumstance was the sudden marked change in the attitude of Lord COLLINS, the other British judge, who at first took a lively interest in the evidence and arguments, indicating a sympathetic understanding and a recognition of the justice of Venezuela's claims, but after a visit to England during a recess of the Tribunal, suddenly became taciturn and listless.

I urged Mr. MALLET-PREVOST to write an account of the incident which could be published after his decease if he did not wish to publish it before, insisting that he owed such a statement to himself and to the memory of the American judges on the Arbitration Tribunal. He said he would do so and about a week later told me he had dictated the memorandum.

Mr. MALLET-PREVOST died in New York December 10, 1948. After his death the following document, which indicates that Venezuela is justified in her resentment, was found among his papers:

Memorandum Left with Judge Schoenrich
Not to be Made Public Except at His
Discretion after My Death

Justice BREWER and I sailed for Europe in January of 1899 in order to attend the first meeting of the Arbitral Tribunal

which was to meet in Paris for the purpose of deciding the boundary between Venezuela and Great Britain. The terms of the Protocol which had been signed between Great Britain and Venezuela required that the Tribunal should meet at that time. However, as it was found inconvenient for all of those who should be connected with the arbitration to meet on that date it was decided to hold merely a preliminary meeting, so as to comply with the terms of the Protocol, and to then adjourn to a more convenient date.

Before going to Paris Justice BREWER and I stopped in London. While there Mr. Henry WHITE, Charge d'affaires for the United States, gave us a small dinner to which Lord Chief Justice RUSSELL was invited. I sat next to Lord RUSSELL and, in the course of our conversation, ventured to express the opinion that international arbitrations should base their decisions exclusively on legal grounds. Lord RUSSELL immediately responded saying: "I entirely disagree with you. I think that international arbitrations should be conducted on broader lines and that they should take into consideration questions of international policy." From that moment I knew that we could not count upon Lord RUSSELL to decide the boundary question on the basis of strict rights.

When we assembled in Paris the following June I met Lord Collins for the first time. During the speeches by Sir Richard WEBSTER, the Attorney General, and by myself (the two of which consumed 26 days) it was quite obvious that Lord COLLINS was sincerely interested in getting at the full facts of the case and in ascertaining the law applicable to those facts. He, of course, gave no indication as to how he might vote on the subject but his whole attitude and the numerous questions which he asked were critical of the British contentions and gave the impression that he was leaning toward the side of Venezuela.

After Sir Richard WEBSTER and I had concluded our speeches the Tribunal adjourned for a short two weeks holiday. The two British arbitrators returned to England and took Mr. MARTENS with them.

When we resumed our sittings at the end of the recess the change in Lord COLLINS was noticeable. He asked very few questions and his whole attitude was entirely different from what it had been. It looked to us (by which I mean to the counsel for Venezuela) as though something must have happened in London to bring about the change.

When all the speeches had been concluded in the month of August or early September the court adjourned so as to allow the arbitrators to confer and render their decision. Several days passed while we anxiously waited but one afternoon I received a message from Justice BREWER saying that he and Chief Justice FULLER would like to speak with me and asking me to meet them at once at their hotel. I immediately went there.

When I was shown into the apartment where the two American arbitrators were waiting for me Justice Brewer arose and said quite excitedly: "MALLET-PREVOST, it is useless any longer to keep up this farce pretending that we are judges and that you are counsel. The Chief and I have decided to disclose to you confidentially just what has passed. Martens has been to see us. He informs us that RUSSELL and COLLINS are ready to decide in favor of the Schomburgk Line which starting from Point Barima on the coast would give Great Britain the control of the main mouth of the Orinoco; that if we insist on starting the line on the coast at the Moruca River he will side with the British and approve the Schomburgk Line as the true boundary." "*However,*" he added that, "he, Martens, is anxious to have a unanimous decision; and if we will agree to accept the line which he proposes he will secure the acquiescence of Lord RUSSELL

and Lord COLLINS and so make the decision unanimous." What Martens then proposed was that the line on the coast should start at some distance southeast of Point Barima so as to give Venezuela control of the Orinoco mouth; and that the line should connect with the Schomburgk Line at some distance in the interior leaving to Venezuela the control of the Orinoco mouth and some 5,000 square miles of territory around that mouth.

"That is what Martens has proposed. The Chief and I are of the opinion that the boundary on the coast should start at the Moruca River. The question for us to decide is as to whether we shall agree to Martens' proposal or whether we shall file dissenting opinions. Under these circumstances the Chief and I have decided that we must consult you, and I now state to you that we are prepared to follow whichever of the two courses you wish us to do." From what Justice BREWER had just said, and from the change which we had all noticed in Lord COLLINS, I became convinced and still believe that during Martens' visit to England a deal had been concluded between Russia and Great Britain to decide the case along the lines suggested by Martens and that pressure to that end had in some way been exerted on COLLINS to follow that course. I naturally felt that the responsibility which I was asked to shoulder was greater than I could alone bear. I so stated to the two arbitrators and I asked for permission to consult General Harrison. This they gave and I immediately went to General Harrison's apartment to confer on the subject with him.

After disclosing to General HARRISON what had just passed he rose in indignation and pacing the floor described the action of Great Britain and Russia in terms which it is needless for me to repeat. His first reaction was to ask FULLER and BREWER to file dissenting opinions, but, after cooling down and considering the matter from a practical standpoint, he said: "MALLET-PREVOST, if it should ever be

known that we had it in our power to save for Venezuela the mouth of the Orinoco and failed to do so we should never be forgiven. What Martens proposes is iniquitous but I see nothing for Fuller and BREWER to do but to agree.''

I concurred with General HARRISON and so advised Chief Justice FULLER and Justice BREWER. The decision which was accordingly rendered was unanimous but while it gave to Venezuela the most important strategic point at issue it was unjust to Venezuela and deprived her of very extensive and important territory to which, in my opinion, Great Britain had not the shadow of a right.

The above has been dictated by me on February 8, 1944.

OTTO SCHOENRICH
Member of the firm of Curtis, Mallet-Prevost, Colt & Mosle, of New York

These documents are further proof of why the Arbitration Award of 1899 is null, as Venezuela has been maintaining since 1962, for having been the product of improper manipulation and blackmail to impose a unanimous decision, based on procedural fraud, without deliberation, in sacrifice of justice and the sovereign rights of Venezuela. The Award defined arbitrarily, without any foundation or motivation, the border between Venezuela and the Colony of British Guiana, ignoring history and the innumerable arguments and evidence produced before the Tribunal, and infinging the prescriptions imposed on arbitrators by the Washington Treaty of 1897 that gave rise to the Arbitral Tribunal.

As was already pointed, it is possible to understand Venezuela´s allegation on the nullity of the Arbitral Award of 1899 after reading this documents, since they show that such Award fixed in a totally arbitrary manner and, of course, without any motivation or foundation, the border between the British Colony of Guyana and Venezuela, making prevail through compromise and blackmail, the determination of the President of the Tribunal to achieve a unanimous decision at all costs, sacrificing justice and the sovereign rights of Venezuela, infringing the requirements of the Washington Treaty and ignoring the history and the hundreds of allegations and evidence produced before the Tribunal; granting the United Kingdom, without any reasoned deliberation, ninety percent of the disputed Essequibo territory, and leaving Venezuela control only of the mouth of the Orinoco River that Great Britain also wanted to seize. That was the lure to materialize the dispossession.

VI

THE ARBITRAL AWARD OF 1899 WAS THE PRODUCT OF BLACKMAIL AND PRESSURE EXERTED BY THE PRESIDENT OF THE ARBITRAL TRIBUNAL ON THE OTHER JUDGES

The most evident fact that results from the MALLET-PREVOST Memorandum is that the Arbitral Award of 1899 was not the result of any discussion in law, on historical titles and sovereignty over the disputed territory, but the result of a negotiation, based on the pressure and blackmail, exerted by the President of the Tribunal Mr. MARTENS to achieve a "unanimous" Award, even if it was without any justification or motivation and sacrificing law and justice, as this was what Mr. MARTENS himself considered as a "triumph."

This explain why on the same day of the award, October 3, 1899, he would say: "In this case, we have had the great happiness of having the unanimity of the arbitrators on all points of the sentence, without any reservation;" qualifying said unanimity, "an immense asset" of "incalculable value."

This "unanimity" was precisely the product of the pressure and blackmail that the President of the Tribunal, Professor F. MARTENS exerted on the rest of the arbitrators.

This results from what was expressed by MALLET-PREVOST, in his Memorandum, when recounting what Judge BREWER told him about the conduct of MARTENS in relation to the American judges:

> "MALLET-PREVOST, it is useless any longer to keep up this farce pretending that we are judges and that you are counsel. The Chief and I have decided to disclose to you confidentially just what has passed. MARTENS has been to see us. He informs us that RUSSELL and COLLINS are ready to decide in favor of the Schomburgk Line which starting from Point Barima on the coast would give Great Britain the control of the main mouth of the Orinoco; that if we insist on starting the line on the coast at the Moruca River he will side with the British and approve the Schomburgk Line as the true boundary".
>
> *"However*," he added that
>
> "he, MARTENS, is anxious to have a unanimous decision; and if we will agree to accept the line which he proposes he will secure the acquiescence of Lord RUSSELL and Lord COLLINS and so make the decision unanimous."
>
> "That is what MARTENS has proposed. The Chief and I are of the opinion that the boundary on the coast should start at the Moruca River. The question for us to decide is as to whether we shall agree to MARTENS proposal or whether we shall file dissenting opinions."

From this MALLET-PREVOST deduced his conviction that:

> "during MARTENS visit to England a deal had been concluded between Russia and Great Britain to decide the case along the lines suggested by MARTENS and that pressure to that end had in some way been exerted on Collins to follow that course."

MARTENS blackmail was made clear by what former president HARRISON finally expressed:

> "MALLET-PREVOST, if it should ever be known that we had it in our power to save for Venezuela the mouth of the Orinoco and failed to do so we should never be forgiven. What MARTENS proposes is iniquitous but I see nothing for Fuller and BREWER to do but to agree".

> "The decision which was accordingly rendered was unanimous but while it gave to Venezuela the most important strategic point at issue it was unjust to Venezuela and deprived her of very extensive and important territory to which, in my opinion, Great Britain had not the shadow of a right."

This confirms the blackmail and pressure that was exerted on the American judges by the President of the Court, Professor MARTENS; pressure and blackmail that was also exerted on the English arbitrators.

This also results from what was expressed by former President HARRISON a few months later, on January 15, 1900, in a letter addressed to William E. DODGE, whiereas he informed him:

> "With regard to Lord RUSSELL'S advice that judicial spirit should be used in these matters, I have only to say that neither he nor his British colleagues practiced such good doctrine. He could recount, but not in writing, some incidents that would surprise him (...). In disputes between individuals, English courts are often remarkably fair and independent, but when it comes to extending Britain's domain, and especially when gold is involved, it is too much to expect of them. The decision in the case of Venezuela, as a compromise, gave Venezuela the strategic points, but

deprived it of an immense part of territory that an impartial court would have awarded it, and I have no doubt about it" (reference to: Library of Congress, United States Benjamin Harrison Mss. Vol. 176, fol. 38.134-35).

All of this is also the result of what was expressed on October 7, 1899, just a few days after the Award was rendered, by Lord RUSSELL, one of the English arbitrators, to Lord Salisbury, Minister of Foreign Affairs of Great Britain, indicating that:

"I must say here that in one very important respect L.J. COLLINS and I were grievously disappointed by the attitude assumed by Mr. Martens. He had up to this, shown that he had a good grasp of the legal question involved and of the facts, but having expressed his opinion on the governing principle rigidly and fearlessly, seemed to cast about for lines of compromise and to think that it was his duty, above all else, to secure, if he could, a unanimous award. I am sorry to be forced further to say that he intimated to J.L. COLLINS, in a private interview, while urging a reduction of the British claims, that if we did not reduce them, he might be obliged in order to secure the adhesion of the Venezuelan Arbitrators to agree to a line which might not be just to Great Britain. I have no doubt he spoke in an opposite sense to the Venezuelan Arbitrators, and fear of possible a much worse line was the inducement to the them to assent to the Award in its present shape. However, this may be I need not say the revelation of Mr. De MARTENS state of mind was most disquieting" (reference to: Hatfield House, Herts, papers of 3rd. Marquis of Salisbury, Vol A/94, Doc. 3).

All this, moreover, has been ratified in the Memorandum submitted to the International Court of Justice by Guyana on March 8, 2022, whereas, when referring to the conduct of MARTENS in relation to British judges, citing the MARTENS

Memoirs, he narrated how he pressured and blackmailed them, with the same purpose of achieving a "unanimous" Award, regardless of the injustice that could result.

In fact, Guyana's *Memorial* states:

> "5.12 In fact, Prof MARTENS, in his diary, confirmed that the British Arbitrators, especially Lord RUSSELL, were displeased with his efforts to obtain concessions from them in order to produce a unanimous Award:
>
> > "I opened the session with the story about my negotiations and made it clear that I find a firm basis for the possible and complete agreement in the concessions made by the Americans. My speech irritated Lord RUSSELL, who is inherently bad-tempered. He started to talk defiantly, saying that the concluded negotiations between the chairman and the members of the tribunal seem awkward and confusing to him and that he is not going to make any concessions. My brief and clear response was that I consider it not only as my right, but rather as a moral duty to carry out such negotiations to ensure full unanimity between the arbitrators and to achieve the greatest objective – a unanimous arbitral award. Due to this I consider the accusations of Lord RUSSELL groundless and I do not regret about the measures I undertook, which I always immediately communicated to both sides."
>
> 5.13 The following passage from Prof MARTENS diary further dispels the suggestion that he colluded with the British to produce a result in their favour:
>
> > "Lords RUSSELL and COLLINS are still angry with me as I literally forced them to be more flexible and to waive their excessive demands.… Even though I did not take any

> side they still felt that I put them in such a position that they had to make one more concession and to accept my line from Cap Palaya. It was obvious that if the British had not agreed to my compromise, I would have joined the Americans rather than them. This is the reason of Lords RUSSELL and COLLINS, and that is how I managed to have the unanimity of all the arbitrators. This is a great triumph!"

5.14 To be sure, Prof MARTENS, as President of the Tribunal, sought to achieve a unanimous Award, which the Arbitrators appointed by the two opposing sides could accept. He made no secret of his objective in this regard:

> "I was extremely happy about my triumph of having a unanimous arbitral award, despite the complete opposition of interests, views and law systems of both parties" (*Memoria*, Guyana, par. 5.12-5.14).

And MARTENS purpose of achieving a unanimous Award was precisely what led him to blackmail both groups of arbitrators, in what was undoubtedly a procedural fraud, as he himself affirmed as testimony in his diary, as transcribed by Guyana. in her *Memorial*:

> "I went to Lord COLLINS but found him even more unwilling to make concessions than the day before. But then I explained to him that it was not in England's best interest to force me to take the Americans' side. This made him reconsider the issue. However, I told Fuller and BREWER that if they do not make a concession, then I will have to take the side of the British à contre-coeur, for I cannot let a scandal to happen, i.e. the situation when the court cannot decide the case, as 4 arbitrators cannot agree with each other, and the superarbitrator refuses to vote!" (Guyana *Memorial*, par. 8.70).).

From the foregoing it is evident, that the Award was not "based on justice and law" as MARTENS stated the day after it was rendered (Guyana *Memorial,* par. 8.73), but rather on the efforts of the President of the Tribunal, sacrificing law and justice in the face of the existing discrepancies between the arbitrators, in order to achieve a unanimous award, this being his great "triumph" in the case. As Guyana put it in its Memorial:

> "that Prof MARTENS' overriding aim was to bridge these differences in order to achieve a unanimous decision. Prof. Martens' diaries show that it was a desire for unanimity, rather than a desire for the delimitation of the boundary along a particular predetermined line" (Guyana *Memorial,* par. 8.81).

To do this, MARTENS pressured and blackmailed the British and American arbitrators, negotiated with them under pressure or coercion separately, urging each group to accept his border proposal, threatening both groups of arbitrators separately, that if they did not accept what he was proposing, he would side with the opposing group. That is, contrary to what Guyana argues (*Memorial*, par. 8.63), an undue "coercion" was exerted on the arbitrators internally through conversations, and there was not any actual deliberation by the court.

This is recognized by Guyana in her *Memorial*, stating that the deliberations led to "a series of mutual concessions and compromises brokered by the President, Prof Martens" (para. 8.62), however qualifying the process as one from which a "consensus" emerged, which it isn't true. Guyana says:

> "Those same documents demonstrate that through that process of discussion and deliberation, a settled consensus ultimately emerged – a consensus that was the product of mutual compromises and adjustments in the Arbitrators'

> respective positions, including compromises facilitated by the Tribunal's President, who strove to achieve a unanimous Award" (Guyana *Memorial*, par. 1.39).

On the contrary, the Arbitral Award of 1899 was issued after a process of compromise, pressure and blackmail, namely, procedural fraud. Hence, the Award could not have any rational foundation or motivation of any kind, as in fact did not, since was adopted with excess power and ignoring the arguments put forward by the parties contained in the documents submitted to the Arbitrators.

VII

AN ARBITRARY ARBITRAL AWARD WITHOUT REASONING

As summarized by Otto SCHOENRICH in his Note to the MALLET-PREVOST Memorandum:

> "In March 1898, each party submitted its case with accompanying papers: Venezuela, three volumes and an atlas; Great Britain, seven volumes and an atlas. In July, 1898, the counter-case was submitted: Venezuela, three volumes and an atlas; Great Britain, two volumes and maps. In November, 1898, the parties submitted printed arguments: Venezuela, two volumes, Great Britain, one volume. After a brief inaugural session in January, 1899, formal sessions for arguments began in Paris in June, 1899, and lasted for fifty-four sessions of four hours each, ending September 27, 1899."

That voluminous documentary evidence submitted during the trial was also highlighted by Guyana in her 2022 *Memorial*, outlining how, pursuant to the provisions of the Washington Treaty, arguments were made before the Arbitral Tribunal "through many thousands of pages of written submissions and more than 200 hours of oral hearings," (Guyana Report par. 1.9); in other terms:

3.46 In addition to the many hundreds of pages of written submissions and over 200 hours of oral arguments, more than 2,600 documents were placed before the Tribunal.

3.47 In accordance with Article XI of the Treaty – which required the Arbitrators to "keep an accurate record of their proceedings" – a verbatim record of the oral proceedings was produced day by day, issued in 56 parts. The published record of the entire oral proceedings ran to more than 3,200 pages.

It all happened like this:

8.2 […] on 15 March 1898, Great Britain and Venezuela each submitted their Cases to the Tribunal. Great Britain's Case comprised 164 pages of written submissions plus seven volumes of annexes (running to a total of more than 1,600 pages).467 Venezuela's Case comprised 236 pages of written submissions plus two volumes of annexes (running to more than 900 pages).

8.3 Article VII of the Treaty gave each party the right to file "a Counter-Case, and additional documents, correspondence, and evidence, in reply" within four months of the submission of the Cases. In accordance with that provision, four months after they submitted their Cases, on 15 July 1898, the parties submitted their respective Counter-Cases. Venezuela's Counter-Case comprised three volumes (containing nearly 800 pages) and an atlas. 469 Great Britain's Counter- Case comprised two volumes (of more than 550 pages), together with several maps.

8.4 Four months later, on 15 November 1898, the parties filed their final printed Arguments in accordance with Articles VII and IX of the Treaty. Great Britain's Argument comprised a single volume of 55 pages. 471 Venezuela's Argument comprised two volumes running to a total of 765

> pages, with an additional 80 pages of supplementary materials. On 15 June 1899, the substantive hearings before the Tribunal began. 4 Between 15 June and 27 September 1899, the Tribunal held 54 four-hour sessions at which Great Britain and Venezuela presented their respective arguments and evidence.
>
> 8.6 In accordance with Article XI of the Treaty – which required the Arbitrators to "keep an accurate record of their proceedings" – a verbatim record of the oral proceedings was produced by a team of shorthand writers and published contemporaneously. The published record of the entire oral proceedings comprises more than 3,200 pages."

Neither a single allegation or argument, nor a shred of evidence submitted by the parties was taken into account by the Arbitral Tribunal of 1899. As highlighted by Guyana in its *Memorial* (Guyana *Memorial*, par. 8.62) the Arbitral Award was extremely short, rendered only six (6) days after the oral arguments ended; an Award whereas the thousands of pages and hundreds of documents were supposedly considered, but without motivation or reason, arbitrarily setting the border between Venezuela and the British Colony of Guyana, only stating that after having heard the parties and examined the arguments:

> "[the Arbitrators] have investigated and ascertained 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."

That was the only "motivation" of the Award, really being a transcript of the article III of the Washington Treaty of 1897 containing the instruction to the Tribunal.

That, of course, was no "motivation" to issue an award establishing the border between Venezuela and the Colony of British Guiana, since the Arbitrators did not reveal how they had investigated and ascertained 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 the British Guiana" (Article III of the Washington Treaty); nor how they concluded on the applicability –or not– of the principle that "adverse holding or prescription during a period of fifty years shall make a good title" (Article IV.a of the Washington Treaty).

Without any foundation, the border was set as follows:

> "Starting from the coast at Point Playa, the line of boundary shall run in a straight line to the River Barima at its junction with the River Mururuma, and thence along the mid-stream of the latter river to its source, and from that point to the junction of the River Haiowa with the Amakuru, and thence along the mid-stream of the Amakuru to its source in the Imataka Ridge, and thence in a south-westerly direction along the highest ridge of the spur of the Imataka Mountains to the highest point of the main range of such Imataka Mountains opposite to the source of the Barima, and thence along the summit of the main ridge in a south-easterly direction of the Imataka Mountains to the source of the Acarabisi, and thence along the mid-stream of the Acarabisi to the Cuyuni, and thence along the northern bank of the River Cuyuni westward to its junction with the Wenamu, and thence following the mid-stream of the Wenamu to its westernmost source, and thence in a direct line to the summit of Mount Roraima, and from Mount Roraima to the source of the Cotinga, and along the mid-stream of that river to its junction with the Takutu, and thence along the mid-stream of the Takutu to its source,

> thence in a straight line to the westernmost point of the Akarai Mountains, and thence along the ridge of the Akarai Mountains to the source of the Corentin called the Cutari River."

Since the Award was totally unreasoned, there is no evidence that the Arbitrators considered any arguments or documentary material provided by the parties, nor that they considered the two rules established in the Washington Treaty. For this reason, the result was an arbitrarily established by the Court "border", without any relation to the aforementioned requirements. Namely, it was not the result of the determination 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," nor of the application -or not- of the principle that an "adverse holding or prescription during a fifty years shall make a good title." These rules were part of the primary mission that the 1899 Arbitral Tribunal was required to perform under the Washington Treaty. Hence, this is the task that the International Court of Justice will now have to assume by declaring the nullity of the 1899 Award, taking into account all the documentation produced between 1897-1899 before the Tribunal, which must undoubtedly be submitted to the trial, in addition to new Documentation to be submitted by the parties to determine the border between Venezuela and Guyana.

In particular, the second of the rules established by the Washington Treaty ignored the Agreement that the United Kingdom and Venezuela reached since 1850, signed in separate communications by the Chargé d'Affaires of Great Britain in Caracas, Belford Hinton Wilson of 18 November 1850 and by the Minister of Foreign Affairs of Venezuela, Vicente Lecuna on December 20, 1850, after the printing of the SCHOMBURGK

Report (*Reisen in Guiana und am Orinoko*, Leipzig, 1841) on his first expedition (1835-1839), and after his second expedition (1841-1843, whereas both countries committed themselves not to occupy or usurp the disputed territory west of the Essequibo River.

The Arbitral Tribunal should have studied the meaning, value and effect of said Agreement, which prevented the occurrence of an alleged fifty-year prescription that could not operate based on an alleged possession that was not legitimate or peaceful, and that in addition, the Tribunal was totally ignorant of the *uti possidetis juris* principle that was the title under which Venezuela formed its territory when declaring Independence from Spain since 1810.

The lack of motivation of the Award is a consequence of the arbitrariness and manipulation in its rendering, affecting the validity of the Award; hence it is not true what Guyana affirmed in her *Memorial* that:

> "The absence of reasons for the Arbitral Tribunal's decision was in accordance with the requirements of the Treaty, the contemporaneous expectation of the parties, and the general prevailing practice at the time." (*Memorial* Guyana par. 1.38).

It should be remembered that the Washington Treaty required the Tribunal to demonstrate that it had observed the

rules therein. Moreover, at the First Hague Peace Conference held the same year parallel to the arbitration process developed in Paris in 1899, the proposal of Germany´s representative on the matter prevailed, despite MARTEN´S opposition, and the Hague Convention (art. 2, which was finally 52), established that the arbitral award "It must contain the reasons on which it is based," crystallizing the already established legal custom that an award must be motivated.

This lack of motivation in the Award, which Guyana acknowledges and renders it null and void, seems to be precisely what Guyana sought to remedy, 123 years later, when it "explained" in her 2022 *Memorial*:

> 3.56 The boundary established by the Tribunal did not match the claim of either party but divided the disputed territory between them. Venezuela's claim to the entire Essequibo Region, comprised of all the territory between the Essequibo and Orinoco Rivers, was rejected. Likewise, Great Britain's "Extreme Boundary Claim" and its alternative claim based on the Schomburgk Line were rejected. Instead, the Tribunal adopted the standard that Great Britain was entitled to the territory possessed by the Dutch at the time the British acquired it from them, and Venezuela was entitled to the territory belonging to Spain at that time. The Tribunal drew a line that, as it described, divided the Amakura and Barima basins, leaving the former on the Venezuelan side and the latter on the British side, with the result that Venezuela was given Point Barima on the Atlantic Coast, with a strip of land about fifty miles long. This gave it dominion and control over the entire mouth and surrounding delta of the Orinoco River. And it left the British with far less territory than it would have received if the

> Original Schomburgk Line had been adopted as the boundary, let alone the more extreme boundary claimed by Great Britain. (*Memorial* Guyana par. 3.56).

This "explanation" or "motivation", however, is not contained in the Award. Moreover, had it been included in the Award, it would be arbitrary and, hence, confirm the nullity, particularly because it is false that, as Guyana says in her *Memorial* the:

> "Tribunal adopted the standard that Great Britain was entitled to the territory possessed by the Dutch at the time the British acquired it from them, and Venezuela was entitled to the territory belonging to Spain at that time."

This is false, not only because it is not argued in the judgment, but also because it does not conform to historical reality, since the "establishments" (not territories) that the Dutch possessed at the time of Great Britain´s acquisition on August 13, 1814, consisted of three tiny enclaves or settlements on the Essequibo, Demerara and Berbice rivers, while Venezuela´s titles and domain extended throughout the territories located between the Essequibo River and the Orinoco River.

What really happened was not that the Arbitral Award, as Guyana affirms in its Memorial, gave Venezuela "dominion and control over the entire mouth and surrounding delta of the Orinoco River," of which it had been the sovereign since Christopher Columbus set foot on Paria in 1498; but rather that this domain and control over the Orinoco was not taken from Venezuela, as MARTENS threateningly explained to the American arbitrators to get their votes and produce a unanimous Award through blackmail played by the President of the Arbitral Tribunal.

All of the above shows that the 1899 Arbitration Award is null and void, not only for lack of legal grounds and motivation,

but also deviation and procedural fraud, exceeding the Tribunal the exercise of his functions, "solving" a legal arbitration without legal considerations, ignoring the terms of international law; and also establishing principles on river navigation in Guayana Esequiba in times of peace (Amakuru and Barima rivers) that was not among the powers of the Arbitrators. And all this, because one of the arbitrators acted corruptly, by blackmailing and negotiating with the other arbitrators, separately, in a compromise where the sovereign rights of Venezuela were sacrificed, materializing a dispossession, only to achieve a "unanimous" decision, through the certain threat (which was in the hands of the decision of the fifth Arbitrator Mr. MARTENS, the "super arbitrator") to take control of the mouths of the Orinoco River from Venezuela.

In addition, the award is null and void because the Tribunal, with its conduct, committed an essential error of law, by ignoring and not deciding pursuant to what had been imposed on him, namely, investigating and determining investigating and determining 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 the British Guiana," and "the adverse holding or prescription during a period of fifty years" that could "make a good title;" to be able to go on, consequently, to "determine the border line between the Colony of British Guiana and the United States of Venezuela."

It is not that there is no evidence that the Arbitrators did not consider such rules as stated by Guyana in her *Memorial* (par. 8.47); on the contrary, there is no evidence, due to the lack of motivation in the Award, that the Arbitrators effectively considered those fundamental aspects established in the Washington Treaty, as it results from the border they arbitrarily

set. That error in law derived from the essential error in fact, since to come to the arbitrary decision, the Tribunal ignored history and the facts, capriciously setting a border between the two countries, without any foundation.

On the other hand, as Guyana acknowledges in its *Memorial* (*Memorial*, Guyana para. 8.61), as there is no motivation in the Award, no deliberation on the issue of the alleged errors in the maps presented by the United Kingdom, that since 1865 Venezuela denounced as false or manipulated is shown therein, again rendering the Award null and void for lack of reasoning.

PART THREE

ESSENTIAL HISTORICAL PREMISES TO RESOLVE THE GUAYANA ESSEQUIBA CONTROVERSY AND THE FALSEHOODS OF THE GUYANA'S *MEMORIAL* FILED BEFORE THE INTERNATIONAL COURT OF JUSTICE

I

ESSENTIAL HISTORICAL PREMISES TO RESOLVE THE CONTROVERSY AND THE EXISTING DOCUMENTARY EVIDENCE

Venezuela has all the legal and historical titles that shows her sovereignty over the territory of Guayana Esequiba west of the Essequibo River.

Therefore, respecting history, the following facts are the ones that must be taken into consideration to resolve the controversy in accordance with the terms established in the Washington Treaty of 1897, showing the legal and historical possession and sovereignty that Venezuela has had over the Essequibo Territory, between the Orinoco River and the Essequibo River:

First, the Spanish Crown pursued the settlement and occupation of the territory of the northern part of South America, known as *Tierra Firme*, from the Isthmus of Panamá to the Amazon River, beginning with the discovery of Christopher COLUMBUS at the mouth of the Orinoco River in 1498; the navigation of Vicente YÁNEZ PINZÓN, in 1499, bordering the current north coast of Brazil to the Amazon Delta, obtaining Capitulation to go and to discover from the point of Santa María to Rostro Hermoso and the river of Santa María de la Mar Dulce (the Marañón or Amazon); the navigation of RODRIGO DE BASTIDAS in 1500, accompanied by Juan DE LA COSA, obtaining

the latter in 1504 Capitulation to go and to discover the Gulf of Urabá, and the first, in 1524, Capitulation to go ad to discover and populate the province of Santa Marta; the navigation of Alonso de HOJEDA, accompanied by Américo VESPUCIO along the coast of Venezuela and rediscovering the pearl fishery near the Isla de Margarita, obtaining Capitulation in 1504 to go and to discover Coquibacoa (La Guajira); the founding in 1508 in the island of Cubagua of the City of Nueva Cádiz; and the Capitulation granted to the Welsers in 1528 for the discovery and colonization of what was known as Venezuela, from Maracapaná to Cabo de la Vela.

This initial process of discovery and colonization was followed by the trip of Diego DE ORDAZ in 1530, with Capitulation to discover, conquer and settle two hundred leagues from Maracapana, in the confines of the Capitulation of the Welsers, up to the Marañon River, arriving in 1531 to Paria. After Diego DE ORDAZ'S expedition down the Orinoco in 1531, effective penetration into Venezuelan Guayana toward the east began in 1568, first from Cumaná and then from the New Kingdom of Granada.

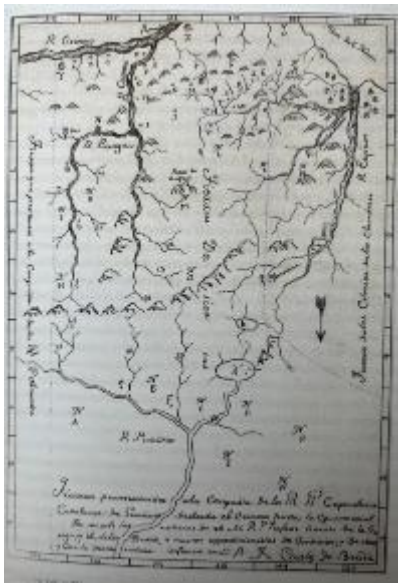
In that year 1568, the Province of Nueva Andalucía or Cumaná was established, first, by Capitulation granted to Diego FERNÁNDEZ DE SERPA, including on various occasions the Provinces of Trinidad and Guayana; and second, the Province of Guayana through Capitulation granted to Gonzalo JIMÉNEZ DE QUESADA to discover and populate the plains, provinces and lands to the east of the New Kingdom of Granada. This became effective in 1569, by Antonio DE BERRÍO, who founded the city of Santo Thomé de Guayana on the banks of the Orinoco in 1595, and before that, in 1592, of San José de Oruña, on the island of Trinidad, which was always part of said Province.

The latter Provinces were established towards the east up to the confines of the Amazon River, which was their territorial limit. It was in the coast of those vast territories known geographically as *Caribana* and *Guiana*, where the Dutch located some commercial settlements.

Information about the discovery and recognition of South America by the Spanish and other navigators was expressed in the work of Joannis de Laet or Leat, Nievwe Wereldt, ofte beschrijvinghe van West-Indien (Leyden, 1625-1630), particularly in the maps it contained, prepared by Hessel Gerritsz, one of the least known of the great Dutch cartographers of the seventeenth century. He was official cartographer of the Dutch East India Company, and was able to gather all the cartographic information that came from the New World to Holland. He traveled to the Caribbean and the coasts of Brazil, which allowed him to collect first-hand the information he poured into his maps, which did not happen with the others.

As for the occupation of territory in the area by the Spanish Crown, it was undoubtedly difficult since large indigenous communities, such as the Caribs, populated the east of the Orinoco and Caroní rivers. In any case, was carried out fundamentally through Jesuit and Capuchin Missions, governing the Amazon and the territory of Guayana Esequiba on behalf of the Spanish Crown.

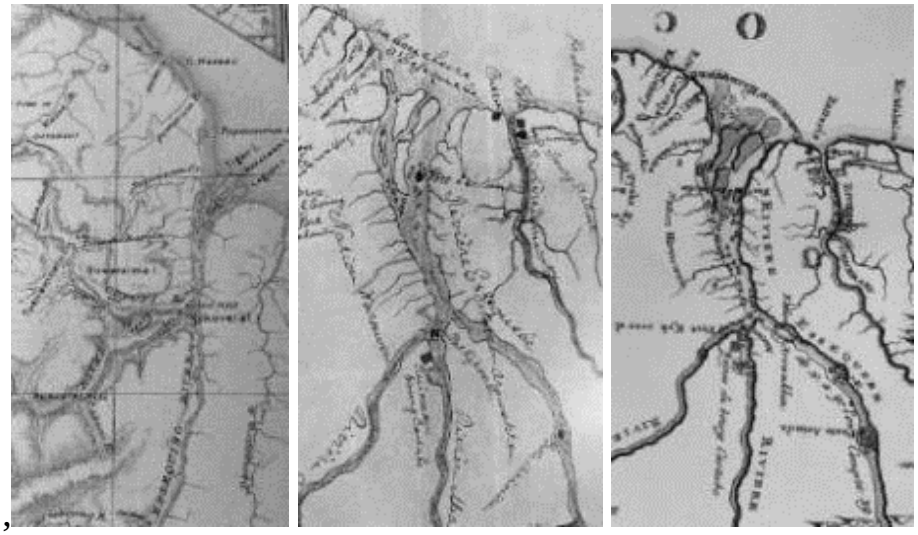
Mapa de la provincia y Misiones de la Compañía de Jesús del Nuevo reino de Granada 1741



Tierras pertenecientes a la conquista de los RP Capuchinos Catalanes de Guaina Desde el Orinoco hasta la Equinoccial, Fray Carlos de Barcelona, 1779

Muestra las "tierras de las Colonias de los Olandeses" al este del río Esequibo

Second, the Dutch, then rebel subjects of the kingdom of Spain that had not yet recognized at the time the independence of the United Provinces of the Netherlands (the "eighty years' war" of that independence began in 1568 and ended in 1648 under the Treaty of Münster), a century after the discovery, and of the beginning of the Spanish colonization of the entire territory between the Isthmus of Panama and the Amazon River (Tierra Firme), began to venture into the coasts of Guyana to establish settlements for commercial purposes from 1598. Particularly they did so in the territories east of the Essequibo River, on the mouth of the Berbice and Demerara rivers, building also a fort on the Island of Kykoveral in the confluence

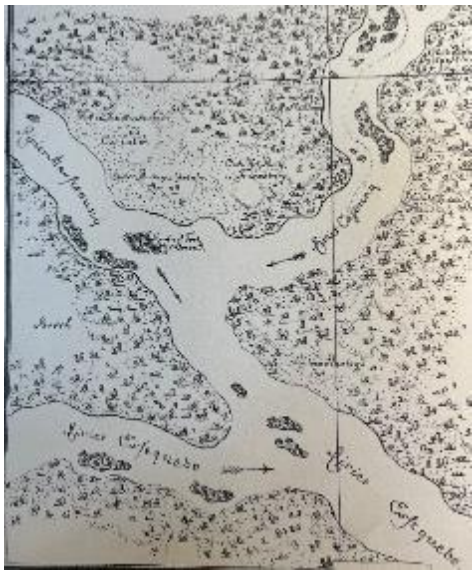


Izq.: Detalle del Mapa: "Historical Map showing European Occupation in the year 1626." George Lincoln Burr. Washington 1897. Presidential Commission United States

Centro: Detalle del Mapa: "Carte Générale de la Cologne d'Esequebe et Demerarie situé dans la Guiane en Amérique. F. von Bouchennoeder, 1798

Der: Detalle del General Map of a Part of Guiana, F. von Bouchennoeder, 1798. Todos muestran el asentamiento del Fuerte Kyk-over-al, en la isla del mismo nombre en la unión del río Mazaruni con el río Cuyuní, antes de su desembocadura en el río Esequibo.

in the confluence of the Mazaruni river with the Cuyuní river, prior to the confluence of the latter in the Esequibo river (1616). This was all managed by the West Indian Company established on 1607.



Detalle del Map of the Cuyuni River from its mouth to the First fall, J.C.v Heneman 1772

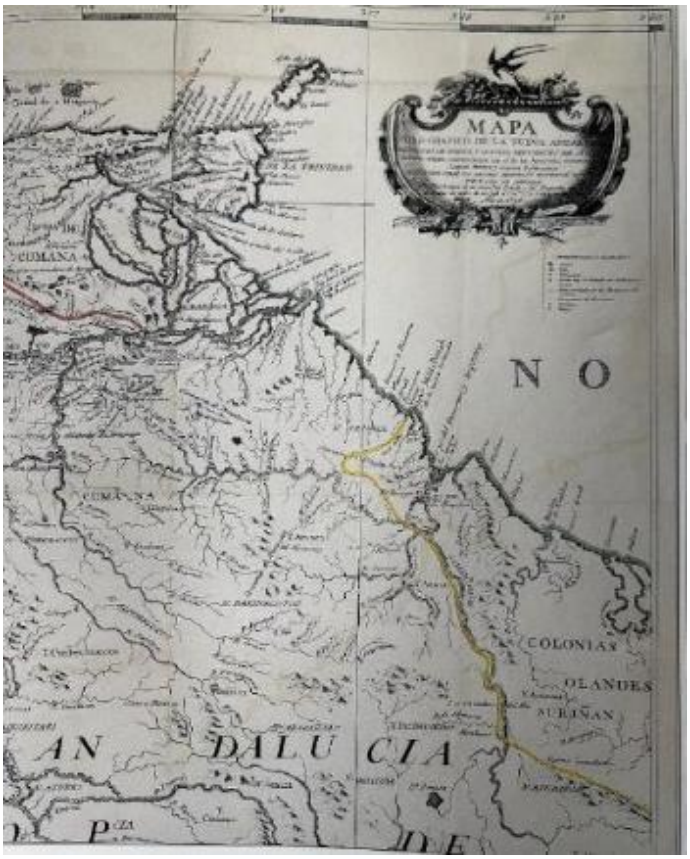
They furtively made incursions into the territories west of the Essequibo River, and on occasion even attacked the city of Santo Thomas de Guayana, but were always repealed by the Spaniards.

Third, by means of the Treaty of Münster of 1648 signed between Spain and the General States of the Netherlands, when Spain recognized the independence of Netherland, the Crown only recognized the possessions that the Dutch had in Guiana east of the Essequibo River in the Demerara and Berbice rivers, and at the junction of the Mazaruni River and the Cuyuni River before the mouth of the Essequibo River, on the island of Kyk-over-al exclusively, the border having been established in the possessions in Guiana between Spain and Holland, on the Essequibo River. The territory west of the Essequibo came under Spanish sovereignty, with no right on the part of Holland to continue occupying territories. By recognizing only the mentioned Dutch settlements Spain therefore retained sovereignty over the rest of the Essequibo territory, not being Netherlands authorized by the Treaty of Münster to occupy new Spanish territories in Guiana. Hence, any subsequent occupation of

territories in Esequiba Guiana by the Netherlands was illegitimate and incapable of generating sovereign titles.

Mapof the Noveau Royaume de Granade, Nouvelle Andalousie, et Guyane, 1764

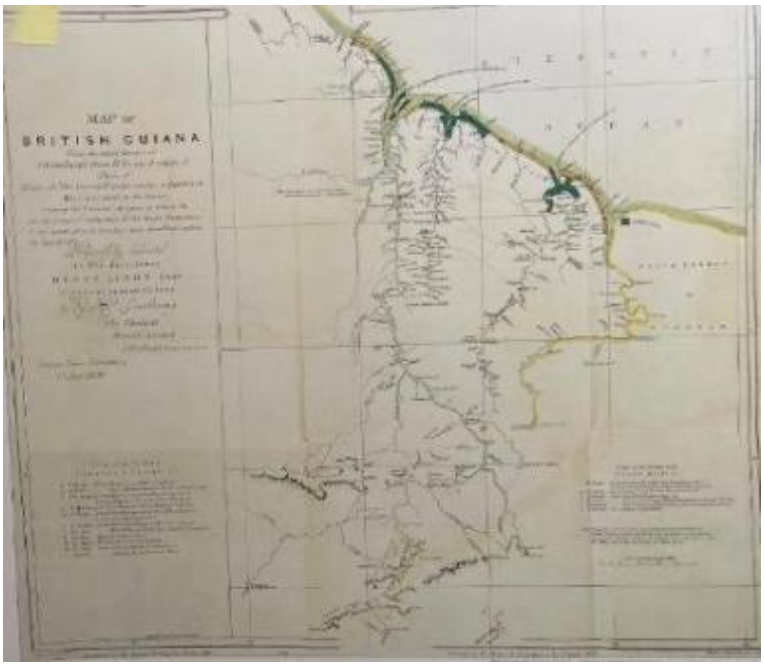
Shows the Spanish Provinces of Nueva Andalucía and Guayana and the Dutch Colonies of Surinam toward the east of the Esequibo river



Detalle del mapa Coro-Gráfico de la Nueva Andalucía, Provincias de Cumaná, y Guayana, vertientes del Orinoco, su cierto origen, comunicación con el de las Amazonas, situación de la Laguna Parime, y nuevas poblaciones, 1778

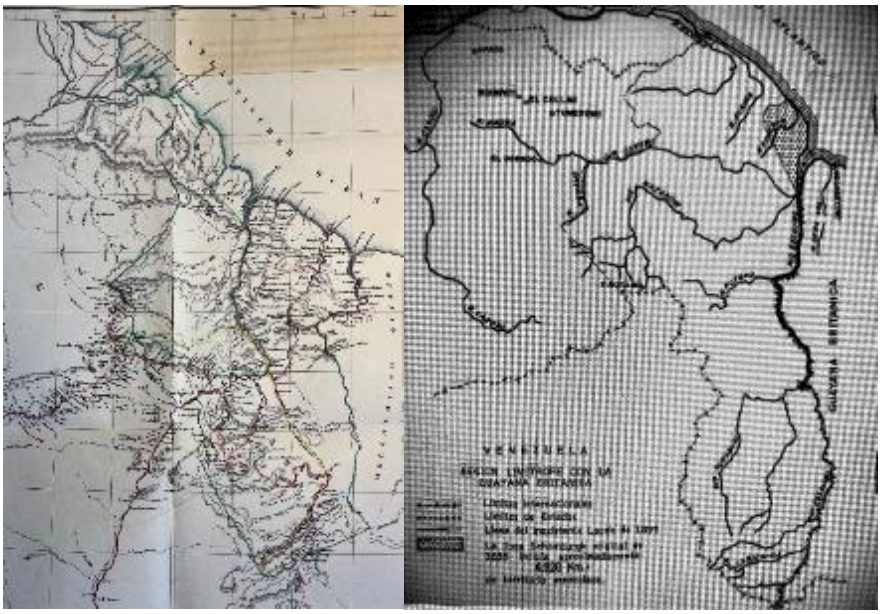
Muestra las Colonias Holandesas de Surinam al este del río Esequibo

Fourth, by means of the London Peace Treaty of May 30, 1814, and the subsequent Convention of August 13, 1814, Holland ceded to Great Britain in Guyana; namely the *establishments* (settlements) of Demerara, Essequibo, and Berbice; which were three enclaves located on the three rivers, and nothing else, maintaining the Venezuelan border with the new British Colony on the Essequibo River.



Map of British Guiana, from the latest Surveys of Schomburgk, Owen, Hilhouse & Others, and those of Hancock, Van Cooten, Bouchernrode & Bercheyck, 1838 (presented to Henry Light, Governor of the Colony)

That border was even displayed in the initial map drawn up by Robert Herman SCHOMBURGK in 1836, who started his expedition in 1835, although the Map was later modified, misrepresenting the truth.



Línea original de Schomburgk 1835,

Izq. del libro de R.H. Schongurgk, Reisen in Guiana und am Orinoko, Leipzig 1841,

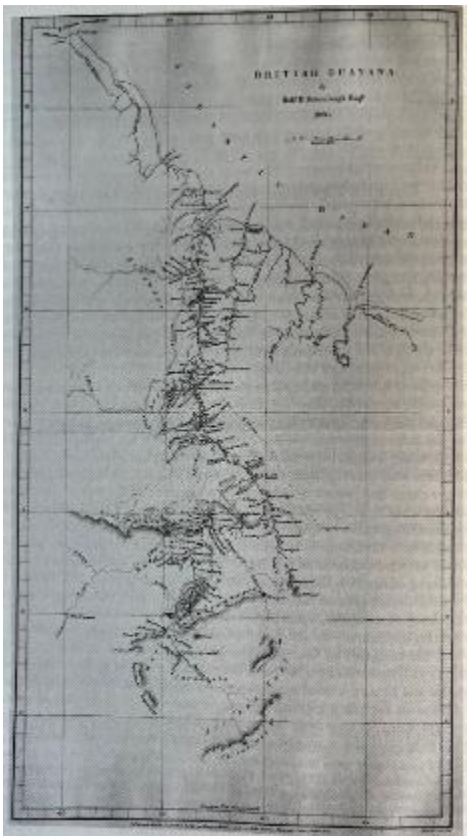
***Der: del* libro de Armando Rojas, *Venezuela limita al este con el Esequibo,* Cromotip, Caracas 1968**

Other than these three settlements (Demerara, Essequibo, and Berbice) that Spain recognized and transferred to the Netherlands through the Treaty of Münster, the Netherlands had no sovereign title to transfer any lands in Essequiba Guiana east of the Essequibo River to Great Britain.

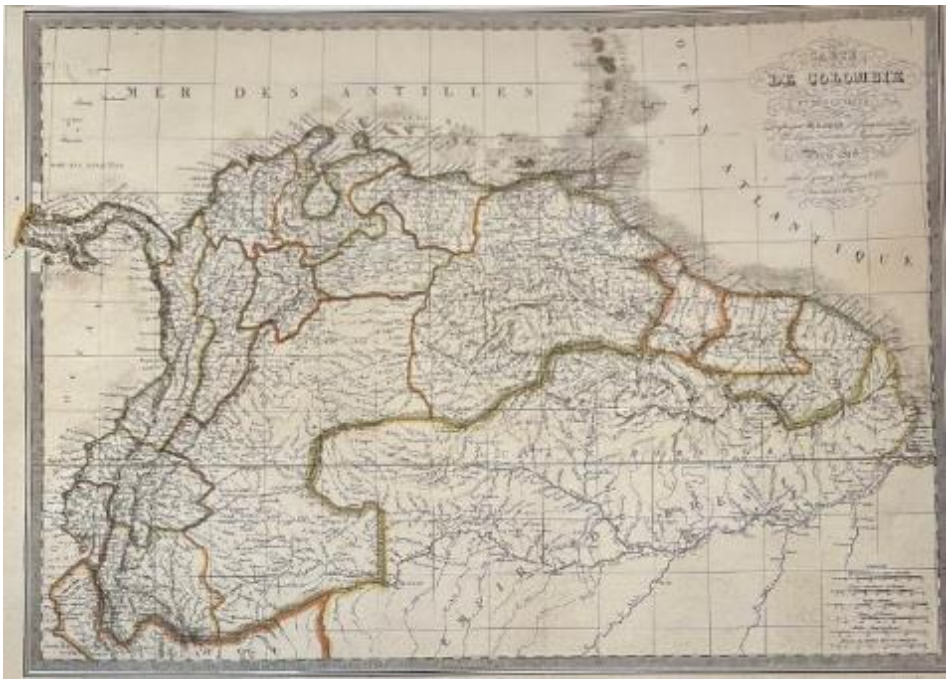
Hence, the settlements transferred by the Netherlands to England, were limited to small areas on the banks of the mouths of the Demerara, Berbice and Essequibo rivers, namely those that Great Britain consolidated with the single denomination of British Guiana in 1831. Detailed information about them and their extension is contained in the SCHOMBURGK first Expedition Report ((1835-1839).

That is to say, by the time SCHOMBURGK began his first expedition, what in fact existed in what he described as "British

Guiana" were some plantations and populations located within a few miles of the coasts in the mouths of the Esequibo, Demerara and Berbice rivers, as he reported, and as can also be seen in another version of the Map he prepared in 1836 (by that time, and since 1748, the Fort of Kikoveral constructed by the Deutch in the intersection of the Esequibo, Cuyuní and Mazaruni river had been abandoned), showing the boundary with Venezuela running along the Essequibo river.



British Guyana. By Rob. H. Schomburgk Esq. 1836. Proof copy, illustrating route of the first expedition. Published in P. Rivière (Ed), ***The Guiana Travels of Robert Schomburgk 1835-1844*****, The Hakluyt Society, London 2006, Vol. I, p. 32**



Carte de la Colombie et des Guyanes, Pierre Lapse, 1828
Showing the boundary of the Republic of Colombia to the east along the Esequibo river, and showing the Guianas eastof the same Esequibo river

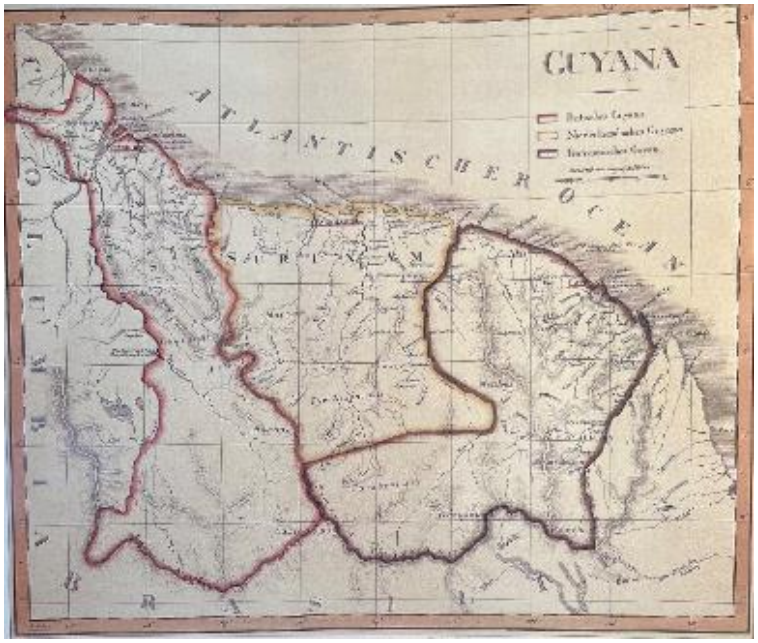
On the basis of the foregoing factual, historical, and legal premises, the conclusion is, as argued by Venezuela in the 1899 arbitration proceedings, and summarized by Guyana in her *Memoria*l (par. 3.49), the following:

That Spain discovered the area since 1498 and, "by a first and timely settlement of a part of the whole, perfected her title to the whole of the geographical unit known as Guiana".

That through the Treaty of Münster of 1648, "Spain ceded to the Dutch only the places in Guiana that the Dutch physically possessed, and that the rest of the territory remained open to future possession by Spain."

That "all the territory to the north and west of the Dutch settlements were Spanish territory on which the Dutch were prohibited from encroaching by the Treaty" [of Münster].

That "the Dutch could not transfer those lands to Great Britain by the 1814 London Convention or the 1815 Treaty of Paris, and Great Britain was not entitled to any territory beyond that physically held by the Dutch at the time of the Treaty of Münster of 1648" (*Memoria*, Guayana, par. 3.49).



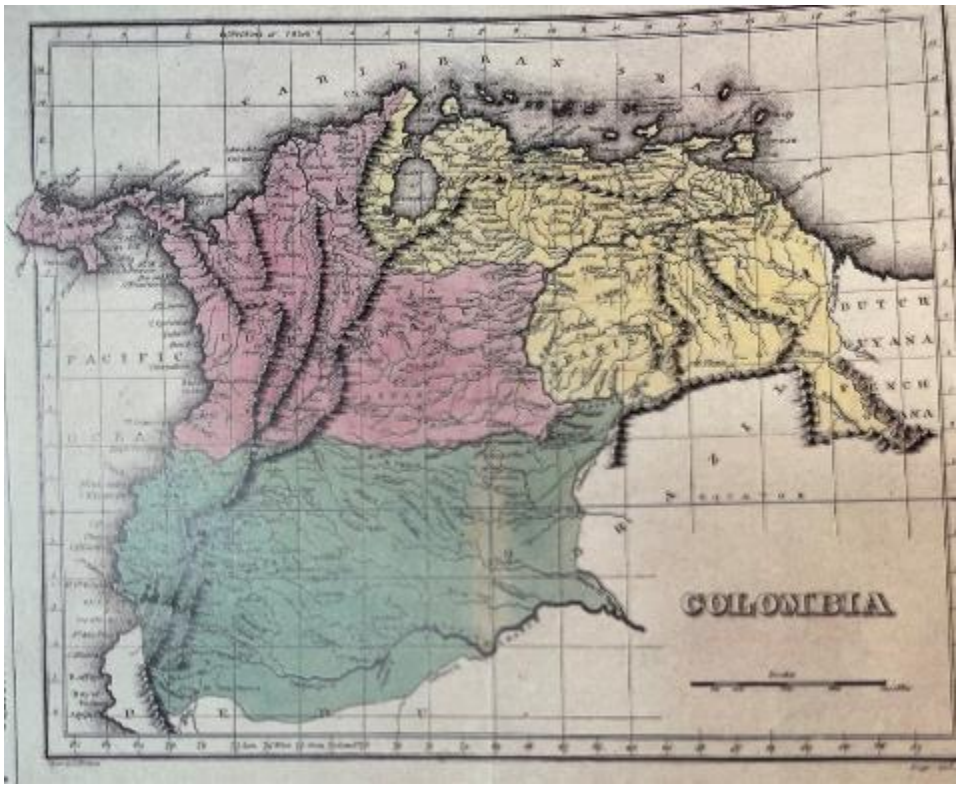
Guyana. Weimar Geographic Instituto. 1828

Consequently, since 1810, when Venezuela declared her independency and defined the national territory as the one held by the General Captaincy of Venezuela created in 1777 (excluding only the island of Trinidad that Spain surrounded to Great Britain in 1802 through the Treaty of Amiens of 1802, after the English invasion in 1797), pursuant to the principle of *uti possidetis iuris*, the Venezuelan territory towards the east, in the province of Guyana, extended to the Essequibo River. From

there and further east were the enclaves recognized to Netherlands under the Treaty of Münster. That was the territory of the Province of Guayana that in 1817 was liberated from Spain by Simón Bolívar and by Decree of the same year was incorporated to the Republic of Venezuela.

For this reason, in the maps of the former Republic of Colombia drawn under the Constitution of 1821, to the east the border appears in the Esequibo river:

Carta de la República de Colombia, José Manuel Restrepo, París 1822.



***Geographical, Statistical and Historic Map of Colombia,
James Finlayson, 1822***

That new country, the Republic of Colombia regulated in the Constitution of 1821, was expressly recognized internationally by the United States in June 1822 and by the United Kingdom in December 1824, with it's corresponding territory as defined in the Territorial Division law of the country issued the same year, extended towards the east to the Essequibo river (to the north with the ocean sea and to the east with the Essequibo river).

Over that same territory, through the Treaty of Peace and Recognition signed between Venezuela and Spain on March 30, 1845, Spain renounced "for itself, its heirs and successors, the sovereignty, rights and actions that correspond to it over the

American territory, known under the old name of Captaincy General of Venezuela, today the Republic of Venezuela" (art. 1); and recognized:

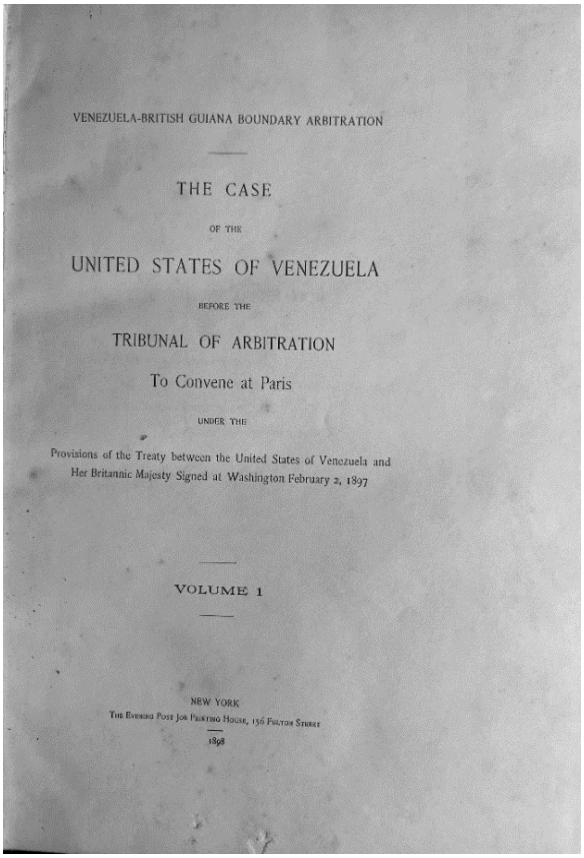
> "as a free, sovereign and independent Nation the Republic of Venezuela composed of the provinces and territories expressed in its Constitution: and other subsequent laws, namely: Margarita, Guayana, Cumaná, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure, Mérida, Trujillo, Coro and Maracaibo and any other territories and islands that may correspond to it" (art. 2).

That territory, including the territory of the Province of Guayana, is the one that extended to the east of the Orinoco as far as the Essequibo River, since this was the border that the Treaty of Münster established between Spain and the United Provinces of the Netherlands in 1648.

All of the above was argued and proven before the Arbitral Tribunal created by the Washington Treaty in 1897 between 1898 and 1899, in the following documents and their annexes produced and printed before the Arbitral Award was issued, and must be formally recorded by Venezuela in the trial before the International Court of Justice, as part of her allegations and evidence, especially since Guyana has already made profuse reference to many of them in her Memorial:

First, the three volumes and its annexes identified as:

- Venezuela-British Guiana Boundary Arbitration, ***The Case of the United States of Venezuela before the Tribunal of Arbitration to Convene in Paris under the Provisions of the Treaty between the United States of Venezuela and the Britannic Majesty signed in Washington February, 1897***, New York 1898.



VENEZUELA-BRITISH GUIANA BOUNDARY ARBITRATION

THE CASE

OF THE

UNITED STATES OF VENEZUELA

BEFORE THE

TRIBUNAL OF ARBITRATION

To Convene at Paris

UNDER THE

Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897

VOLUME 1

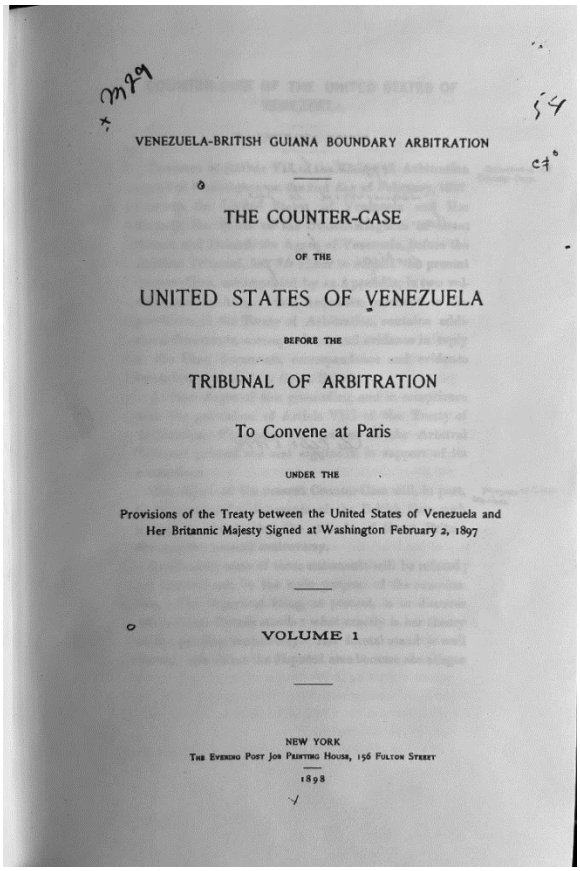
NEW YORK

THE EVENING POST JOB PRINTING HOUSE, 156 FULTON STREET

1898

Second, the two volumes and its annexes identified as:

- Venezuela-British Guiana Boundary Arbitration, ***The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene in Paris under the Provisions of the Treaty between the United States of Venezuela and the Britannic Majesty signed in Washington February, 1897***, New York 1898.



VENEZUELA-BRITISH GUIANA BOUNDARY ARBITRATION

THE COUNTER-CASE

OF THE

UNITED STATES OF VENEZUELA

BEFORE THE

TRIBUNAL OF ARBITRATION

To Convene at Paris

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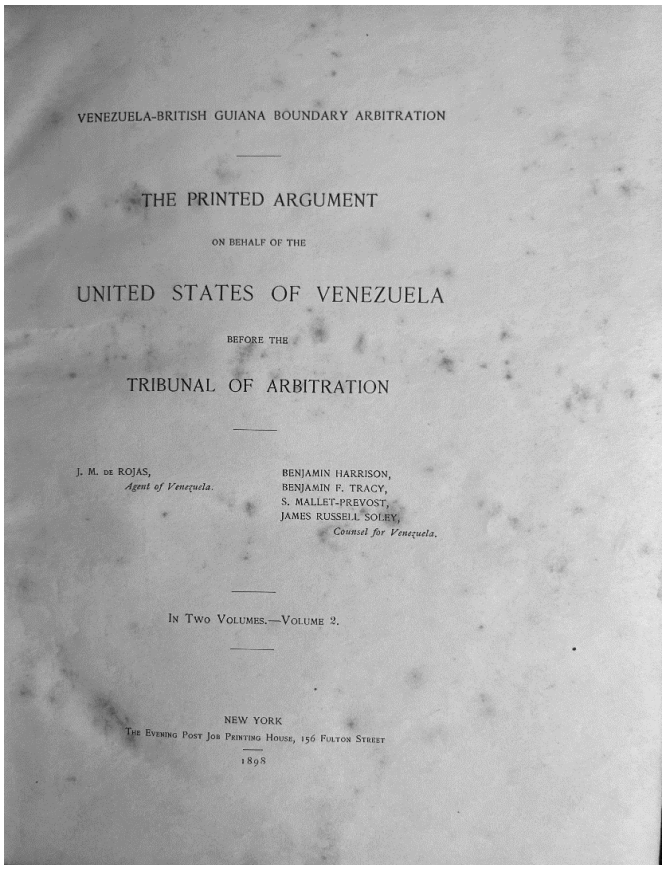
Third, the two volumes and its annexes identifies as:

- Venezuela-British Guiana Boundary Arbitration, ***The Printed Arguments on Behalf of the United States of Venezuela before the Tribunal of Arbitration***, *Benjamin Harrison, Benjamin J. Tracy, S. Mallet-Prevost, James Russell Soley, Counsel for Venezuela, New York, 1898*.



VENEZUELA-BRITISH GUIANA BOUNDARY ARBITRATION

THE PRINTED ARGUMENT

ON BEHALF OF THE

UNITED STATES OF VENEZUELA

BEFORE THE

TRIBUNAL OF ARBITRATION

J. M. DE ROJAS,
Agent of Venezuela.

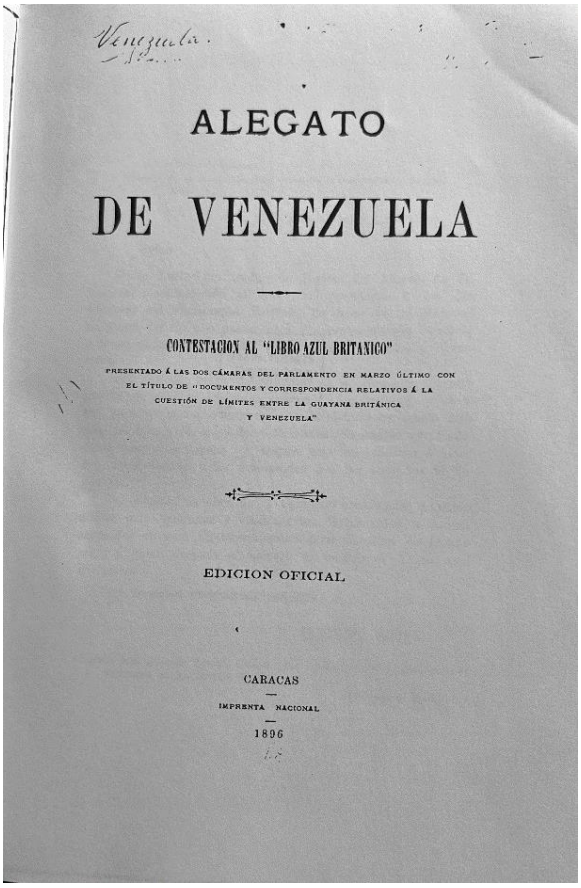
BENJAMIN HARRISON,
BENJAMIN F. TRACY,
S. MALLET-PREVOST,
JAMES RUSSELL SOLEY,
Counsel for Venezuela.

IN TWO VOLUMES.—VOLUME 2.

NEW YORK
THE EVENING POST JOB PRINTING HOUSE, 156 FULTON STREET
1898

In addition, as part of its arguments and evidence Venezuela must formally file before the International Court of Justice, the following volumes and annexes also printed prior to the Arbitration Award, identified as:

- ***Alegato de Venezuela. Contestación al "Libro Azul Británico" presentado a las dos Cámaras del parlamento en marzo último con el título de "Documentos y correspondencia relativos a la cuestión de Límites entre la Guayana Británica y Venezuela,"*** Edición Oficial, Imprenta Nacional, Caracas 1896.



Venezuela.

ALEGATO

DE VENEZUELA

CONTESTACION AL "LIBRO AZUL BRITANICO"

PRESENTADO Á LAS DOS CÁMARAS DEL PARLAMENTO EN MARZO ÚLTIMO CON EL TÍTULO DE "DOCUMENTOS Y CORRESPONDENCIA RELATIVOS Á LA CUESTIÓN DE LÍMITES ENTRE LA GUAYANA BRITÁNICA Y VENEZUELA"

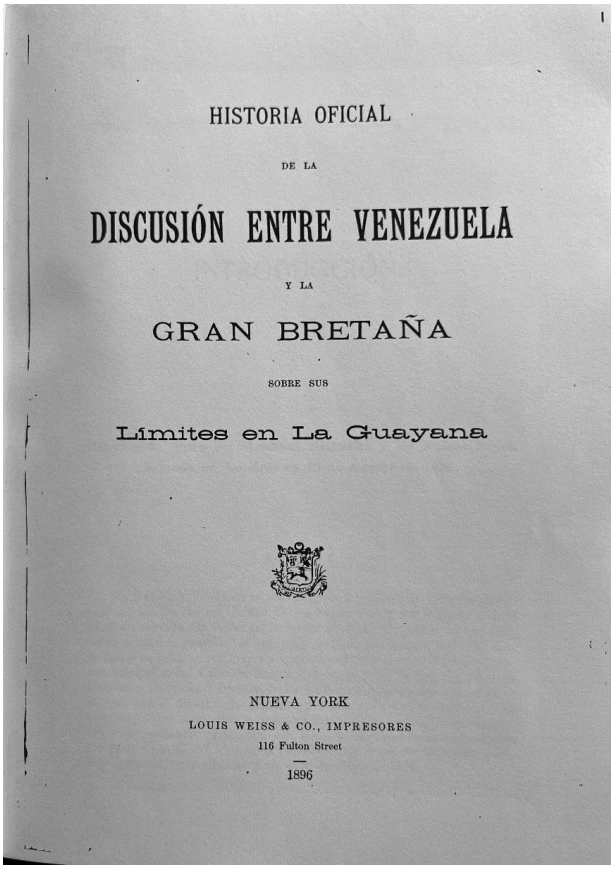
EDICION OFICIAL

CARACAS

IMPRENTA NACIONAL

1896

- ***Historia Oficial de la Discusión entre Venezuela y la Gran Bretaña sobre sus Límites en La Guayana,*** Louis Weiss & Co, Impresores, 116 Fulton Street, Nueva York, 1896.



HISTORIA OFICIAL

DE LA

DISCUSIÓN ENTRE VENEZUELA

Y LA

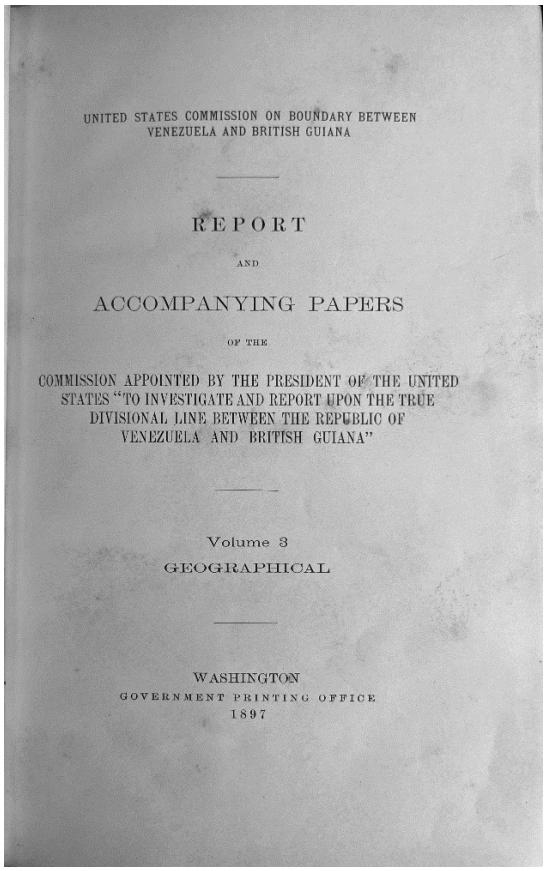
GRAN BRETAÑA

SOBRE SUS

Límites en La Guayana

NUEVA YORK
LOUIS WEISS & CO., IMPRESORES
116 Fulton Street
1896

- United States Commission on Boundary between Venezuela and British Guiana, ***Report and Accompayning Papers of the Commission Appointed by the President of the United States "to investigate and Report upon the True Divisional Line between the Republic of Venezuela and the British Giana"***, Washington, Government Printing Office 1897.



UNITED STATES COMMISSION ON BOUNDARY BETWEEN VENEZUELA AND BRITISH GUIANA

REPORT

AND

ACCOMPANYING PAPERS

OF THE

COMMISSION APPOINTED BY THE PRESIDENT OF THE UNITED STATES "TO INVESTIGATE AND REPORT UPON THE TRUE DIVISIONAL LINE BETWEEN THE REPUBLIC OF VENEZUELA AND BRITISH GUIANA"

Volume 3

GEOGRAPHICAL

WASHINGTON

GOVERNMENT PRINTING OFFICE

1897

And, in addition to the volumes of the *Colección Frontera* printed by the Ministry of Foreign Affairs ef Venezuela (1981), at least, for instance, the following texts:

- Carlos Álamo Ybarra, ***Fronteras de Venezuela con la Guayana Británica,*** Academia de Ciencias Políticas y Sociales – Editorial Élite, Carracas 1938.

- Rafael Badell Madrid, ***La reclamación de Venezuela sobre el Territorio Esequibo***, Academia de Ciencias Políticas y Sociales, Caracas 2023.

- Tomás Enrique Carrillo Batalla (coord.), ***La reclamación venezolana sobre la Guayana Esequiba,*** Academia de Ciencias Políticas y Sociales, Serie Eventos 2, Caracas 2008.

- Mercedes Alicia, Carrillo Zamora, ***La impugnación internacional de la sentencia arbitral por fraude procesal. Estudio particularizado de la controversia limítrofe anglo-venezolana sobre el territorio de la Guayana Esequiba*** (Premio Estudios Constitucionales 1812), Universidad de Cádiz, Madrid 2011.

- Santos Rodulfo Cortez Juan Vicente Arévalo (ed), ***Cartografía Antigua de Guayana. Haud ulli spectaberis impar dives opum variarum***, CVG Electrificación del Caroní. Edelca, Caracas 2000.

- Manuel Donis Ríos, ***El Esequibo. Una reclamación histórica***, Abediciones – Konrad Adenauer Stiftung, Caracas 2016.

- Héctor Faúndez Ledesma y Rafael Badell Madrid (coords.), ***La controversia del Esequibo,*** Academia de Ciencias Políticas y Sociales - Editorial Jurídica Venezolana, Serie Eventos 34, Caracas 2022.

- Hermann González Oropeza y Pablo Ojer, ***Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional***, Ministerio de Relaciones Exteriores, Caracas 1967.

- Ministerio de la Defensa. ***El litigio de la Guayana. Revelación de los papeles de los "Árbitros" que habían permanecido ocultos en los archivos ingleses***. Oficina de Publicaciones del Estado Mayor Conjunto, Caracas 1965.

- Ministerio de Relaciones Exteriores, ***Reclamación de la Guayana Esequiba***. Documentos, Caracas 1967

- Ministerio de Relaciones Exteriores, ***La reclamación Esequiba. Documentos***, Caracas 1984.

- Enrique Bernardo Núñez, ***Tres Momentos en la controversia de límites de Guayana. El incidente del Yuruán. Cleveland y la Doctrina Monroe,*** Ministerio de Relaciones Exteriores, Caracas 1962.

- Pablo Ojer Celigueta, *Robert H****. Schomburgk explorador de Guayana y sus líneas de frontera,*** Universidad Central de Venezuela, Caracas 1969.

- Nelson Ramírez Torres, ***La recuperación del Esequibo***, 2023.

- Armando Rojas, ***Venezuela limita al este con el Esequibo,*** Cromotip, Caracas 1968.

II

THE FALSEHOOD OF GUYANA'S MEMORIAL THAT ARE BELIED BY THE EXISTING DOCUMENTATION

Contrary to what Guyana affirms in her 2022 *Memorial*, the referred documents show that:

1. *It is not true* that:

> "The first Europeans to settle in present day Guyana, including the Essequibo Region, were the Dutch. They arrived in 1598, seventeen years after the "United Provinces" declared independence from Spain. They explored the Orinoco inland, up to the Caroni River. From there they moved eastward along the coast and established settlements at various points between the Orinoco and the Amazon Rivers" (*Memorial* Guyana, par. 2.11).

By 1598, Spanish explorers had already taken possession of the entire territory of *Tierra Firme*, extending first, the border of the Province of Nueva Andalucía (1568), later the border of the Province of Guayana (1568, 1582, 1595) to the Amazon River. From that date onwards, west of the Essequibo River, on the coast of the Guianas only commercial establishments of a company of one of the provinces of the Netherlands that were in war against Spain, established theein.

2. *It is not true* that the Dutch:

> "Occupied and administered the territory between the Essequibo and Orinoco Rivers until the early nineteenth century, when they were supplanted by the British…" (*Memorial* Guyana, par. 1.27).

By the beginning of the nineteenth century, the Dutch had only three trading establishments at the mouths of the Essequibo, Berbice and Demerara rivers exclusively, and these were what they ceded to Great Britain in 1814.

3. *It is not true* that one of the Chambers of the West India Company established in 1621, "the Zeeland Chamber, formally carried out the colonization of the Essequibo Region" (par. 2.12); defined in the same *Memorial* as follows:

> "The Essequibo Region comprises all of Guyana's land territory lying to the west of the Essequibo River, for which the Region is named" (*Memorial* Guyana par. 2.2).

In any case, such alleged "colonization" by the Commercial company, *and not by a State*, was exclusively reduced to the establishments located in the Esequibo, Demerara and Berbice rivers.

4. *It is not true* that:

> "The seat of government for the Essequibo Colony was formally established at Kykoveral, and, from there, the United Provinces exercised possession, control and political authority over the territory between the Essequibo and Orinoco Rivers" (*Memorial* Guyana par. 2.12)

Kykoveral, as has been said, was a fluvial island located at the confluence of the Mazaruni River with the Cuyuní River, before it flows into the Essequibo River, and the fort located there was the entire Dutch "settlement" that existed (until 1748),

so it is also misleading that a "government" had been established there that had exercised "possession, control and political authority over the territory between the Essequibo and Orinoco Rivers."

5. *It is not true* that:

> "Spanish colonization of northern South America began in the sixteenth century, at New Granada, where present-day Colombia is located, and slowly extended eastward as far as the Orinoco River" (*Memorial* Guyana pa,r. 2.13).

As mentioned, after navigating all the coast of *Tierra Firme*, the Spanish colonization process began in 1508 with the establishment of the city of Nueva Cádiz in the Island of Cubagua between the Island of Margarita and the eastern cost of Venezuela.

6. It is not true that by 1621, the Dutch:

> "Had already built numerous settlements between the Orinoco and the Essequibo Rivers". (*Memoria*, Guyana par. 2.13).

By that time, the only "settlement" they had established west of the Esequibo river was a Fort in the Kok-o-veral Island, already mentioned.

7. It is not true that:

> "The *Spanish* did not establish settlements east of the Orinoco River" (*Memorial* Guyana, par. 2.14).

On the contrary, during the seventeen and eighteen centuries Spain established numerous settlements east of the Orinoco River governed by the Capuchins Missionaries, who were formally in charge of the colonization process in name of the Spanish Crown.

8. *It is not true* that:

"By the 1630s, Dutch authority extended to all ports east of the Orinoco River" (*Memoria*l Guyana par. 2.14).

By that time, there was no Dutch authority east of the Orinoco River; there were only three establishments in the rivers Esequibo, Demerara and Berbice wattled only for commercial purposes.

9. *It is not true* that by the time the Treaty of Münster was signed in 1648:

"Spain thus relinquished any claims it might have had, inter alia, in respect of the territory held and administered by the Dutch east of the Orinoco River" (*Memorial* Guyana par. 2.15).

At that time, the only Dutch settlement that existed east of the Orinoco River was the fort on the island of Kyk-over-al, located at the junction of the Mazaruni River with the Cuyuní River, before its flows into the Essequibo River.

10. *It is not true* that on a Map by William Blaeuw (1667), the Orinoco River was:

"The boundary between Dutch and Spanish territory in northern South America, in accordance with the Treaty of Münster" (*Memorial* Guyana par. 2.16).

The Treaty of Münster, by recognizing the settlements of Demerara, Berbice, and Essequibo in favor of the Dutch Provinces east of the Essequibo River, accepted Spanish dominion of the lands west of that river; and the denomination Guiana or Caribana that the Blaew Map depicts, whereas, like other contemporary maps, no borders were drawn, is well known

and accepted as identifying the entire region between the Orinoco River, the Atlantic Sea and the Amazon River, without any political territorial sense.

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Based on the conclusions from the reading of the judgments of the International Court of Justice in the case, and the Memorial presented by Guyana before it, as I expressed at the conclusion of the Conference organized by the Academy of Political Sciences and Social Sciences between 2021 and 2022 on the Essequibo Controversy (Héctor FAÚNDEZ LEDESMA and Rafael BADELL MADRID, Coordinators), *La Controversia del Esequibo,* Serie Eventos No. 34, Academia de Ciencias Políticas y Sociales, Editorial Jurídica Venezolana, Caracas 2022), Venezuela has not only to good reasons to appear before the Court and defend its rights, but also the obligation to do so.

Failure to do so would mean giving up her rights in the Guayana Esequiba, amounting to a crime against the country by the international relation representatives.

For those who govern and for the entire country, the issue of the controversy over Guayana Esequiba is too significant and important, requiring a firm decision to defend the rights before the International Court of Justice, in the lawsuit filed against Venezuela, and to do it with knowledge and firmness. It is not a subject to be dealt with in "popular consultations." The people, social organizations and all individuals may and have the right to express their opinion on the subject, but what the government cannot do is avoid the duty to act responsibly in the trial, calling be the best international and national lawyers to assist the country.

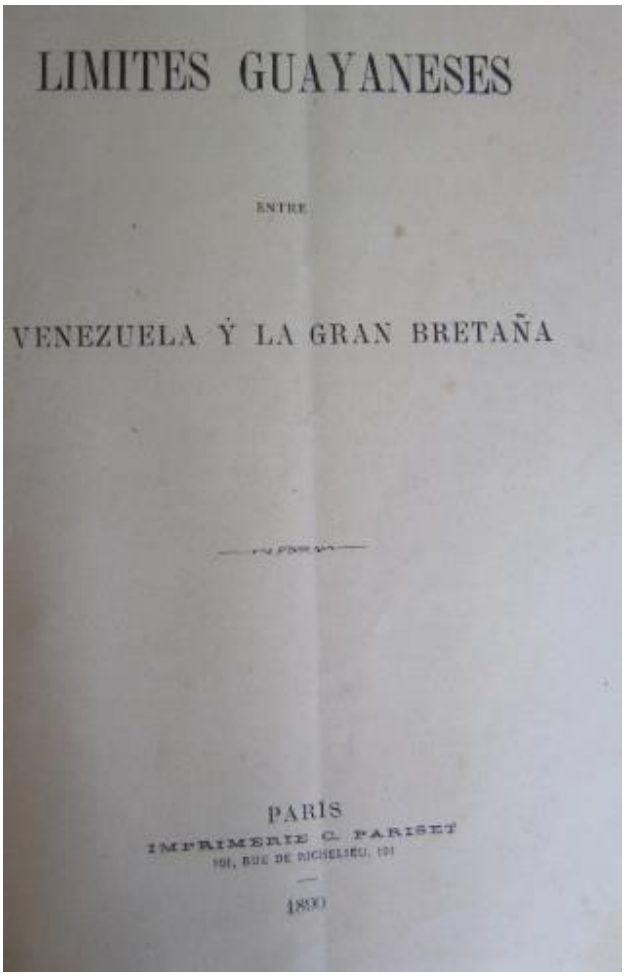
There are plenty of reasons to win in the judicial process, so the political decision to assert the rights of the country before

the International Court of Justice, seriously, with knowledge, for which the country has barely eleven months, cannot be missing.

Let us only remember, for example, on the position and rights of Venezuela the account made on May 10, 1890 by former President Antonio Guzman Blanco when justifying why during his then last government (the so-called "The Acclamation" 1886-1888), in February 1887 Venezuela broke diplomatic relations with Great Britain, due to the invasion that had occurred from the Colony of British Guiana in Venezuelan territory "from the Orinoco, Barima and Amacuro, to Cape Nassau," considering that with this "we were in the presence of a casus belli ."

Due to "the very serious attack committed by His British Majesty's Government against the sovereignty and empire of Venezuela," GUZMÁN BLANCO pointed out that such serious decision was made, and Congress then resolved that "relations should not be reestablished, as long as the English authorities do not vacate the recently usurped territory…" and not "return things to the modus vivendi established by the 1850 convention."

These considerations were made by GUZMÁN BLANCO from Europe, when he answered in a pamphlet printed on May 1890 entitled: *Límites guayaneses entre Venezuela y la Gran Bretaña* (Paris. Imprimerie C. Pariset, 101, rue de Richelieu, 1890), some criticisms made the previous month by Marco Antonio Saluzzo, Minister of Foreign Relations in the government of President Raimundo ANDUEZA PALACIO, questioning his performance during his government in 1887 and before, in 1886 as Extraordinary Envoy and Plenipotentiary Minister of Venezuela, who had been before most of the European courts.



LIMITES GUAYANESES

ENTRE

VENEZUELA Y LA GRAN BRETAÑA

PARIS
IMPRIMERIE C. PARISET
101, RUE DE RICHELIEU, 101
1899

In said pamphlet, after having studied "the numerous files on the boundary issue," GUZMÁN BLANCO specified what in his opinion were the grounds of Venezuela's territorial rights over Guayana Esequiba, particularly given his conviction that "the English Government has the inveterate purpose of usurping the territory between the Essequibo and the Orinoco, following the whimsical line devised by Schomburgk" after his second expedition (1841-1843) that he constructed mainly following the river basing system with no political foundations.

In any case, now, 130 years later, the grounds for Venezuela to argue again before a Court of Justice, are fundamentally the same as when as GUZMÁN BLANCO explained then, as follow:

> "1° The Spanish jurisdiction and empire reached in 1810 as far as the Essequibo, as proven by history and the wars that Spain and Netherlands had, due to the factories that the latter had established on this side [the west side] of that river.
>
> 2° The Treaty of 1814 between the Netherlands and England, ceded to the latter the possessions that belonged to it on the other side [east side] of such river Essequibo, since on this side [west side], Netherlands did not have any.
>
> 3° Founded in the *uti possidetis juris* of 1810, Colombia claimed from England, the territory that it pretended without right to continue occupying as heiress to Netherlands, between the Pomerón and the Essequibo.
>
> 4° Venezuela, after it separated from Colombia, continued the same just claim.
>
> 5° In 1840 the Venezuelan Minister, Mr. FORTIQUE, obtained an agreement, ceding to England the strip of land between the Essequibo and Cape Nassau, and assuring the right of Venezuela from this Cape to the Orinoco. Mr. FORTIQUE thought, without a doubt, that this sacrifice could be made, looking for a division of waters, in which some would give to the Essequibo and the others to the Orinoco exclusively. This arrangement, however, was providentially rejected by Venezuela.
>
> 6° The English remained, however, actually occupying land on the left bank of the Essequibo and up to Cape Nassau, a fact that Venezuela continued to reject in its subsequent discussions with the English Government.

> 7° In 1850, on the occasion of an exploratory trip of the aforementioned SCHOMBURGK, against which our Government complained, it was declared by both parties that neither Venezuela nor Great Britain intended to usurp any territory that until then had been in dispute, and that both undertook to not to exercise acts of jurisdiction, before the question of limits was decided. It was thus established since 1850, as ways of living that neither Venezuela nor Great Britain, would occupy the disputed ground.
>
> 8° This is how the matter lasted until 4 or 5 years ago, when England, ignoring the convention of 1850, began to invade us, not from the Essequibo, but from the Pomerón to Amacuro and up to the Barima Arm and the island of this name; which, of course, not only determined but imposed the rupture of diplomatic relations."

Let us not forget that with the ruling of the International Court of Justice declaring her jurisdiction, if the Court later declares the nullity of the Arbitral Award of 1899, as it will surely do, the controversy will have to be decided, as the Minister of Foreign Affairs of Venezuela said in 1966 after the Geneva Agreement was signed, "in the initial terms." This means that the International Court of Justice will then have to address the issue of the border between the two countries in the terms that the Arbitral Tribunal was due to consider when issuing the Arbitral Award of 1899, that is, respecting the historical territorial rights that Venezuela has been raising and claiming for almost a century and a half regarding the Esequibo Territory.

New York, May 2023