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VENEZUELA´S CLAIM TO THE ESSEQUIBO TERRITORY

Rafael Badell Madrid

Foreword
Héctor Faúndez Ledesma

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RAFAEL BADELL MADRID

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I dedicate this book to my beloved wife, María Amparo, and our marvellous three children: Jessica, Rafael Andrés, and María.

VENEZUELA'S CLAIM TO THE ESSEQUIBO

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FOREWORD

Dr Rafael Badell Madrid has given me the honourable and pleasant task of prefacing his latest book, this time on the Venezuelan Claim to the Essequibo Territory. It is the most comprehensive work written on the subject to date, covering all the elements relevant to understanding it, from the origins of the territorial dispute over the Essequibo to the stage it is at today, just after the decision of the International Court of Justice on the preliminary objection of admissibility raised by Venezuela. We may not agree on every aspect, or have the same interpretation of every passage of this story, or of every rule of law that has been, or is, at stake, but we both share the same hope that at the end of this process the injustice done to Venezuela will be redressed. The reader can rest assured that the book Dr. Badell offers us today is a fiery and well-documented defence of Venezuela's legitimate rights in the territory west of the Essequibo River, in the style of a first-rate trial lawyer.

Although the main theme of this work is the legal dispute between the parties, Dr. Badell's presentation is based on his historical knowledge and on political and other considerations that have influenced the development of this territorial dispute at every stage. With an agile and light style, the author jumps from legal considerations to historical or political ones, to the context of the facts, or to the perception of the various actors in this two-hundred-year-old dispute, and to the role that each of its protagonists played. On such a vast subject, the analysis is broad and incisive, covering both theoretical and practical aspects. It examines the rules agreed by the parties in the 1897 Treaty, but also the background to international arbitration and its impact on this case. In order not to leave any questions unanswered, this study -which is divided into nine chapters- is accompanied by a list of the people who have intervened in this controversy, including those of us who have been mere chroniclers and sometimes critics of the strategy chosen by those representing Venezuela. Dr. Badell then gives a chronological account of the main events and concludes with a documentary appendix. From there, the facts, dates, and personalities can be conveniently collated.

While reading the book, this new way of presenting the case forces us to refer at each moment to a point that has already been dealt with in the book, but whose repetition is justified because it deals with transversal aspects that cannot be separated from the rest of the elements that form part of this dispute.

This approach, which has implications for the way in which what is now before the Court is presented, brings back bitter memories of the way in which a procedural trap was set that offended national sensibilities. This text offers a fresh and different view of the Essequibo dispute, one that we are not used to.

Dr. Badell traces the origins of this controversy back to 1822, when the presence of British settlers west of the Essequibo River was first detected, beyond what could be legitimately claimed by Britain under the terms of the 1814 Treaty of London, by which the United Provinces of the Netherlands ceded part of their possessions in Guiana to Britain. In fact, from that moment on, steps were taken -at that time by Colombia, of which Venezuela was a member- to demarcate the border between Colombia (Gran Colombia) and the colony of British Guiana. In the instructions given to the Colombian minister in London at the time, Rafael Revenga, it was stated that it was essential that the colonists, previously referred to, should place themselves under the protection and obedience of the laws of [Gran] Colombia, or they should return to their former possessions, for which they would be given the necessary time. However, Minister Revenga did not even have the opportunity to discuss the boundary question with the British authorities, and, from 1840 onwards, Britain began a relentless expansion of its borders west of the Essequibo River, always unilaterally and always at the expense of a territory claimed by Spain and in whose rights it was succeeded by Venezuela. The discovery of gold in the second half of the 19th Century only served to exacerbate this situation, with new British incursions, new maps, and new border lines, always to the detriment of Venezuela and always drawn unilaterally by Britain.

In 1824, in the territorial division of Colombia, the province of Guyana reached as far as the Essequibo River. In his introduction, along with the historical background to this controversy, Dr. Badell mentions a map drawn up by Agustín Codazzi, showing the eastern boundary

of Venezuela. It is actually two maps, one designated as *Chart of the Republic of Colombia divided by Departments* (undated), and the other entitled *Political Map of the Republic of Venezuela in 1840*[1]. In the first of these maps, it is noted that the Department of Orinoco reached as far as the Essequibo River, with the exception of two small sectors, marked by Codazzi as *"Territory considered usurped by the English"*. In the second of these maps -from 1840- Codazzi omits any reference to territories usurped by the English, and simply draws the eastern border of Venezuela west of the Essequibo River.

Dr. Badell recalls that, on 16 July 1824, when the nascent Republic of Colombia applied for recognition of the United Kingdom of Great Britain and Ireland, it was expressly stated that this country extended *"across the North Sea from the Essequibo River or the confines of the province of Guyana"*. In December 1824, the United Kingdom recognised Colombia as an independent state, without raising any objection to the boundaries claimed by Colombia. In fact, the condition imposed by the United Kingdom to grant this recognition was that the two countries sign a Treaty of Friendship, Commerce and Navigation, which was signed in Bogotá on 18 April 1825, without any of its provisions objecting to the boundaries previously claimed by Colombia.

What followed was a series of maps drawn by, or attributed to, the naturalist Robert Schomburgk. The first was a simple sketch, the result of his visit from 1835 to 1839, commissioned by the Royal Geographical Society of London, which already departed from Venezuelan line of claim, attributing to Britain territories that Britain had previously recognised as Colombian in 1824, at the time of the recognition of Colombia (of which Venezuela had been a part until its dissolution in 1830). This sketch was followed in 1840 by a map commissioned by the British government, in which Schomburgk added new territories to the British Empire, practically to the mouth of the Orinoco River. This new border was so unfounded that even members of the British cabinet found it difficult to digest and adopt.[2] In response

[1] Both published by Thierry Frères in 1840 in Paris and reproduced by Hermann GONZÁLEZ OROPEZA., *Atlas de la Historia Cartográfica de Venezuela (Atlas of Cartographic History of Venezuela)*, Editorial PAPI S. R. L., Caracas, 1983, Láminas XCVI A-B, pp. 285 y 287.

[2] Cfr. Minutes of 7 September 1841, signed by Lord Stanley, Minister for the Colonies.

to Venezuela's protests, the British government agreed to remove the posts erected by Schomburgk's mission. But, like El Cid Campeador, maps would be credited to Schomburgk even after his death in Berlin in March 1865. Indeed, in 1887, Britain claimed a new line, supposedly drawn by Schomburgk, running 167,830 square kilometres west of the Essequibo River, but this was not yet the British line of maximum claim.

Thomas Heyward Gignilliat's 1896 map (reproduced by Dr. Badell) shows how the British claim grew progressively. Other maps show the same. From an early Schomburgk sketch we move to a second Schomburgk line, more ambitious than the first, then, although, in 1844, the Aberdeen line reduced those claims, in 1881 we moved on to the Granville line, which continued to extend westwards. This was followed, in 1886, by the Rosebery line, more insatiable than the previous one, followed by the Salisbury line of 1890, which continued to advance, until, in 1893, new territorial claims were formulated.

Andrew Carnegie referred to the appetite for territory that would characterise the English-speaking races, to the extent that -in his words- some of his race thought it was their prerogative to acquire it. Referring specifically to the case of the small island of Britain, Carnegie notes that Britain had nowhere to extend to and, *"by hook or by crook"*, the British had acquired territory all over the world, no matter how distant. In his view, there could be no better illustration of this *modus operandi* than Britain's relations with Venezuela. With fine irony, Andrew Carnegie referred to Britain's constantly shifting positions on the Essequibo controversy. According to Carnegie, Britain began modestly by claiming a border which, as Venezuela did not accept it, Britain decided to let some time pass before insisting on it. Then Venezuela found that the British border had moved even further into its territory, followed by another protest from Venezuela and another break from Britain. But, once the issue was revived, Britain discovered that it had been wrong again, and that it had not claimed enough territory, so its third claim extended even further than the second. Finally, a fourth line was drawn, covering valuable gold deposits, and placing Britain on the banks of the Orinoco River.[3] Carnegie notes that an editorial in

[3] Cfr. Andrew Carnegie, *The Venezuelan Question*, in The North American Review, vol. 162. N° 471, February 1896, pp. 131 a 134. "It begins by modestly claiming a boundary;

London's *Daily News* expressed the conviction that the British claim was just (*"We believe the British claim to be just"*.); but -as Carnegie sarcastically notes- omitted to indicate which of the many British claims was the just one. For Carnegie, the first claim was probably fair; the second claim was fairer; and the third claim was even fairer, since it was the one that gave Britain the most territory. This was, in his view, one of the most flagrant exercises of brute force against a weak country, to illustrate the propensity of the English-speaking race to absorb as much territory as possible.[4] According to Carnegie, the plain truth was that, in the past, following their instinct of expansion, the British had laid hands on all the territories they could acquire in Europe, Asia, and Africa; and, having done so successfully, they intended to carry out this same policy on the American continent, this time at the expense of the weak Republic of Venezuela.[5]

The maps on which the British claims were based were not credible even to themselves. Indeed, in a memorandum of June 1886, the Librarian of the United Kingdom's Foreign Office, Mr. Edward Herslet, downplayed the maps, pointing out that the boundaries indicated on them by Robert Schomburgk were not to be taken as reliable, since they had never been adjusted by the respective governments. In the same vein, in a note of June 1886 from the British Colonial Minister, Mr. Charles Harris, to Herslet, the latter claimed that the Colonial Ministry apparently had a more or less official map, but that it differed widely from Schomburgk's original map, and that privately they had heard that the boundary line -presented to Venezuela as an ultimatum- could not be defended at all.

The 1850 exchange of notes between Britain and Venezuela, which took place at the initiative of the former, is of particular importance

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Venezuela asks it to submit its claims to arbitration; this is refused; the matter rests for a while, when it appears that United Kingdom's boundary has been shifted a good deal, and includes more territory adjoining Venezuela; another remonstrance from Venezuela, and another pause; when the question is revisited, United Kingdom discovers that it has again been mistaken and has not claimed enough, and its third claim goes far beyond the second. Finally, a fourth line is drawn, cutting across valuable gold deposits and actually putting Britain on the banks of the Orinoco."

4 Cfr. *Ibidem.* Page 134.

5 Cfr. *Ibidem.* Page 141.

in this dispute. Indeed, on 18 November 1850, the British Consul General in Caracas sent a communication to the Venezuelan Foreign Minister, declaring that the British Government had no intention of occupying the territory then disputed between the two nations, and invited the Venezuelan Government to make a similar declaration. That communication was replied to on 20 December 1850, in the same terms, both parties pledging to preserve the *status quo*. It was, therefore, assumed that neither of the disputing nations was going to increase its territorial claims, or exacerbate a conflict that was already serious enough. Indeed, Edward Herslet's memorandum, referred to in the previous paragraph, argued that, by the 1850 Agreement, the respective governments of Britain and Venezuela had undertaken *"not to invade or occupy the territory occupied by both"*. However, the 1850 Agreement was no obstacle to further incursions by the British into hitherto undisputed territory; moreover, the discovery of gold deposits in the Yuruari region led to the emergence of new maps, and caused the boundary line claimed by Britain to continue to shift westwards.

As part of Britain's expansionist strategy, in January 1895, while Venezuelan guards were conducting field exercises, British troops took possession of a Venezuelan military post, lowered Venezuelan flag, and raised their own. However, as Dr. Badell relates, in what is known as the Yuruán incident -because it took place on the banks of the river of the same name, before its confluence with the Cuyuní River- Venezuelan troops quickly recovered the post and captured the British involved in the adventure.

In a country that was just coming to independent life, incursions by British colonists into territories that Venezuela considered historically and legally its own became commonplace. Despite repeated Venezuelan protests, the unduly occupied territories were never evacuated. These facts, together with the presence of British ships at the mouth of the Orinoco and the British refusal to submit the dispute to international arbitration, led Venezuela -after officially protesting the acts of dispossession against it- to break off diplomatic relations with the United Kingdom of Great Britain and Ireland on 20 February 1887. This measure, although fully justified, had the effect of cutting off direct communications with Britain, and Venezuela had to resort to the

intercession of third states -particularly the United States of America- to try to resolve the territorial dispute.

The request for support for the Venezuelan proposal to resort to international arbitration was well received by the President of the United States of America, Grover Cleveland. President Cleveland's administration took matters into its own hands and, with the Monroe Doctrine as a basis, sent a message to British Prime Minister Salisbury on 20 July 1895, stating that no European power would be tolerated if it took over an American state by force. The message stated that British claims to Venezuelan territory were not founded in law, and that the Schomburgk line was impossible to be considered as such, since it had originated only for reasons of convenience and expediency. The same was said of the other boundary lines which, since 1840, had been invoked by Great Britain, but always as conventional lines -not as lines in law- and that they had never had the consent of Venezuela. Given the disparity of forces between Britain and Venezuela, the message concluded by giving Britain an ultimatum to agree to submit the territorial dispute with Venezuela to arbitration. As the British government was slow to respond, in his message to the US Congress on 17 December 1895, President Cleveland stated that the dispute had reached a point where it was incumbent on the United States of America to take steps to determine for itself, with sufficient certainty, the dividing line between the two countries. To that end, Cleveland arranged for the appointment of a Commission to study the boundaries of Venezuela with the Colony of British Guiana, and submit a report with its findings, which the United States of America would take as definitive and would be responsible for defending. The British government viewed the situation thus created with grave concern because, faced with an ultimatum, no state could yield without dishonour. But with the Commission in place, Britain eventually agreed to submit to arbitration, albeit on its own terms.

The book the reader is holding in his hands rightly begins by recounting the circumstances that led to the Treaty of Washington of 1897, which is the arbitration compromise between the United Kingdom of Great Britain and Ireland, on the one hand, and the Republic of Venezuela, on the other, and which led to the arbitral award of 3 October 1899. Since it is the arbitral compromise which confers jurisdiction on

the Tribunal, and since it is that compromise which marks the limits of that jurisdiction, before entering into a discussion of whether the award is null and void, or valid, the first thing to examine is the validity of the arbitral compromise, and the nature of the matters which it entrusted to the arbitrators.

The arbitration compromise was negotiated by the United States of America and Great Britain, without the participation of Venezuela, and without consulting the latter on points of crucial importance, such as the prescription rule, or the effect of the presence of colonists not acting on behalf of any State, and the absence -at the suggestion of Richard Olney, US Secretary of State-[6] of any mention of the 1850 Agreement, which had frozen the claims of the parties as they stood. Regarding the composition of the Tribunal, the United States of America accepted Britain's veto of the presence of a Venezuelan arbitrator[7] -for there was no one among them who deserved the appellation of jurist- and it was presented to Venezuela as a great achievement that, in its place, there were two American arbitrators. It was hard for the British Empire to accept arbitration with a nation barely half a Century into its independent life, and in the midst of a civil war. But, if arbitration was inevitable, what the British Empire could not consent to was for Venezuela to be treated on an equal footing with what was still the queen of the seas, and the most powerful nation in the world.

The treaty thus negotiated -as if it were a compromise between the United States of America and Britain, or as if Venezuela were a protectorate or vassal state of the United States of America- was presented to Venezuela as a *fait accompli*, merely for Venezuela's signature. James Storrow, a US lawyer who had been retained by Venezuela as an advisor, informed the US Secretary of State -who was not his client- that, after the text of the treaty was presented to them for approval, the Venezuelans had behaved "*as if they were being asked for an opinion"*.

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6 Cfr. Letter to Julian Pancefote, dated 29 October 1896.

7 Cfr. Letter from Salisbury, British Prime Minister, to Julian Pauncefote, 5 June 1896, in which he insists that the arbitrators on the Venezuelan side should be appointed by the United States.

The terms of the arbitration compromise were offensively one-sided and, in normal circumstances, would have resulted in such a treaty having to be rejected outright by Venezuela. But, pressure from the United States of America -which was already beginning to cultivate a *"special relationship"* with Britain- coupled with the threat of being left to its own devices, forced Venezuela to sign -and then ratify- the treaty. The pressure exerted on Venezuela may not have been so great as to constitute the kind of coercion that renders a treaty null and void. But the fact remains that the manner in which this treaty was negotiated, as well as the fact that Venezuela was misled as to the meaning and scope of some of its key provisions, such as the prescription rule -on which the United States of America and Britain had agreed a particular interpretation, of which Venezuela was not informed- meant that the necessary *"common will of the parties"* had not been formed to set the limits of the jurisdiction of the tribunal that was being created.

Dr. Badell believes that the arbitral compromise is void, and there are many reasons for considering that it is so. However, while this is an important point, I do not think that it is the fundamental issue in this controversy. The circumstances in which the Washington Treaty was concluded may not be sufficient to invalidate it; but that treaty is the original sin in which the Paris Award took root. Even if the arbitration compromise between Britain and Venezuela is found to be valid, the circumstances in which this Treaty was reached are the tip of a thread of a skein marked by fraud and deceit, which permitted the irregular constitution of a tribunal lacking in impartiality, which continued with a procedural farce, and which culminated in a rigged arbitral award, devoid of any basis. Venezuela may, for whatever reasons, have given valid consent to the 1897 Treaty. However, none of this justified disregarding the principles of equity and the rules of international law applicable to the arbitral process and the award, including the rules expressly agreed by the parties in the aforementioned treaty.

In the text we foreword, Dr. Badell analyses both the content of the Paris Award and the prior procedure of which it is the culmination, to then go into the considerations that lead to the argument that the award is null and void. The author refers to the Geneva Agreement as a fundamental milestone in the effort to resolve this dispute. He also

mentions the Port of Spain Protocol -which had the effect of suspending the application of the Geneva Accord for twelve years- and the return to the Geneva Accord, with the intervention of successive good offices appointed by the UN Secretary-General. The truth is that, whether due to Guiana's stubbornness or the clumsiness of our negotiators -or both- the good offices mechanism was an absolute failure, which ended up exhausting the patience of the last two UN Secretaries-General, Ban Ki-moon and António Guterres. This circumstance led UN Secretary-General António Guterres, in accordance with Article IV.2 of the Geneva Agreement, to choose judicial settlement before the International Court of Justice as the next means of peaceful settlement to be attempted to resolve this dispute. Following that decision, on 29 March 2018, Guiana filed its application with the Court, seeking confirmation of the validity of the Paris Award. But, Dr. Badell rightly recalls that the object of the Geneva Agreement is to resolve the boundary dispute between the parties, leaving aside the question of the nullity or validity of the award.

Chapter IX of the book is devoted to the International Court of Justice, where the dispute is currently pending. The author refers to the jurisdiction of the Court, the way in which the proceedings are initiated before it, the procedural rules that govern it, and the way in which these proceedings are to conclude with a final and unappealable judgment that will put an end to the dispute over the territory located west of the Essequibo River.

Dr. Badell refers extensively to the preliminary objection raised by Venezuela on 7 June 2022, which considered that the claim introduced by Guiana was inadmissible, due to the absence of an indispensable party to the proceedings, and due to the lack of *locus standi* of the claimant. Briefly, in that document, Venezuela argued that Guiana's claim was inadmissible because the United Kingdom of Great Britain and Northern Ireland is an indispensable party to these proceedings, without whose participation the case could not proceed. Secondly, Venezuela argued that the party entitled to sue was the United Kingdom, and not Guiana. This would be so because it is the United Kingdom, that was a party to the 1897 arbitral compromise, then to the arbitral proceedings leading to the Paris Award, and, finally, was bound by the Geneva Agreement. The United Kingdom remains a party to the

Geneva Agreement and, according to Venezuela, the commitments and responsibilities undertaken by the United Kingdom vis-à-vis Venezuela would be the very subject of the decision on which the Court bases its jurisdiction over the case. According to the preliminary objection raised by Venezuela, the object of the decision sought by Guiana would be the conduct of the United Kingdom in the arbitration that resulted in the award, and the Court could not decide on the nullity of the award in the absence of one of the parties to the proceedings that gave rise to it. Venezuela was concerned that an eventual decision on the nullity of the award would not be binding on the United Kingdom, as it was not a party to the current ICJ proceedings. Venezuela argued that, at the time of the conclusion of these acts, the Co-operative Republic of Guiana did not exist as an independent political entity. With respect to the Geneva Agreement -which was signed by the Prime Minister of British Guiana- Venezuela notes that, under the terms of Article VIII of the said Agreement, after its independence was obtained, Guiana would become a party to it, together with the United Kingdom and Venezuela. Therefore, in Venezuela's view, Guiana would be a marginal party to the Geneva Agreement -to which it would have become a party not by application of the rules of State succession- and its only role would be to seek a practical and satisfactory settlement of the dispute, but not to enter into a debate on the validity of an award resulting from a proceeding in which it would not have participated. Thus, according to the preliminary objection raised by Venezuela, Guiana would lack *locus standi* to ask the Court to declare the validity of the Award of 3 October 1899. Venezuela argued that the dispute over the nullity or validity of the award could only be resolved by those who were parties to the arbitral proceedings that concluded with the award. In addition -in an argument relating to the merits of the dispute, which had nothing to do with the preliminary objection- Venezuela argued that it could not be obligated to prove the nullity of the award, because it never undertook to do so, and because the Geneva Agreement only obligates the parties to find an amicable and mutually satisfactory solution.

The author of this text does not avoid making a detailed account of Guiana's arguments in relation to the preliminary objection raised by Venezuela, which were, as regards the basis thereof, accepted by the

judgment handed down by the Court on 6 April 2023. The Court notes that, while Article I of the Geneva Agreement describes the dispute as one between the United Kingdom and Venezuela, Article II assigns no role to the United Kingdom in the initial stage of the dispute settlement procedure and that, rather, it placed the responsibility for appointing the representatives of the Mixed Commission -provided for in the Geneva Agreement- solely on British Guiana and Venezuela. The Court noted that the references to British Guiana in Article II of the Geneva Agreement were distinguishable from references to the United Kingdom in other provisions of the Treaty, and considers it noteworthy that this compromise was reached despite the fact that British Guiana was still a colony of the United Kingdom and not yet a party to the treaty. As the Court observes, there is also no reference to the United Kingdom in Article IV, Paragraphs 1 and 2 of the Geneva Agreement, which refer to the final stages of the dispute settlement procedure. In both paragraphs, mention is made only of the Governments of Guiana and Venezuela. Therefore, the Court understands that the Geneva Agreement specifies, in its provisions, the role of Guiana and Venezuela, without assigning any role to the United Kingdom in the choice of a means of settlement of this dispute, or in participating therein. Consequently, the Court rejected Venezuela's preliminary objection, thereby resuming the proceedings on the merits of the dispute. The Court has set 8 April 2024 as the deadline for Venezuela to submit its counter-memorial.

As Judge ad-hoc Wolfrum emphasised in his statement, the judgment does not mean that the Court cannot consider all the information provided by the parties concerning the alleged fraudulent conduct of the arbitrators.[8] Beyond that, it is idle to deny what is self-evident: the remedy sought by Venezuela was rejected. But, notwithstanding the defeat suffered by Venezuela in the decision on this procedural motion, it should be noted that the key to this matter was not the response to the preliminary objection raised by Venezuela, because that is not the subject matter of the dispute. In fact, this incident should never have been raised by Venezuela, exposing us to a second judicial defeat in little more than two years. I should recall that, for decades, the position of the

8 Cfr. Paragraph 6 of the Declaration of Judge Rüdiger Wolfrum.

Venezuelan Foreign Ministry had been extremely solid and categorical in relation to the Essequibo dispute, and it was summed up in three very simple ideas: a) the arbitration process that led to the Paris Award was a farce, b) the award of 3 October 1899 is null and void, and c) Venezuela has historical and legal titles to the territory west of the Essequibo River that are incontrovertible. With the Geneva Agreement, this was coupled with a commitment by the parties to seek *"a practical"* and mutually satisfactory settlement, which is the object and purpose of the treaty. With a territorial dispute now approaching two centuries, fifty-seven years after the Geneva Agreement was signed, Venezuela had no need for delaying tactics of any kind. Venezuela has no reason to avoid entering into the substantive issue that is now before the International Court of Justice, which has to do with the nullity or validity of the award, and with the determination of the definitive land border between Guiana and Venezuela. On both points, Venezuela has arguments and evidence. Many of these arguments and evidence, demonstrating that Venezuela is right and justice is on its side, have been developed in the book we prologise today.

In an official communiqué of that same day, 6 April 2023, along with *"celebrating"* this ruling, because it understands that it validates its arguments, the Venezuelan Government stated that *"Venezuela does not recognise the judicial mechanism as a means of resolving"* this dispute, and that it *"will evaluate its implications"*. However, once we have reached this crossroads, it seems to me that the country would not understand it if Venezuela did not make its voice heard, if its arguments on the merits were not asserted before the ICJ, and if the evidence to support them was not presented before the ICJ. By appointing an ad-hoc judge, its agent, and its alternate agent, and by submitting its pleadings at the preliminary objections stage, Venezuela has already recognised the jurisdiction of the Court and has already appeared in the proceedings before it. That was a responsible act, which is to be welcomed. Now, with the certainty that the award is null and void, and with the conviction that reason and justice are on Venezuela's side, what remains to be done is to do the task ahead of us, and do it well.

The object of the Geneva Agreement is not to determine whether the Paris Award is valid or null and void -a question that the parties

preferred to avoid- but to seek a practical arrangement to resolve the border dispute between Venezuela and British Guiana. Venezuela does not have to prove the nullity of an award that is evident from its own text. But, placed in that position -and without prejudice to reiterating that this issue was set aside by the parties to the Geneva Agreement- there are multiple reasons to maintain that the award is null and void. In Dr. Rafael Badell's opinion, the award is, in summary, null and void for violations of due process, for arbitrator exceeding their powers, for ruling *ultra petita*, for lack of reasoning, and for lack of impartiality of the Tribunal. In addition, Dr. Badell also refers to the irregular composition of the Tribunal, which is undoubtedly another circumstance that must be considered when determining whether the award is null and void or valid. For the author of the book we are forewording today, the arbitral award is a legally non-existent act, which has no more value than that of a piece of paper with ink poured over it.

Under the terms of Article III of the 1897 Treaty of Washington, the task of the Arbitral Tribunal was to *"investigate and establish"* the extent of the territories that could be legally claimed by the United Provinces of the Netherlands or by the Kingdom of Spain *"at the time of Great Britain's acquisition of the Colony of British Guiana"*, which had occurred in 1814, with the conclusion of the Treaty of London. In the text of the award, the Arbitral Tribunal did not record either one or the other. There is no way of knowing whether it did or did not fulfil its task of *"investigating"* who had just title to those territories, nor is there any way of knowing whether it succeeded in *"establishing"* -and by what means- to whom the exercise of sovereignty over those territories belonged. On the contrary, instead of establishing which territories belonged to whom, in 1814, which was the critical date referred to in the Washington Treaty, the Court awarded both disputed and undisputed territories to Britain as a result of the 1850 Agreement. That was not the task entrusted to the Tribunal and, in that respect, the Tribunal exceeded its powers, with the effect of rendering the award of 3 October 1899 null and void. There is a difference between establishing to whom something belongs and *awarding* that something to someone.

The Tribunal was not entitled to decide in its own discretion, as this was not an arbitration in equity. Article IV of the 1897 Treaty set out

the rules by which the Tribunal was to be guided in deciding the matters before it. Those rules were: a) the rule of acquisitive prescription, which was fixed at fifty years, b) the recognition of rights based on any other basis recognised by international law, or by such principles of international law as the arbitrators considered applicable, provided they were not inconsistent with the rule of prescription, and c) the effect which the Tribunal might give to the occupation of part of the disputed territory by nationals of either party to this dispute, having regard to reason, justice, principles of international law, and equity. These rules -which had been negotiated by Britain, but not by Venezuela- were adopted to the detriment of the Venezuelan position, and imposed on Venezuela. But there is no indication that the Tribunal was guided by these rules, or by others. And, if the former, neither is there any indication of which of these rules led the Tribunal to adopt the decision it did, and what interpretation it gave to it.

Nor was it within the jurisdiction of the Arbitral Tribunal to regulate the navigation of rivers, or to determine the tariff rates that could be levied by the disputing States. The arbitral compromise agreed by the parties was to settle a boundary dispute. Nothing more.

If the task entrusted to the Tribunal was to investigate and establish the extent of the territories belonging to one or other of the disputing parties, Article V of the arbitral compromise mandated that, in the execution of that task, careful consideration should be given to all issues before the Tribunal. There is no way of knowing whether the Tribunal considered all such issues, nor whether it did so carefully. On the contrary, what is on the record is the careless and negligent manner in which it did so.

Despite the abundant documentation submitted by the parties and the complexity of some of their arguments,[9] despite the more than 2,600

[9] Guyana's Memorial recalls that the proceedings consisted of a written phase and an oral phase, and that the written phase consisted of three rounds of written submissions made simultaneously by the parties. The first round was held on 15 March 1899. Venezuela's brief consisted of 236 pages and included more than 900 pages of exhibits. Great Britain's brief consisted of 164 pages and over 1600 pages of documentary annexes. On 15 July 1898, the parties filed a second round of written pleadings, similar in length to the previous round, and also containing documentary evidence. Following its establishment on 25 January 1899, the Tribunal held fifty-six sessions, during which more than two hundred hours of

documents submitted to the Tribunal by the parties, the material provided by the Boundary Commission appointed by President Cleveland (consisting of fourteen volumes of documents, with an atlas containing seventy-five maps), despite the fact that the closing arguments of each of the parties had lasted thirteen days, and despite the more than 3,200 pages of minutes of the sessions, when barely six days had elapsed after the end of the hearings, at 12:05 p.m. on Tuesday, October 3, 1899, in the city of Paris, in a public ceremony held in one of the halls of the French Ministry of Foreign Affairs -on the Quai d'Orsay- the arbitral tribunal, which had been appointed to settle the boundary dispute between Venezuela and the British Colony of Guiana, announced its award, which was unanimously agreed upon. To the reader's delight, Dr. Badell's book does examine each of the points which, in its haste to decide, the arbitral tribunal failed to consider.

Not only was the award we are commenting on adopted in haste, without time to carefully examine each of the issues raised before the Tribunal, but it does not have a single paragraph -not even a single sentence- that serves as a basis for the decision. As Dr. Badell rightly points out, the obligation to give reasons for the award was a part of international law at the time. The fact that the award was unanimous did not excuse the obligation to explain how and why the decision had been reached.

In his presentation, Dr. Badell gives an extensive account of the occasions on which, from the outset, Venezuela objected to the arbitral award rendered in Paris on 3 October 1899. This serves as a response to Guiana's argument that, by its alleged silence for 63 years, Venezuela would have acquiesced to the validity of the award. In any case, if the award is valid, one may ask for what -and why- it is necessary to resort to the argument of Venezuela's alleged acquiescence; conversely, if the award is null and void, one must ask how Venezuela's acquiescence could cure procedural irregularities that cannot be remedied.

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oral argument and testimony were heard. The record shows that the oral arguments of each side lasted thirteen days. Cf. Guyana's Memorial, submitted to the International Court of Justice on 8 March 2022, in the case of the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, vol. I, paragraphs 3.41 al 3.44.

The award of 3 October 1899 -which speaks for itself- is the best example of a legal botch-up, which purported to resolve the territorial dispute then existing between Britain and Venezuela, and which has now been inherited by Guiana. Guiana claims that the Paris Award is *"full, perfect and unappealable"*, and that it has the effect of *res judicata*. But, for that to happen, a properly rendered award was necessary. Nothing is finished if it is not finished properly. The International Court of Justice will have to review whether that award is valid, as Guiana claims, or whether it is null and void, as Venezuela maintains. The sense of justice, doctrine, jurisprudence, and international practice are on Venezuela's side.

If the award is found to be valid, then that is the end of the matter. Venezuela will have to honour its tradition of respect for international law, and will have to accept the outcome. Conversely, if the award is found to be invalid, the Court will have to move on to resolve what it calls *"the question relating to the determination of the final land boundary between Guiana and Venezuela"*. It is another matter as to what path the Court might choose to take in addressing this second question. At that crossroads, in the opinion of the writer of these lines, the Court has four options:

1) What emerges from the ICJ's judgment on its jurisdiction in this case is that the Court could itself take on the task of deciding the border dispute; however, in light of the Geneva Agreement -on which the Court bases its jurisdiction- such a task seems difficult for a court of law to take on, as the purpose of the Geneva Agreement is *"a practical settlement"*, which is mutually satisfactory to the parties. The role of a Court is to apply the law, not to try to find practical arrangements that satisfy both parties. It is hard to imagine how the Court could do both at the same time. The determination of whether the award is valid or null and void is a strictly legal question, which, in terms of Article 36(2) of the ICJ Statute, is one of the matters to which its jurisdiction extends. But the determination of a *"practical arrangement"* on the border between Guiana and Venezuela is not a legal question, and does not fall within the proper functions of a court of justice;

2) Strictly in law, once an award is declared null and void, the logical consequence is that the situation reverts to the state of affairs immediately prior to the annulled act. Consequently, the Court could refer the case back to the State-parties so that, under the terms of the Treaty of Washington of 1897, they could designate a new arbitral tribunal to determine the boundary between the two countries. However, given that, in the Geneva Agreement -which is the legal framework for determining the ICJ's jurisdiction- the parties agreed to seek *"satisfactory solutions for the practical settlement of the dispute"*, it does not seem appropriate in this case to send the parties back to the state existing immediately before the award was made so that a new award can be made in accordance with the rules of a treaty that has lost its validity because it has been succeeded by another treaty;
3) Once the award is declared null and void, given that the rules and procedures provided for in the Geneva Agreement are aimed at seeking *"a practical settlement"* -which is far from the strict application of the law- the Court could refer the case back to the UN Secretary-General, so that -in exercise of the competence conferred on him by Article IV.2 of the Geneva Agreement- it is the latter who chooses another appropriate means of resolving the boundary dispute; and
4) Finally, the Court could refer this part of the case back to the State-parties in the dispute for them to determine the final border between the two countries, in terms compatible with the Geneva Agreement.

Of the above four options, the last two are the most consistent with the terms of the Geneva Agreement, which is, moreover, the frame of reference for the jurisdiction of the International Court of Justice in this case, as decided by the Court in its judgment of 18 December 2020.

In the first two of these hypotheses, if it is determined that the applicable law is the law agreed by the parties in the Treaty of Washington of 1897 (i.e., the arbitration compromise), the Court -or whoever it may be- would have to assess the titles of the parties at the time when the cession of territories by the United Provinces of the Netherlands to

Great Britain took place, according to the Treaty of London of 1814. If one wants to move the critical date to a later point -which would favour Guiana- one would have to take into account the 1850 Agreement, which froze the claims of both parties where they stood, or -if one wants to move that critical date even closer, to take into account the extravagant British claims, which increasingly demanded territories further west of the Essequibo River- one would have to abide by the rules agreed in the 1897 arbitral compromise regarding occupation and prescription. That is the history, and those are some of the most notable milestones in this dispute; but it is hard to ignore that, through the Geneva Agreement, the parties agreed to a new legal framework for resolving this dispute, which renders the 1897 Treaty of Washington null and void.

Depending on one's point of reference, the Essequibo controversy is already two centuries old, or close to that.[10] This is the most important issue that Venezuela has had to face in its entire republican history, and it has marked the soul of Venezuelans with the feeling that the arbitration compromise -negotiated behind Venezuela's back- was reached through deceit, that the arbitration process was fraudulent, that the Paris Award was a dispossession, that the territory west of the Essequibo River rightfully belongs to Venezuela, and that this is a historical injustice that must be redressed. This time, we are before a properly constituted, independent and impartial Tribunal, where the parties are on equal footing. Our evidence will be received and our arguments will be duly considered. As appropriate, the Court will examine the facts and the applicable law. On this occasion, there will be no pretext that, even if the judgment is unanimous, it will not be duly substantiated. This is the opportunity Venezuela has been waiting for to make its voice and its claim heard. Let us not waste it! It is up to us to present our arguments convincingly; so, if those who represent us are unable to do this task, let us not blame others, let us accept the outcome with maturity, and let us not invent alleged conspiracies.

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[10] According to Dr. Badell, it began in 1822, when the presence of British settlers west of the Essequibo River was detected. For the chronicler of the US State Department's Office of US History, the dispute officially began in 1841, when the Venezuelan Governmentgovernment protested against British incursions into Venezuelan territory. Cfr. Office of the Historian, https://history.state.gov/milestones/1866-1898/venezuela.

This is a book written with all the author's passion for Venezuela's claim to the Essequibo territory, in which he has brought to bear his vast legal knowledge and investigative skills, returning to the fold of public international law, where I first met him forty years ago. Moreover, this text comes at an opportune moment, when the case pending before the International Court of Justice still has a long way to go. I have no doubt that the team of lawyers representing Venezuela in this matter today will be able to draw on the legal and argumentative contribution that Dr. Rafael Badell offers us today; but the responsibility to defend Venezuela's rights and interests -and to do it well- lies exclusively with them.

Héctor Faúndez Ledesma
Palmyra, 16 April 2023.

I. INTRODUCTION

In 1822, more than two hundred years ago, in the dominions of Venezuela, which was then part of the Republic of Colombia, the presence of English settlers was detected, who occupied Demerara and Berbice near the Essequibo River, beyond the territories that belonged to the United Kingdom under the provisions of the Treaty of London of 13 August 1814.

The territory that Holland had ceded to the United Kingdom by said Treaty consisted of the camps of Demerara, Berbice and Essequibo, made up of a geographic space of no more than 32,186 square kilometres, which Holland had acquired from Spain through the Treaty of Münster of 1648. The territories ceded by Spain to Holland and, later, to the United Kingdom, never extended beyond the eastern margin of the Essequibo River.

At the same time, beginning in 1822, efforts were made to get the British to agree to the establishment of a demarcation line between British Guiana and Colombia. However, this did not happen and, on the contrary, in 1840, the United Kingdom unilaterally drew a demarcation line that unfairly added to its territory an area of 141,930 square kilometres of Venezuelan nation, starting from the mouth of the Amacuro River and running north-south as far as the Roraima River, and this is precisely the origin of the controversy. From then on, the United Kingdom began to expand into the territory of the Essequibo..

In 1887, during the third government of Antonio Guzmán Blanco, on the occasion of the discovery of gold deposits, the United Kingdom considered, again unilaterally, that the border with Venezuela consisted of a line drawn from the coast to Upata, thus usurping 203,310 square kilometres of territory belonging to Venezuela.

The incursion of settlers from Demerara and Berbice to the west of the Essequibo River, the maps unilaterally drawn up by the United Kingdom, and the United Kingdom's violations of the sovereignty of Venezuela's territory were always rejected by Venezuela.

The expansion of the United Kingdom in America constituted a clear violation of the doctrine proclaimed on 2 December 1823 by the President of the United States of America James Monroe, who in his annual message to Congress insisted that the American continent was not susceptible to colonization and that the European powers could not extend their dominions in it, on pain of such facts being considered a direct affront to the rights and interests of the United States of America.

In view of the advance of the United Kingdom over Venezuelan territories, the President of the United States of America, Grover Cleveland, in a message to Congress on 17 December 1895, invoked the Monroe Doctrine, which motivated the Congress of that country to become interested in determining the true dividing line between Venezuela and British Guiana

As a result of pressure from the United States of America, the United Kingdom finally agreed to submit the controversy to arbitration, which took place on 3 October 1899, during the last days of the presidency of Ignacio Andrade and in the midst of the Liberal Restoration Revolution, when the Paris Award was issued, whereby 159,500 square kilometres were awarded to the United Kingdom, significantly more than the territory ceded by Holland to the United Kingdom, through the aforementioned Treaty of London of 13 August 1814.

The Paris Award was the product of a procedural farce. It is null and void because of the multiple direct violations of the Washington Treaty of 1897 and the international law in force at the time it was rendered, and also because it violated due process; had the flaw of arbitrators exceeding their powers; decided beyond what was required of the arbitral tribunal and, consequently, ruled *ultra petita*; lacked the required reasoning, and, furthermore, the arbitrators did not comply with their duty of impartiality.

Notwithstanding the nullity of the Paris Arbitral Award, the United Kingdom forced Venezuela to execute it under the threat that it would carry out the demarcation unilaterally if Venezuela did not participate. The Paris Arbitral Award was executed within an enormous political, social, and economic crisis in Venezuela, in the midst of the overthrow of President Ignacio Andrade by Cipriano Castro. While the demarcation commissions proceeded with the execution of the award,

Venezuela suffered in 1902 the blockade of its coasts and the threats of invasion by the United Kingdom, Germany, and Italy.

Throughout the 20th Century Venezuela's claim to the Essequibo territory was always present. During the government of General Juan Vicente Gómez, there were several attempts by the United Kingdom to occupy territories beyond what the Paris Arbitral Award had established, with particular interest in the Bocas del Orinoco. Faced with these facts, the government's response was a resounding rejection.

On 14 October 1938, Dr. Carlos Álamo Ybarra, in his work of incorporation to the Academy of Political and Social Sciences entitled *"The Boundaries of Venezuela with British Guyana",* studied for the first time in a systematic way and with scientific rigor the controversy of the Essequibo and especially its antecedents.

In January 1944, Venezuelan President Isaías Medina Angarita, visiting New York City, accompanied by Venezuelan Ambassador in Washington, Diógenes Escalante, demanded reparation for the injustice committed by the award, and Ambassador Diógenes Escalante stated that Venezuela was waiting for the injustice to be repaired.

During that visit to New York, President Medina Angarita met with Severo Mallet-Prevost, lawyer of Venezuelan defence team in the Paris Arbitration, and awarded him the Order of the Liberator for his commitment to the defence of Venezuela's territorial rights.

From the very moment the Paris Award was rendered, suspicions began to arise that the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, had seriously violated the duty of impartiality. Allegations and comments to this effect were made in the media, through legal publications and by those who had been close to the participants in the Arbitration.

All this was fully substantiated in July 1949, when the posthumous memorandum of Severo Mallet-Prevost, who had died on 10 December 1948 in New York, was published in the *American Journal of International Law*.

In the memorandum, Severo Mallet-Prevost noted that he and President Benjamin Harrison were aware of the collusion that existed between the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, and English arbitrators Lord Russell and Lord Collins.

Mallet-Prevost denounced that Fyodor Fyodorodorovich Martens met with the American arbitrators David Josiah Brewer and Melville Weston Fuller, to pressure them into agreeing to a unanimous decision.

On 30 March 1948, President Rómulo Betancourt, who headed Venezuelan delegation attending the IX International American Conference, stated that "*In advocating the principle of self-determination of colonial peoples to decide their own destiny, we do not in any way deny the right of certain nations of the Americas to obtain certain portions of hemispheric territory, which in justice may belong to them, nor do we renounce what Venezuelans, in the event of a serene and cordial revaluation of the history and geography of the Americas, could assert in favour of their territorial aspirations over areas now under colonial tutelage and which were previously within our own sphere"*[1].

During the second government of Rómulo Betancourt, Venezuela's claim for the territory of the Essequibo gained much strength. Betancourt, in his message to Congress on 12 March 1962, pointed out that: "*The dispute between the weak Venezuela and the arrogant Albion of the days of Queen Victoria was resolved in an iniquitous and unacceptable, and always rejected by Venezuela award pronounced by a political court and not a court of law, in a sentence of 3 October 1899. Venezuela has never admitted nor will it admit that such an extensive portion of territory legitimately of its own should cease to be framed within its geography"*.[2]

In this regard, the Chamber of Deputies of the Congress issued an Agreement, as a result of the sessions of 28 March and 4 April of 1962, to *"Support the policy of Venezuela on the boundary dispute between the British possession and our country as regards the territory of which we were dispossessed by colonialism; and, on the other hand, to support*

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1 Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967, Pages 23 & 24.

2 Naudy SUÁREZ FIGUEROA (comp.), *"Rómulo Betancourt. Selección de escritos políticos (1929-1981)"* ("Rómulo Betancourt. A Selection of Political Papers (1929-1981)"), The Rómulo Betancourt Foundation, Caracas, 2006. Page 387.

without reservation the total independence of British Guiana and its incorporation into the democratic system of life"[3].

During the Betancourt administration, the claim of the Essequibo was promoted by Ambassador Carlos Sosa Rodriguez before the 130th meeting of the XVI Annual Session of the General Assembly of the United Nations on 22 February 1962, where he ratified the position held by the Ministry of Foreign Relations of Venezuela, according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice.

Marcos Falcón Briceño, before the 348th Session of the Special Political Committee of the XVII United Nations Assembly on 12 November 1962, ratified the position of Ambassador Carlos Sosa Rodríguez regarding the claim and invoked the historical Venezuelan position that the Paris Arbitral Award is null and void.

Two years later, on 7 March 1964, in his message to the National Congress, President Rómulo Betancourt gave an account of the steps that Venezuelan Ministry of Foreign Relations had taken before the United Kingdom and pointed out that: "*The negotiations have continued and, for the good of the Republic and to repair an injustice done to Venezuela, they must be continued. The culmination of these negotiations must be the incorporation into the national territory of an area that, from a legal-historical point of view, never ceased to belong to Venezuela"*[4].

All these diplomatic steps constituted an important antecedent to the Geneva Agreement that was signed on 17 February 1966 to seek satisfactory solutions for the practical settlement of the controversy.

The Geneva Agreement had the virtue of recognizing the existence of a dispute between the two countries, so that the Paris Arbitral Award did not put an end to the controversy; but it also eliminated the effect of *res judicata* of the Paris Arbitral Award of 1899 and eliminated the intangibility of said Award.

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3 *Ídem.*

4 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), in coordination with Tomás Enrique CARRILLO BATALLA (Coordinator.), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guiana-Essequibo"). *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Page 33.

The same Agreement lays down that should the parties fail to agree on the choice of the means of settlement, they shall refer the decision of the matter to *"an appropriate international body to be agreed upon by both Governments"*. If this agreement did not occur, they should refer the matter to the Secretary-General of the United Nations (UN). If the chosen means of settlement is not effective, the organ that selected it or, as the case may be, the UN Secretary-General would choose another means under Article 33 of the United Nations Charter (UNC). This selection of means of settlement would be repeated until the dispute was resolved or the means of Article 33 were exhausted, whichever came first.

On 18 June 1970, during the first government of President Rafael Caldera, the Port of Spain Protocol was signed between Venezuela, the United Kingdom, and the Co-operative Republic of Guyana (hereinafter Guyana), intended to suspend for a period of 12 years the application of the Geneva Agreement, renewable, in principle, for twelve more years, unless the parties agreed on a different period of not less than five years.

In 1981, under the government of President Luis Herrera Campíns, Venezuela denounced the Port of Spain Protocol and expressed its intention not to renew it in accordance with Article V.

The Paris Award could not solve the dispute that now, more than one hundred and twenty years later, is in the jurisdiction of the International Court of Justice (ICJ), after Guyana had filed a lawsuit with the ICJ[5] against Venezuela on 29 March 2018, pursuant to the first paragraph of Article 36 of the ICJ Statute (Statute), the first paragraph of Article 40 of the Statute and Article 38 of the ICJ Rules of Court (the *"Rules of Court"*).

In response, the ICJ, by judgment dated 18 December 2020, declared itself competent to hear the claim based on Article IV, Paragraph 2 of the Geneva Agreement, and on 8 March 2021, issued an order, pursuant to Article 48 of the Statute, whereby it established the deadlines within the proceedings for the submission of the memorial and counter-memorial, pursuant to Article 43, paragraph 2 of the Statute.

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5 International Court of Justice, "*Application Instituting Proceedings*", of 29 March 2018. Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20180329-APP-01-00-EN.pdf.

Pursuant to the aforementioned resolution, Guyana had until 8 March 2022 to submit its Memorial, and Venezuela until 8 March 2023 to produce its corresponding Counter-Memorial. In compliance with this, on 8 March 2022, Guyana submitted its Memorial.

By that time Venezuela had not yet appeared in the proceedings and had expressed its rejection of the ICJ's jurisdiction by a memorandum and a letter. The memorandum of 28 November 2019, signed by the Minister of Foreign Affairs, Jorge Arreaza, denied the jurisdiction of the ICJ and ruled out the possibility of a judicial settlement. The referred memorandum insisted on settling the dispute through negotiation and resorting to political means under the Geneva Agreement.

On 24 July 2021, Venezuelan Minister of Foreign Relations, Jorge Arreaza, sent a letter to the President of the ICJ, Abdulqawui Ahmed Yusuf, in which he insisted on the reasons why the ICJ did not have jurisdiction to hear the case. Venezuela ratified the arguments presented in the memorandum sent on 28 November 2019, asserting that the purpose of the Geneva Agreement is to overcome the dispute over the validity of the Paris Arbitral Award and replace it with a practical arrangement acceptable to both parties.

On 6 June 2022, after the filing of the Memorial by Guyana, and when almost three months had elapsed from the deadline for Venezuela to file its counter-memorial, Venezuela sent a communication to the ICJ whereby, in accordance with Article 42 of the Statute and Article 40 of the Rules of Court, appointed Ambassador Samuel Moncada Acosta, Permanent Representative of Venezuela to the UN, as Agent in the trial before the ICJ, and Ambassador Félix Plasencia González, former Minister of the People's Power for Foreign Relations of Venezuela, and Professor Elsie Rosales García as Co-Agents.

On 7 June 2022, Venezuela appeared before the ICJ and raised preliminary objections on the admissibility of the claim of Guyana, in accordance with the provisions of Article 79 of the Rules of Court. As a result, on 13 June 2022, the ICJ issued an order whereby it set the deadline of 7 October 2022 for Guyana to submit its observations and pleadings on the preliminary objections raised by Venezuela. In addition, the ICJ indicated that the determination of the subsequent procedure would be made known in a future decision.

Guyana submitted its observations and written pleadings on the preliminary objections raised by Venezuela and, in accordance with the second paragraph of Article 79ter of the Rules of Court, the ICJ called the parties to present their arguments in oral hearings that took place between 17 and 22 November of 2022.

Venezuela's representatives were called upon to present their arguments during the first public hearing held on Thursday, 17 November 2022. Likewise, the representatives of Guyana presented their arguments on the inadmissibility of the preliminary objections on Friday, 18 November 2022. On Monday, 21 November 2022, Venezuela submitted its reply to the arguments of Guyana and on Tuesday, 22 November 2022, Guyana submitted its counter-reply.

The International Court of Justice sitting in rounds of hearings on the occasion of the preliminary objections of admissibility raised by Venezuela.

On 6 April 2023, the ICJ rendered a judgment by which it ruled on the preliminary objection filed on 7 June 2022 by Venezuela regarding the admissibility of the claim brought by Guyana.

The judgment, adopted by a majority of the judges, was accompanied by four separate statements and a so-called partly individual and partly dissenting opinion. The four separate statements are by Indian judge Dalveer Bhandari, Jamaican judge Patrick Robinson, Japanese judge Yuji Iwasawa and German ad hoc judge appointed by Guyana Rüdiger Wolfrum. The so-called partially individual and partially dissenting opinion was delivered by the Belgian ad hoc judge appointed by the Bolivarian Republic of Venezuela, Philippe Couvreur.

First, the ICJ unanimously declared the preliminary objection presented by Venezuela admissible. Then, with fourteen votes in favour and Judge ad hoc Philippe Couvreur voting against, the ICJ declared the preliminary objection inadmissible.

Finally, with fourteen votes in favour and Judge ad hoc Couvreur voting against, the ICJ confirmed that it has jurisdiction to decide on the merits of the claims of Guyana, insofar as they fall within the scope of paragraph 138, sub-paragraph 1, of the judgment of 18 December 2020.

The ICJ, after ruling on the preliminary objections' procedure, issued an order establishing 8 April 2024 as the deadline by which Venezuela must submit its Counter-Memorial on the merits of the dispute with Guyana concerning the nullity or validity of the Paris Arbitral Award of 3 October 1899.

Venezuela's claim over the Essequibo territory first attracted my attention forty years ago, when I started teaching Public International Law at the Andrés Bello Catholic University in 1982, a few months after the Port of Spain Protocol ceased to be in force and the Geneva Agreement was once again applied.

Now, seeing that the resolution of the matter is in the jurisdiction of the ICJ, after the lawsuit filed by Guyana, and the high interest that this matter has for all Venezuelans, it seems pertinent to me to make these comments on the subject.

I am going to try to do it simply, in such a way that it reaches all readers, even the non-specialized ones; to do so I will try looking at it in three ways. First, I will refer to the most important legal events that have occurred in these two hundred years, but also to their antecedents and to some facts that have impacted the claim; among them, the *Statu quo* Treaty of 1850, whereby Venezuela and the United Kingdom undertook to maintain the border situation as it was at that time, avoiding the occupation of the territory under discussion; the Treaty of Washington of 1897; the Paris Award of 1899; the Geneva Agreement of 1966; and the Protocol of Port of Spain of 1970. I will also make some considerations on the ICJ, its substantive and procedural legal regime, the aspects that have already been developed in that judicial instance and those that are yet to occur.

A second way of approaching the subject is through the personalities that have been protagonists, for better or worse, not only of what has happened in the last two hundred years, but also since 1493 when Pope Alexander VI signed the Minor Bull Inter Caetera, whereby the territories of South America were divided between Spain and Portugal.

Thirdly, I will present the matter through the most relevant dates of the claim, which also begin in 1493 with the aforementioned Minor Bull Inter Caetera issued by Pope Alexander VI, which is considered the first document that constitutes a legal title over the disputed territories, and in 1494, when the Treaty of Tordesillas consecrated the sovereignty of Spain and Portugal in the American continent.

My considerations on this interesting subject are preceded by a foreword written by one of the most knowledgeable people on the subject, the academic and professor Dr. Héctor Faúndez Ledesma. The book was made possible thanks to the generous financing of our very dear friend, brilliant lawyer and successful businessman, Dr. Carmelo De Grazia Suárez. To both of them I express my deepest gratitude.

My thanks also go to Wilfredo Monsalve for his investigative work; Evelyn Barboza for her cover design; Oralia Hernández for her impeccable work on the layout of the book, and Helen Spankie de Rivera for her extraordinary work in translating the book into the English language.

In order to achieve this purpose, I must bear in mind that this very important and delicate subject has been extensively studied by many members of the Academy of Political and Social Sciences, among them: Carlos Álamo Ybarra[6] , Isidro Morales Paúl[7], Carlos Sosa Rodríguez[8],

6 Carlos ÁLAMO YBARRA, "*Fronteras de Venezuela con la Guayana Británica" (*"Venezuela's Borders with British Guiana"), *Academy of Political and Social Sciences*-Editorial Élite, Caracas, 1938.

7 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), *Bulletin of the Academy of Political and Social Sciences,* Nº 91, Caracas, 1983. Also see: *"El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela"* (The Arbitral Proceedings on the Guiana-Esequibo and the Violation of the Principles of Due Process to the Detriment of Venezuela"). *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008.

8 Carlos SOSA RODRÍGUEZ, *"El acta de Washington y el laudo de París",* ("The Washington Act and the Paris Award"), *Bulletin of the Academy of Political and Social Sciences*, Nº 91, Caracas, 1983.

René De Sola[9], Allan Brewer-Carías[10], Luis Cova Arria[11], Eugenio Hernández-Bretón[12], Gabriel Ruan Santos[13], Humberto Romero-

[9] René DE SOLA, *"Valuación actualizada del Acuerdo de Ginebra",* ("Updated Evaluation of the Geneva Agreement"). *Bulletin of the Academy of Political and Social Sciences*, Nº 91, Caracas, 1983.

[10] Allan BREWER-CARÍAS, *"Territorio de Venezuela. Período Republicano",*("The Venezuelan Territory") in *Diccionario de Historia de Venezuela (Dictionary of Venezuelan History"),* Volume II, Fundación Polar, Caracas, 1989. Pages 867-874; Allan BREWER-CARÍAS, *"Guyana-Venezuela Border Dispute", Max Planck Encyclopedia of Public International Law*, September 2006. Available at: https://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/Guyana-Venezuela%20Border%20Dispute.%20Max%20Planck%20EPIL,%202006.pdf. Allan Brewer-Carías, "La formación de la república y de su territorio en las constituciones 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", en *Boletín de la Academia de Ciencias Políticas y Sociales*, número 164, abril-junio, Caracas, 2021; Véase también Allan Brewer-Carías, "Conclusiones Coloquios de la Academia de Ciencias Políticas y Sociales sobre la reclamación del territorio Esequibo", en *Boletín de la Academia de Ciencias Políticas y Sociales*, número 168, abril-junio, Caracas, 2022.

[11] Luis COVA ARRIA, *"Principales aspectos de la situación jurídica de la reclamación venezolana sobre la Guyana Esequiba"* ("Main Aspects of the Legal Status of the Venezuelan Claim to the Guiana-Esequibo") in: Cecilia SOSA GÓMEZ y Jesús María CASAL (Coordinators), *"What to do with Justice? The Venezuelan Case." Academy of Political and Social Sciences*-Center for Integration and Public Law, Caracas, 2020; Also see, by the same author: *"La Academia de Ciencias Políticas y Sociales y la defensa del territorio Esequibo",* ("Academy of Political and Social Sciences and the defense of the Essequibo Territory.") *Bulletin of the Academy of Political and Social Sciences*, Nº 164, April-June, Caracas, 2021.; and, by the same author: "Conclusiones: coloquios de la Academia de Ciencias Políticas y Sociales sobre la Reclamación del Territorio Esequibo*"* ("Conclusions: Colloquiums of the Academy of Political and Social Sciences on the Esequibo Territory Claim"), *Bulletin of the Academy of Political and Social Sciences,* Nº 168, April-June, Caracas, 2022.

[12] Eugenio HERNÁNDEZ-BRETÓN, *"La necesaria defensa del territorio Esequibo",* ("The Necessary Defense of the Essequibo Territory") *Bulletin of the Academy of Political and Social Sciences,* Nº 164, 164, April-June, Caracas, 2021.

[13] Gabriel SANTOS, "La Academia de Ciencias Políticas y Sociales y la reclamación de Venezuela por la Guayana Esequiba. Algunos antecedentes" ("The Academy of Political and Social Sciences and Venezuela's Claim to the Essequibo Territory. A Brief Background.") *Bulletin of the Academy of Political and Social Sciences*, Nº 164, April-June, Caracas, 2001. Also see, by the same author: "Los títulos de la reclamación por la Guayana Esequiba. Especial referencia a la cláusula de prescripción" ("The Deeds for the Claim to the Guiana-Esequibo. Special Reference to the Statute-of-Limitations Clause") *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2001. Also see: "La supuesta aquiescencia de Venezuela en la disputa por la Guayana Esequiba. Especial referencia al Acuerdo de Ginebra" ("Venezuela's Supposed Acquiescence in the dispute over the Guiana-Esequibo. Special Reference to the Geneva

Muci[14], Héctor Faúndez Ledesma[15], Carlos Ayala Corao[16], Cecilia Sosa Gómez[17], Jesús María Casal[18], Julio Rodríguez Berrizbeitia[19], Luciano

Agreement." in the Book to the Tribute of Cecilia SOSA GÓMEZ, Volume I, Academy of Political and Social Sciences, Caracas, 2001.

14 Humberto ROMERO-MUCI, "Palabras del Dr. Humberto Romero-Muci para el coloquio sobre la Academia de Ciencias Políticas y Sociales en la defensa del territorio Esequibo" ("Words of Dr. Humberto ROMERO-MUCI for the Discussion on The Academy of Political and Social Sciences in the defense of the Essequibo Territory") "The Academy of Political and Social Sciences and the defense of the Essequibo Territory. *Bulletin of the Academy of Political and Social Sciences,* Nº 164, April-June, Caracas, 2001

15 Héctor FAÚNDEZ LEDESMA, "*La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela") Series: Studies 126. *Academy of Political and Social Sciences*-Editorial Jurídica Venezolana. Caracas, 2020. See: Héctor FAÚNDEZ LEDESMA, *"La competencia de la CIJ respecto de la cuestión relacionada con el arreglo definitivo de la controversia sobre la frontera entre Guyana y Venezuela",* ("Jurisdiction of the ICJ with respect to the matter of a Final Decision in the Dispute of the Border between Guiana and Venezuela") *Bulletin of the Academy of Political and Social Sciences,* Nº 167, January-March, Caracas, 2022; with respect to the nullity of the Paris Award, see: Héctor FAÚNDEZ LEDESMA, "La nulidad del Laudo de París, del 3 de octubre de 1899" ("Nullity of the Paris Arbitral Award of 3 October 1899."). *Bulletin of the Academy of Political and Social Sciences,* Nº 167, January-March, Caracas, 2022; also bear in mind: *"La controversia del Esequibo y las condiciones de validez del Laudo de París del 3 de octubre de 1899"* ("The Esequibo Controversy and the Conditions for Validity of the Paris Award of 3 October 1899.") a Book *In Tribute to* Cecilia SOSA GÓMEZ, Volume I, *Academy of Political and Social Sciences,* Caracas, 2001. Also see: Héctor FAÚNDEZ LEDESMA, "La necesidad de medidas provisionales en el caso Guyana c. Venezuela" ("The Need for Provisional Measures in the Case of Guiana v. Venezuela") *Bulletin of the Academy of Political and Social Sciences,* Nº 166, October-December, Caracas, 2021; and, by the same author: "Medidas cautelares en el caso Guyana c. Venezuela" ("Precautionary Measures in the Case of Guiana v. Venezuela"), an article published by "El Nacional" on 19 November 2021. Available at: https://www.elnacional.com/opinion/medidas-cautelares-en-el-caso-guyana-c-venezuela/

16 Carlos AYALA CORAO, "Opening Words", *Bulletin of the Academy of Political and Social Sciences,* Nº 166, October-December, 2021, Pages 429 & ff. Note his participation in several of the conferences held within the cycle of colloquiums on the Essequibo controversy, See: "*Academy of Political and Social Sciences* and the Defense of Essequibo Territory" of 6 May 2021, Available at: https://www.youtube.com/watch?v=tYYwRUGV-7Y; "The Formation of the Republic and the Venezuelan Territory in the Venezuelan constitutions", of 20 May 2021, Available at:https://www.youtube.com/watch?v=QjmXTxgqIHk&t=2866s; "The Arbitral Award of 3 October 1899 and the Mallet-Prevost Memorandum," dated 19 August 2021, Available at: https://www.youtube.com/watch?v=YAuecChpzHg&t=2901s

17 Cecilia SOSA GÓMEZ, "La Formación de la República y el Territorio en "Las Constituciones de Venezuela" ("The Constitutions of Venezuela")" ("Formation of the Republic and the Venezuelan Territory in the Venezuelan Constitutions"). *Bulletin of the Academy of Political and Social Sciences,* Nº 164, 164, April-June, Caracas, 2021.

Lupini Bianchi[20], Ramón Escovar León[21], and I have also done so previously[22].

I am also aware of the publication of the book "*La reclamación venezolana sobre la Guayana Esequiba"* (Venezuelan Claim on the Essequibo Guiana) coordinated by the academic Tomás Enrique Carrillo Batalla in 2008[23]. Likewise, the Academy of Political and

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18 Jesús María CASAL, *"Cinco vertientes constitucionales de la reclamación del Esequibo"* ("Five Constitutional Angles on the Essequibo Claim"). *Bulletin of the Academy of Political and Social Sciences,* Nº 164, 164, April-June, Caracas, 2001.

19 Julio RODRÍGUEZ BERRIZBEITIA, "Las reglas del Tratado de Washington de 1897 y los títulos históricos del territorio del Esequibo" ("The 1897 Treaty of Washington Rules and the Historical Deeds of the Essequibo Territory"). *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2021. Julio RODRÍGUEZ BERRIZBEITIA, "Palabras de Clausura del Presidente de la Academia de Ciencias Políticas y Sociales" ("Closing Words of The Academy of Political and Social Sciences President"), *Bulletin of the Academy of Political and Social Sciences*, Nº 168, April-June, Caracas, 2022.

20 Luciano LUPINI BIANCHI, "Opening remarks at the XII Colloquium on the Essequibo Controversy, delivered by the First Vice President of *Academy of Political and Social Sciences*", *Bulletin of the Academy of Political and Social Sciences,* Nº 168, April-June, Caracas, 2022.

21 Ramón ESCOVAR LEÓN, *"La controversia con Guyana: Venezuela debe presentar la contramemoria"* ("The Dispute with Guiana: Venezuela Must Submit the Counter-Memory") an article published by "El Nacional" on 31 May 2022. Available at: https://www.elnacional.com/opinion/la-controversia-con-guyana-venezuela-debe-presentar-la-contramemoria/; Ramón ESCOVAR LEÓN, *"El Esequibo y la unidad nacional"* ("The Essequibo and National Unity") an article published by "El Nacional" on 2 February 2021. Available at: https://www.elnacional.com/opinion/el-esequibo-y-la-unidad-nacional/; Also see: Ramón ESCOVAR LEÓN, *"La sentencia de la Corte Internacional de justicia en el conflicto de Guyana vs Venezuela"* ("The Sentence of the ICJ in the Conflict of Guiana v Venezuela") an article published "El Nacional" on 22 December 2020. Available at: https://www.elnacional.com/opinion/la-sentencia-de-la-corte-internacional-de-justicia-en-el-conflicto-de-guyana-vs-venezuela/; also bear in mind: Ramón ESCOVAR LEÓN, "*Marcos FALCÓN BRICEÑO y el Esequibo"* ("Marcos FALCÓN BRICEÑO and the Essequibo"), an article published by "El Nacional" on July 7th, 2020, Available at: https://www.elnacional.com/opinion/marcos-falcon-briceno-y-el-esequibo/.

22 Rafael BADELL MADRID, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899.") *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, 2021. Also see: Rafael BADELL MADRID, *"Comentarios sobre la controversia con Guyana"* ("Comments on the Dispute with Guiana") in the Book to the Tribute of Cecilia SOSA GÓMEZ, Volume I, *Academy of Political and Social Sciences,* Caracas, 2001; Pages 731-814.

23 Tomás Enrique CARRILLO BATALLA (Coordinator), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guiana-Essequibo"). *Academy of Political and Social Sciences,* Series: Events 2, Caracas, 2008.

Social Sciences has issued several pronouncements on the controversy that are of great importance today[24].

In addition, valuable studies and documents on the subject are published in the Bulletins of the Academy of Political and Social Sciences, among them, the posthumous memorandum of Severo Mallet-Prevost[25] and the works published by several experts on the matter, such as: Marcos Falcón Briceño[26], Armando Rojas[27], Elbano Provenzali[28], Sadio Garavini[29], Gerson Revanales[30], Eloy Torres Román[31], Allan

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24 Humberto ROMERO-MUCI (Coordinator), *"Doctrina Académica Institucional"* ("Institutional Academic Doctrine"), Editorial Jurídica Venezolana, Caracas, 2019. Visit the Web-Page of the Academia de Ciencias Políticas Sociales (*Academy of Political and Social Sciences*) for the section on 'Pronouncements' hosting all the publications regarding the Essequibo controversy; Available at: https://www.acienpol.org.ve/pronunciamientos-acienpol/.

25 Otto SCHOENRICH, "Materia de excepcional importancia para la historia diplomática de Venezuela. La disputa de límites entre Venezuela y La Guayana Británica" ("A Matter of Exceptional Importance in the Diplomatic History of Venezuela. The dispute regarding the Border between Venezuela and British Guiana.") The Academy of Political and Social Sciences Volume 14, Nos.: 1-2-3-4, Caracas, 1949.

26 Marcos FALCÓN BRICEÑO, *"Orígenes de la actual reclamación de la Guayana Esequiba"* (Origins of the Current Claim to the Guiana-Essequibo"). *Academy of Political and Social Sciences* Nº 91, Caracas, 1983.

27 Armando ROJAS, "La reclamación de la Guayana Esequiba. Gestiones diplomáticas realizadas por Venezuela durante el siglo XIX" ("The Claim to the Guiana Essequibo. Diplomatic Endeavors by Venezuela in the 19th Century"). The Academy of Political and Social Sciences Nº 91, Caracas, 1983.

28 Elbano PROVENZALI HEREDIA, *"Cronología de una solidaridad. Documentos brasileños revelan los derechos de Venezuela sobre la Guyana Esequiba"* ("Timeline of a solidarity. Brazilian Documents Reveal Venezuela's Rights to the Guiana Essequibo ". *Academy of Political and Social Sciences* Nº 93 and 94, Caracas, 1983.

29 Sadio GARAVINI DI TURNO, *"Guyana: El Acuerdo de Ginebra en la actualidad"* ("Guiana: The Geneva Agreement as it stands now."), *Academy of Political and Social Sciences* Nº 153, Caracas, 2014; See: Sadio GARAVINI DI TURNO, "*El Acuerdo de Ginebra y la controversia del Esequibo"* ("The Geneva Agreement and the Essequibo Dispute") *, Academy of Political and Social Sciences* Nº 165, July-September, Caracas, 2021; and also: Sadio GARAVINI DI TURNO, "*La demanda de Guyana, la competencia de la Corte Internacional de Justicia y las opciones de Venezuela"* ("Guiana's Claim, the ICJ's jurisdiction, and Venezuela's options.") *Academy of Political and Social Sciences* Nº 166, October-December, Caracas, 2021.

30 Gerson REVANALES, "Venezuela: un caso de debilidad jurídica, política, y diplomática en la reclamación del Esequibo" ("Venezuela: a case of legal, political, and diplomatic weakness in the Claim to the Essequibo.") The Academy of Political and Social Sciences Nº 158, Caracas, 2019.

31 Eloy TORRES ROMÁN, *"Los antecedentes de la controversia del Esequibo"* ("The Background of the Essequibo Dispute"), *Bulletin of the Academy of Political and Social Sciences,* Nº 164, April-June, Caracas, 2001.

Estrada Morales[32], Asdrúbal Aguiar[33], Milagros Betancourt[34], Antonio Remiro-Brotóns[35], Emilio Figueredo[36], Juan Carlos Sainz Borgo[37], Jorge Cardona Llorens[38], Víctor Rodríguez Cedeño[39], Josmar Fernández[40],

32 Allan Amilkar ESTRADA MORALES, *"Diferendo territorial entre Guatemala vs. Belice"* ("Territorial Differences between Guatemala vs. Belice") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September, Caracas, 2021.

33 Asdrúbal AGUIAR, "El compromiso arbitral de Washington sobre la reclamación Esequiba y el Derecho internacional" ("The Washington Essequibo-Claim arbitral agreement and International Law") *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2021; Also see: Asdrúbal AGUIAR, "La competencia de la Corte Internacional de Justicia y la cuestión conexa sobre la frontera entre Guyana y Venezuela" ("The ICJ's Jurisdiction and the connected matter regarding the border between Guiana and Venezuela"). *Bulletin of the Academy of Political and Social Sciences*, Nº 167, January-March, Caracas, 2022.

34 Milagros BETANCOURT, *"El Laudo Arbitral del 3 de octubre de 1899 a la luz de la Jurisprudencia de la Corte Internacional de Justicia"* ("The Arbitral Award of 3 October 1899, in light of the Jurisprudence of the International Court of Justice"). *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2021.

35 Antonio REMIRO-BROTÓNS, *"El Acuerdo de Ginebra y la controversia del Esequibo"* ("The Geneva Agreement and the Essequibo Dispute"), *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2001.

36 Emilio FIGUEREDO, "El Acuerdo de Ginebra y su significado en la controversia territorial entre Venezuela y Guyana", ("The Geneva Agreement and its meaning in the Territorial Dispute between Venezuela and Guiana"). *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2021.

37 Juan Carlos SAINZ-BORGO, *"El Acuerdo de Ginebra a la luz del Derecho de los Tratados"* (The Geneva Agreement in Light of Treaty Law"), *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2001; Also see: Juan Carlos SAINZ-BORGO, "La recuperación de Esequibo. Anotaciones desde la estrategia procesal" ("Recovery of the Essequibo. Notes on a Procedural Strategy"). *Revista de Derecho Público (Public Law Magazine)* Nº 167-168, Editorial Jurídica Venezolana, Caracas, 2021.

38 Jorge CARDONA LLORENS, "La competencia de la Corte Internacional de Justicia en materia contenciosa, el principio de la competencia sobre la competencia y la ejecución de las sentencias de la Corte" ("The Jurisdiction of the ICJ in Contentious Matters , the Principle of Jurisdiction on Jurisdiction, and the Enforcement of the Court's Sentences."), *Bulletin of the Academy of Political and Social Sciences*, Nº 166, October-December, Caracas, 2021.

39 Víctor RODRÍGUEZ CEDEÑO, *"Las implicaciones de la no comparecencia en el procedimiento contencioso ante la Corte Internacional de Justicia: Reglas y principios aplicables a la luz de la práctica de la Corte"* ("The implications of not attending the contentious procedure of the International Court of Justice: Applicable Rules and Principles in light of the Court's Practices."), *Bulletin of the Academy of Political and Social Sciences*, Nº 166, October-December, Caracas, 2021; Also see: Víctor RODRÍGUEZ CEDEÑO, "Sobre el principio del *uti possidetis iuris* en el contexto de la controversia territorial sobre el Esequibo" (On the *uti possidetis iuris* Principle within the context of the Territorial Dispute on the Essequibo"), *Bulletin of the Academy of Political and Social Sciences*, Nº 167, January-March, Caracas, 2022.

40 Josmar FERNÁNDEZ, *"La plataforma continental y la frontera marítima entre Guyana y Venezuela*" ("The Continental Platform and the marine border between Guiana and

Jesús Ollarves[41], Orlando Guerrero Mayorga[42], José Toro Hardy[43] and Ricardo Salvador De Toma-García[44].

I note that the Academy of Political and Social Sciences recently published the valuable book *"La Controversia del Esequibo"* (The Essequibo Controversy), which collects the cycle of twelve events held between 6 May 2021 and 31 March 2022 under the auspices of the Academy of Political and Social Sciences.

There are also studies on the historical aspects of the controversy. In the first place, the valuable contribution of historians Hermann González Oropeza and Pablo Ojer Celigueta, who travelled to London and conducted very important research in the confidential British Archives. The result of their work was published in 1967 in the Report that Venezuelan experts for the question of boundaries with British Guyana presented to the national government, Ministry of Foreign Relations[45].

The report contains details such as notes in newspapers, comments of personalities who participated in the Paris Arbitration, maps and press reactions on the procedure and the Paris Arbitral Award. All

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Venezuela"), *Bulletin of the Academy of Political and Social Sciences,* Nº 167, January-March, Caracas, 2022.

41 Jesús OLLARVES, "La plataforma continental y la frontera marítima entre Guyana y Venezuela. Reflexiones sobre los problemas en torno a la delimitación de la frontera marítima entre Venezuela y Guyana y el derecho aplicable" ("The Continental Platform and the Marine Border Between Guiana and Venezuela. Reflections on the Issues Surrounding the Delimitation of the Border Between Guiana and Venezuela. "). *Bulletin of the Academy of Political and Social Sciences*, Nº 167, January-March, Caracas, 2022.

42 Orlando GUERRERO MAYORGA, *"El Laudo del Rey de España Alfonso XIII del 23 de diciembre de 1906"* (The 23 December 1906, Award of Alfonso XIII, King of Spain"), *Bulletin of the Academy of Political and Social Sciences,* Nº 167, January-March, Caracas, 2022.

43 José TORO HARDY, "Ponencia de José Toro Hardy ante la Academia de Ciencias Políticas y Sociales" "Address by José TORO HARDY to The Academy of Political and Social Sciences"), *Bulletin of the Academy of Political and Social Sciences,* Nº 168, April-June, Caracas, 2022.

44 Ricardo Salvador DE TOMA-GARCÍA, *"Panorama y crítica de los intereses geopolíticos en la región"* ("Outlook and Critique of the Geopolitical Interests in the Region"). *Bulletin of the Academy of Political and Social Sciences,* Nº 168, April-June, Caracas, 2022.

45 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, "*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional"*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967.

the information published in the report is supported by documents submitted to the United Kingdom in expert discussions, which are the product of the 15 sessions that took place in London between February and May 1964.

I have also considered the work of Venezuelan historians Manuel Donís Ríos[46] and Edgardo Mondolfi Gudat[47], both Full Members of the National Academy of History. In addition to all of the above, we must mention the study by Colombian historian José Manuel Restrepo, entitled *"Historia de la Revolución de la República de Colombia"* (History of the Revolution of the Republic of Colombia)[48], which contains relevant information related to the boundaries of Venezuela during the existence of Gran Colombia.

46 Manuel DONÍS RÍOS, *"Antecedentes de la reclamación venezolana del territorio Esequibo"* ("Background of the Venezuelan Claim to the Essequibo Territory". *Bulletin of the Academy of Political and Social Sciences,* Nº 164, April-June, Caracas, 2001. Manuel DONÍS RÍOS, "Presentation" in "*El reclamo Esequibo. Un compromiso nacional vigente ante la historia y la justicia"* ("The Esequibo Claim. An Ongoing National Commitment with History And Justice"), Abediciones, Universidad Católica Andrés Bello, Caracas, 2021; Manuel DONÍS RÍOS, "*El Esequibo. Una reclamación histórica"* ("The Esequibo. A Historic Claim"), Abediciones-Konrad Adenauer Stifung, Caracas, 2016; Manuel DONÍS RÍOS, *"La reclamación del territorio Esequibo: 1899-1966"* ("The Claim to the Essequibo Territory: 1899-1966"), *Boletín de la Academia Nacional de la Historia* (National History Academy Bulletin), Nº 397, Caracas, 2016.

47 Edgardo MONDOLFI GUDAT, *"Apuntes en torno al Acuerdo de Ginebra"* ("Notes regarding the Geneva Agreement"), an article published in *Prodavinci* on 3 July 2021. Available at: https://prodavinci.com/apuntes-en-torno-al-acuerdo-de-ginebra/.

48 José Manuel RESTREPO, "*Historia de la Revolución de la República de Colombia"* ("The History of the Revolution of the Coilombian Republic"), Volume I. Librería Americana, París, 1827.

II. GENERAL CONSIDERATIONS

By the Treaty of London of 13 August 1814, the United Kingdom acquired the Dutch settlements of Berbice, Demerara and Essequibo east of the Essequibo River, which Holland had acquired from Spain by the Treaty of Münster of 24 October 1648. All these camps were east of the Essequibo River. Thus, all territories west of the Essequibo River have always belonged to Venezuela.

By royal decree of 8 September 1777, the General Captaincy of Venezuela was established. In the same year, the provinces of Cumaná, Guayana and Maracaibo and the islands of Trinidad and Margarita were separated from the Viceroyalty and General Captaincy of the New Kingdom of Granada and incorporated into the General Captaincy of Venezuela[49]. Then, article 128 of the first Constitution of Venezuela of 21 December 1811, which was promulgated after the independence of 5 July 1811, stipulated that: *"As soon as the provinces of Coro, Maracaibo and Guayana are free from the oppression they have suffered, should they wish to join the Confederation, they will be admitted to be part of it, without such violent separation in which they have remained, to their and our regret, altering the principles of equality, justice and fraternity which they will enjoy like all the other provinces of the union"*[50].

Later, in the midst of the wars to consolidate independence, on 7 August 1817, Simón Bolívar sent a letter to Colonel Leandro Palacios from Lower Guayana in which he declared: *"At last I have the pleasure of seeing Guayana free! The capital surrendered to us on the 18th of last month,* and these fortresses, on the 3rd of this month. *The country has not been left in the best condition as regards the population, which*

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49 *Cf.* Irene LORETO GONZÁLEZ, "*Génesis del constitucionalismo en Venezuela"* ("The Genesis of Constitutionalism in Venezuela"), *Juridical Research Center*, Caracas, 2005. Page 74.

50 Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), *Academy of Political and Social Sciences*, Caracas, 1997. Pages 555 ff

has almost been exterminated in the seven months of siege and because a great part of the population emigrated with the Spaniards"[51].

On 15 October 1817, Simón Bolívar issued a decree from the General Headquarters of Angostura whereby he incorporated the province of Guayana to Venezuela and designated its constituting departments. Article 1 of the aforementioned decree established that *"The province of Guayana in all its extension is united with the territory of Venezuela, and from today will form an integral part of the Republic"*[52].

When the Constitution of Angostura was approved on 15 August 1819, Guayana was one of the provinces of Venezuela. In fact, this constitutional text in Title 2º, Section 1º, Article 2 established that: *"The territory of Venezuela shall be divided into ten provinces, which are: BARCELONA, BARINAS, CARACAS, CORO, CUMANA, GUAYANA, MARACAIBO, MARGARITA, MERIDA, and TRUJILLO. Their boundaries and demarcations shall be established by Congress"*[53].

On 17 December 1819, the Congress of Angostura approved the Fundamental Law of Colombia, Article 2 of which established the principle of *uti possidetis iuris* in the following terms "*Its territory will be that which comprised the former General Captaincy of Venezuela and the Viceroyalty of the new Kingdom of Granada, with an extension of 115,000 square leagues, the exact terms of which will be determined under better circumstances"*[54].

With the aforementioned Fundamental Law of Colombia and, especially with the aforesaid provision of Article 2, the decree of Simón Bolívar of 15 October 1817 was complemented by expressly regulating the *uti possidetis iuris* principle according to which Venezuela had the

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51 See the Article by: el artículo de Rafael CASTRO, *"Las revoluciones son esencialmente transformaciones culturales"* ("Revolutions are In Essence Cultural Transformations") published on 10 August 2015. Available at: https://www.aporrea.org/actualidad/a212082.html.

52 See: Libertador Simón Bolívar's Decree dated in Angostura on 15 October 1817, incorporating the Province of Guayana to the Republic of Venezuela and indicating its Departments. Available at: http://www.archivodellibertador.gob.ve/escritos/buscador/spip.php?article2283.

53 Allan Randolph BREWER CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), Quoted Above, Pages 619 ff

54 *Ibidem,* Pages 643-644.

same boundaries that the General Captaincy of Venezuela[55] had at the time.

On 20 February 1821, the diplomat Francisco Antonio Zea, who had been Vice-President of the Republic of Colombia from 17 December 1819 to 19 March of 1820 and Ambassador of the Republic of Colombia in the United Kingdom from 16 June 1820 to 28 November 1820, sent a communication to the Minister of Foreign Affairs of the United Kingdom, Robert Stewart, Viscount of Castlereagh, to clarify the situation of the eastern border of Colombia.

In said communication he stated: *"The Republic of Colombia occupies in South America the northernmost part, extending in latitude from 12º N, to 69 S, and in longitude from 589 to 81 Q of the Greenwich meridian. Its limits are to the East the Atlantic Ocean that bathes its coasts from the mouths of the Orinoco to Cape Nassau; from this cape starts a North-South. line that ends in the Essequibo River, the left bank of this river being the border with the Dutch Guyana"*[56].

The above is followed by the Fundamental Law of the Union of the Peoples of Colombia, sanctioned by the Congress of the Villa del Rosario de Cúcuta on 15 August 1821, whose Article 5 ratified the *uti possidetis iuris*:

> *"The territory of the Republic of Colombia shall be that included within the boundaries of the former General Captaincy 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"*[57].

It should also be noted that the Constitution of the Republic of Colombia of 30 August 1821, which President Simón Bolívar ordered to be executed on 6 October 1821[58], considered the *uti possidetis iuris*

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55 *Ídem.*

56 Herman GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 33.

57 Allan Randolph BREWER CARÍAS, "Las Constituciones de Venezuela" ("The Constitutions of Venezuela"), Quoted Above, Pages 645-646.

58 In this respect, see: Rafael BADELL MADRID, *"Consideraciones sobre la Constitución de Colombia de 1821"* ("Considertions on the 1821 Constitution of Colombia"), *Bulletin of the Academy of Political and Social Sciences,* Nº 165, Caracas, 2021. Page 541 & ff

principle and integrated Guayana within its territory. In effect, article 6 established that: *"The territory of Colombia is the same as that of the former Viceroyalty of Nueva Granada and the General Captaincy of Venezuela"*.

In 1822, the presence of English settlers from Demerara and Berbice was detected near the Essequibo River in the dominions of Venezuela, which was part of the Republic of Colombia. In response, the Colombian government, through the Ministry of Foreign Affairs, instructed its Minister Plenipotentiary in London, José Rafael Revenga, to agree with the English to fix the dividing line between British Guiana and Colombia.

The above instructions were as follows: *"I may, however, draw your attention in particular to Article 2 of the draft treaty on boundaries. The English now possess Dutch Guiana, on the side of which they are our neighbours. You agree to determine as precisely as possible the line of demarcation between the two territories, in accordance with the last treaties concluded between Spain and Holland. The settlers of Demerara and Berbice have usurped a large part of the land, which they claim belongs to us on the side of the Essequibo River. It is absolutely necessary that these settlers either place themselves under the protection and obedience of our laws, or withdraw to their former possessions. For this purpose, they will be given the necessary time as established in the project"*[59].

However, the Minister Plenipotentiary, José Rafael Revenga, was unable to comply with the instructions he had received *"because he had not been given the opportunity to discuss the boundary question during his mission in England"*[60]. Although these instructions did not materialize, this clearly demonstrates the immediate rejection of the British occupations in the territory of Venezuela, which at that time was united with Colombia.

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59 See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Page 6. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

60 *Ídem.*

Thus, the incursion of settlers from Demerara and Berbice to the west of the Essequibo River was always firmly rejected and the defence of the Essequibo territory has been present in the history of Venezuela, even when it was part of the territory of the Republic of Colombia.

By 1824, the Republic of Colombia was made up of the territories that belonged to the Viceroyalty of Nueva Granada, the General Captaincy of Venezuela, Panama -which joined Colombia on 28 November 1821, the same day it gained its independence- and the provinces of Quito, which joined Colombia through provincial proclamations, first the Province of Cuenca in April 1822 and then those of Quito and Guayaquil, in May and July of the same year, respectively[61].

The eastern boundary of the Republic of Colombia was ratified by the Law of Territorial Division of the Republic of Colombia of 25 June 1824, which established that the territory of the republic would be divided into twelve departments, including the Department of Orinoco which, according to article 2 *eiusdem*, had among its provinces those of Cumaná, Barcelona, Guayana and Margarita.

The same article 2 established that the province of Guayana consisted of the cantons of Santo Tomás de Angostura, Río Negro, Alto Orinoco, Caura, Guayana Vieja, Caroní, Upata, La Pastora and La Barceloneta[62]. This Territorial Division Law of 25 June 1824 was in force for the State of Venezuela, even after the disintegration of Colombia, until the government of José Tadeo Monagas, when the Law of 28 April 1856 was sanctioned, establishing the Territorial Division of Venezuela.

The border situation of the Republic of Colombia for the year 1824 can be clearly seen on the Chart of the Republic of Colombia divided

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61 Rafael BADELL MADRID, *"Consideraciones sobre la Constitución de Colombia de 1821"* ("Considertions on the 1821 Constitution of Colombia"), Quoted Above, Page 542 & ff.

62 Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted Above.

into 12 departments in 1824 in a map published in the Physical and Political Atlas of Venezuela prepared by the engineer Colonel Agustín Codazzi.

In the Charter of the Republic of Colombia divided into 12 departments in 1824, the territory of the Republic of Colombia was established in accordance with the *uti possidetis iuris* principle and included the territories of the province of Guayana up to the Essequibo River. As Brewer-Carías notes *"the territory of the Canton of Upata of the Province of Guayana extends to the Essequibo River, excluding the area between the mouth of the Moruco River and the Essequibo River, which appears in this case with the indication: "TERRITORY CONSIDERED USURPED BY THE ENGLISH", a situation which is repeated in the area of the west bank of the headwaters of the Essequibo River"*[63].

The Republic of Colombia was dissolved after facing political, economic, and social problems. The events of the political movement known as La Cosiata, led by General José Antonio Páez with the support of the municipalities of Caracas and Valencia, contributed to the extinction of the Republic of Colombia[64]. The lack of consensus on the adoption of the form of State between centralists and federalists was one of the elements that accelerated the dissolution process. The last attempt to resolve the tensions between the supporters of these two currents was the Ocaña Convention of 9 April 1827, which was unsuccessful[65].

This was followed by the Organic Decree of the Dictatorship issued by Simón Bolívar on 7 August 1828, with which the Constitution of the Republic of Colombia ceased to be in force due to the rupture of the constitutional thread.

After the rupture of the constitutional thread produced by the decree of the dictatorship, a Constituent Congress was called in Bogotá. The electoral college of Venezuela formulated a draft of instructions for the

63 *Ibidem,* Page 146.

64 See: Rafael BADELL MADRID, *"Consideraciones sobre la Constitución de Colombia de 1821"* ("Considertions on the 1821 Constitution of Colombia"), Quoted Above, Pages 532 y 549.

65 *Ídem.*

deputies who would attend in representation of the country, in which *"the need to sustain the Constitution of the Villa del Rosario de Cúcuta was established"*[66]. However, *"the Constituent Congress of Bogota began its work on 2 January 1830, but Venezuela did not participate. On 13 January 1830, General José Antonio Páez summoned the Congress of Valencia which was installed on 6 May 1830, and sanctioned the Constitution of the State of Venezuela on 22 September 1830"*[67].

Even after the separation of Venezuela from the Republic of Colombia, the territorial limits established in the Territorial Division Law of 1824 were maintained and Venezuela exercised sovereignty over the territories that belonged to the General Captaincy of Venezuela.

As noted by Colombian historian José Manuel Restrepo, during the same period in which the Republic of Colombia existed, the limits along the Atlantic Coast were: *"...from Cape Nassau,* ***or rather from the Essequibo River,*** *former limit of Dutch Guiana, to Cape Gracias a Dios in the province of Honduras by fifteen degrees north latitude, and including the islands of Margarita, San Andrés, Vieja Providencia, and other even smaller ones"*[68]. (Highlighting Added).

In addition, José Manuel Restrepo pointed out that the Essequibo River: *"...continues to divide English Guyana from that of Colombia to the mouth of the Cuyuní River in it, being the western territory of Colombia and the eastern territory of England. The Cuyuní River is the dividing line from its mouth in the Essequibo to the confluence of the Maceroni River: from there it continues north to the Pumarón River and then its course reaches the sea at Cape Nassau. Here ends the boundary*

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66 Allan BREWER-CARÍAS, "La Constitución de la República de Colombia de 30 de agosto de 1821. Producto de la unión de los pueblos de Venezuela y de la Nueva Granada propuesta por Simón Bolívar. Sus antecedentes y condicionantes", ("The Colombian Republic Constitution of 30 August 1821, arising out of the union of the Venezuelan and Nueva Granada peoples proposed by Simón Bolívar. Its background and conditioning factors.") Political and Social Academy-Colombian Academy of Jurisprudence-Editorial Jurídica Venezolana-Editorial Temis, Caracas/Bogotá, 2021. Page 303.

67 See: Rafael BADELL MADRID, *"Consideraciones sobre la Constitución de Colombia de 1821"* ("Considertions on the 1821 Constitution of Colombia"), Quoted Above, Pages 621-622.

68 See: José Manuel RESTREPO, *Historia de la Revolución de la República de Colombia* ("The History of the Revolution of the Colombian Republic") , Volume I. Librería Americana, París, 1827, Page 13.

between Colombia and what is now English Guyana, which begins at 2 degrees 10 minutes north latitude to the south east of the Macusis"[69].

The Envoy Extraordinary and Minister Plenipotentiary José Rafael Revenga was replaced by José Manuel Hurtado, who on 16 July 1824 requested the United Kingdom to recognize the Republic of Colombia as an independent State. On that occasion, it was insisted -once again- that the boundary between the Republic of Colombia and the British Colony of Guayana, which belonged to the United Kingdom, was the Essequibo River.

In fact, José Manuel Hurtado expressed: *"This beautiful and rich country extends along the northern sea, from the Essequibo River or the borders of the province of Guayana to the Culebras River, which separates it from Guatemala"*[70].

Venezuelan historian Manuel Donís Ríos indicates that the referred phrase of José Manuel Hurtado *"from the Essequibo River or the confines of the province of Guyana"* must be interpreted in accordance with the existing boundaries at the time, that is to say: *"To the east, the former General Captaincy of Venezuela, now an integral part of the Republic of Colombia under the name of Department of Venezuela, had the Essequibo River as its boundary with British Guiana South of the Essequibo River, the General Captaincy of Venezuela reached the mouth of the Amazon River, by virtue of the capitulation of Guayana obtained by Antonio de Berrío in 1582"*[71].

In December 1824, the United Kingdom recognized the Republic of Colombia as an independent State. The decision of the United Kingdom was notified to Spain that same year of 1824 and the news was received with jubilation in America[72]. The United Kingdom had established as

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69 *Ibidem,* Pages 17-18.

70 Manuel DONÍS RÍOS, "*El Esequibo. Una reclamación histórica"* ("The Esequibo. A Historic Claim"), Abediciones-Konrad Adenauer Stifung, Caracas, 2016; Page 58. The autor sustains that there are strong signs allowing us to conclude that the Memorial was written by Don Andrés Bello who, at the time, was in public service holding the position of Secretary of the Colombian Republic in London: "*There are reasons to believe that Andrés Bello at least took part in writing this document. But Bello himself allows us to consider such authorship*".

71 *Ídem.*

72 Julio Alberto PEÑA ACEVEDO, "Cronología de Guyana, cuarta entrega, Gran Colombia" ("The Guiana Chronology, fourth issue, The Greater Colombia"). Published on 19 March 2015. Available at: https://elespacioacuaticovenezolano.com/2015/03/19/1552jualpeac/

a condition for granting this recognition that the Republic of Colombia would sign a Treaty of Cooperation and Friendship between the two countries, which was effectively signed on 18 April 1825[73]. The importance of the matter lies in the fact that the Treaty of Cooperation and Friendship between Colombia and Great Britain recognized that the Essequibo River was the border between the Republic of Colombia and the British Guiana Colony.

In 1835, notwithstanding this express recognition of the Republic of Colombia as an independent State, the United Kingdom began to expand into the territory of the Essequibo with the aim of dominating the Orinoco River, which would allow it to control the northern part of South America by river and exploit the mineral resources of this territory.

In 1835, on behalf of the Royal Geographical Society of London and with the support of the Colonial Office, the geographer and naturalist Robert Hermann Schomburgk drew the first border demarcation line between Venezuela and British Guiana With this line, the border was fixed at the Essequibo River, although the line *"departs from said river approximately 45 miles from the coast, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and from that point forms a sort of pocket, west of the Essequibo River, to the point on the coast where the Moroco River flows into it"*[74].

This first line Schomburgk established as the border had a territory of 4,920 square kilometres beyond the Essequibo River, specifically "*in the area comprised from the coast, between the mouths of the*

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73 *Ídem.* The author quotes the work of BIERCK Harold, *"Public Life with Don Pedro Gual"* Page 268. PEÑA ACEVEDO explains that this treaty was ratified by the Senate on 23 May 1825, and ratifications were exchanged on 7 November 1825. He adds that *"In the treaty with Great Britain, British imperial pressure was even stronger, because, as a condition for the recognition of Colombia's independence, they demanded the Treaty of Friendship, Commerce and Navigation be signed. Venezuela informs Britain that the border with British Guiana was located on the Essequibo River. Maps similar to that of Hamilton Adams, from Wilkinson's Atlas (1827), circulated in Great Britain in the second half of the 1820s. Despite the diplomatic and commercial recognition given to the Republic of Colombia by Great Britain, British maps repeatedly presented the border between Colombia and Brazil according to British interests in the region and not according to the aspirations of the Greater Colombian authorities."*

74 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 122.

Essequibo and Moroco Rivers; the curved line that follows the course of the Moroco River up to reaching the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and finally the Essequibo River downstream to its mouth into the sea"[75].

In 1840, during the second government of General José Antonio Páez, Robert Schomburgk, this time sent by the English government, drew a second demarcation line that added an area of 141,930 square kilometres, starting from the mouth of the Amacuro River, following a north-south direction until reaching the Roraima. This is the well-known Schomburgk pseudo line reflected in the Sketch Map of the Parliamentary Papers of 1840[76], which is precisely the origin of the controversy. In addition to this new line, whereby the arbitrary drawing of the limits between both States was carried out, Schomburgk erected posts with the initials of Queen Victoria, marked trees and executed acts of possession in the territories covered by the line, reaching as far as Punta Barima at the mouth of the Orinoco River.

This new line drawn by Schomburgk was rejected by Venezuela and even by the Foreign Office of the United Kingdom and the Colonial Office, considering it biased and partial, although in truth this line obeyed the orders of the British government with a clear interest in the mining potential of the area[77].

On 7 September 1841, the Minister of the Colonies, Lord Stanley, signed a minute that indicated *"The maps in my possession [Schomburgk's maps] do not allow us to see the course followed by Mr. Schomburgk and he does not make it easy to trace it. Extracts from*

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75 *Ídem.*

76 Héctor FAÚNDEZ LEDESMA, "*La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 23.

77 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 11. Also see: Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" ("The 1899 Arbitral Proceedings Regarding the Guiana-Essequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"), Quoted Above, Pages 309ff. Dr. MORALES PAÚL stated in his work that: "The Arbitral Award, the prototype of what an award should not be, followed the false Schomburgk, line that was only a British ambition traced apparently by someone who copied other cartographers on a mission to please his client and boss."

this report should be communicated to the Royal Geographical Society, but care should be taken not to insert vague accusations against the Government of Venezuela, which, though possibly well founded, lack sufficient authority, and even if they had, would perhaps afford no advantage if published. Mr. Schomburgk provides no data on which to base the boundary claimed by him, which he repeatedly defines as based on the 'undoubted' rights of the British Crown"[78].

At that very moment, September 1841, Venezuela protested these facts and sent to London the diplomat Alejo Fortique, who with the help of historian Rafael María Baralt had the mission to clarify the situation and reach a solution. The instructions given by the Venezuelan Government to Alejo Fortique were the following: *"Although the right of Venezuela over Guayana should be established by Your Majesty up to the banks of the Essequibo, the Government does not intend that it should be asserted in all this extension because it wishes to smooth out on its part all obstacles to a prompt settlement, and it is clear that the "English Government would not agree to cede its establishments of the Pumarón and Moroco. Thus, you may direct the course of the negotiation, yielding by degrees until you agree that the limits between Venezuela and English Guiana be determined at the following points:- the river "Moroco to its headwaters in the mountains of Imataca; the highest "row of these, continuing southward to the Tupuro channel; thence in this stream until entering the Cuyuní; and continuing along the northern bank of the latter up to its mouth at the exit of the Essequibo River and the left bank of the latter to the south, up to its "confluence with the Rupununi River, where this line concludes"*[79].

The diplomat Alejo Fortique and the Foreign Secretary of the United Kingdom, Lord Aberdeen, exchanged at least seven letters between November 1841 and January 1842. Through them Alejo Fortique

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78 William DÁVILA BARRIOS (ed.), *"Libro blanco: La reclamación venezolana del territorio Esequibo"* ("White Book: The Venezuelan Claim to the Essequibo Territory"), National Assembly, Caracas, 2020, Page 135.

79 See: Book on the *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

asked Lord Aberdeen for the removal of the posts erected by Robert Schomburgk; the elimination of a military post erected in Venezuelan territory where the British flag had been hoisted and to agree to the negotiation of a treaty in order to determine the border between both territories.

In response to the aforementioned communications sent by the diplomat Alejo Fortique, the Foreign Secretary of the United Kingdom, Lord Aberdeen, stated that he had no knowledge of the military post and considered that the posts erected by Robert Schomburgk should have no greater importance than some lines drawn in ink on a map. The British Foreign Secretary stated that this should not be perceived as the exercise of sovereignty.

At the insistence of Alejo Fortique, who vehemently defended the position of the Venezuelan Government, on 31 January 1842, the British government, through the Secretary of State for the Colonies, Edward George Geoffrey Smith Stanley, instructed the Governor of British Guiana, Henry Light, to remove the posts erected by Robert Schomburgk[80].

This is what the governor said in his letter:

> *"Mr. Henry Light to Mr. F. O'Leary.*
>
> *Dear Sir:*
>
> *I have the honour to inform you, to the satisfaction of the Venezuelan Government, that I have received instructions from the honourable Secretary of State for the Colonies to remove the posts placed by Mr. Schomburgk on the Barima and elsewhere, in the survey of the alleged boundaries of British Guiana. These instructions being given, I trust they will be received as a pledge of the friendly intentions of His Majesty's Government, and will be obeyed as soon as possible. If, in the meantime, there should be any delay in carrying out the instructions I have received, I trust you will use your good offices to inform the Venezuelan Government that they may consider all grounds of counterclaim removed by the concession made to them by the British Ministers.*

80 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 122.

I have the honour, Sir, to be your most obedient and humble servant.

HENRY LIGHT, Governor of British Guiana.

Mr. Daniel F. O'Leary, Caracas"[81].

However, the removal of those posts did not end with the usurpation and due to the growing tensions between Venezuela and the United Kingdom, on 18 November 1850, the British Consul General in Caracas, Belford Hinton Wilson, sent a communication to the Secretary of State and Foreign Relations of Venezuela, Vicente Lecuna, whereby the British authorities undertook not to usurp or occupy the territories in dispute.

This communication denounced the *"propaganda of falsehood and slander"* against the policies of the British government and sought to neutralize the rumour circulating in Venezuela that *"Great Britain intends to claim the Province of Venezuelan Guayana"*[82]. The British Consul stated in the same communication that he had been instructed *"to declare that while on the one hand Hs Majesty's Government has no intention of occupying or usurping the disputed territory, on the other hand, it will not look with indifference on the aggressions of Venezuela to that territory"*[83].

In the same communication he stated that *"Venezuelan Government cannot, without doing an injustice to Great Britain, distrust for a moment the sincerity of the formal declaration, now made in the name and by the express order of Her Majesty's Government, that* ***Great Britain has no intention of occupying or usurping the disputed territory****; consequently, the Venezuelan Government cannot, in the same spirit of*

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81 See: Book on the *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted Above, Page 19. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1.

82 José Rafael GAMERO LANZ, "Convenio de *Statu quo* del 18 de noviembre de 1850" ("The *Statu quo* Convention of 18 November, 1850," an article published on 19 November 2018. Available at: https://www.linkedin.com/pulse/convenio-de-status-quo-del-18-noviembre-1850-jos%C3%A9-rafael-gamero-lanz/?originalSubdomain=es.

83 *Ídem.*

good faith and friendship, refuse to make a similar declaration to Her Majesty's Government, namely, that Venezuela itself has no intention of occupying or usurping the disputed territory"[84]. (Highlighting Added).

On 20 December 1850, Venezuela responded to the United Kingdom through Venezuelan Secretary of Foreign Relations, Vicente Lecuna, who declared that *"the Government has no difficulty in declaring, as it does, that Venezuela has no intention of occupying or usurping any part of the territory whose dominion is disputed, nor will it view with indifference that Great Britain should proceed otherwise"*[85].

This exchange of these notes between the two countries sought to avoid worsening their diplomatic relations, which were going through a delicate moment due to the British occupations, and its main effect was that the United Kingdom and Venezuela undertook to maintain the border situation as it was at that time, avoiding occupying the territory under discussion, between the second Schomburgk line and the Essequibo.

In other words, that by this exchange of notes an agreement or *modus vivendi* was established between the United Kingdom and Venezuela. The aforementioned exchange of notes constitutes in effect a *modus vivendi*, that is to say, a temporary or provisional treaty between Venezuela and the United Kingdom, according to which both countries were obligated to maintain the state of affairs (*status quo*), as it was at the end of 1850.

As Sureda Delgado states in reference to the *Statu quo* Treaty of 18 November 1850, *"Venezuela and Great Britain signed an agreement whereby the disputed territory could not be occupied or usurped by either country. However, the British disregarded the agreement, and continued their advance to the detriment of the homeland's geography"*[86].

The expression *modus vivendi* is one of the multiple names given to international treaties. As Guerra Iñiguez points out, treaties *"receive different names according to certain very relative appraisals,*

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84 *Ídem.*

85 See: "*Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted Above.

86 Rafael SUREDA DELGADO, Quoted Above, Page 42.

for example, they are called convention or accord, declaration, act, protocol, agreement, modus vivendi, concordat, exchange of notes, but without this name having any legal significance"[87].

The *modus vivendi* is a temporary agreement whose purpose is to reach a definitive or more permanent one[88]. They are temporary or provisional commitments between States on very specific matters[89].

According to Alfred Verdross, an international treaty can be subscribed *"directly by an agreement between absolute monarchs, or by an exchange of notes between the government and a foreign diplomatic representative, or by an exchange of notes between the two governments"*[90], as Venezuela and the United Kingdom did. through the notes exchanged by their diplomatic representatives, Venezuelan Minister of Foreign Relations, Vicente Lecuna, and the British Consul General in Caracas, Belford Hinton Wilson.

In effect, it is a *status quo modus vivendi*, which is why this commitment is often referred to as a *Statu quo* Treaty. This warlike name *status quo treaty* has its origins in the Latin expression *statu quo ante bellum*, which refers to the return of the state of things to the way they were before the war[91]. Public international law adopted the expression *status quo*, both to refer to the restitution of the state of things to the pre-war state -*status quo ante bellum*- and to refer, in general, to the state of things at a particular historical moment.

The expression *statu quo*, according to the Royal Spanish Academy, refers to a *"state of things at a given moment"*[92]. Consequently, the

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87 Daniel GUERRA IÑIGUEZ, *Derecho internacional público* ("Public International Law"), Second Edition, Grafiunica, Caracas, 1976. Page 129.

88 Temístocles Lastenio BRAVO SUÁREZ, "*Derecho Internacional Público Contemporáneo"* ("Contemporary Public International Law"), Editorial Área de Innovación y Desarrollo, Alicante, 2018. Page 26.

89 *Ibidem.* Page 130.

90 Alfred VERDROSS, "*Derecho Internacional Público" ("Public International Law")*, Sixth Edition, Biblioteca Jurídica Aguilar, Madrid, 1976. Page 149.

91 On the matter, see: Santiago MENDIZABAL, "Jus Post Bellum: ¿Qué tan útil es para Relaciones Internacionales?" ("Jus Post Bellum: How useful is it to International Relations.") *El Outsider*, Nº 5, Universidad San Francisco de Quito, Quito, 2020. When refering to *Jus Post Bellum* in the fair war theory proposed by Walzer, the author mentions the *statu quo ante bellum* and defines it as "*the same stabililty that existed before the conflict"*.

92 Real Academia Española, *Spanish Language Dictionary*, 23rd Edition, On-Line Version 23.4 at https://dle.rae.es. Visited on: 27 October 2021.

effect of a *Statu quo* Treaty referring to border limits between nations is to maintain the border situation existing at the time the convention is signed (*modus vivendi*). The above, in the case of the controversy between Venezuela and the United Kingdom, means to maintain the border situation existing at the end of 1850 and to stop the advance of the illegitimate British expansion.

With the *Statu quo* Treaty of 1850, United Kingdom agreed to halt the advance of its expansion into Venezuelan territory. By virtue of this, it would be possible to invoke the doctrine of Estoppel, *"an institution born in Anglo-Saxon private law, and which is similar to the idea present in the continental European system of the doctrine of one's own acts"*[93].

The Estoppel or doctrine of estoppel implies in international law that a State may not invoke in its favour rights which it has previously waived by acts or declarations setting a specific position on the matter.

By official acts of the State, the United Kingdom desisted from advancing its expansion in Venezuelan territory. The doctrine of estoppel obligated the United Kingdom to be consistent with the position it established by official diplomatic communications, such as those that constituted the *Statu quo* Treaty of 1850.

As Llanos Mansilla says *"the State has the right to allege a ground in its favour to annul the treaty or terminate it or withdraw from it or suspend its application, but it is prevented from doing so by virtue of its own previous acts which disqualify it from doing so, Estoppel is, in other words, the omission of a protest"*[94].

The main Estoppel effect is *"the inadmissibility of the claim of a State in so far as it contradicts its previous attitude"*[95] that *"whether by its recognition, manifestation, conduct or silence, that State has maintained an attitude contrary to the right which it now seeks to claim"*[96].

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93 Francisco PEÑA SILVA, *"Los actos unilaterales de los Estados"* ("The Unilateral Actions of the States"). *Revista de Derecho (Law Magazine)* Nº2-December, Universidad Austral de Chile, Valdivia, 2020. Page 183.

94 Hugo LLANOS MANSILLA, "*Teoría y práctica del derecho internacional público" ("Theory and Practice of Public International Law")*, First Edition, Editorial Jurídica de Chile, Santiago de Chile, 1977. Page 258.

95 *Ibidem.* Page 259.

96 *Ídem.*

However, the *Statu quo* Treaty of 1850 was subject to serious violations by the United Kingdom. The expansion of the United Kingdom over Venezuelan territories continued after 1850, especially after 1880, during the second government of Antonio Guzmán Blanco, when on the occasion of the discovery of gold deposits, the pretension of the United Kingdom *"reached such extremes that it almost went past the boundary through the town of Upata, starting obviously from the mouths of the Orinoco"*[97].

Let us bear in mind that the Treaty of Recognition of the sovereignty of Venezuela over the territory known under the old name of General Captaincy of Venezuela, signed by Spain on 30 March 1845, included the Province of Guayana, which bordered to the east with the Essequibo River.

British expansion intentions are clearly reflected in a third Schomburgk line of 1887 that reached 167,830 square kilometres of territory and was based on Hebert's map of 1842[98]. The British tried to make it appear that this had always been their claim, but it really was not.

The British were not satisfied with the third Schomburgk line. In 1887, during the third government of Antonio Guzmán Blanco, the United Kingdom unilaterally considered that the border with Venezuela consisted of a line drawn from the coast to Upata, thus usurping 203,310 square kilometres of territory belonging to Venezuela[99].

The expansion of the line and the illegitimate occupation by British colonists on Venezuelan lands prompted Venezuela to demand the

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97 Marcos FALCÓN BRICEÑO, Quoted Above, Page 43.

98 There are no further details on the author of this map; See: Carlos SOSA RODRÍGUEZ, Quoted Above, Page 123, where the academician refers to the creator of the 1842 map as *"Mr. Herbert"*. Also see: Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967, Page 11, where they point out that *"in 1887, the British government published a map drawn by someone by the name of Herbert"* and, when referring to the map, they name it *"the adulterated line"*. According to the United Kingdom, the cartography representation dates back to 1842 and was taken by the British in 1887 to represent a third Schomburgk line usurping 167.830 km2 of Venezuelan territory.

99 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 123.

immediate vacating of its lands since, as indicated in the note rejecting the British actions, the United Kingdom *"has violated the sovereignty and independence rights of Venezuela, depriving it of the most holy and inviolable of the properties of a nation, namely, that of its territory"*[100].

The immense power of the United Kingdom, in contrast with the enormous weakness of Venezuela at the end of the 19th Century, allowed it to insist on expansion and its illegitimate unilateral demarcations tried to be documented in different maps.

In 1844, the British pretension diminished with respect to the second Schomburgk line and the United Kingdom proposed the Aberdeen Line that began in the Moroco River, between Pomarón and Punta Barima.

Among the demarcation lines proposed by the United Kingdom were, in 1881, the Granville Line, which started twenty-nine miles from the Moroco River in the direction of Punta Barima; in 1886 the Rosebery Line, which extended to a place on the west coast of the Guaima River in the direction of Punta Barima; in 1890 the Salisbury Line which, usurping a larger territory, established the border at the mouth of the Amacuro River on the Orinoco; in 1893 the new Rosebery Line, which advanced even further westward and into the interior of Venezuela and established the border from the west of the Amacuro River to the headwaters of the Cumano River and the Sierra de Usupamo[101].

In the month of June 1886, the United Kingdom, under instructions from Granville George Leveson-Gower, 3rd Earl Granville, ordered the rectification of the border of the British Guiana Colony with Venezuela and the destruction of the previous copies of the maps[102].

On 1 June 1886, Mr. Edward Hertslet, Librarian of the British Foreign Office, wrote a memorandum in which, in reference to some of the unilateral delimitations drawn by the British government, he recognized the value of the *Statu quo* Treaty signed between Venezuela

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100 *Ídem.*

101 For a more detailed analysis of the lines created by the United Kingdom, see: The English Map Dance in Héctor FAÚNDEZ LEDESMA, *"La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"),* Quoted Above, Pages 78 & ff

102 Oficina de Registros Públicos (Londres) F.O. 80/373. Reproduced in the Appendix to the work of Hermann GONZÁLEZ OROPEZA, S.J. and Pablo OJER, Quoted Above, Page 35.

and the United Kingdom by diplomatic notes at the end of 1850. Indeed, Mr. Hertslet stated the following: *"The boundaries indicated on this map are those established by the late Sir Robert Schomburgk, who was engaged in exploring the Colony during the years 1835 to 1839, under the direction of the Royal Geographical Society.* ***But the boundaries thus established between Brazil, on the one hand, and Venezuela, on the other, and the Colony of British Guiana are not to be taken as authoritative, as they have never been adjusted by the respective Governments, and a compromise subsists between the Governments of Great Britain and Venezuela*** **whereby** ***neither is at liberty to invade or occupy territory claimed by either****"*[103]. (Highlighting Added).

Also in June 1886, the Minister of Colonies of the United Kingdom, Charles A. Harris, sent a letter to the Librarian of the British Foreign Office, E. Hertslet, in which he wrote: *"I am afraid that this question of the boundaries with Venezuela is in a very unsatisfactory state. The Colonial Office seems to have a more or less official map which differs widely from Schomburgk's original map, and we have now heard privately that the line of our border, which was officially put forward as our ultimatum to Venezuela, cannot be secured at all; but the Colonial Office is to send a surveyor with a police escort in order to demarcate the boundaries and in addition a British squadron is to be sent to patrol off the Orinoco"*[104].

In a note sent on 26 January 1887, Venezuelan Minister of Foreign Relations, Diego Bautista Urbaneja, pointed out that Venezuela: *"Protests before the Government of Her Britannic Majesty, before all civilized nations, before the world in general, against the acts of dispossession, which to Venezuela's detriment the Government of Great Britain has consummated and that at no time nor for any reason will it recognize as capable of altering in the least the rights it has inherited from Spain"*[105].

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[103] Reproduced in WRITTER, J G., *The International Arbitration Process*, Oceana Publications, Inc. Dobs Ferry, New York, 1979. Volume III. Chapter VIII. The Venezuela-Guyana Boundary Dispute. An In-Depth Documentary Case Study of Nullity of an Arbitral Award. Pages 145-146.

[104] Ministry of Foreign Relations.AffairsRelations. *La Reclamación Esequiba*, ("The Essequibo Claim") Documentos, Caracas, 1984. Page 178.

[105] Carlos SOSA RODRÍGUEZ, Quoted Above, Pages 123-124.

In the same note, the Minister of Foreign Relations, Diego Bautista Urbaneja, concluded by stating that: *"...the President of the Republic demands from H.M.B. the evacuation of Venezuelan territory from the mouths of the Orinoco to the Pomarón, which she has unduly occupied; in the understanding that, if by February 20th, the time of the meeting of the Congress, to whom the Government must give an account of everything, no answer has been given, or if it has been answered in the negative, diplomatic relations between the two countries will be cut off from then on"*[106].

On 20 February 1887, diplomatic relations between Venezuela and the United Kingdom were broken by a new note sent by the Minister of Foreign Relations Diego Bautista Urbaneja. Venezuelan minister, after making an exposition of Venezuela's titles and the constant abuses of the United Kingdom in Venezuelan territory, stated: *"Consequently, Venezuela, not having to maintain friendly relations with a State that thus injures it, suspends them from this day, and protests before the Government of Her Britannic Majesty, before all civilized nations, before the world in general, against the acts of dispossession that the Government of Great Britain has consummated to its detriment"*[107].

Three months later, on 12 May 1887, Venezuelan Congress filed a complaint about the violation of the Monroe Doctrine by the United Kingdom, intended to persuade the United States of America to intervene in the border controversy[108].

Venezuela had requested the support of the United States of America to mediate in the controversy with the United Kingdom, and on 20 July 1888, during the government of Juan Pablo Rojas Paúl, the Secretary of State of the United States of America Richard Olney sent a note to the United Kingdom defending the position of Venezuela regarding the disputed territory.

On 6 October 1892, the Legalist Revolution that brought Joaquín Crespo to power ended. That year Dr. Pedro Ezequiel Rojas was

106 See the Book: "*Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("The Official History of the Discussion between Venezuela and Great Britain on the Borders in Guiana"), Quoted Above, Page 155.

107 *Ibidem,* Page 175.

108 Claudio A. BRICEÑO MONZÓN, José Alberto OLIVAR y Luis Alberto BUTTÓ (coords.), *"La cuestión Esequibo. Memoria y soberanía."* ("The Essequibo Issue. Memorial and Sovereignty"), Universidad Metropolitana, Caracas, 2016. Page 66.

appointed Minister of Foreign Relations, which was very important for the Venezuelan Claim, since Ezequiel Rojas established contact with the American lawyer and diplomat William Lindsay Scruggs, whom he entrusted to initiate a campaign in the United States of America to support Venezuela[109].

For Marcos Falcón Briceño, it was William L. Scruggs who roused the interest of the President of the United States of America Grover Cleveland in the border controversy of Venezuela with the British Guiana Colony. William Lindsay Scruggs used his very good relations and not only talked with President Grover Cleveland, but also with house representatives and senators of the United States of America Congress. Marcos Falcón Briceño pointed out that *"it could be said that Scruggs is one of the fathers of public relations when the term did not yet exist"*[110].

William L. Scruggs had written a book entitled *"British Aggressions against Venezuela. The Monroe Doctrine on Trial"*[111], which was decisive for Venezuela to obtain the cooperation of the United States of America in the resolution of the controversy with the United Kingdom. This book was a means of divulging what was happening, according to Marcos Falcón Briceño: "*One night at the White House, Scruggs had a long conversation with President Cleveland. Cleveland was interested in the matter and asked him for more than one copy of "British Aggressions against Venezuela". Cleveland said that he himself was going to take an interest in the matter and now there was a new Secretary of State, a man very different from the previous one, Gresham, who was of a calm character, very different from who replaced him, Richard Olney, a man of an aggressive temperament, who took things in a determined mood and produced a note to the Ambassador in London, Mr. Bayard, to inform the British Prime Minister Lord Salisbury of the situation that had arisen. That note was called by Cleveland, The 20-Round Cannon Shot. Salisbury took his time to answer it, but as it took a long time, Cleveland reacted intelligently and effectively. He sent a message to Congress in which he asked for the appointment of a commission to*

109 Marcos FALCÓN BRICEÑO, Quoted Above, Page 44 ff.
110 *Ídem.*
111 *Ídem.*

study the problem of Guyana and to determine its limits with Venezuela. These limits will be the definitive ones"[112].

Venezuelan press also reacted to the British aggression and usurpation of Venezuelan territory. On June 2, 1894, the Caracas newspaper El Diablo published a caricature entitled: *"En las Garras del León"* ("In the Lion's Clutches"), which shows the British lion in possession of its prey -Venezuela- and behind it, defeated, appears President Joaquín Crespo and the expectant Congress[113]:

"En las Garras del León" ("In the Lion's Clutches") published in El Diablo, year IV, Nº 87, Caracas, June 2, 1894. National Newspaper Library Collection.

The caricature published in the Caracas newspaper was accompanied by the following words: *"The British lion has already made prey of immense portions of Venezuelan territory. The nation has exhausted its legal remedies. It is now awaiting the decisions of Congress. Venezuela has protested in vain against the usurpation (...) Neither diplomatic channels, nor the good offices of friendly nations, everything has been ineffective before the colonizing and imperialist designs of England"*[114].

A few months later, on 15 August 1894, the same newspaper El Diablo published another cartoon, this time referring to the border

112 *Ídem,* Page 45.

113 Véase caricatura "En las garras del león*"* publicada en *El Diablo*, año IV, número 87, Caracas, 2 de junio de 1894. Colección Hemeroteca de la Biblioteca Nacional.

114 See: Andrés Eloy BURGOS GUTIÉRREZ (ed.), *"Memorias de Venezuela"* ("Memorial of Venezuela"), Nº 34, January-February 2016, Ministry of the People's Power for Culture-National History Center, Caracas, 2016. Nº 25.

controversies with Colombia and Guyana that Venezuela experienced during the last part of the XIX Century. In that illustration, Venezuelan Minister of Foreign Relations, Pedro Ezequiel Rojas, is seen running away from President Joaquín Crespo, who is in a chair reading the Constitution, while under his seat appear two explosives that are about to explode, one of them reads *"Boundaries with Guayana"* and the other reads *"Boundaries with Colombia"*[115].

"Which one?" published in El Diablo, Year IV, Nº 97, Caracas on 15 August 1894. Newspaper Collection of the National Library[116].

On 3 December 1894, in his last message before the Parliament, when the North American president Grover Cleveland stated his interest in participating in the discussions to ensure peace through arbitration, in order to stop the aspirations of British supremacy in South America[117].

In the early morning of 2 January 1895, ten months after the founding of the town of El Dorado, the Yuruán Incident[118], also known as the Cuyuní Incident, took place, which was a confrontation between

115 See the Caricature "¿What?" published in *El Diablo*, Year IV, Nº 97, Caracas, 15 August 1894.

116 Also see: Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 22.

117 Claudio A. BRICEÑO MONZÓN , José Alberto OLIVAR y Luis Alberto BUTTÓ (coords.), Quoted Above, Page 66.

118 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 24. Also see: Andrés Eloy Burgos Gutiérrez (ed.), Quoted Above, Page 14.

Venezuelan and British troops. It is worth noting that the creation of El Dorado was ordered on the basis of *"the need of Venezuelans to face the calculated invasion of England, taking advantage of both the military weakness of Venezuela and the successive internal political conflicts that demoralized and bled it"*[119].

The Yuruán Incident consisted in the occupation by several Englishmen led by Douglas Barnes of an unoccupied Venezuelan military post, while the guards were practicing ordinary exercises[120]. The English troops lowered Venezuelan flag and raised the British flag with the intention of controlling the post in order to then *"take the lands of El Callao, passing through Upata, Tumeremo and El Dorado, as well as other areas that, it was rumoured, were full of gold"*[121].

Venezuelan military authorities, headed by General Domingo Sifontes, *the intellectual plainsman*, reacted immediately to the occupation of Venezuelan military post and acted in its defence. The order to recover Venezuelan military post was given to Captain Andres Avelino Dominguez, second in command of General Domingo Sifontes, who successfully carried it out and arrested the eight Englishmen who were sent to Ciudad Bolivar, including Inspector Douglas Barnes[122].

General Domingo Sifontes[123]

119 *Ídem.*

120 See: Juan MATORANO *"El incidente del Yuruán, evidencia del expansionismo inglés"* ("The Yuruán Incident; Evidence of English Expansionism"),. Available at: https://www.facebook.com/venezuelaesequiba/posts/1774219026194258/ Also see: Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), published in *Aporrea* on July 29th, 2015. Available at: https://www.aporrea.org/actualidad/a211477.html.

General Domingo Sifontes sent a letter to Carlos Pumar, Director of the Caracas newspaper El Tiempo, which was published on 22 April 1895 in issue 629 of the newspaper El Tiempo[124] and in which he related the facts. He pointed out that the antecedents of the Yuruán Incident dates back to March 1894 when he was appointed National Commissioner of the Cuyuní and its tributaries and was entrusted with the tasks of colonising, populating, civilising the natives of the area, taking care of the troops, and creating of sub-commissariats. He fulfilled all of them efficiently[125].

His work to promote colonization and population in the area led him to *"ascertain the existence of considerable clearings on the banks of the Yuruán and the Cuyuní"*[126]. At that time *"there were only nine houses between the two banks: 6 on the left and 3 on the right. Of these last two with their respective farms, were founded in 1870, by José Francisco and Loreto Lira, Miguel Angel González, and Lorenzo Rivas; and the other built in 1890, by a British subject named Mc Turk, in front of the mouth of the Yuruán, and in which six individuals of the same nationality resided, involved in the working on a small plantation, and, from April or May, under the orders of the titled Inspector Barnes"*[127].

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121 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/.

122 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above. Also see: William DÁVILA BARRIOS (ed.), Quoted above, Page 49.

123 Portrait of General Domingo Sifontes. A photograph taken from https://es.wikipedia.org/wiki/Domingo_Antonio_Sifontes#/media/Archivo:General_Domingo_Antonio_Sifontes.jpg.

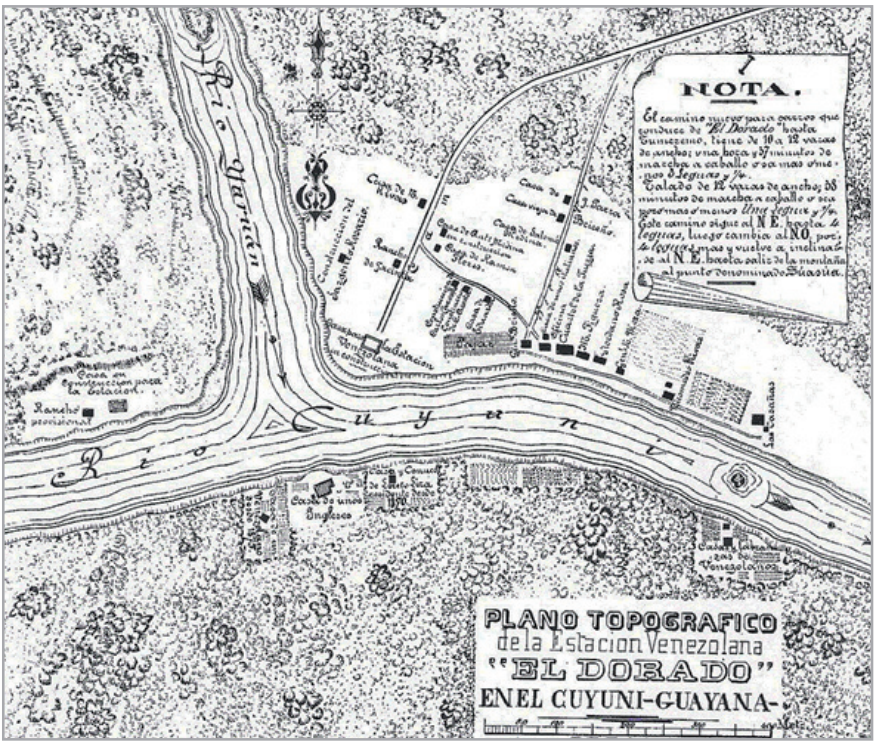
124 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), published in *Aporrea* on July 29th, 2015. Quoted Above.

125 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/.

126 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

127 *Ídem.*

The information supplied by General Domingo Sifontes is graphically represented in the *Topographical Plan of Venezuelan Station "El Dorado" in the Cuyuní-Guayana:*



Topographical Plan of Venezuelan Station of El Dorado 1894-1895.
Collection of the Essequibo Guyana Foundation[128]

There was always a respectful relationship between General Domingo Sifontes and Inspector Douglas Barnes, even in the most delicate moments. A first example of this was the support given by General Domingo Sifontes to a young German named Guillermo Faull, whom Inspector Douglas Barnes was trying to evict from the right bank of the Cuyuní River. General Domingo Sifontes stated in his letter the following*: "This incident, however, did not alter my good*

[128] The Guyana-Esequibo Foundation, "CUYUNÍ (The Cuyuní or Yuruán Incident)". Available at: http://laguayanaesequiba.blogspot.com/search/label/El%20General%20Domingo%20Antonio%20Sifontes.

relations with Barnes, who by his fine treatment, captured my personal appreciation"[129].

Despite the cordial relationship that existed between the two main authorities in the area, General Domingo Sifontes wrote in the letter that "*the conflict that occurred on 2 January was a premeditated action by the usurping settlers of Demerara, as proven by the Argosy editorial of 24 November of last year, in which a probable collision between Venezuelans and Englishmen of the Yuruán was foretold, with the loss of precious lives, obviously including Englishmen, which was lamented beforehand, at the same time that the most hurtful epithets and the most atrocious invectives were hurled at Venezuelans"*[130].

Inspector Douglas Barnes and his men infringed upon the sovereignty of Venezuela. However; during their detention they were treated with dignity and their rights were respected. In fact, General Domingo Sifontes referred in his letter upon his arrival at El Dorado on 8 January 1895 and stated the following: *"I proceeded to initiate the legal proceedings, and after taking the depositions, among these, that of Barnes himself, written in English in his own handwriting, the detention was decreed"*[131].

Once the usurpers were released by order of President Joaquin Crespo, Inspector Douglas Barnes sent a letter from Upata, dated 21 January 1895, to General Domingo Sifontes in which he stated the following: *"I cannot, however, leave Venezuela without saying to you that since our departure from Cuyuní, Mr. Luis Manuel Salazar has given us the greatest care and attention in everything we have needed, and that we have nothing to complain about. I must say the same of his companions. I thank you personally for all the trouble you have taken"*[132].

Notwithstanding the above, Inspector Douglas Barnes narrated in London a totally different version of events. For this reason, General Domingo Sifontes wrote in the referred letter the following: *"How*

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129 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

130 *Ídem.*

131 *Ídem.*

132 *Ídem.*

does this procedure fit in with what Barnes later stated in his Report, in which he appears pettily exaggerating the facts, while hiding others that could exalt him if he were truthful and just?"[133].

General Domingo Sifontes was not only betrayed by Inspector Douglas Barnes, but also by César Urdaneta who in front of the members of the group escorting Inspector Douglas Barnes, said:

> *- "...I know that you have been mistreated a lot.*
> *- "No sir", answered the Englishman, "we have been treated well and General Sifontes paid us for a little damage done to us by his people."*
> *- "No; I know you have been treated very badly. General Sifontes is to blame for everything that has happened. The Government has disapproved of his actions and is calling him to Caracas. I have come to replace him. So, I hope that you will return with me to your post, because with me you will have all kinds of guarantees..."*[134].

As stated by General Domingo Sifontes *"A colonist from Demerara would not defend the cause of the Usurpation*[135] *better than Urdaneta"*. In any case, the forceful response of Venezuelan troops in the Yuruán Incident made General Domingo Sifontes go down in history as a defender of the national territory. In the State of Bolivar, a municipality bears his name[136] and rightly so, because "*having the English there in Cuyuní in front of El Dorado with a sign on the facade of the Bungalow clearly reading in the English language "Department of Police of Cuyuní and Yuruán Rivers", was not to remain calm while waiting for the approval of President Crespo, who absurdly asked Sifontes to more or less play the fool, but to proceed as he did, although with ungrateful results, because after arresting the English commissioner Douglas D. Barnes together with the officers and the troops of the Bungalow, and sending all of them to Ciudad Bolivar, they were released almost*

133 *Ídem.*
134 *Ídem.*
135 *Ídem.*
136 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-

immediately by the governor or president of the State, General Manuel Gomez Gil"[137].

At the time of the Yuruán incident, relations between the United States of America and the United Kingdom were not cordial and the delicate situation of the border between Venezuela and British Guiana generated greater tensions between both countries[138]. Thus, the aforementioned *"Yuruán Incident"* led the United States of America to take a position on the matter; but we will discuss this point later on.

On 22 February 1895, the U.S. Congress sent resolutions to the English and the Venezuelan Governments, suggesting that they adhere to their president's intention regarding arbitration. On 1 January 1896, the U.S. President appointed Guyana Boundary Investigation Commission[139].

McDougall, "The Guayana question", in El Diablo, year IV, Nº 105, Caracas, 10 June 1895. National Library Newspaper Library Collection.

venezolano-que-hizo-correr-a-los-ingleses/

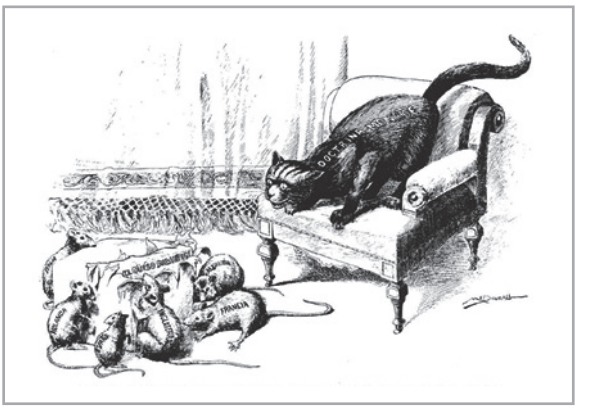
137 Américo FERNÁNDEZ, "El Incidente del Cuyuní" ("The Cuyuní Incident"), an article published on the Web *Crónicas de Guayana* ("The Guiana Chronicles") of 29 March 2014 and edited on 4 April 2021. Available at: https://xn-crnicasguayana-mob.info/el-incidente-del-Cuyuní/.

138 Héctor FAÚNDEZ LEDESMA, "*La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela") Quoted Above, Pages 83-84.

139 Claudio BRICEÑO MONZÓN, José ALBERTO OLIVAR, and Luis Alberto BUTTÓ (Coordinators), Quoted Above, Page 66.

The tension in the relations between the United Kingdom and Venezuela was also reflected in the publications of the national press. An example of this was the publication of McDougall's caricature, entitled *La cuestión Guayana (The Guayana Question)*, in the Caracas newspaper *El Diablo* of 10 June 1895. There, the great British lion is seen enlarging the territory with its claws on the Barima, Amacuro, Cuyuní and Yuruán rivers[140]:

Caricatures were also published in Venezuelan press referring to the intervention of the United States of America. In particular, a caricature made by McDougall stands out, published -like the previous illustration- on 10 June 1895 in the same Nº 105 of the Caracas newspaper El Diablo. This caricature is entitled *"The Monroe Doctrine"*, in which six rats are shown identified with the names Italy, Holland, Spain, the United Kingdom, France and Germany eating the *South America Cheese* and, in an armchair, watching and controlling all of them is Mr. Monroe's cat Sam[141].



McDougall, "La Doctrina Monroe" in El Diablo, Year IV, Nº 105, Caracas, 10 June 1895. ("The Monroe Doctrine"), Newspaper Library Collection of the National Library.

140 Mc DOUGALL, *"La cuestión Guayana"* ("The Guiana Matter"), in *El Diablo*, Caracas, año IV, Nº 105, 10 June 1895. Colección Hemeroteca de la Biblioteca Nacional.

141 Mc DOUGALL, *"La Doctrina Monroe"* ("The MONROE Doctrine"), in El Diablo, Year IV, Nº 105, Caracas, 10 June 1895. Colección Hemeroteca de la Biblioteca Nacional. Also see: Andrés Eloy BURGOS GUTIÉRREZ (ed.), *"Memorias de Venezuela"* ("Memorial of Venezuela"), Nº 34 January-February 2016, Ministry of the People's Power for Culture-National History Center, Caracas, 2016. Page 24.

On 20 July 1895, the Secretary of State of the United States of America, Richard Olney, sent a telegram to Mr. Thomas Bayard, Ambassador of the United States of America in the United Kingdom, in defence of the interests of Venezuela. This telegram was known as *"The 20-Round Cannon Shot*" due to the important impact it had on the British.

In that document, in clear reference to the Monroe Doctrine, the following was stated: *"The States of North and South America, by reason of their geographical proximity, their natural sympathies, and the similarity of their constitutions, are friends and allies, commercially and politically, of the United States of America. To allow any one of them to be subjugated by a European power is to turn the tables entirely, and to lose all the advantages which flow from their natural relations with us. But this is not all. The people of the United States of America have a vital interest in the cause of government by the people for themselves. It has secured this right for itself and its posterity at the cost of much blood and money. They have exercised it and proved its beneficence by a career unexampled in national greatness and individual happiness. They believe that they possess the virtue of healing nations, and that civilization must advance or recede as it extends or narrows its supremacy. Infused with these sentiments, it is perhaps not impossible that the people of the United States of America should be impelled to active propaganda in behalf of a cause so dear to themselves and to the human race. But the time of the Crusades has passed, and he is content to proclaim and defend the right of the people to govern themselves, as their own safety and prosperity require. In this connection, he believes, above all, that no European power should be permitted to assume by force the political dominion of any American State"*[142].

The telegram pointed out that the conflicting British claims to Venezuelan territory had never been based on law: *"...Under these circumstances it seems impossible to regard the Schomburgk line claimed by Great Britain as in accordance with law; nor otherwise, than as a line which had its origin in reasons of expediency and*

[142] See: Book on the *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted Above, Pages 293-318.

opportunity. Since 1840, Great Britain has from time to time indicated other boundary lines, but all of them as conventional lines, for which the consent of Venezuela was sought, but which in no case, it is believed, have been claimed as a right"[143].

The telegram recognized the disparity of forces between the two States which forced Venezuela to seek the solution of the dispute only through peaceful means. It stated that *"The disparity of force between the claimants is such that Venezuela can only hope for the establishment of its rights by peaceful methods, by settlement with its adversary, either on the issue itself or on arbitration"*[144].

It was clear that the expansionist aspirations of the United Kingdom in America constituted a violation of the doctrine proclaimed on 2 December 1823 by the fifth president of the United States of America James Monroe, who in his annual message to Congress stated that the American continent was not susceptible to colonization and that the European powers would not be able to extend their dominions therein, on pain of such acts being observed as a direct affront to the rights and interests of the United States of America.

The Monroe Doctrine, which was summarized in the phrase *"America for the Americans", was understood "as a principle affecting the rights and interests of the United States of America, that the American continents, because of the free and independent condition which they have acquired and maintain, should not henceforth be considered as objects of future colonization by any European power…"*[145].

Thus, in view of the advance of the United Kingdom in the territories of Venezuela, the President of the United States of America, Grover Cleveland, in a message to Congress on 17 December 1895, invoked the Monroe Doctrine and stated *"The dispute has reached such a point that it is now incumbent upon the United States of America*

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143 *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"),Quoted Above, Page 293 & ff.

144 *Ibidem,* Page 304.

145 See: "The MONROE Doctrine (1823) fragment of the Seventh Annual Message delivered by President Santiago MONROE to Congress on 2 December 1823" in the Virtual Library of Inter-American Peace Iniciatives. Available at: https://www.oas.org/sap/peacefund/VirtualLibrary/MonroeDoctrine/Treaty/MonroeDoctrineSpanish.pdf.

to take steps to determine, with sufficient certainty to justify it, what is the true dividing line between Venezuela and British Guiana. When that report is completed and accepted, it will, in my opinion, be the duty of the United States of America, to resist by every means in her power, as a premeditated aggression upon her rights and interests, the appropriation by Great Britain of any land, as well as the exercise of its governmental jurisdiction in any territory which, upon investigation, we have determined rightfully belongs to Venezuela"[146].

President Grover Cleveland's message motivated the subscription of an act of the Congress of the United States of America, approved on 21 December 1895, in which the House of Representatives and the Senate agreed to *"...an appropriation for the expenses of a commission to ascertain the true dividing line between Venezuela and British Guiana, and to report thereon. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: There is hereby appropriated the sum of one hundred thousand dollars, or such part thereof as may be necessary, for the expenses of a commission, to be appointed by the President, to ascertain the true dividing line between Venezuela and British Guiana, and report the result"*[147].

The results of the investigation carried out by the Presidential Commission to determine the true boundary between Venezuela and British Guiana showed that there was no conclusive evidence of Dutch occupation in 1648, either north or west of the Essequibo River, or on the island called Kikoveral. Nor were any elements found to indicate an occupation at Punta Barima prior to 1648[148].

On 6 May 1896, the presidential commission of investigation addressed the Secretary of State, Richard Olney, in the following terms: "*Those general views on which the British Government based its right to Punta Barima, do not find support, as far as we have been able to*

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146 Tomás Enrique CARRILLO BATALLA (Coordinator), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guyana-Essequibo"), *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Pages 433-434.

147 *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("The Official History of the Discussion between Venezuela and Great Britain on the Borders in Guiana"), Quoted Above, Page 336.

148 *Cf.* Tomás Enrique CARRILLO BATALLA (Coordinator), Quoted Above, Page 434.

establish, in the work of the historians of the colony, whether English or Dutch. Whether the Dutch actually occupied Punta Barima or not, it seems that by 1680 at the latest, that occupation, if it ever existed, had ceased and that point was definitely abandoned"[149].

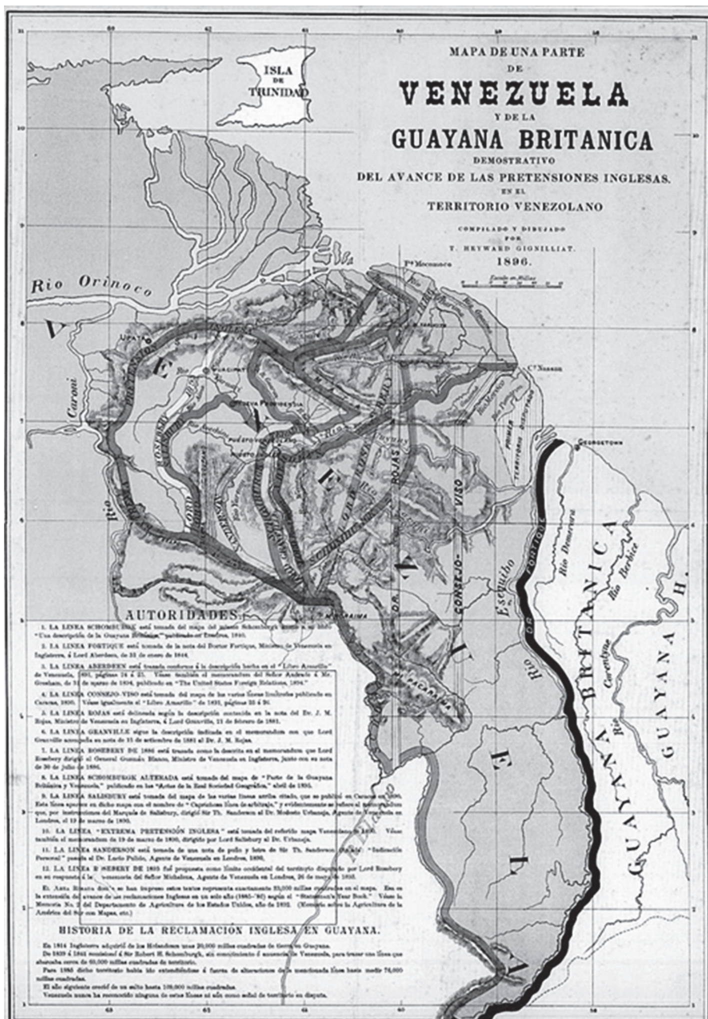
The results of the investigation of the presidential commission ratified the immense value of the *"Map of a part of Venezuela and British Guiana showing the advance of the English pretensions in Venezuelan territory"* drawn by T. Hayward Gignilliat and published in 1896. This map was part of the Yellow Book of the United States of Venezuela presented by the Minister of Foreign Relations of Venezuela, Pedro Ezequiel Rojas, before the Congress during the mandate of President Joaquín Crespo[150].

The Map depicts the multiple unilateral demarcations of the United Kingdom and reflected the desire of the United Kingdom to embrace greater territories in the world. The legend, included at the bottom of the document reads: *"In 1814, England acquired about 20,000 square miles of land in Guiana from the Dutch. From 1839 to 1841, without the knowledge or consent of Venezuela, it commissioned Sir Robert Schomburgk to draw a line covering about 60,000 square miles of territory. By 1885, this territory had been increased to 76,000 square miles by altering the aforementioned line. The following year it jumped to 109,000 square miles. Venezuela has never recognized any of these lines, even as a sign of disputed territory"*[151].

In 1844, the British claim diminished, regarding the second Schomburgk line and the United Kingdom proposed the Aberdeen Line that started in the Moroco River, between Pomarón and Punta Barima. In 1881, the United Kingdom established the Granville Line which started 29 miles from the Moroco River towards Punta Barima. In 1886, the British claim increased with the Rosebery Line, extending to a place on the west coast of the Guaima River towards Punta Barima. In 1890, the United Kingdom advanced its pretension of usurping Venezuelan territory by the Salisbury Line that established the border at the mouth of the Amacuro River in the Orinoco. In 1893, the British expansion

149 *Ibidem,* Page 435.
150 See: Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 37.
151 *Ídem.*

advanced even further westward and into the interior of Venezuelan territory, by a new Rosebery Line that established the border from the west of the Amacuro River to the headwaters of the Cumano River and the Usupamo Mountain Range[152].



[152] For a more detailed analysis of the lines created by the United Kingdom, see: The English Map Dance in Héctor FAÚNDEZ LEDESMA, *"La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"),* Quoted Above, Pages 78 & ff.

The British expansion was void of all legal basis and only obeyed the growing geophagy of the United Kingdom. This is proven by the letter sent by Dr. Tomás Michelena -appointed by the Ministry of Foreign Affairs to the United Kingdom as Confidential Agent with Full Power *ad hoc*- to Lord Rosebery, Secretary of State for Foreign Affairs of the United Kingdom, dated 29 September 1893 which was of the following tenor:

> *"Your Excellency may now readily take note of the subtle differences in the various boundary lines proposed by Her Britannic Majesty's Government in 1841, 1881, 1886, 1886, 1890 and at the present time; the ever persistent tendency to extend the boundaries of the colony of British Guiana at the expense of the territory of Venezuela, and the manifest discrepancy between His Excellency's proposals in 1886 and the present pretension that Venezuela should accept without compensation the extended Schomburgk line, which deprives Venezuela not only of the Guaima River, an important desire of the Foreign Office, but also of the Barima River and the Point of the same name, with its adjoining territories"*[153].

Before the intervention of the United States of America, the English rejected several times the proposals of Venezuela to settle the controversy through arbitration, because they had no legal title to the territories in dispute.

Venezuela did have all the legal and historical titles over the territory and, therefore, a judicial settlement was not convenient for the United Kingdom. Indeed, *"The efforts of Venezuela to obtain a peaceful settlement of the boundary dispute prematurely created by the Prussian naturalist are also well-known facts. The new evidence reveals that Great Britain rejected the constant Venezuelan proposals to submit the question to arbitration because its government considered that it lacked arguments and that a fully judicial decision would be unfavourable to it"*[154].

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153 Annex 4 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

154 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 11.

The permanent rejection by the United Kingdom of Venezuela's proposals to resolve the dispute through arbitration recalls the words of García-Velutini when he stated, referring to arbitration as a peaceful means of dispute resolution, that: *"Unfortunately arbitration is not always used; and the situation is even more serious, when a State has a firm will to resort to such a procedure; however, its good intentions are often defrauded, either by injustice, by a business or political deal in between, or by the influences of overbearing states, which make arbitral awards unacceptable as unjust and in violation of all rights and equity"*[155].

Venezuela's insistence on resolving the dispute through arbitration was confirmed in the so-called *20-Round Cannon Shot* sent by the United States of America Secretary of State, Mr. Richard Olney, to the United States of America Ambassador to the United Kingdom, Mr. Thomas Bayard. In effect it states: *"...Venezuela, on the one hand, has been offering and requesting arbitration, while, on the other hand, Great Britain has replied by insisting on the condition that any arbitration must refer only to that portion of the disputed territory which lies west of a line designated by itself..."*[156].

Venezuela's desire to settle the dispute by arbitration and the hesitation of the United Kingdom were supported by a publication by Andrew Carnegie entitled Venezuelan Question, published in The North American Review in 1896, in which he noted: *"(Great Britain) begins modestly to claim a boundary; Venezuela asks it to submit its claims to arbitration; this is refused; the matter rests a while, when it appears that the boundary of England has been much displaced and embraces more territory adjoining Venezuela; another protest from Venezuela, and another rest. When the question is revived, Britain discovers that it was wrong again and did not claim enough, and its third claim extends far beyond the second. Finally, a fourth line is drawn which extends*

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155 Oscar GARCÍA-VELUTINI, *Facultad, acción y efecto de arbitrar* (The Power, Action, and Effect of Arbitration"), Editorial Arte, Caracas, 1960. Pages 16-17.

156 See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("The Official History of the Discussion between Venezuela and Great Britain on the Borders in Guiana"), Quoted Above, Pages 293-318.

over valuable gold deposits and actually places Britain on the banks of the Orinoco"[157].

Only after *"a long process of claims by Venezuela for the continuous and persistent dispossession by the United Kingdom, who had the audacity to occupy by force the Orinoco shore, and in the face of such facts, Venezuela managed to involve the United States of America to mediate the conflict"*[158].

157 *The North American Review*, Vol. 162, No. 471, 1896. Pages 133-134.

158 Alfonso RIVAS QUINTERO, Derecho constitucional, Clemente Editores, Valencia, 2002. pp. 237-238.

III. THE TREATY OF WASHINGTON OF 2 FEBRUARY 1897

1. General Considerations

With the support of the United States of America, Venezuela was finally able to get the United Kingdom to agree to participate in a peaceful solution mechanism for the territorial dispute regarding the delimitation of the eastern border with the Colony of British Guyana, and in January 1896, negotiations began for the signing of an arbitration treaty to resolve the controversy. For this purpose, the President of the United States of America, Grover Cleveland, appointed a commission to investigate the boundaries of Venezuela with British Guiana

For the conversations that took place in Washington, the United Kingdom sent its Ambassador to the United States of America, Julian Pauncefote; representing Venezuela was Minister Plenipotentiary Jose Andrade and the United States of America sent its Secretary of State, Richard Olney.

The meetings between the representatives of the United Kingdom and the United States of America, with little participation of Venezuela, resulted in the signing of the Treaty of Washington on 2 February 1897, whereby the United Kingdom and Venezuela undertook to resolve the territorial dispute through arbitration.

It should be noted, first of all, that this arbitration treaty was drafted only in English, the language of one of the parties, and no corresponding version was contemplated in Spanish, which was the language of Venezuela, the other party.

The absence of the Spanish language in the Washington Arbitration Treaty reflects Venezuela's weakness during the negotiation. Indeed, Venezuela's precariousness during the discussion of the clauses of the arbitration treaty was due to the fact that it was a small country, less than a Century after gaining independence and affected by severe internal crises of the most diverse nature. José Andrade, the only Venezuelan representative who participated in the negotiations, could do little, unlike the representatives of the United States of America, Richard

Olney, and the United Kingdom, Julián Pauncefote, who, between them, negotiated practically the entire content of the Treaty of Washington.

The failure to consider the Spanish language in the formulation of the Treaty of Washington- and also in the arbitration procedure- is probably a consequence of the belief of the United Kingdom that it was negotiating an arbitration treaty with the United States of America and not with Venezuela. Certainly, the colonialist vision of the United Kingdom, an important imperial power at the time, did not allow Venezuela to be appreciated as an equal, but as a semi-barbarian or semi-savage state. Without going too far, Fyodor Fyodorovich Martens- who, as we shall see later on, was the president of the Paris Arbitral Tribunal that would be constituted as a result of the Treaty of Washington- shared this same view[159]. For the United Kingdom to negotiate directly with Venezuela was tantamount to lowering itself and abandoning its dominant position, which is precisely why it only agreed to settle the dispute through arbitration in the face of the intervention of the United States of America.

2. The Arbitral Tribunal

In accordance with Article I of the Treaty of Washington, the arbitral tribunal was to be appointed immediately to determine the dividing line between the United States of Venezuela and the Colony of British Guiana.

In execution of this provision, on 25 January 1899, the arbitral tribunal was installed in the Palace of Orsay, in the city of Paris. This arbitral tribunal was to issue an award of law that would determine the dividing line that constitutes the eastern border of Venezuela, but ended up issuing a farce of an award aimed at openly benefiting the United Kingdom.

Article II of the Treaty of Washington established the composition of the arbitral tribunal, which was to be made up of five jurists, none of them appointed by Venezuela. In fact, the arbitrators were to be

159 See: Héctor GROS ESPIELL (Translator), *"Rusia e Inglaterra en Asia Central"* ("Russia and England in Central Asia"), translated and commented by Héctor GROS ESPIELL, Editors of the Presidency of the Republñic, Caracas, 1981. Page 50-51.

appointed as follows: two on the part of Venezuela, but one appointed by the President of the United States of Venezuela, namely Melville Weston Fuller, Chief Justice of the Supreme Court of the United States of America, and the other appointed by the Justices of the Supreme Court of the United States of America, namely David Josiah Brewer, Justice of the Supreme Court of the United States of America. Two arbitrators would be selected by the United Kingdom, appointed by the members of the Judicial Committee of Her Majesty's Privy Council, namely Baron Herschell and Sir Richard Henn Collins, one of the judges of the Supreme Court of Her Majesty's Judicature. The arbitrator, a jurist who was to be chosen by the four appointees and who was to be President of the Tribunal, turned out to be the Russian Fyodor Fyodorovich Martens. Baron Herschell, who represented the United Kingdom, died on 1 March 1899, and was replaced by Charles Russel of Killowen, a member of Queen Victoria's Privy Council.

The Treaty of Washington did not contemplate, therefore, the participation of Venezuela in the arbitration, as is evident from its Article II, so that Venezuela did not choose any arbitrator, as did the United Kingdom and the United States of America. Furthermore, in case of death, absence or incapacity of any of the arbitrators, Article II of the Treaty of Washington established that: *"If such vacancy occurs among those appointed by Venezuela, the substitute shall be chosen by the Justices of the Supreme Court of the United States of America by a majority vote; and if it occurs among those appointed by Great Britain, those who were then members of the Judicial Commission of Her Majesty's Privy Council shall choose the substitute by a majority vote"*[160].

The null participation of Venezuelan arbitrators in the composition of the arbitral tribunal is a product of the colonialist vision of the United Kingdom, which only accepted to resolve the dispute through arbitration if the counterparty was represented by the United States of America because, according to them, there were no Venezuelan jurists qualified to assume the functions of arbitrator. This is deduced from the whole

[160] Héctor FAÚNDEZ LEDESMA, "*La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela") Quoted Above, Page 337.

course of the arbitration proceedings, but also from a letter sent by Julian Pauncefote, Ambassador of the United Kingdom, to Lord Salisbury, Prime Minister of the United Kingdom, dated 18 December 1896, in which he stated the following: *"There is no danger that Mr. Olney will listen for a moment to Venezuelan howl asking for a modification of our terms of arbitration. But I am a little uneasy about the possibility that he will not urge the U.S. judges to appoint a Venezuelan as an arbitrator.... It may seem unfair that there should be two Englishmen on our side and no Venezuelan on the other, but Venezuelan agreed to be represented by the U.S. and I certainly undertook that the matter would be arbitrated precisely as if the dispute were between G. Britain and the U.S. for the reason, among others, that we know of no Venezuelan jurist worthy of the name, to whom we could consent to entrust the functions of arbitrator in such a case"*[161].

Indeed, *"the conditions under which Venezuela agreed to be represented, without any protectorate or regulatory institution, by a third country seem unusual in arbitration proceedings and reveal a quasi-colonial situation"*[162].

But in any case, it is clear that the need for jurist arbitrators suggests that according to the Treaty (Articles III and IV), the arbitral tribunal had to proceed in law to resolve the dispute. However, it was precisely the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, who turned the arbitration into a political agreement and failed to apply the law, forcing the decision of the other arbitrators who made up the arbitral tribunal. In fact, during the two-week recess of the arbitral tribunal, Fyodor Fyodorovich Martens met in London with the English arbitrators, put pressure on them, and succeeded in changing their thinking on the dispute.

Fyodor Fyodorovich Martens also met with the American arbitrators who had been appointed to represent the interests of Venezuela and proposed them to decide unanimously or, otherwise, he would vote

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161 Annex 5 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

162 Paul REUTER, La motivation et la révision des sentences arbitrales à la Conférence de la Paix de La Haye (1899) et le conflit frontalier entre le Royaume Uni et le Venezuela, 1968. Mélanges offerts à Juraj Andrassy. M. Nijhoff, La Haye, 1968. Page 246.

together with the British arbitrators in favour of the line claimed by the United Kingdom; this implied that Venezuela would lose the Bocas del Río Orinoco and this is what the arbitrator David Josiah Brewer stated to lawyer Severo Mallet-Prevost, who was assisting Venezuela in the arbitration. *"...Martens has come to see us and informs us that Russell and Collins are willing to decide in favour of the Schomburgk line which, starting from Punta Barima on the coast, would give Great Britain the dominion of the main mouth of the Orinoco: Martens was anxious to obtain a unanimous decision, and if we wanted to accept the line he proposed, he would secure the acquiescence of Lord Russell and Lord Collins in order to make the decision unanimous"*[163].

According to Article III of the Treaty of Washington, the arbitral tribunal had the obligation to "investigate and ascertain the extent of the territories which might be legitimately claimed by either party, at the time of the acquisition of the British Guiana Colony by the United Kingdom, and to determine the dividing line between the United States of Venezuela and the British Guiana Colony".

The terminology used in the wording of the article referred to the terms *"investigate"* and *"ascertain",* which implies that the arbitrators should have examined each of the parties' titles, but this was never done. Had the obligation of Article III been fulfilled, such an extensive territory would not have been granted to the English. Venezuela had all the legitimate titles to the disputed territory; the United Kingdom had nothing more than unilateral delimitations that had no legal value.

Article V of the Treaty of Washington established the duty of the arbitrators to meet in the city of Paris *"within sixty days after the delivery of the printed arguments of Article VIII"*, having the possibility of meeting in another city, if they so agreed. In addition, this rule established the obligation of the arbitrators to examine and decide impartially and carefully the questions submitted to them by the parties.

Article V regulated two further matters, namely that the decisions of the tribunal were to be adopted by an absolute majority of all arbitrators and the duty of the parties to appoint agents to represent them before the arbitral tribunal.

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163 See the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH, Quoted Above, Page 30.

Venezuela was represented by five lawyers. The first was Benjamin Harrison, former President of the United States of America; the second was James Russell Soley, a naval historian; the third was Benjamin F. Tracy, former Secretary of War of the United States of America; the fourth was José María Rojas, a diplomat who served several times as Minister Plenipotentiary and the only Venezuelan in this group; and Severo Mallet-Prevost, the youngest lawyer in the group.

The United Kingdom appointed a team of four lawyers, all of them English. Sir Richard Everard Webster, who at the time of the Paris Arbitration was Attorney General of the United Kingdom, Sir Robert Reid, who had also been Attorney General of the United Kingdom prior to the Paris Arbitration, G.R. Askwith and Sidney Arthur Taylor Rowlatt.

Article VI of the Treaty of Washington established a period of eight months from the date on which the exchange of ratifications of the States' parties took place, for the delivery of the parties' printed pleadings, as well as all documentation, correspondence, and other relevant evidence on which they were based.

In addition, Article VII established a time limit of four months from the delivery of the printed pleadings for the submission of counter-pleadings in duplicate to the arbitrators and to the opposing party's counsel. It also provided for the possibility of submitting new evidence. Finally, the rule states that " *If either party has referred to or cited in its pleadings submitted to the arbitrators any report or document in its exclusive possession without attaching a copy thereof, that party shall, if the other party deems it expedient, furnish the other party with a copy of such report or document; and either party may, through the arbitrators, cause the other party to produce in evidence the originals or certified copies of the papers so cited, in each case giving notice thereof within thirty days after the filing of the pleadings, and the original or copy so requested shall be delivered as soon as practicable and within a period not exceeding forty days after the receipt of such notice".*

Article VIII is related to Article V, since it established a period of three months after the expiration of the time for filing the counter-pleadings for the delivery of printed arguments containing the points and evidence supporting the position of each party. In effect, the rule

provided that *"The Agent of each party, within three months after the expiration of the time set for the delivery of the Counter-Pleadings by both parties, shall deliver in duplicate to each of said Arbitrators and to the Agent of the other party a printed argument stating the points and citing the evidence on which its Government is based, and either party may also support it before the Arbitrators with oral arguments of its Counsel; and the Arbitrators may, if they desire further clarification with respect to any point, require thereon a written or printed statement or arguments, or oral arguments of Counsel; but in such case the other party shall have the right to reply orally or in writing, as the case may be*".

Article IX regulated the extensions of the procedural periods that could be granted by the arbitrators with respect to Articles VI, VII and VIII, which would be of thirty days in addition to the previously established period, and Article X established a period of three months, once the arguments of the parties were concluded, for the arbitral tribunal to issue the final award, if possible. It also regulated the formal requirements of the award: written, dated, and signed by each of the arbitrators who accept it. Furthermore, *"the decision shall be drawn up in duplicate; one copy shall be delivered to the Agent of the United States of Venezuela for its Government, and the other shall be delivered to the Agent of Great Britain for its Government"*.

The arbitrators were obligated to keep "an accurate record of their proceedings" and, for such purposes, "may choose and employ such persons as they may require for their assistance", as provided for in Article XI.

Article XII stipulated the manner in which the expenses of the parties concerning the fees of their agents, attorneys, arbitrators, preparation, and submission of the dispute to the arbitral tribunal would be defrayed. It ends by stating that "the two Governments shall pay in equal shares all other expenses relating to the Arbitration".

3. The Law Applicable to the Dispute

Article IV of the Treaty of Washington established the law applicable to the dispute between Venezuela and the United Kingdom by providing that *"in deciding the matters submitted to the arbitrators,*

the arbitrators shall ascertain all the facts they deem necessary for the decision of the dispute, and shall be governed by the following rules agreed upon by the high contracting parties as rules to be considered applicable to the case, and by such principles of international law not inconsistent therewith as the arbitrators may deem applicable thereto".

Those rules were:

> *(a) "Adverse possession or prescription for the term of fifty years shall constitute good title. The arbitrators may judge that the exclusive political domination of a District and the effective colonization of it are sufficient to constitute adverse possession or create prescription titles.*
> *b) The arbitrators may recognize and enforce rights and claims which are based on any other valid basis under international law and on any principles of international law which the Arbitrators consider applicable to the case and which do not contravene the foregoing rule.*
> *(c) In determining the dividing line, if the tribunal finds that the territory of one party has been at the date of this treaty occupied by the citizens or subjects of the other party, such occupation shall be given such effect as, in the opinion of the tribunal, reason, justice, the principles of international law and the equity of the case may require".*

The first obligation of the arbitrators was to ascertain the facts they deemed necessary to decide. This duty was violated because Venezuela's titles were never considered, much less was there any interest in ascertaining any facts to support Venezuelan position, which is evident in the award.

The second obligation of the arbitrators was to be governed by the applicable law selected by the parties. At that time the applicable law consisted of the rules contained in Article IV itself and the international law in force at the time.

However, Article IV of the Treaty of Washington, which- as we have said- established the applicable law, indicated that the arbitrators were to be governed by the rules set forth in the same article *"and by such principles of international law not inconsistent therewith as the arbitrators may deem applicable"*. This last sentence restricted the

principles of international law, so that they would only operate when they did not violate the rules of the Treaty of Washington negotiated by the representative of the United Kingdom, Julian Pauncefote, and that of the United States of America, Richard Olney.

Indeed, the rules set forth in Article IV of the Treaty of Washington were clearly in violation of the principles of international law in force at the time. Specifically, Rule "a" of Article IV, known as the prescription clause, which established a different mode of acquisitive prescription to benefit the United Kingdom, was contrary to the principles of international law.

It is likely *"that England sought to impose its own positive law in the drafting of Article IV of the Arbitration Treaty, with the consent of another Anglo-Saxon country such as the USA, which privileged the so-called "immemorial possession" as the title to be given preference in the confrontation of titles, for which a centennial possession should have been required and not the lesser and accommodating fifty-year possession"*[164].

As we have pointed out on another occasion *"It is curious- and also opportune for the United Kingdom- that a fifty-year prescription rule was established which would allow the acquisition of many more territories instead of establishing, at least, a hundred-year prescription rule which was more in accordance with the principles of international law but which, on the other hand, was less beneficial to the English in that it would prevent them from obtaining such a vast territory"*[165].

The negotiators of the arbitration treaty, the British Ambassador to the United States of America, Julian Pauncefote, and the U.S. Secretary of State, Richard Olney, knew that establishing only this condition to applicable law would create problems, so they established a second condition to applicable law, which was that they would apply only *"principles of international law not inconsistent therewith"*.

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164 See: Gabriel RUAN SANTOS, *"Los títulos de la reclamación por la Guayana Esequiba. Especial referencia a la cláusula de prescripción"* ("The Deeds for the Claim to the Guiana-Esequibo. Special Reference to the Statute-of-Limitations Clause") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September 2021, Caracas, 2021.

165 Rafael BADELL MADRID, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899.") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September, 2021.

It is necessary to bear in mind that on 5 June 1896 Lord Salisbury sent a telegram to Julian Pauncefote, British Ambassador in Washington, containing a fragment in which he pointed out that: *"His Majesty's Government would accept the 4th clause of the proposed treaty in the form suggested by you ... Its application to Venezuela would also be accepted if the United States of America would stand in the place of Venezuela for this purpose, such arrangement requiring a subsidiary Convention, and the United States of America shall select the arbitrator. Under the approved version of paragraph 4, the reviewing court on Venezuelan side should not be the Supreme Court of Caracas, but the Supreme Court of Washington, and any decision to which the United States of America submits or which is not overruled by the Supreme Court of Washington must be binding on Venezuela"*[166].

As to the interpretation of Rule "a", Richard Olney told Minister Jose Andrade that it applied only to occupations prior to 1814, when the United Kingdom had acquired the Berbice, Demerara and Essequibo settlements from Holland. If that had been the case, then the United Kingdom would only have been entitled to the territories ceded to it by Holland through the Treaty of London of 1814.

Richard Olney explained that Rule "a", referring to prescription, applied only to a very small territory between the Pomarón, Moruco and Essequibo rivers; but he actually knew the true purpose of the prescription rule, which he had agreed to in a secret agreement with the United Kingdom's Ambassador to the United States of America, Julian Pauncefote, on 12 November 1896[167].

For their part, the English interpretation was that the Rule "a" applied to any occupation of more than fifty years' duration, after 1814, the date on which the United Kingdom and Holland signed the Treaty of London, to which we have referred on several occasions during this study.

In the first place, this interpretation ignores the 1850 *Statu quo* Treaty signed by an exchange of diplomatic notes between the British Consul General in Caracas, Belford Hinton Wilson, and Venezuelan

166 Annex 4 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

167 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 126.

Secretary of Foreign Affairs, Vicente Lecuna, on 18 November and 20 December of 1850. According to this international treaty, both parties committed themselves to maintain the state of things as they were at the end of 1850. Thus, both Venezuela and the United Kingdom had the duty not to advance in their occupations in the disputed territory.

Despite its enormous importance there was no reference in the 1897 Treaty of Washington to the 1850 *Statu quo* treaty and the interpretation given to the prescription clause was contrary to that *modus vivendi* whereby both parties had committed themselves to maintain the frontier situation as it was at that time.

Let us recall that the parties had committed themselves not to occupy the territory under discussion between the pseudo Schomburgk line, the maximum aspiration of the United Kingdom, and the Essequibo. Thus, the interpretation regarding possession could never refer to that period of time.

The truth is that the United Kingdom never respected the *Statu quo* Treaty of 1850. On the contrary, and as can be deduced from its subsequent actions, the United Kingdom insisted on advancing its claim over Venezuelan territory in an increasingly aggressive and brazen manner. The interpretation of Rule "a" of Article IV of the Treaty of Washington ignores the *Statu quo* Treaty and thereby decides to ignore its violation and disregard its legal value.

The fact that the *Statu quo* Treaty of 1850 was rendered null and void was not accidental. Indeed, Richard Olney, Secretary of States of the United States of America, sent a letter to Julian Pauncefote, Ambassador of the United Kingdom in Washington, dated 29 October 1896, in which he noted the following: *"I think it most desirable not to give the Agreement of 1850 any status in the Convention, even by reference, much less by an attempt to define its scope and meaning. An attempt to interpret it would involve us in a protracted debate and indefinitely postpone the attainment of the objective we now have in mind"*[168].

[168] Annex 6 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

The interpretation given to rule "a" of Article IV of the Washington Treaty runs counter to the principle of *uti possidetis iuris,* which since independence has been a principle of supreme importance for American countries and has even been used by countries from other continents in cases decided by the ICJ, as we shall see below, due to its usefulness in terms of border delimitation.

To reaffirm that the *uti possidetis iuris* principle is a fundamental maxim in international law that has been widely accepted by the international community. This principle establishes that states must maintain the borders they had at the time of their independence, unless the parties involved agree otherwise, which evidently did not happen in the case of the dispute between Venezuela and the United Kingdom.

In the South American context, the application of the *uti possidetis iuris* principle is essential because of the historical tradition of the region. During the South American independence process, precise territorial boundaries were established on the basis of the limits of the former colonies. These boundaries have been respected for more than two centuries.

It is important to note that in the case of the dispute between Venezuela and the United Kingdom, it was not a question of establishing a boundary for the first time, since Venezuela already had clear limits that were known to the United Kingdom and Spain during the 19th Century.

Therefore, the application of the *uti possidetis iuris* principle has always been crucial to guarantee Venezuela's territorial integrity and sovereignty in the region.

The Paris Arbitral Tribunal improperly excluded the application of the *uti possidetis iuris* principle and gave precedence to the *uti possidetis facti* principle in order to legitimise the illegal occupation of the United Kingdom within Venezuelan territory[169].

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169 Víctor RODRÍGUEZ CEDEÑO, *"La nulidad del laudo arbitral de 1899 y la titularidad jurídica de Venezuela sobre el Territorio Esequibo"* ("The Nullity of the 1899 Arbitral award and Venezuela's Legal Title to the Essequibo Territory, an article published in *El Nacional* on 14 February 2023. Available at: https://www.elnacional.com/opinion/la-nulidad-del-laudo-arbitral-de-1899-y-la-titularidad-juridica-de-venezuela-sobre-el-territorio-esequibo/.

In violation of the principle of *uti possidetis iuris,* during the negotiations between Richard Olney, Secretary of State of the United States of America, and Julian Pauncefote, Ambassador of the United Kingdom to the United States of America, the rule of prescription was established and the principle of *uti possidetis facti* was given pre-eminence.

The rule of prescription was intended to undermine the unconstitutionality argument put forward by Minister José Andrade that the 1893 Constitution - in force at the time of the conclusion of the treaty - did not permit the alienation of any part of the territory of the Republic.

Thus, the explanation given to Venezuela on the meaning and scope of the rules of Article IV was different from the interpretation given by the British, which was the one finally implemented in the Arbitral Award of 3 October 1899[170].

This Rule "a" *"contains the constituent elements of the defencelessness in which the interests of Venezuela*[171] *were placed"* and this aspect is decisive for the establishment of the nullity of the arbitral commitment. As stated by Isidro Morales Paúl *"precisely in the prescription clause lies the backbone of the problem"*[172].

The interpretation given to Rule "a" *"openly favoured the United Kingdom, who through a prescription, non-existent indeed due to the statu quo treaty, obtained title over the disputed territory. "Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure from the United States of America and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government, which was given explanations that misled it"*[173].

The dialogue between the arbitrator Lord Russell and the former President of the United States of America proves the difference between the interpretations of Venezuela and the United Kingdom regarding the

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170 On this matter, See: Carlos SOSA RODRÍGUEZ, Quoted Above.

171 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 179.

172 *Ibidem,* Page 187.

173 Herman GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 26.

prescription clause. In effect, Venezuela's lawyers, Benjamin Harrison and James Russell Soley, implied -erroneously- to the Paris Arbitral Tribunal that the London Treaty was subject to the modifications that may derive from rules (a), (b) or (c) of the Treaty of Washington.

Attorney James Russell Soley explained to arbitrator Lord Russell that the Vienna Convention on the Law of Treaties, which reflects peacefully observed customary international law, provides that:

> *"For the purposes of the interpretation of a Treaty the context shall comprise, in addition to the text, including its preamble and annexes, the following:*
> *a.- any Agreement which relates to the Treaty and has been concluded between all the parties in connection with the conclusion of the treaty...".*

Attorney James Russell Soley continued in his explanation by pointing out that *"according to doctrine, the interpretative declaration may form part of the Treaty or it may be an authentic interpretation emanating from the parties involved".* Although the Secretary of State of the United States of America, Richard Olney, was not a party to the Treaty of Washington, *"He did not represent or sign for Venezuela, nor did he have the authority to prepare or sign interpretative notes on behalf of Venezuela. Therefore, some notes that he made together with Ambassador Pauncefote were not authentic interpretations, nor interpretative, nor did they have any value, nor did they bind Venezuela in any way".*

In short, the document we are analysing indicates in its last lines that what is certain is that the United Kingdom confessed *"that it agreed to arbitration under the condition that the clause of prescription or adverse possession of 50 years be added as part of a valid title, but furthermore, that this period of adverse possession or prescription be counted as from 1814".*

4. The Arbitral Award

Article XIII established the definitiveness of the arbitral award by stating that *"the High Contracting Parties undertake to consider the*

result of the proceedings of the arbitral tribunal as a full, perfect and final settlement of all issues submitted to the arbitrators".

However, a treaty negotiated and drafted without the participation of a representative of the parties in the negotiation, which included rules that violated the principles of public international law, cannot lead to a full, perfect, and final settlement of the dispute.

For the award to be a full, complete, and final settlement, Article XIII had to be consistent with the other provisions of the Washington Treaty, especially Articles II, III and IV. It follows from this concordance that it was obvious that the Treaty of Washington established the rules for a legal arbitration. Therefore, a complete, perfect, and final settlement would only have these characteristics if it was made in accordance with the rules of law, combined with the respective legal reasoning of the arbitrators.

5. Signature of the Treaty

Finally, Article XIV contemplated the duty of the parties to ratify the Treaty of Washington. In effect, the rule provided that "*the present Treaty shall be duly ratified by the President of the United States of Venezuela with the approval of the Congress, and by Her Britannic Majesty; and the ratifications shall be exchanged at Washington or London within six months from the date of this Treaty"*.

On 2 February 1897, José Andrade and Julián Pauncefote signed the Treaty of Arbitration known as the Treaty of Washington between the United States of Venezuela and Her Majesty the Queen of the United Kingdom. This was later ratified by Venezuelan Congress on 7 April 1897, and established the written basis for resolving the dispute.

By the time the arbitration treaty was being negotiated, many sectors of Venezuelan society- and even Latin American and U.S. public opinion- were against its approval. However, the Secretary of State of the United States of America, Richard Olney, wielded strong pressure on Venezuela to accept the commitment, since if it did not do so, the nation would be left helpless in its struggle against the United Kingdom[174]

[174] *Cf.* Hermann GONZÁLEZ OROPEZA, *"Dos aspectos del reclamo Esequibo"* ("Two Aspects of the Essequibo Claim") *Bulletin of the Academy of Political and Social Sciences,* Nº 91, Caracas, 1983. Page 110.

Thus, Venezuela did not freely sign the Treaty of Washington and its participation in the negotiation of the arbitration treaty was symbolic or non-existent. As Sosa Rodriguez points out *"Venezuela is treated like a colony or a country under mandate"*[175].

As we have previously pointed out, once the United States of America invoked the Monroe Doctrine it became interested in the dispute and took over Venezuela's position. It is true that if this had not happened, it would have been difficult for the United Kingdom to accept the arbitration that Venezuela had been insistently requesting to solve the boundary problem and which the United Kingdom openly despised. At that time, a small and unstable country like Venezuela could not face, without help or support, a power like the United Kingdom. The help of the United States of America was indispensable.

However, later on, the United States of America and the United Kingdom significantly improved their relations and Venezuela, without knowing it yet, ceased to have the support that the United States of America had initially given it. The withdrawal of the support of the United States of America was noticed from the moment of the negotiation of the Treaty of Washington, with the secret agreement on the prescription rule, signed between Secretary of State Richard Olney and Ambassador Julian Pauncefote on 12 November 1896.

It was also clear with the selection of the arbitrators regulated in the Treaty of Washington, where only English and American arbitrators were included, excluding the participation of Venezuelans in their own territorial dispute, and creating an inadmissible inequality in an arbitration procedure.

The rapprochement between the United States of America and the United Kingdom may have occurred because at the end of 1895 and beginning of 1896 the so-called Jameson Incursion[176] took place in South Africa, which was a movement headed by the Englishman Leander Starr James intended to provoke the uprising of British expatriate workers in the Republic of Transvaal.

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175 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 127.
176 Marcos FALCÓN BRICEÑO, Quoted Above, Page 46.

Faced with this situation, Kaiser Wilhelm II- the last German Emperor and King of Prussia- offered his support to the President of the Transvaal Republic, Paul Kruger[177]. This generated an alliance between Germany and the Transvaal Republic against the United Kingdom. Germany was a concern for the United Kingdom because of its growing maritime power. This promoted closer relations between the United Kingdom and the United States of America[178], which perceived the Germans as an imminent threat to its hegemony, and served as a meeting point between the two powers.

That same year 1896, the press of the United States of America reacted to the acceptance of the United Kingdom to solve the territorial dispute with Venezuela through arbitration and published a caricature where Uncle Sam and John Bull are seen toasting in front of a map of Venezuela[179]:

On 21 November 1896 a cartoon entitled *"Peace Pudding"* was published in London Charivari's Punch or Magazine. In that cartoon, Uncle Sam and John Bull are observed sharing the food whose container indicates *Venezuela Arbitration*:

177 *Ídem.*

178 *Ídem.*

179 *The Shape of Guyana. Road to Arbitration*. This is a 3-paet series published in the *Stabroek News* of Octoiber 1998. http://www.guyana.org/features/shape_guyana.html

"Peace Pudding", published in the *Punch or London Charivari's* Magazine, London, 21 November 1896[180]

Later, in 1897, an article with an illustration entitled "The Reason for the Anglo-Venezuelan Agreement" was published in El Diablo, Caracas, year VI, Nº 125, where Uncle Sam (representation of the United States of America) is seen beating John Bull (Representation of the United Kingdom):

"The Reason for the Anglo-Venezuelan Agreement ", published in El Diablo, Year VI, Nº 125, Caracas, circa 1897[181]

The wording accompanying the cartoon states:

"Uncle Samuel and John Bull / Sometimes they quarrel / And others, like good brothers, / They caress and kiss each other, / In

180 See: Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 23.
181 *Ídem.*

one of those tantrums / Out came Venezuela / Which John Bull loved / With the enthusiasm of...a mother-in-law, / And the good-natured Samuel, / Grabbing the scissors / That the tailor Monroe gave him / To dress America / He invented commissioners, / And revision of borders..."[182].

The above cartoons demonstrate the perception held by the United States of America regarding the legitimate Venezuelan claim before, during and after the arbitration. Thus, the change of position of the United States of America with respect to the support given to Venezuela during the boundary controversy with the British Guiana Colony was not only reflected in communications, instructions, investigations, and diplomatic notes, but was also stated in the international press when the Treaty of Washington was signed in 1897.

6. Invalidity of the Arbitration Agreement

It should be borne in mind that one of the causes recognized by the doctrine to establish the nullity of arbitral awards is the invalidity of the arbitration commitment itself, i.e., of the instrument whereby the consent of the parties to submit their dispute to the examination of the arbitrators was stated. Thus, the validity or invalidity of the 1899 Treaty of Washington is an important aspect, although not the only one, in the analysis of the nullity of the 1899 Paris Award, because the latter is so flawed that it is *per se* null and void regardless of the flaw of origin mentioned.

It is clear that without a due and proper arbitral commitment there is no jurisdiction for the tribunal. But the jurisdiction of the arbitral tribunal is also questionable when the arbitration treaty is open to challenge on the basis of elements that create reasonable doubts as to its validity. Discussing the validity of the arbitration agreement "*gives rise to the broader question of inquiring into the validity of the treaty, and that of establishing to what extent the party to a treaty may repudiate it on grounds of invalidity, after having acted in accordance with it*"[183].

182 *Ídem.*

183 Max SORENSEN, Quoted Above, Page 644.

In this regard, Max Sorensen points out that *"the invalidity of the commitment is generally considered as a possible reason for nullity"*[184] and a similar position has been taken by Alfred Verdross, who considers *"the absence of a valid treaty or arbitration commitment"*[185] or nullity of the arbitration commitment, as grounds for nullity of arbitral awards.

Some of the reasons for doubting the validity of the Treaty of Washington are the following:

1.- Venezuela did not sign the 1899 Treaty of Washington freely. According to the law of treaties there are three central elements for its formulation, namely, capacity, consent, and legality of the object of the treaty[186].

This first reason refers to consent, which in the case of the Washington Arbitration Treaty was not freely stated by Venezuela. On the contrary, on several occasions Venezuela was forced to accept the provisions of the arbitration agreement that was being negotiated by the other party and a third party.

Let us consider, for example, that Venezuela was excluded several times from the negotiations of the arbitration agreement. This was the case in the talks in which the prescription rule was discussed, where Venezuelan minister José Andrade was progressively excluded from what ended up being a negotiation between the Secretary of State of the United States of America, Richard Olney, and the Ambassador of the United Kingdom to the United States of America, Julian Pauncefote, which ended in a secret pact signed only between them on 12 November 1896.

Rule "a" of Article IV was explained to Venezuelans in a different way just to get them to accept it without complaint. Indeed, as we have already pointed out, Richard Olney explained to Venezuelan minister, José Andrade, that prescription rule applied only to occupations prior to 1814 and that it referred to a very small territory between the Pomarón, Moruco and Essequibo rivers.

But very different was the British interpretation, according to which the rule applied to any occupation that by 1897 had lasted 50 years. The intention behind the British interpretation was to invalidate

184 *Ídem.*
185 Alfred VERDROSS, Quoted Above, Page 399.
186 *Ibidem,* Page 222.

the unconstitutionality argument defended by Minister José Andrade. In fact, the Constitution of 1893, in force at the time of the conclusion of the Treaty of Washington, did not allow the alienation of any part of the territory of the Republic. This prohibition was present in the constitutional text implicitly, as it had traditionally been since 1864, and was later expressly included in the Constitution of 1904. Indeed, *"The prohibition to alienate the territory in any form was tacitly established by the aforementioned suppression; this tacit prohibition that existed under the rule of the constitutions of 1864, 1874, 1881, 1891 and 1893, was later transformed into an express prohibition in the Constitution of 1901 (Art. 5) and in all subsequent constitutions, 1904 (Art. 6); 1909 (Art. 11); 1914 (Art, 7); 1922 (Art.7); 1925 (~.2); 1929 (Art. 2); 1931 (Art. 2); 1936 (Art. 2); 1947 (Art. 1º.); 1953 (Art. 2) and that of 1961 (Art. 8)"*[187].

The United States of America threatened Venezuela with withdrawing its support if it did not sign the treaty and accept its provisions. Thus, *"Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure from the United States of America and Great Britain, which negotiated the bases of the commitment to the exclusion of the Venezuelan Government, which was given explanations that misled it"*[188].

2. - Venezuela's participation in the negotiation of the arbitration treaty was merely symbolic and almost non-existent. As Sosa Rodriguez points out, "Venezuela i*s treated as if it were a colony or a country under mandate"*[189].

This is evidenced by the very wording of Article II, according to which *"The Tribunal shall be composed of five Jurists; two on the part of Venezuela, appointed, one by the President of the United States of Venezuela, namely, the Honourable Melville Weston Fuller, Chief Justice of the United States of America, and one by the Justices of the Supreme Court of the United States of America, namely, the Honourable David Josiah Brewer, Justice of the Supreme Court of the United States of America; two from Great Britain, appointed by the*

187 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 131.
188 Herman GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 26.
189 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 127.

members of the Judicial Committee of Her Majesty's Privy Council. namely, the Right Honourable Baron Herschell, Knight Grand Cross of the Most Honourable Order of the Bath, and the Right Honourable Sir Richard Henn Collins, Knight, one of the Justices of Her Majesty's Supreme Court of Judicature; and of a fifth Jurist to be chosen by the four persons so appointed, or, in the event of their failure to agree on the appointment within three months from the date of the exchange of the ratifications of the present Treaty, by His Majesty the King of Sweden and Norway. The Jurist chosen shall be President of the Tribunal".

From the wording of this provision, it is understood, as already stated, that Venezuela did not elect any arbitrator. The arbitrators who *"represented"* our interests in the tribunal were chosen by the United States of America. The arbitrators in this totally indirect manner supposedly *"appointed by Venezuelan side"* were David Josiah Brewer and Melville Weston Fuller, both Justices of the Supreme Court of the United States of America. On the British side, the arbitrators were Sir Richard Henn Collins and Baron Herschell, but, in view of the latter's death, Baron Charles Russell of Killowen, a member of Queen Victoria's Privy Council, was appointed.

The arbitrators appointed, two for Venezuelan side and the other two for the United Kingdom, agreed on the appointment of the Russian Fyodor Fyodorovich Martens as President of the Arbitral Tribunal. Furthermore, the team of lawyers defending Venezuela had only one Venezuelan. In fact, the defence attorneys for Venezuelan side were the Americans Severo Mallet-Prevost, Benjamin Harrison (former President of the United States of America), James Russell Soley, Benjamin F. Tracy (former US Secretary of War) and, the only Venezuelan, Jose Maria Rojas as Government Agent, accompanied by Jose Andrade (Venezuelan Ambassador in London and Rome).

On the other hand, the defence lawyers for the British side were English. The United Kingdom chose as arbitrators Sir Richard E. Webster (Attorney General), Sir Robert Reid (former Attorney General), G. R. Askwith, S. A. Rowlatt and, as Agent of the government, George Buchanan.

Even, according to Article II of the treaty, in the case of death of any of the arbitrators, the selection process would be different depending on

whether the arbitrator was appointed by Venezuela or by the United Kingdom: *"In the event of death, absence or inability to serve of any of the four Arbitrators mentioned above, or in the event that any of them should fail to exercise the functions of such Arbitrator by omission, resignation or cessation, he shall be replaced immediately by another Jurist of repute. If such vacancy occurs among those appointed on the part of Venezuela, the substitute shall be chosen by the Justices of the Supreme Court of the United States of America by a majority vote; and if it occurs among those appointed on the part of Great Britain, the substitute shall be chosen by a majority vote by those who were then members of the Judicial Committee of Her Majesty's Privy Council. If the office of the fifth arbitrator should become vacant, a substitute shall be chosen for him in the manner herein stipulated as to the original appointment"*.

In this case, if the arbitrators *"appointed by Venezuela"* died, they would not be elected by Venezuela, but by the Supreme Court of the United States of America. On the other hand, if one of the arbitrators appointed by the United Kingdom died, the replacement was to be chosen by the Judicial Commission of Her Majesty's Privy Council.

The Treaty of Washington did not consider the *Statu quo* Treaty concluded between Venezuela and the United Kingdom by the exchange of diplomatic notes in November 1850, to which we have referred in detail above. On the contrary, it was conveniently omitted for the interests of the British and its application was excluded by a secret agreement between the Americans and the British.

Richard Olney, in a letter dated 29 October 1896, sent to Julian Pauncefote, British Ambassador to the United States of America, mentioned the *"undesirability"* of invoking the *Statu quo* Treaty of 1850 when he wrote that: *"It is very convenient, I think, that the 1850 Agreement should not be given any "status" in the letter of the Convention itself, not even by way of reference, much less by attempting to define its extent and meaning. If an attempt is made to interpret it, this would embroil us in a protracted debate that would indefinitely postpone the attainment of the end we now have in mind. The Agreement will be, and must be, submitted to the Arbitral Tribunal in the natural course of things, and will be interpreted by that Tribunal with the aid of*

facts, documents, and considerations of which we have no knowledge at present"[190].

Later, Richard Olney, in contradiction with the aforementioned letter, deceived Venezuela again when he stated in a new communication dated 29 July 1898 sent to former President Benjamin Harrison, main lawyer of Venezuelan defence, that with the *Statu quo* Treaty of 1850 its rights were guaranteed in the following terms: "*I may add that both Mr. Storrow and I consider it legally impossible for the Venezuelan Government to have any legal right to the Arbitral Tribunal. Storrow and myself considered it legally impossible that there could be any adverse possession or prescription whatsoever against the 1850 Agreement, a position on which it appeared to us that the British Government was fully publicly and emphatically committed"*[191].

Moreover, even if the *Statu quo* Treaty of 1850 had not been taken into consideration, there was a principle of international law which protected the interests of Venezuela: the principle according to which *"acts of sovereignty performed either during the course of negotiations or after the dispute has arisen have no probative value"*[192].

The consequences of a null and void arbitration treaty are reflected in the final decision of the tribunal, which will be equally null and void. This is also a reason for stating that the Paris Arbitral Award contains flaws that compromise its legal validity and the dispute has never been resolved.

There is no doubt that the manner in which the United Kingdom and the United States of America proceeded during the negotiation and implementation of the Treaty of Washington affected its legal validity. Moreover, the violation of Venezuela's legitimate rights did not end there, but continued during the arbitration proceedings and persisted when the Paris Arbitral Award was rendered and enforced, which, as we have said, had serious flaws that also lead to affirm its invalidity.

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190 Herman GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 38.

191 *Ibidem,* Page 41.

192 Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" ("The 1899 Arbitral Proceedings Regarding the Guiana-Essequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"), Quoted Above, Page 334.

IV. THE PARIS ARBITRAL AWARD OF 3 OCTOBER 1899

1. General Considerations

At one o'clock in the afternoon of Tuesday, 3 October 1899, at the Palais d'Orsay, after fifty-four hearings, each lasting four hours, held by the arbitral tribunal during the last days of the presidency of Ignacio Andrade, and in the midst of the Liberal Restoration Revolution, the Paris Arbitral Award was read, dictated, and published.

In six paragraphs, eight hundred and forty-four words, and without any reasoning, the arbitral tribunal unanimously decided to award the United Kingdom 159,500 square kilometres, which constituted more than ninety percent of the disputed territory and which was considerably more than the territory to which the United Kingdom was entitled, for it having been ceded to it by Holland through the Treaty of London on 13 August 1814.

The territory that Holland had ceded to the United Kingdom consisted of the Demerara, Berbice, and Essequibo camps, comprising a geographical space of no more than 32,186 square kilometres[193], which Holland had acquired from Spain through the Treaty of Münster.

Thus, the territories ceded to Holland and later to the United Kingdom never exceeded the eastern margin of the Essequibo River. As Héctor Faúndez points out, the size of what the Paris Award awarded to the United Kingdom *"is larger than the combined area of Switzerland, Belgium and the Netherlands, and even larger than the combined area of the whole of England and Wales"*[194].

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193 René DE SOLA, *"Valuación actualizada del Acuerdo de Ginebra",* ("Updated Evaluation of the Geneva Agreement") in Tomás Enrique CARRILLO BATALLA (Coordinator), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guyana-Essequibo"), *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Page 84.

194 Héctor FAÚNDEZ LEDESMA, "Presentation", in Héctor FAÚNDEZ LEDESMA y Rafael BADELL MADRID (Coordinators), Quoted Above, Page 17.

This also includes the projection of the Atlantic façade in Venezuela's international waters, which has currently been usurped by Guyana, "*thus encroaching on our territorial sea rights, contiguous economic zone, and continental shelf"*[195] which are under the exclusive jurisdiction of Venezuela, *"in direct violation of the Geneva Agreement and to the detriment of Venezuela's territorial sovereignty"*[196].

The Paris Award of 3 October 1899:

1. A boundary line was set between the two territories, "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 Cuyuní, and thence along the northern bank of the River Cuyuní 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

195 Carlos AYALA CORAO, "Words of the Academician Carlos AYALA CORAO, at the opening of the Tenth Meeting on the Continental Shelf and the Maritime Border between Guiana and Venezuela", *Bulletin of the Academy of Political and Social Sciences,* Nº 167, January-March, Caracas, 2022.

196 Luis COVA ARRIA, "*Academy of Political and Social Sciences* and the Defense of the Essequibo Territory", *Bulletin of the Academy of Political and Social Sciences,* Nº 164, Caracas, 2021.

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."

2. Next, the Arbitrators indicated that the aforesaid boundary line would be fixed without prejudice to, and with reservation of, any matters between Venezuela, Great Britain, and Brazil.
3. The Award established, deciding on a matter that was not a part of the dispute, that the Amacuro and Barima Rivers would be open to navigation by the merchant- ships of all nations.
4. And, in connection therewith, the Award established the payment of lighthouse or other like dues, not specifying what these dues were. The condition for this was that the dues of Venezuela or the United Kingdom in respect of the passage of vessels along the portions of such rivers respectively owned by them would be charged at the same rates.
5. The Award decided that no customs duties would be levied by either such nation in respect of goods carried on board ships, vessels, or boats; according to the Award, such duties would only be levied on goods landed either in the territory of Venezuela or the United Kingdom.

The Award was signed by the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, and Arbitrators Melville Weston Fuller; David Josiah Brewer; Russel of Killowen, and Richard Henn Collins.

As García-Velutini affirms, *"the people and the government of Venezuela, without ever accepting it, have always protested that Award of 3 October 1899, whereby the country was dispossessed of the territory of Guayana Esequiba"*[197]. In this regard, it is worth remembering that as early as in 1842, a student at the Central University of Venezuela (UCV), Tito Alfaro, who was presenting his thesis, agreed with the opinion of Dr. Nicanor Borges, a juror of thesis who later became Minister of Foreign Relations of Venezuela, according to which *"The Essequibo is the true limit between Venezuela and the Guayana Esequiba"*[198].

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197 Oscar GARCÍA-VELUTINI, Quoted Above, Page 18.
198 *Ídem.*

Thesis of student Tito Alfaro on the important subject of the territorial integrity of Venezuela was approved with honours. As Oscar José Márquez points out: *"As time went by, Tito Alfaro became an eminent jurist, he became a professor at the UCV, and a member of its Academic Tribunal in the 1850's; he was a member of the Federal High Court in 1864; from 1870 onwards, he was a War Auditor in the Army during the time of Guzmán Blanco"*[199].

On 2 October 1899, one day before the award was published, Lord Russell's private secretary, J. R. Block, wrote the following in his diary: *"Venezuela. Martens' shady deal has given us victory. Private files"*[200]. There, it is clearly stated that the settlement, which should have been a legal one, ended up being a shady deal, a word defined by the Royal Academy of the Spanish Language as *"Agreement or transaction of an objectionable or immoral nature"*. The Award was not a legal decision, it was in fact the product of a political arrangement led by the President of the Arbitral Tribunal himself.

On 3 October 1899, the contents of the Paris Arbitral Award were made known and the next day José María Rojas, the only Venezuelan lawyer who was part of Venezuelan defence team, pointed out that the decision was *"derisory and a manifest injustice"*[201].

On 11 October 1899, a mere eight days after the award was published, the British magazine *Punch, or the London Charivari,* published an illustration of Lord Salisbury entitled "*Peace and Plenty"*. The caricature depicts Lord Salisbury, whose aversion to arbitration was well known, escaping with several documents, including the Schomburgk line and some other maps of mines and forests that had been obtained thanks to the award. The caption under the caricature reads: «*Lord Salisbury (chuckling*) "*I like arbitration- in the Proper Place!"» "*[202].

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199 Óscar José MÁRQUEZ, "Theses Program Supported by Student Tito ALFARO in 1842", Universidad Central de Venezuela. Available at: https://ley.exam-10.com/pravo/2546/index.html.

200 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 41.

201 *Ibidem,* Page 21.

202 See: Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above.

Lord Salisbury made no secret of his dislike of arbitration. On multiple occasions, in his capacity as Prime Minister of the United Kingdom and also as Foreign Secretary, he refused to resolve the boundary dispute with Venezuela by arbitration. Indeed, Lord Salisbury *"allowed correspondence with Secretary Olney on Venezuelan boundary dispute to proceed in a perfunctory manner, the Foreign Office taking it for granted that our mediation on behalf of the South American republic was merely academic, and persisting, therefore, in its arrogant refusal to submit the dispute to arbitration"*[203].

The above reaction by the press, which represented the perception of the international community upon learning of the content of the Paris Arbitral Award, was- also in 1899- joined by the Review of Reviews, an intercontinental publication founded by William Thomas Stead between 1890 and 1893 with offices in London, New York, and Melbourne, which criticized the award and pointed out that: *"The territory that the Award granted to Venezuela is not worth a five-pound bill"*[204].

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203 Mayo W. HAZELTINE, "The United States and the Late Lord Salisbury1", *The North American Review*, Nº 564, University of Northern Iowa, 1903. Page 722. Available at: https://www.jstor.org/stable/pdf/25119479.pdf?refreqid=excelsior%3A2beedb316f54eb3b39334e139239a6b5&ab_segments=&origin=&acceptTC=1.

204 Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above.

2. Nullity of the Paris Arbitral Award of 3 October 1899

2.1. General Considerations

It is true that international arbitration was not always a legal means of settling disputes between States, but what is certain is that by 3 October 1899, when the Paris Arbitral Award was rendered, arbitration was already considered a legal means for the peaceful settlement of international disputes. By then, it was already clearly understood that it was a procedure whereby two or more States in conflict submit their differences to the knowledge of a permanent body or persons especially appointed by the parties, who would endeavour to settle the dispute through the application of the rules of law in force, the stipulations of the arbitration treaty, and the allegations and evidence in the course of the proceedings. The arbitrators could also decide *ex aequo et bono*, i.e., by applying principles of equity, if this had been expressly agreed upon[205].

Until the middle of the 18th Century, international arbitration was a political-diplomatic means whereby decisions of a political nature, not based on law, were rendered. In this type of arbitration, recognized or powerful and credible persons, such as kings and popes, were selected as arbitrators, and the decisions were not the product of legal reasoning, nor were they based on law.

Arbitration as a means of peaceful settlement of disputes between States has gone through several stages and has undergone a remarkable evolution in public international law. The resolution of three very important cases contributed to the evolution of arbitration, to the point that the awards became decisions of law. The first was the arbitration resulting from Jay's Treaty of 19 November 1794, known as the first arbitration that took place in America during modern times[206]. Jay's Treaty was signed between the United Kingdom and the United States of America to settle the differences arising from the independence of

205 Daniel GUERRA IÑÍGUEZ, Quoted Above, Page 437.

206 Enrique LAGOS VALENZUELA, "Los Estados Unidos de América y el Arbitraje" ("The United States of America and the Arbitration Proceedings"), Anales de la Facultad de Derecho Vol. IV, Nº 13 a 16, Universidad de Chile, 1938. Available at: http://web.uchile.cl/vignette/analesderecho/CDA/an_der_simple/0,1362,SCID%253D330%2526ISID%253D16%2526PRT%253D304,00.html

the former English colonies in North America. This was followed by arbitration between the United States of America and the Kingdom of Spain based on the Treaty of Friendship, Boundaries, and Navigation between His Catholic Majesty and the United States of America, signed on 27 October 1795. Thirdly, the Treaty of Washington, which was signed in May 1871, in virtue of the Alabama claims and led to the arbitration award issued on 14 September 1872.

Regarding the first of the mentioned arbitrations, which was a consequence of the application of Jay's Treaty of 19 November 1794, Faúndez Ledesma points out that: *"From the end of the 18th Century, with the conclusion of the Jay Treaty between Great Britain and the United States of America, arbitration became fashionable again, assuming different modalities: mixed commissions, arbitration by kings, collegiate tribunals (with or without the participation of nationals of the parties), and sole arbitrators"*[207].

Then, a very important arbitration took place between the United States of America and the Kingdom of Spain based on the Treaty of Friendship, Boundaries, and Navigation between His Catholic Majesty and the United States of America signed on 27 October 1795 and which had 23 Articles[208]. The controversy was the result of the complaints by American citizens for the damages suffered by their properties due to the conduct of the subjects of His Catholic Majesty Charles IV of Spain.

The Treaty of Friendship, Boundaries, and Navigation between His Catholic Majesty and the United States of America also established the formula of mixed commissions composed of three members one of whom would be appointed by the United States of America, another by Spain, and the last one would be appointed by mutual agreement between the two parties[209].

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207 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Academy of Political and Social Sciences - Editorial Jurídica Venezolana, Caracas, 2020. Pages 55 ff.

208 *Treaty of Friendship, Boundaries, and Navigation* between His Catholic Majesty and the United States of America signed on 27 October 1795. Available at: https://www.dipublico.org/118369/tratado-de-amistad-limites-y-navegacion-entre-su-majestad-catolica-y-los-estados-unidos-de-america-firmado-a-27-de-octubre-de-1795/

209 See: Enrique LAGOS VALENZUELA, Quoted Above.

This case represents an important milestone in terms of the bases of international arbitration, especially regarding *"setting time limits, requirements and presentation of evidence in writing, oaths of the commissioners, compulsory hearing of witnesses, etc."*[210].

The American style- in terms of the peaceful settlement of disputes through international arbitration- was to include in international treaties a series of rules that defined the composition and functioning of mixed commissions. But their treaties did not include compromissory clauses, i.e., provisions establishing the jurisdiction of arbitral tribunals to settle disputes arising out of a given legal relationship.

In fact, a first approach of the United States of America to the figure of the compromissory clause occurred when it signed a treaty with Colombia on 3 October 1824. In fact, "*On 3 October 1824, shortly before the victory of Ayacucho, the United States of North America made with the Government of Colombia the first treaty of friendship, commerce, and navigation signed in America. But in this treaty, as we have already seen, the compromissory clause we have mentioned was not properly contemplated, but a procedure of diplomatic representations, requirements, and satisfactions in the cases of injuries or damages, with the purpose of peacefully and cordially settling all differences. Arbitration is not explicitly provided. The formula used by the United States of America for more than half a Century, until after the Alabama arbitration in 1872, in its relations with the Spanish-American republics, "while being peaceful and intended to avoid acts of violence," says Gaspar Toro, "was not the formal compromissory clause which, in reality, passed from America to Europe, became generalized there and fixed in conventional law". And he adds: "the Latin-American republics did go further ahead in the treaties that they adjusted from the first days of their independent life. In their untiring yearning for union and peace, they worked their wits out devising formulas of amicable procedures to settle their differences "without ever, according to their terms, resorting to the ominous and detestable means of arms"*[211].

Finally, we refer to the case of the Alabama claim which was very important in the development of the figure of arbitration and with a

210 *Ídem.*
211 *Ídem.*

great general impact on the international law of the time. During the American Civil War (1861-1865), the United Kingdom declared itself neutral by the Neutrality Act signed by Queen Victoria on 13 May 1861. However, the duty of neutrality was violated, as the United Kingdom provided the Confederates with ships.

The privateer Alabama along with another privateer called the Florida laid siege to the American merchant marine, wiping out almost half of its ships by the end of the American Civil War. This caused several damages in raw materials. In addition to that, there were related issues between member States such as illegal fishing activity in Canadian waters and the death of civilian subjects of the British crown in the Civil War.

As a consequence of the above, the United States of America made a series of claims against the United Kingdom, and, in May 1871, the parties signed the Treaty of Washington to resolve the dispute between the two countries. The Treaty of Washington established the rules of neutrality with which the States had to comply in a context of an armed conflict, such as the one they had at that time. These rules were:

> *"A neutral government must:*
> *1. Use all due diligence to prevent any vessel within its jurisdiction from being placed in condition to sail, equip, or arm any vessel which it has reasonable suspicion of being destined to make war against a Power with which it is at peace, and likewise use the same diligence to prevent from leaving its jurisdiction any vessel destined for war as aforesaid, having been transformed in whole or in part for use in the war.*
> *2. Not permit or tolerate that one of the belligerents should make its ports or its waters the base of naval operations against the other, or use them to renew or increase its military supplies or arms, or to recruit men.*
> *3. Exercise all diligence in their ports and waters and, with respect to all persons within their jurisdiction, to prevent any violation of the above obligations and duties"*[212].

[212] See: *"Las reglas del Tratado de Washington de 1897 y los títulos históricos del territorio del Esequibo"* ("The Rules of the 1897 Treaty of Washington and the historical titles to the Essequibo Territory"). Available at: https://www.dipublico.org/109354/reglas-del-

The arbitration award was rendered on 14 September 1872, and the United Kingdom was ordered to pay an indemnity of approximately 15.5 million dollars. From that moment on, the case became a benchmark for future arbitrations.

The case of the Alabama claims set in motion an accelerated process of evolution of arbitration that made it an ideal way to reach legal settlements, in contrast to the arbitrations by kings or personalities providing political settlements as was customary until then.

The case of the Alabama claims contributed to the development of arbitration. In this new stage, arbitrators were required to be jurists, to comply with the duties of impartiality and independence, to give reasons for arbitral awards and to assess the principles and customs of international law as was in force at the time of rendering their decisions. Hence, at the First Hague Conference of 1899, whose proposal was sent by Count Mouravieff on behalf of the Russian Tsar Nicholas II, an attempt was made to establish guidelines for arbitration proceedings and other peaceful means of dispute resolution, which culminated in the Convention on the Pacific Settlement of International Disputes, which was the outcome of that important meeting[213].

By virtue of this evolution of arbitration, it is very clear that, by 3 October 1899, when the Paris Arbitral Award was rendered, arbitration was already considered a legal means for the peaceful settlement of international disputes. That is to say that awards were already considered written and reasoned, founded in law, binding on the parties and with the effect of *res judicata*, whereby a dispute that the parties have freely submitted to the knowledge of arbitrators by virtue of a previously signed arbitration agreement is definitively resolved. If the arbitral award or arbitral decision decides the dispute in accordance with the law, it is considered final and it, consequently, binds the parties from the moment of its pronouncement by the arbitral tribunal, without the need for subsequent acceptance[214].

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tratado-de-washington-entre-gran-bretana-y-estados-unidos-de-8-mayo-1871-referente-a-la-reclamacion-sobre-el-alabama-reglas-de-washington/

213 International Court of Justice, History of the Court. Available at: https://www.icj-cij.org/en/history.

214 Hugo LLANOS MANSILLA, Quoted Above, Page 577.

When we are dealing with international arbitration between States *"We are, therefore, dealing with a procedure whose purpose it is to resolve disputes between subjects of international law in a final and binding manner, by means of bodies chosen by them, either by application of public international law or, where appropriate, by considerations of equity. This modality rests, therefore, on the consent of the States, as a consequence of the voluntary nature of international jurisdiction, and there are several ways of expressing such consent; the dispute is submitted to an impartial third party, which may be a sole arbitrator or a collegiate body; the award rendered is final and binding on the parties, putting an end to the litigation"*[215].

We have said that arbitral awards are written decisions, based on law, subject to the*ma decidendum*, reasoned, final and binding, and having the effect of *res judicata*.

Indeed, the main characteristic of the arbitral award is that it is set in writing. As it is a formal act that definitively and irrevocably resolves- in principle- a controversy that the parties have submitted to the arbitrators, it must be produced in writing and have the signatures of each of the arbitrators selected by the parties. This includes the clarifications and withheld votes of the arbitrators who do not agree with the final decision, if any.

The arbitral award, unless the parties have agreed to decide *ex aequo et bono*, shall be based on law. The expression "*based on law"* means that the arbitral award must be rendered in accordance with the public international law in force at the time it is rendered, in accordance with its principles, written rules, and rules of customary law or *jus cogens,* and respecting the legal rules applicable to the dispute; i.e., as agreed by the parties in the arbitration agreement and considering what has been alleged and proven by the parties.

The arbitral award must be subject to the*ma decidendum*; i.e., the arbitrators may not exceed the objective limits of the dispute that the parties have submitted to them. Failure to comply with this characteristic could result in the arbitral award affecting the legal situation of other

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[215] José Carlos FERNÁNDEZ ROZAS, "El arbitraje internacional y sus dualidades" ("International Arbitration and its Dualities"), *Anuario Argentino de Derecho Internacional*, Nº XV, Córdoba, 2006. Page 15.

subjects of international law who are not parties to the arbitration. This characteristic of the arbitral award is related to the conventional basis of arbitration. As mentioned above, arbitration is based on the consent of the parties to resolve their disputes through this mechanism. This consent is manifested in a prior arbitral compromise that delimits the scope of the dispute, consequently, the arbitrators can and must only act within the limits set by the parties in the compromise.

The arbitral award, regardless of whether it is in law or in equity, must state the reasons on which it is based. The statement of reasons for an arbitral award at law implies a detailed reasoning of the factual and legal reasons that led the arbitral tribunal to decide as it did. Such reasoning involves reference to the facts and legal basis of the award. Reasoning, besides being a characteristic of the arbitral award, is a duty of the arbitrators, who are obligated to account to the parties and ensure transparency in the decision. Even in the case of an arbitral award in equity, the arbitrators must explain the reasons that, to the best of their knowledge and belief, led them to render the final decision.

The reasoning of the award is essential to control its legality. As a control mechanism, reasoning fulfils the function of verifying that the arbitral award is based on law and helps determine whether the arbitrators have decided subject to the*ma decidendum* that the parties have delimited in the arbitration agreement.

This duty to state reasons was included in the 1875 Draft Rules on International Arbitral Procedures prepared by the Institute of International Law in Article 23, according to which:

> *"The arbitral award shall be in writing* ***and shall state the reasons on which it is based,*** *unless the arbitration agreement provides otherwise. It shall be signed by each member of the arbitral tribunal. If a minority refuses to sign, the signature of the majority shall be sufficient, together with a written statement that the minority has refused to sign"*[216]. (Highlighting Added).

[216] Instituto de Derecho Internacional, Projet de règlement pour la procédure arbitrale internationale, Session de La Haye, 1875. Page 5. Texto original del artículo: "La sentence arbitrale doit être rédigée par écrit et contenir un exposé des motifs sauf dispense stipulée

The definitive nature of arbitral awards implies that the decision of the arbitral tribunal *"is binding on the parties that have resorted to the proceeding"*[217]. As Guerra Iñiguez points out, the intention of the parties to make the award a final and binding decision *"is generally stated in the commitment and its compliance could not be refused because it had not been stated in the commitment, since it would not make sense to resort to a procedure of this nature and leave its compliance pending to the whim or good faith of the parties…"*[218].

This final and binding nature of arbitral awards was recognized in Article 18 of the Hague Convention for the Peaceful Settlement of International Disputes, dated 29 July 1899, which established that *"The arbitration convention implies an undertaking to submit to the Award in good faith"*[219].

In the same sense, The Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907, established in Article 37 that *"The purpose of international arbitration is to settle disputes between States by judges of their own choice and on the basis of respect for the law. Recourse to arbitration implies the obligation to submit to the Award in good faith"*[220].

The ICJ's decision of 18 December 1960, on the case of the King of Spain Arbitral Award of 1906 served to demonstrate that *"the source of*

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par le compromis. Elle doit être signée par chacun des membres du tribunal arbitral. Si une minorité refuse de signer, la signature de la majorité suffit, avec déclaration écrite que la minorité a refusé de signer" ("The arbitral award shall be in writing and contain a statement of reasons unless exempted by the special agreement. It must be signed by each member of the arbitral tribunal. If a minority refuses to sign, the signature of the majority shall suffice, together with a written declaration that the minority has refused to sign.").

217 Daniel Guerra IÑÍGUEZ, Quoted Above, Page 449.

218 *Ídem.*

219 Véase Convención de La Haya para la resolución pacífica de controversias internacionales del 29 de julio de 1899. Available at: https://docs.pca-cpa.org/2016/01/Convenci%C3%B3n-de-1899-para-la-resoluci%C3%B3n-pac%C3%ADfica-de-controversias-internacionales.pdf.

220 See: The Hague Convention of 18 October 1907 for the PacificSettlement of International Disputes. Available at: https://docs.pca-cpa.org/2016/01/Convenci%C3%B3n-de-1907-para-la-resoluci%C3%B3n-pac%C3%ADfica-de-controversias-internacionales.pdf. Regarding the rule in Article 37 of this Convention, treatise writer Alfred VERDROSS, Quoted Above, Page 399, sustains that "According to The Hague Convention of 18 October 1907, arbitral awards are final. There is no action in lower court or on appeal". In this sense, see also: Daniel GUERRA IÑIGUEZ, Quoted Above, Page 449.

the binding character of international decisions lies in the agreement of the Parties to submit a given case to arbitration or judicial decision, and is, therefore, essentially conventional. The foregoing, however, does not imply that the arbitration agreement or the declaration of acceptance of the compulsory jurisdiction of the Court must expressly contain a mention of the compliance and enforcement of the award or judgment rendered, by this third party voluntarily chosen by the Parties to decide their dispute, although it is usually done"[221].

2.2 Nullity of the Paris Arbitral Award for Violation of Due Process of Law

The Paris Arbitral Award of 3 October 1899, is null and void for multiple violations of international law when it was rendered; it is null and void for having violated due process and for having left one of the parties defenceless; it is null and void for having committed the flaw of arbitrators exceeding their powers; it is null and void for having decided beyond what was required of the arbitral tribunal and thus having the flaw of ruling *ultra petita*; it is null and void for lacking the required reasoning and the duty of impartiality of the arbitrators. We will now refer specifically to the nullity of the Paris Award for violation of due process.

According to the terms of the Treaty of Washington and, in particular, in accordance with the provisions of Articles III and IV, it was clearly an arbitration at law and as such the arbitrators had to respect the letter and spirit of the Treaty of Washington, and study, investigate and ascertain the legal title of each of the parties and corroborate it with the international law of the time.

Notwithstanding the foregoing, the Paris Arbitral Tribunal did in fact fail to investigate and did not ascertain the legitimacy or legality of the titles held by Venezuela; on the contrary, it dismissed them in violation of Article III of the Arbitration Treaty which established that *"**The Tribunal shall investigate and ascertain** the extension of the*

[221] Tania Elena PACHECO BLANDINO, *"La res judicata en la Corte Internacional de Justicia: un enfoque práctico"* ("Res Judicata at the International Court of Justice: A Practical Approach), Universidad Autónoma de Madrid, Madrid, 2011. Page 446.

respective territories, or the territories that could ***legally be claimed*** *by the parties at the time Great Britain acquired the Colony of British Guiana, and shall determine the dividing line between the United States of Venezuela and the Colony of British Guiana"*[222]. (Highlighting Added).

The expression ***legally claimed*** implied that in resolving the dispute, the arbitrators were required to consider only those titles that the parties could prove in law and to decide in accordance with the principles of international law in force at the time.

The arbitrators were under the obligation of analysing the titles of the parties and considering the applicable law at the time of the dispute, while bearing in mind that the scope of the dispute encompassed only the territories ***that could legally be claimed*** by the parties.

On the other hand, the obligation ***to investigate and ascertain*** meant that the arbitrators should have analysed the legal titles of each party and verified whether they could, in fact, be deemed to be proof for their purposes.

This obligation is also stipulated in Article V of the Treaty according to which, arbitrators should *examine and impartially and carefully decide the matters submitted to them*. In fact, Article V of the Treaty of Washington established that: *The Arbitrators shall meet at Paris, within sixty days after the delivery of the printed arguments mentioned in Article VIII, and shall proceed* ***impartially and carefully to examine and decide the questions that have been, or shall be, laid before them,*** *as herein provided, on the part of the Governments of Her Britannic Majesty and the United States of Venezuela, respectively*[223]. (Highlighting Added)

Two obligations for the arbitrators can be inferred from the above-mentioned articles. Firstly, to examine the issues submitted to them and, secondly, to decide on them impartially and carefully. However, this was not the case.

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222 Héctor FAÚNDEZ LEDESMA, "Contentious Competence of the International Court of Justice and the Case of Guyana v Venezuela". Political and Social Sciences Academy-Editorial Jurídica Venezolana. Caracas, 2020. P. 337.

223 *Ibidem,* Page 338

The arbitrators decided solely upon their own discretion and without considering any of Venezuela's valid titles.

An example of an element of conviction that was not valued by the arbitral tribunal is the letter of 4 March 1842 sent by Henry Light, Governor of the British Guiana Colony, to Lord Stanley, Minister of Colonies. This was a fundamental element of proof in favour of Venezuela's pretensions, since the governor stated that they had no claim to the Amacuro River, west of the Barima River. With this letter, it became clear that even Governor Henry Light knew of the illegitimacy of the second Schomburgk line when he wrote the following:

> *"... We have no claim to the Amacuro River, west of the Barima, although on Major L. von Bouchenroeder's old map, published in 1798, the former river is marked to the east of the latter, and both flowing into the Orinoco.*
> *Both Mr. Schomburgk's map and Mr. Codazzi's map place these rivers in the proper position, with the Amacuro entering the Orinoco from the south west of the Barima. [...]*
> *I believe that Mr. Schomburgk assumes that the Amacuro is the boundary, solely for reasons of convenience. [...]*
> *Neither the Barima nor the Amacuro can now be of any importance to Great Britain, and could only be occupied at a cost of lives and money, which would not make it convenient; but we must be careful that a more important power than Venezuela does not take possession of them.*
> *The existence of the Spanish-American republics seems to depend so much upon political parties always ready to contend for power, that one might ask what is to prevent one of the contending provinces, wishing to obtain foreign aid, from offering the United States of America or France, or any other power, a settlement, merely for the madness of partisan sentiments, ready to plunge into the folly of gaining some temporary advantage over the opposing faction. [...]*
> *[...] British Guiana must never submit to having the flags of France or the United States of America, or any other power, flying on its borders. [...]"*[224].

[224] Quoted in Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of

This document showed not only the lack of interest of the British in occupying the territories covered by the second Schomburgk line, but also the unfeasibility of such occupations, which, according to the governor, *"could only be occupied at a cost of lives and money that would not make it convenient"*[225].

This document was not considered by the arbitral tribunal. Venezuela knew of the existence of this letter but was unaware of its contents. At the time, Venezuela's representatives asked the tribunal to require the British to disclose it; however, based on allegedly *high political considerations*, they refused to do so.

With this refusal, the Paris Arbitral Tribunal also violated Article VII of the Treaty of Washington, which established the obligation of the parties to furnish evidence in their exclusive possession if the other party so required:

> *"... If, in the Pleadings submitted to the Arbitrators, either party shall have specified or cited any report or documents in its exclusive possession, without including a copy thereof, such party shall be bound, if the other party shall think fit to so request, to furnish a copy thereof to the other party; and either party may cause the other, through the Arbitrators, to produce the originals or certified copies of the adduced papers, as evidence, giving in each case notice thereof within thirty days after the filing of the Pleadings; and the original or copy that was requested shall be delivered as soon as possible and within a period not exceeding forty days after the receipt of the notice"*[226].

Despite the provisions of this article, the document came to light only after de English confidential files were opened revealing a number of other documents that had high probative value, which the arbitrators failed to consider in spite of their duty under Article V of the Treaty of

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the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 166-167. Letter of 4 March 1842, by Henry LIGHT, Governor of the British Guiana Colony, to Lord STANLEY, English Colonial Secretary, Foreign Office, 80/108. Wording translated by the quoted author.

225 *Ídem.*

226 Héctor Faúndez Ledesma, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 338-339.

Washington to *proceed impartially and carefully to examine and decide the questions that have been, or shall be, laid before them"*[227].

Another serious violation of the obligations that the Treaty imposed on the arbitrators is related to the so-called first Schomburgk line of 1835, which was not considered by the judges. This first Schomburgk line *"only departs from said river about 45 miles approximately from the* coast*, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and from that point forms a sort of pocket, west of the Essequibo River, to the point on the* coast *where the Moroco River flows into it"*[228].

Although the first Schomburgk line is the least aggressive in comparison with the future delimitations set by the English, it was built on the basis of old and equally arbitrary demarcations. In fact, the original Schomburgk line was drawn on the basis of Deslile's maps dated 22 March 1700, which were misinterpreted *"almost from the beginning by D'Anville (1748), an individual whose name and influence were sufficient to perpetuate the errors he made to this day"*[229].

The D'Anville's line delimited the border between the Spanish and Dutch possessions, but it differed markedly from that established in Deslile's maps. Later, John Arrowsmith *"drew two lines, one line limiting the Dutch occupation to the Pomerón River and another similar to that drawn by Deslisle and D'Anville"*[230].

Arrowsmith's maps were studied in detail by lawyer Severo Mallet-Prevost, who concluded that *"said author had no intention of publishing a new line, considering it entirely arbitrary"*[231]. The first Schomburgk line was based on these prior maps and is, therefore, equally, or more arbitrary than the previous delimitations.

The arbitral tribunal, on the contrary, considered the expanded line of the 1842 Hebert map, a line on which there are important indications

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227 *Ídem.*

228 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 122.

229 Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" (The Arbitral Proceedings on the Guiana-Esequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"). Quoted Above, Page 342.

230 *Ibidem,* Page 343.

231 *Ídem.*

of falsification and alteration, namely: "*Venezuela has proof that the British Foreign Office was not aware of this line until June 1886. This in itself is a more than serious indication that the corruption of the original map that lay in the Colonial Office since 1842, is recent"*[232].

On the other hand, Rule "c" of Article IV, which specifies the application of international law in the following terms, should also be considered:

> *"The Arbitrators may recognise and give effect to rights and claims resting on any other valid grounds according to international law, and on any principles of international law which the Arbitrators may deem to be applicable to the case..."*[233].

As established in the foregoing articles, arbitration should be conducted following the law and, as such, the arbitrators must adhere to the letter of the 1897 Treaty of Washington, study, investigate, ascertain the legal titles of each of the parties, and apply international law as it stood at the time.

Contrary to all of the above, the arbitrators decided with absolute discretion and without considering any of Venezuela's valid titles, in frank violation of due process and then applicable law, despite the fact that Venezuela had and has legal titles that support its legitimate ownership of the Essequibo territory.

Furthermore, there is evidence in different historical sources that Spain- during colonial times- exercised real acts of sovereignty over the disputed territory. As Guerra Iñiguez points out *"the occupation is intimately linked to the discovery of America"*[234]. It is easy to understand that Spain acquired these territories by this means.

In public international law, occupation is one of the original means of acquiring territory. Hence, the occupation of territories by human settlements and signs of exercise of power in them has a central legal

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232 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 13.

233 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 338.

234 Daniel GUERRA IÑIGUEZ, Quoted Above, Page 179.

relevance because it is one of the original means of acquisition of territory, recognized by the doctrine of international law[235].

The acts of occupation, although not endowed with the same value as legal titles, are reliable evidence that the territory west of the Essequibo River was occupied and dominated by Spain and that, through the *uti possidetis iuris* principle and, later, a recognition treaty, it was acquired by Venezuela.

We must bear in mind that the *uti possidetis iuris* principle is a legal maxim originating in Roman law that also constitutes a principle of American public international law adopted by the newly independent States. According to this principle, the territories of the nascent States would be the same as those that were dominated by their respective colonies. This principle is of great practical utility, even today, since it facilitated the territorial delimitation between several South American countries during the emancipation.

As Claudio Briceño Monzón has indicated *"Venezuela's sovereignty over the Essequibo Territory is based on historical and geographical facts. In the delimitation of its borders, Venezuela has invoked documents in its favour, the Royal Decrees among them, which confirm its undoubted rights since colonial times. These documents are based on the principle of Utis Possidetis Juris as a legitimate title of eminent domain in which all South American republics agreed at the end of their wars of independence to preserve the territories that belonged to their provinces under Spanish rule"*[236].

Regarding the territory of Venezuela and its historical-legal process of formation, we must pay special attention to everything stated by Brewer-Carías as regards the fact that *"the demarcation of the territory followed the principle of American public international law known*

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235 See the presentation of Luís GARCÍA CORROCHANO at the event on The Rules of the Treaty of Washington of 1897 held within the framework of the Cycle of Conferences on the Essequibo Controversy organized by *Academy of Political and Social Sciences* on July 15, 2021. Available at: https://www.youtube.com/watch?v=j0EhW5TrA0I.

236 Claudio Alberto BRICEÑO MONZÓN, "La Guayana Esequiba: Frontera Oriental de Venezuela" in *El reclamo Esequibo. Un compromiso nacional vigente ante la historia y la justicia"* ("The Esequibo Claim. An Ongoing National Commitment with History And Justice"), compiled by Manuel DONÍS RÍOS, Universidad Católica Andrés Bello, 2021. Page 16.

as uti possidetis juris, according to which the Republic of Colombia had rights over the territories that, in 1810, belonged to the General Captaincy of Venezuela and the Viceroyalty of Nueva Granada"[237].

The value of the *uti possidetis iuris* principle in the claim of the Essequibo territory has been a matter of special relevance that dates back to the times of the birth of the Republic and remains in full force today. *"As a means to elucidate the boundary issue, Venezuela has always invoked the guidance provided by the administrative division made by the Spanish crown on that territorial extension calling it the General Captaincy of Venezuela and has also invoked and welcomed the results that emerge from the boundary treaties that Spain had concluded with other countries before 1810"*[238].

The first document that constitutes a juridical title over the territories in dispute is the Minor Bull Inter Caetera issued by Pope Alexander VI in 1493, whereby the territories of South America were divided between Spain and Portugal based on the discoveries of the two nations.

The Alexandrine Bulls are a series of papal documents issued in 1493 after the first voyage of Christopher Columbus. After this important event, a series of controversies arose between Spain and Portugal.

The Papal Bulls of Alexander VI were intended to resolve these territorial issues. There were three documents of this nature. "The first, dated 3 May 1493, granted Spain *"by the authority of God almighty", the exclusive and perpetual dominion of the new territories. The second, issued on 4 May that same year, set a north-south dividing line some 560 kilometres west of the Cape Verde Islands. The pope affirmed that all lands discovered or to be discovered west of that line belonged to Spain, those discovered to the east belonged to Portugal. The third decree seemed to increase the influence of Spain in the east, as far*

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237 See: Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted Above.

238 Alfonso RIVAS QUINTERO, *Derecho Constitucional* ("Constitutional Law"), Clemente Editores, Valencia, 2002. Page 232

as India. The latter was not to the liking of King John II of Portugal, so he appealed to Spain and negotiated directly with the Catholic Monarchs"[239].

The disagreement with the third Alexandrine Bull led Portugal to appeal the decision and this led to direct negotiation between Portugal and the Catholic Monarchs. The result of this was the Treaty of Tordesillas, signed on 7 June 1494, a complementary agreement to the Bull Inter Caetera that specified in greater detail and extended the Portuguese territory to 350 leagues from Cape Verde. With this, the treaty consecrated the sovereignty of Spain and Portugal in the American continent through the division of navigation and conquest zones between the two nations.

By the year 1498, Spanish explorers discovered and colonized these territories. Christopher Columbus did it during his third voyage in the Gulf of Paria and the Orinoco Delta and, later, in 1499, Alonso de Ojeda made incursions to the coast of Guayana and conquered more than a thousand kilometres of Guyanan coast along the Orinoco and Amazon rivers[240]. It is clear that the title to these lands belonged to Spain, as it was represented in the Planisphere of Juan de la Cosa, the first world map that included America and dates back to 1500[241]. In 1502, a second expedition led by Captain Alonso de Ojeda took place along the coast between the Orinoco River and the Essequibo River[242].

Later, between 1531 and 1532, Diego de Ordaz, an explorer who was also in the armed forces, explored from the Orinoco River to the Meta, as well as the basins of the Cuyuní and Mazaruní rivers. Later, Charles V granted him the government of the territory[243]. In 1533,

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239 *"Alexandrine Bulls"* in the *Library of the Universidad Pontificia Bolivariana*. Available at: https://bibliotecas.upb.edu.co/index.php/sin-categoria/1388-bulas-alejandrinas. *"The original documents of the Alexandrine Bulls are kept in the General Archives of Simancas; the Archives of the Indies and the National of the Torre do Tombo of Lisbon"*.

240 See, in general, the detailed account of historical titles on Venezuela regarding the claimed territory in the works of Academician Dr. Carlos ÁLAMO YBARRA, Quoted Above. Also see: Rafael SUREDA DELGADO, "*Venezuela y Gran Bretaña. Historia de una usurpación"* ("Venezuela and Great Britain. The History of an Usurpation"), Volume I, A Paper presented to the illustrious Central University of Venezuela for promotion, on the teaching staff list, to the category of Assistant Profesor, Caracas, 1974. Page 26.

241 *Ídem*.

242 Rafael SUREDA DELGADO, Quoted Above, Page 27.

243 See: Carlos ÁLAMO YBARRA, Quoted Above.

the Spaniards entered through the Maraven River, as the locals called the Essequibo. The discovery and inspection of the Essequibo River is largely due to Captain Juan de Esquivel, one of the main Spanish explorers.

In 1562 and 1569, more than twenty expeditions were carried out in the Orinoco and the interior of Guayana, all led by subjects of the Spanish crown who had the necessary authorizations to do so.

Brewer-Carías indicates that the province of Guayana was formally created by the Royal Decree dated 18 November 1568, ordering the Santa Fe Audience to authorize Gonzalo Jiménez de Quesada to carry out expeditions and acts of possession in the lands to the east of the New Kingdom of Granada. This order was finally executed by Antonio de Berrío in 1569[244].

The Sixteenth and Seventeenth Centuries were characterized by acts of sovereignty exercised by Spain in these territories. As regards an *ius ad rem* title, the peacefully accepted rules of international law only required that a territory be discovered without requiring that some solemn act be held. That title had to be complemented with the subsequent effective possession of the territory.

It cannot be denied that Spain complied with both requirements. It could hardly be denied that the Spanish discovered and conquered these lands. It is even more complicated to deny their dominion, which was difficult to consolidate because of *"the hostile attitude of the Caribe Indians towards the Spanish, in favour of the Dutch"*[245].

It was not until 1581 that the Dutch occupied territories located east of the Essequibo River. It is true that the Dutch tried to invade the territories located to the west of the Essequibo River, but they always

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244 Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted Above.

245 Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" (The Arbitral Proceedings on the Guiana-Esequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"). Quoted Above, Page 319.

failed in this task because *"on every occasion, they were strongly repelled by the Spaniards"*[246].

In 1591, the Spaniards began the process of colonization of the Essequibo territory and, in 1594, Spain took possession of the Guayana Province, a fact that is recorded in a set of charts discovered in 1595[247]. In 1596, 2000 Spanish settlers were sent to the Essequibo territory in order to colonize these lands[248].

Between 1596 and 1617, the Spaniards dedicated themselves to colonizing the Essequibo territory and *"repelled the continuous invasion attempts of the Englishman Walter Raleigh and the Dutch themselves"*[249]. In 1623, the Dutch managed to establish a fort on Kikoveral Island, specifically at the confluence of the Cuyuní and Essequibo rivers[250]. Sureda Delgado adds that the Dutch: *"years later occupied a small area between the Pomarón River and the coast"*[251]. Both occupations were very short-lived[252].

The Treaty of Münster, whereby Spain recognized the possessions of the Dutch in Guayana, was signed on 30 January 1648[253]. However, at no time were such Dutch possessions located west of the Essequibo River.

Moreover, when the Treaty of Münster was signed, *"Spain had discovered and explored America; it had discovered, explored, possessed, and colonized Guyana; it had maintained undisputed power over the Orinoco and the envied interior region, whose fabulous wealth had been the cause of so many foreign expeditions uselessly undertaken and so much blood uselessly spilled; the key to the interior was in Spain's hands alone; towards the great inland pit of the Cuyuní-Mazaruni it had driven its roads and extended its conquests; and it held the entrance, the only entrance to that pit through the softly undulating savannas of the Orinoco; it had colonized, cultivated, fortified the Essequibo itself ..."*[254].

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246 Rafael SUREDA DELGADO, Quoted Above, Page 28.
247 *Ídem.*
248 *Ídem.*
249 *Ibidem,* Pages 28-29.
250 *Ídem.*
251 *Ídem.*
252 *Ídem.*
253 *Ídem.*
254 Venezuelan Ministry of Foreign RelationsRelations, *Yellow Book*, Caracas, 1899. Pages 109 y 110. Quoted in Rafael SUREDA DELGADO, Quoted Above, Page 30.

We must insist on the relevance of the Treaties of Utrecht- very important in the delimitation of the territory- inasmuch as, by a commitment of 13 July 1713, the United Kingdom agreed to aid to the Spaniards *"so that the ancient limits of their dominions in America may be restored and set as they were in the time of Charles II"*[255].

The latter part of Article VIII of the Treaty of Utrecht did indeed establish that: *"In order that the dominions of Spanish America may be more completely preserved, the Queen of Great Britain promises that she will request and give aid to the Spaniards, so that the ancient boundaries of their dominions in America may be restored and set, as they were in the time of the aforesaid Catholic King Charles II, if it should be found that, after the death of said Catholic King Charles II, they have in any way or under any pretext suffered any dismemberment or bankruptcy"*[256].

Between 1713 and 1725, the Dutch settlers established small posts in Wacuco and Pomarón that lasted no more than two years after their creation[257]. Although they did maintain *"a colony between the Mazaruni and the Cuyuní on the left banks of the Essequibo, but not beyond"*[258].

In 1734, Don Carlos de Sucre, Governor of Cumaná, a province which Guayana was a part of, agreed with the prelates of the religious communities to divide the region into three missionary zones. The one assigned to the Capuchin Fathers included the territory extending "*from Boca Grande de Orinoco to the colony of Essequibo"*.[259] This is particularly important because the religious missions fulfil the function of being instruments of effective occupation, thus demonstrating the exercise of sovereignty over those territories[260].

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255 Carlos ÁLAMO YBARRA, Quoted Above, Pages 25-26.

256 The Utrecht Treaty of Peace and Friendship Between Spain and Great Britain of 13 July 1713. Available at: https://es.wikisource.org/wiki/Tratado_de_Paz_y_Amistad_de_Utrecht_entre_Espa%C3%B1a_y_Gran_Breta%C3%B1a.

257 Rafael SUREDA DELGADO, Quoted Above, Page 30.

258 *Ídem.*

259 *Ibidem,* Page 15.

260 The in depth invetigation the U.S. Congress had agreed to authorize urged by Presideent Glover Cleveland on 21 December 1895 to clearly ascertain the facts in connection to the controversy between Veneuela and the United Kingdom, did, in fact, take into account the missionary settlements that, as we pointed out, serve as instruments of effective occupation of the disputed territor.

Then, on 13 January 1750, Ferdinand VI of Spain and John V of Portugal signed the Treaty of Madrid, which demarcated the borders between the South American colonies of Spain and Portugal[261]. Just that year, the following map entitled "Nueve Granade, Caracas et Guyanés" was published. This map is relevant as it indicates that the territory located west of the Essequibo River was at that time called Spanish Guiana *(Guyane Spagnole)*. From that map, we can deduce that Venezuela's title to the disputed territory has always been sufficient and definitive, a fact that is reflected in the maps produced at different times throughout our history.

We know that the maps alone do not have the value of titles and that their effectiveness is limited in demonstrating the aspirations of the parties *"and, especially, they constitute proof against the person who draws them due to their unilateral nature"*[262]. In a similar sense, Héctor Faúndez indicates that *"The official maps did not constitute (nor do they now constitute) a title of dominion or acquisition of territory and,*

261 *Ibidem,* Page 23.

262 Gabriel RUAN SANTOS, "Los títulos de la reclamación por la Guayana esequiba. Especial referencia a la 'cláusula de prescripción'" ("The titles of the Claim by Guiana-Essequibo. Special reference to the "limitation clause", *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September 2021, Caracas, 2021.

coming from an interested party, neither did they constitute (nor do they now constitute) a means of proof of the extension of the territories under the sovereign dominion of each State; but they are a valuable means of proof for the counterparty, to show how far went the territorial claims of those who, at a certain point in time, exhibited those maps as being official"[263].

By 1750, the General Captaincy of Venezuela had not even been created, but the Treaty of Münster had been signed on 24 October 1648, whereby the Kingdom of Spain ceded to Holland the camps of Demerara, Berbice and Essequibo. However, all the ceded territories were located east of the Essequibo River.

From the above, one can conclude that all the territories located west of the Essequibo River belonged to the Kingdom of Spain. The consequence of this is that, after its independence, Venezuela succeeded the Kingdom of Spain in its rights over these lands. This, of course, includes the geographic space shown on this map as Spanish Guayana.

The Dutch attempted to establish new posts on the Cuyuní River between 1754 and 1772. However, these attempts were repelled by the Spaniards *"who had expanded the occupation with a countless towns and villages, in addition to the numerous religious missions that had arrived in the territory"*[264].

On 4 June 1762, the King of Castile *"issued a royal title in Aranjuez declaring all of Guayana as a separate Command Province, with immediate subordination to the Viceroyalty of Nueva Granada"*[265]. Then, on 5 May 1768, it was established by Royal Decree that the southern boundary of Guayana would be the Amazon River and separated it from Nueva Andalucía[266].

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263 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 78.

264 *Ibidem,* Pages 30-31.

265 *Ibidem,* Page 17.

266 Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted

This was followed by the creation of the General Captaincy of Venezuela, by Royal Decree of 8 September 1777. That same year, the provinces of Cumaná, Guayana, and Maracaibo and the islands of Trinidad and Margarita were separated from the Viceroyalty and General Captaincy of the New Kingdom of Granada and were incorporated into the General Captaincy of Venezuela[267].

In 1779, José de Avalos, Intendant General of Venezuela, authorized officer José Felipe de Inciarte to carry out survey and population work in the eastern zone of the Lower Orinoco[268].

In 1790, a new map entitled *"Caracas and Guyanas"* was published, just like the map published in 1750, indicating the territory of Spanish Guyana, whose eastern border coincides precisely with the Essequibo River. In this regard, this cartographic representation was of great value to indicate what the dominions of the Kingdom of Spain were at that time. This map was drawn after the conclusion of the Treaty of Münster dated 24 October 1648. With this, one can see that, already by the year this map was drawn (1790), the Kingdom of Spain had ceded the camps of Demerara, Berbice and Essequibo to Holland; all of them located east of the Essequibo River.

Above. "In 1768 the General Command of the Orinoco and Río Negro was added to the Province, whose boundaries reached the Amazon from the south.".

267 *Cf.* Irene LORETO GONZÁLEZ, "*Génesis del constitucionalismo en Venezuela"* ("The Genesis of Constitutionalism in Venezuela"), *Juridical Research Center*, Caracas, 2005. Page 74.

268 *Cf.* Carlos ÁLAMO YBARRA, Quoted Above, Page 19.

On 1 January 1799, Francisco de Miranda published the map drawn by Juan de la Cruz Cano y Olmedilla, also known as the Geographic Map of South America, in which the border of the Captaincy and Guyana was established on the Essequibo River. This was sponsored by the United Kingdom and published in London[269] by William Faden, royal geographer to King George III. In an article, Smith calls Cano's map the South American equivalent of Mitchell's 1755 Map of the British Colonies [270]:

269 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 121.

270 See: Geographical Map of South America. Available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~3373~330002:Mapa-Geografico-de-America-Meridion.

In the month of June 1803, the United Kingdom occupied *"the region situated between the Essequibo and Demerara rivers and remained there until 13 August 1814, when the Treaty of London was signed"*[271].

On 28 May 1811, the Treaty of Alliance and Confederation between Cundinamarca and Venezuela -also known as the Lozano-Cortés Treaty- was signed, establishing the basis of the *uti possidetis iuris*.

The Constitution of 1811, sanctioned on 21 December established, in article 128, that *"Once free from the oppression suffered by the Provinces of Coro, Maracaibo, and Guayana, if they can and wish to join the Confederation, they will be admitted to it without the violent separation in which, to their regret and ours, they have remained, altering the principles of equality, justice and fraternity, which they will henceforth enjoy as all the other Provinces of the union"*[272].

The Treaty of London was signed on 13 August 1814, whereby Holland ceded to the United Kingdom the Dutch establishments of Berbice, Demerara and Essequibo located to the east of the Essequibo River that, in turn, Holland had acquired from Spain through the Treaty of Münster dated 24 October 1648. All these camps were located east of the Essequibo River and comprised a territory of approximately 51,700 square kilometres.

Shortly thereafter, on 7 August 1817, Simón Bolívar, in a letter to Colonel Leandro Palacios, sent from Lower Guayana, stated: *"At last I have the pleasure of seeing Guayana free! The capital surrendered to us last 18th,* and these fortresses, on the 3rd of this month. *The country has not been left in the best conditions, because of the population, which has almost been annihilated in the seven months of siege, and because a great part of the people emigrated with the Spaniards"*[273].

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271 José VARGAS PONCE, "¡La Guayana Esequiba es de Venezuela!" ("The Guayana-Esequiba Belongs to Venezuela"), Available at https://josevargasponce.wordpress.com/2011/10/29/la-guayana-esequiba-es-de-venezuela/.

272 Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), *Academy of Political and Social Sciences*, Caracas, 1997. Pages 555 & ff.

273 See: the article by RAFAEL CASTRO, *"Las revoluciones son esencialmente transformaciones culturales"* ("Revolutions are In Essence Cultural Transformations") published on 10 August 2015. Available at: https://www.aporrea.org/actualidad/a212082.html.

On 15 October 1817, from the General Headquarters of Angostura, Simón Bolívar issued a decree whereby he incorporated the province of Guayana to Venezuela and established its departments. Article 1 established that *"The Province of Guayana in all its extension is reunited to the territory of Venezuela, and will form from today an integral part of the Republic"* [274]

The specific treatment of the boundaries of the Republic in the department of Lower Orinoco was stipulated in the following terms: *"To the North: the Orinoco streams from the mouth of the Caroni to the entrance to the sea by the Rio Grande, and the coast of the sea up to and excluding Fort Muruca. To the East and South: the limits with foreign possessions. To the West: those that have been assigned to the Department of the Centre by the East"*[275].

Guayana was also incorporated as a province in the Constitution of Angostura, dated 15 August 1819, with the participation of the deputies for Guayana, Eusebio Afanador, Juan Vicente Cardozo, and Juan Tomás Machado. Within Title 2º, Section 1º, Article 2 established: *"The Territory of Venezuela is divided into ten Provinces, which are: BARCELONA, BARINAS, CARACAS, CORO, CUMANA, GUAYANA, MARACAIBO, MARGARITA, MERIDA, and TRUJILLO. Their limits and demarcations shall be set by Congress"*[276].

On 17 December 1819, the Congress of Angostura sanctioned the Fundamental Law of Colombia, whose Article 2 also established the *uti possidetis iuris* in the following terms: *"Its territory will be that which comprised the former General Captaincy of Venezuela, and the Viceroyalty of the new Kingdom of Granada, embracing an extension of 115 thousand square leagues, whose precise terms will be fixed in better circumstances"*[277].

With the Fundamental Law of Colombia and, especially, with the aforementioned provision of Article 2, the decree of Simón Bolívar

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274 See: Libertador Simón Bolívar's Decree dated in Angostura on 15 October 1817, incorporating the Province of Guayana to the Republic of Venezuela and indicating its Departments. Available at: http://www.archivodellibertador.gob.ve/escritos/buscador/spip.php?article2283.

275 *Ídem.*

276 Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), Quoted Above, Pages 619 & ff.

277 *Ibidem,* Pages 643-644.

of 15 October 1817, to which we have already referred to before, was complemented. That decree had not expressly considered the principle of the *uti possidetis iuris* when establishing the limits and left out of Venezuelan dominions *"a small portion on the line of the Atlantic Sea beach west of the mouth of the Essequibo River up to the Moruco River"*[278]. This was remedied with the tacit repeal of the decree, produced by the referred law according to which the territory of Venezuela would, now, be the same as that of the General Captaincy of Venezuela[279].

On 20 February 1821, diplomat Francisco Antonio Zea, who had previously been Vice-President of the Republic of Colombia from 17 December 1819, to 19 March 1820, and Ambassador of the Republic of Colombia in the United Kingdom from 16 June 1820, to 28 November 1820, sent a letter to the Minister of Foreign Affairs of the United Kingdom, Robert Stewart -Viscount of Castlereagh- to clarify the situation of the eastern border of Colombia. In the letter in reference, he stated:

> *"The Republic of Colombia occupies in South America the northernmost part, extending in latitude from 12° N, to 69 S, and in longitude from 589 to 81 Q of the Greenwich meridian.*
> *Its limits are to the East the Atlantic Ocean that bathes its coasts from the mouths of the Orinoco to Cape Nassau; from this cape, starts a line North-South that ends in the Essequibo River, the left bank of this river being the border with the Dutch Guyana"*[280].

The above is followed by the Fundamental Law of the Union of the Peoples of Colombia dated 15 August 1821, sanctioned by the Congress of the Villa del Rosario de Cúcuta, whose Article 5 ratified the *uti possidetis iuris* as follows:

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278 Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted Above.

279 *Ídem.*

280 Herman GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 33.

> *"The territory of the Republic of Colombia shall be that included within the limits of the former General Captaincy 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"*[281].

The Constitution of the Republic of Colombia of 1821, which considered the *uti possidetis iuris* principle, also integrated Guayana into its territory. In effect, Article 6 established the following: *"The territory of Colombia is the same as that of the former Viceroyalty of Nueva Granada and the General Captaincy of Venezuela"*[282].

This was ratified by the Law of Territorial Division of the Republic of Colombia of 25 June 1824, which established that the territory of the Republic would be divided into twelve departments, including the Department of Orinoco, which according to Article 2 *eiusdem* had among its provinces those of Cumaná, Barcelona, Guayana, and Margarita. The same Article 2 established that the province of Guayana was composed of the cantons of Santo Tomás de Angostura, Río Negro, Alto Orinoco, Caura, Guayana Vieja, Caroní, Upata, La Pastora, and La Barceloneta[283].

The Territorial Division Law of 25 June 1824, remained in force even after the disintegration of Colombia when it was adopted by the State of Venezuela. This is fundamental for the understanding of Venezuelan border history. The same territorial limits fixed in the Territorial Division Law of 1824 were maintained after the separation of Venezuela from the Republic of Colombia.

Thus, the territorial composition of the State of Venezuela remained the same. Venezuela continued to exercise its sovereignty over the same territory that in the past was the seat of the General Captaincy of Venezuela. This situation remained as such up to the government of

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281 Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"). Quoted Above, Pages 645-646.

282 *Ibidem,* Pages 647 & ff.

283 Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted Above.

José Tadeo Monagas, when the Law of 28 April 1856, was sanctioned, establishing the Territorial Division of Venezuela.

On 16 July 1824, the Republic of Colombia requested the United Kingdom to recognize it as an independent nation. That same year, José Manuel Hurtado was appointed Envoy Extraordinary and Minister Plenipotentiary of Colombia as a substitute for Doctor Rafael Revenga with the primary mission of obtaining that recognition[284]. The United Kingdom gave its unreserved recognition to the Republic of Colombia.

This *"... recognition of Colombia came through the influence of Canning to Lord Liverpool where he submitted a memorandum to the cabinet favouring the recognition of new states"*[285]. In December 1824, the decision of the United Kingdom to recognize Colombia as an independent state was notified to Spain and, that same year, it was heard with joy in America[286].

The recognition of the United Kingdom to the Republic of Colombia was stated through the Treaty of Cooperation and Friendship between Colombia and Great Britain adopted on 1 April 1825, approved by decree of the Congress of Colombia on 23 May 1825, and ratified by the government of Colombia on that same date. The ratifications were exchanged on 7 November 1825. This treaty was imposed by the United Kingdom as a condition for the recognition of Colombia. Article 1 of the aforesaid treaty established: *"There shall be perpetual, firm, and sincere friendship between the Republic and People of Colombia and the subject dominions of His Majesty the King of the Kingdom of Great Britain and Ireland, his heirs and successors"*[287].

Venezuelan Constitution of 1830 kept Guayana within its territory by expressly establishing, in Article 5, the *uti possidetis iuris* principle in the following terms: *"The territory of Venezuela comprises all that which, before the political transformation of 1810, was called the*

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284 Julio Alberto PEÑA ACEVEDO, "Cronología de Guyana, cuarta entrega, Gran Colombia" ("The Guiana Chronology, fourth issue, The Greater Colombia"). Published on 19 March 2015. Available at: https://elespacioacuaticovenezolano.com/2015/03/19/1552jualpeac/

285 *Ídem.*

286 *Ídem.*

287 Ministry of Foreign Relations of Colombia, *"Tratado de Cooperación y Amistad entre Colombia y Gran Bretaña"* ("Treaty of Cooperation and Friendship between Colombia and Great Britain") adopted on 1 April 1825, Available at: http://apw.cancilleria.gov.co/Tratados/adjuntosTratados/UK-01-04-1825.PDF.

General Captaincy of Venezuela. For its better administration it will be divided into Provinces, Cantons, and Parishes, whose limits will be set by law"[288].

In 1840, the limits of the Republic of Colombia were established in accordance with the *uti possidetis iuris* principle, and were graphically represented in the *Chart of the Republic of Colombia, divided into 12 Departments in 1824,* which was included in the *Physical and Political Atlas of Venezuela* prepared by Agustín Codazzi colonel of engineers.

The limits represented in the *Chart of the Republic of Colombia, divided into 12 Departments in 1824*, included the territories of the Province of Guayana; and stated that there were, at the time, English occupiers in some portions of such territory, who were qualified as usurpers, as can be seen below:

Chart of the Republic of Colombia divided into 12 Departments in 1824, as taken from the Physical and Political Atlas of Venezuela prepared by Agustín Codazzi[289].

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288 Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), Quoted Above, Pages 707 & ff.

289 Quoted in: Allan Randolph BREWER-CARÍAS, "La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), Quoted Above. Page 143.

Brewer-Carías points out that, in the aforesaid chart, *"the territory of the Canton of Upata of the Province of Guayana extends to the Essequibo River, excluding the area between the mouth of the Moruco River and the Essequibo River, which is shown in this case with the indication: "TERRITORY DEEMED USURPED BY THE ENGLISH", and the same situation is found in the area of the west bank of the Essequibo River's headwaters"*[290].

The *Political Map of Venezuela of 1840* was also included in the *Physical and Political Atlas of Venezuela.* From the Atlas, it follows that the eastern border of Venezuela was the Essequibo River. Although, as is the case also with the *Chart of the Republic of Colombia divided into 12 Departments in 1824*, the territory of the west bank of the Essequibo River headwaters is not included therein and neither is the territory in which the mouth of the Moruco and Essequibo rivers is located; these territories are shown in the aforementioned Chart as *"territory deemed usurped by the English",* even though this indication is no longer present in the *Political Map of Venezuela of 1840*:

Political Map of Venezuela of 1840,
as taken from the Physical and Political Atlas of Venezuela
prepared by Agustín Codazzi[291].

Then, by the Treaty of Peace and Recognition of 1845, after the independence processes, Spain renounced all the rights it had to

290 *Ibidem,* Page 146.
291 *Ibidem,* Page 143.

Venezuelan territory and, through this treaty, also recognized that the province of Guayana was part of the territory of the Republic.

It must also be considered that the *"Law of 28 April 1856, that established the Territorial Division of the Republic"*[292], as we have previously commented when referring to the Territorial Division Law of the Republic of Colombia dated 25 June 1824, was its immediate antecedent since it remained in force until 1856.

Regarding the Law of 28 April 1856, which established the Territorial Division of the Republic approved and sanctioned by Venezuelan Congress of Venezuela, we must highlight the provision in Article 1º as follows:

> *"The city of Santiago de León de Caracas, birthplace of the Liberator Simón Bolívar, is the Capital of Venezuela, whose territory is divided into twenty-one Provinces to be called: Cumaná, Maturín, Margarita, Barcelona, Guayana, Amazonas, Apure, Caracas, Guárico, Aragua, Carabobo, Cojedes, Portuguesa, Barinas, Barquisimeto, Yaracuy, Coro, Trujillo, Maracaibo, Mérida and Táchira"*[293].

In fact, it is not surprising that the Province of Guayana has been included among the provinces of Venezuela. On the contrary, this is the natural consequence of the historical and legal titles supporting that the Essequibo territory belongs to Venezuela since the beginning of the Republic.

The Law of 28 April 1856, further details the territory of the Republic and, certainly, specifies the cantons that make up the Province of Guayana which, according to the provisions of Article 7 of that law, was formed by *"the cantons of Héres, Upata and Alto Orinoco; its capital, Ciudad Bolivar"*[294]. This same provision of Article 7 was subdivided into three paragraphs setting forth the division of each canton:

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292 This law of territorial division has been the first and only one that Venezuela has had throughout its history in this matter.

293 The Law of 28 April 1856, that establishes the Territorial Division of the Republic approved and sanctioned by Congress of the Republic of Venezuela Available at: https://docs.venezuela.justia.com/federales/leyes/ley-del-28-de-abril-de-1856-que-establece-la-division-territorial-de-la-republica-de-venezuela.pdf

294 *Ídem.*

> *"Paragraph First - The canton Héres comprises the parishes of Ciudad Bolívar, Panapana, Barcelonesa, Aripao, Borbón, Moitaco, La Piedra, Puruey, Ancient Guayana, Piacoa, and Curiapo; its capital is Ciudad Bolívar.*
> *Paragraph Second: The canton Upata comprises the following parishes: Upata, Puerto de Tablas, Cupapui, Pastora, San Antonio, Tumeremo, Gurí, Palmar, Miamo, Caruachi, Tupuquen, Guasipati, and Carapo; its capital is Upata.*
> *Paragraph Third: The canton Alto Orinoco comprises the parishes of Caicara, Cuchibero, Altagracia, and Urbana; its capital is Caicara"*[295].

On the other hand, Article 8 ratified that *"the islands that form the Orinoco, including all those of the upper and lower Delta, and the beaches known as "la manteca", including that of Pararuma"*[296] belonged to the Province of Guayana.

As for the probatory elements that lead to the conviction that Venezuela has always had legitimate rights over the disputed territory, we cannot ignore the importance of a map published in 1860 under the title "Caracas and Guiana":

This map depicts the territory that belonged to the Kingdom of Spain and, on that portion of geographic space, it includes Spanish Guiana,

295 *Ídem.*
296 *Ídem.*

clearly showing what Spanish Guiana was, before the independence of Venezuela.

It also explicitly indicates that the territory of Dutch Guiana, marked on the map as *Dutch Guiana*, begins to the east of the Río Essequibo, which territory was ceded by the Kingdom of Spain to the Netherlands through the Treaty of Münster of 24 October 1648.

Thus, Venezuela's titles are clearly comprised not only in historical documents, but also in normative bodies of domestic and international law, although none of them were considered by the Arbitral Tribunal of Paris, which did not fulfil its duty and obligation to ascertain the legitimacy and legality of these titles that demonstrate Venezuela's rights over the disputed territory.

As we have said before and now ratify, the obligation to *investigate and ascertain* entailed that the arbitrators consider the legal titles of each of the parties and corroborate that they could indeed have been considered evidence of their claims, but the arbitrators decided otherwise with absolute arbitrariness, thus ignoring the abundance of valid Venezuelan titles.

If the arbitrators had complied with their duty to ascertain and ensure the validity of the legal titles of the parties, it would have been impossible for them to award such a vast territory to the English, which they did in clear violation of Venezuela's historical territorial rights.

2.3. Nullity of the Arbitral Award for Arbitrators Exceeding their Powers

The Paris Arbitral Award is null and void for having committed the flaw of arbitrators exceeding their powers by wrongly applying the prescription rule in favour of the United Kingdom in violation of Article IV of the arbitration treaty which provided as follows: "*Adverse possession or prescription for a term of fifty years shall constitute good title. The arbitrators may deem that the exclusive political domination of a District, as well as the effective colonization of it, is sufficient to constitute adverse possession or to create titles of prescription"*[297].

[297] Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International

As explained above, the Treaty of Washington incorporated Rule "a", known as the prescription clause, which did not mean the possibility of making use of it with predominance to the existence of valid legal titles such as those Venezuela had and still has. An erroneous and deviated construal of said rule was committed when the principle of *uti possidetis facti* prevailed over the principle of *uti possidetis iuris,* the true axis of the problem[298]. This was done under the argument that *uti possidetis iuris*, a principle of American international law, was only applicable between the States of the region under conquest. Thus, the United Kingdom, not being part of the States under colonial rule, should not be subject to its application.

It was not at all convenient for the United Kingdom that the applicable law should involve an assessment of the principle of *uti possidetis iuris*. In fact, that principle should have been key in the determination of the boundary. Not only was it a principle that formed part of our constitutional tradition since independence, but it has also been repeatedly recognized by international jurisprudence and doctrine[299].

In any case, there is no doubt that the application of *uti possidetis iuris* would have benefited Venezuela, which in accordance with this principle acquired all the territories that belonged to the General Captaincy of Venezuela since 1777. It is here where the notion of 'critical date' begins to gain relevance, since the need arose to establish the specific moment that should be considered by the court to apply this rule.

Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337. Héctor Faúndez Ledesma, Quoted Above, Page 337.

298 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 192.

299 See the discourse of Víctor RODRÍGUEZ CEDEÑO at *Academy of Political and Social Sciences* event under the title of "CIJ Jurisdiction and Determination of the Land Border Between Guiana and Venezuela" held on 20 January 2022. Available at: https://www.youtube.com/watch?v=UCFlmNhatQg. To demonstrate the consolidation of the principle of *uti possidetis iuris* he mentions in his speech a series of international awards that recognize it, e.g.: the Award of Queen Maria Cristina of Spain (Isla de Aves 1865) and the Award of the President of France dated 11 September 1900, that recognizes the validity of the titles inherited from the crown. It concludes that the principle of *uti possidetis iuris* is not a political principle but an eminently legal one.

We are reminded that a critical date is known as- and this has been defined by jurisprudence- *"that from which the acts of the parties cannot alter the legal situation, either to improve or to prejudice the rights of said parties"*[300].

The establishment of a critical date was based on the principle of good faith that must govern the parties in the process in order not to worsen the conflictive situation existing between them. In the dispute between Venezuela and the United Kingdom there was- as is usually the case in territorial disputes- a predetermined critical date.

That predetermined critical date was the one agreed upon by the manifestations of will of duly authorized and capable officials, which took place on 18 November 1850, by virtue of the exchange of diplomatic notes *"whose essential purpose was to put an end to the state of tension and hostility existing at that time between Venezuela and Great Britain and at the same time to achieve legal certainty by freezing the usurping appetite of Imperial Great Britain"*[301], a matter that has been addressed earlier in this study.

Even disregarding the conventional date of the *Statu quo* Agreement of 18 November 1850, there was another critical date, 13 August 1814, when Holland ceded its dominions east of the Essequibo River to the United Kingdom.

Venezuela was led to believe through its representatives that the court would apply prescription rule to a period prior to 13 August 1814, and that, moreover, it would only apply to a small portion of the territory.

However, this rule was applied - to the benefit of the English- to the future and not to the past. That very thing was maintained before the court -surprisingly- by the Former President of the United States of America, Benjamin Harrison, who was acting on behalf of Venezuela when, referring to the secret correspondence between the Secretary of State, Richard Olney and the Ambassador of the United Kingdom in Washington, Julian Pauncefote, he stated the following:

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300 Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" (The Arbitral Proceedings on the Guiana-Esequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"). Quoted Above, Page 356.

301 *Ibidem,* Page 359.

> *"It would be naive on my part if I did not say that they, clearly, seem to indicate that Mr. Olney and Mr. Julian Pauncefote understood the prescription rule applies to the years after 1814"*[302].

In other words, confidential letters from two individuals who had no authority to bind Venezuela were taken to commit the country to a manifestation of will completely contrary to their own interests in the controversy.

In fact, with the endorsement of one of Venezuela's lawyers, the correspondence of two non-representative individuals was taken as an interpretative statement that was detrimental to the nation. As it has been pointed out in an investigation related to this matter: *"we are not dealing with a duly accredited representative here, but with the representative of a third State that enters into a secret agreement, without any authority to bind anyone, an agreement that amazingly is admitted in the process, incorporated to the evidence and, consequently, produces full procedural effects. No greater outrage can be found in the judicial history of nations, to the detriment and behind the back of the country whose interests were being debated"*[303].

The award established that the boundary line between the United States of Venezuela and British Guiana was 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 Cuyuní,*

302 *Ibidem,* Page 374.
303 *Ibidem,* Pages 376-378.

> *and thence along the northern bank of the River Cuyuní 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. Provided always that the line of delimitation fixed by this Award shall be subject and without prejudice to any questions now existing, or which may arise, to be determined between the United States of Venezuela and the Republic of Brazil, or between the latter Republic and the Government of Her Britannic Majesty*[304].

In 1967, during the presidency of Raul Leoni, the Jesuit Fathers Hermann Gonzalez Oropeza and Pablo Ojer published the *"Report that Venezuelan experts for the question of limits with British Guiana present to the national government, Ministry of Foreign Affairs*[305]. Hermann González Oropeza and Pablo Ojer Celigueta based their report on confidential British documents.

When writing about the report presented by Venezuelan experts, García-Velutini insists on recalling that *"the first conclusion formulated therein is that Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure and deceit exerted by the United States of America and Great Britain, which negotiated the bases of the compromise to the exclusion of the Venezuelan Government in the last and decisive phase of the negotiation; and Venezuela, the Report continues, was so neglected that the United States of America and Great Britain agreed from the beginning of the negotiation that no Venezuelan jurist would be part of the Arbitral Tribunal"*[306].

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304 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 342-343.

305 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above.

306 Oscar GARCÍA-VELUTINI, Quoted Above, Page 17.

It is clear from the aforementioned report that even if the prescription rule is assumed in this incorrect way, it is not possible to deduce from it the possibility of granting the enormous territory that was awarded to the United Kingdom. Indeed, it is demonstrated in the map included in the above-mentioned report that the territory that the United Kingdom could acquire by means of the prescription rule was much smaller than that which the award finally granted it.

In the map, which we will analyse when dealing with the evidence of Venezuela, the territories occupied by the British in 1840, then between 1886 and 1890, and then after 1890, can be clearly observed. Thus, the prescription clause was not applicable to a territory as vast as the one finally awarded to the United Kingdom; on the contrary, the prescription rule could only be applied, if it had been appropriate in law, which it was, on a considerably smaller territorial portion[307].

In short, the territory shown on the map is significantly smaller than that awarded to the United Kingdom in the Paris Arbitral Award, since, even in the worst of interpretations, these were the territories to which the prescription rule could apply. Therefore, the Paris Arbitral Award erroneously applied the prescription rule in favour of the United Kingdom, thus violating Article IV of the Arbitration Treaty and, consequently, it committed the flaw of arbitrators exceeding their powers.

2.4. Nullity of the Arbitral Award on grounds of *ultra petita*

It is clear that according to Article I of the Treaty of Washington, the arbitral tribunal had the sole mission of *"determining the dividing line between the United States of Venezuela and the Colony of British Guiana"*[308]. Likewise, according to Article III, the tribunal was to investigate and ascertain the extent of the territories that could be legally claimed and was to determine the dividing line between the United States of Venezuela and the Colony of British Guiana.

307 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 15.

308 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 336.

The arbitral award must be subject to the*ma decidendum*; in other words, the arbitrators may not exceed the objective limits of the dispute that the parties have submitted to them. The arbitral award may not decide on aspects that go beyond what has been requested by the parties and may not affect the legal situation of other subjects of international law who are not parties in the arbitration.

This characteristic of the arbitral award is a consequence of the conventional basis of arbitration, since it is based on the consent of the parties to resolve their disputes through this mechanism. This consent is stated in a prior arbitration agreement, which delimits the scope of the dispute and determines the matter on which the arbitrators can and must act, and becomes the precise limit of their powers.

The Paris Arbitral Award violated these limits and having the flaw of arbitrators ruling *ultra petita*; first, because it decided on the navigation regime in the Barima and Amacuro rivers, which had nothing to do with the subject matter of the dispute delimited in the Treaty, and, on the other hand, with the decision, it involved and affected States that did not subscribe the Arbitration Treaty, ruling on boundary issues that were under discussion at that time, such as the border between British Guiana and Brazil.

The arbitral tribunal did, indeed, ignore the objective boundary when it ruled on the regime of waterways and bestowed international standing to the navigation activities in the Barima and Amacuro rivers, a matter that had no place in the Treaty. And, furthermore, ignored it when it ruled on customs duties between the States in dispute. In this regard, the Award determined the following:

> *"In fixing the above delimitation, the Arbitrators consider and decide that in times of peace the Rivers Amakuru and Barima shall be open to navigation by the merchant-ships of all nations, subject to all just regulations and to the payment of light or other like dues: Provided that the dues charged by Venezuela and the Government of the Colony of British Guiana in respect of the passage of vessels along the portions of such rivers respectively owned by them shall be charged at the same rates upon the vessels of Venezuela and Great Britain, such rates being no higher than those charged to any other nation: Provided also that no customs*

> *duties shall be chargeable either by Venezuela or by the Colony of British Guiana in respect of goods carried on board ships, vessels, or boats passing along the said rivers; but customs duties shall only be chargeable in respect of goods landed in the territory of Venezuela or Great Britain respectively"*[309].

It follows from the foregoing that the award violates the subjective aspect of its jurisdiction because it concerns States that are not signatories to the Arbitration Treaty, since it also defines the territorial limits of Guyana in relation to Brazil and Suriname.

The Paris Award affected Brazil when it awarded the United Kingdom the boundary of the Cotinga and Takutú rivers, territories that were the object of dispute between the United Kingdom and Brazil. Indeed, the award stated when determining the boundary:

> *"...and from Mount Roraima to the **source of the Cotinga**, and along the mid-stream of this River to its junction with the **Takutú**, and along the mid-stream of the **Takutú** to its source, and thence in a straight line to the westernmost point of the Akarai Mountains.."*[310]. (Highlighting Added).

In fact, when the Treaty of Washington was signed in 1897, Brazil anticipated the possible effects that could result from the award. Before the Paris Arbitral Award of 1899 was rendered, the Brazilian government filed a protest against the wording of the Arbitration Treaty of 1897, specifically on the generality of Article III, after considering that its content was prone to negatively compromise Brazil's rights in its territorial dispute with the British. The Brazilian protest was sent to the President of the Arbitral Tribunal and also to the British and the Venezuelan Governments.

Thus, the Paris Arbitral Award impaired Brazil's situation by awarding to the United Kingdom lands disputed by these two nations, thus eliciting formal protests from the Brazilian Ministry of Foreign Affairs.

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309 *Ibidem,* Page 343.
310 *Ibidem,* Page 342.

Brazil's considerations in anticipating and subsequently raising its protest were correct. The content of the Circular Letter of the Ministry of Foreign Affairs of Brazil to the Brazilian Diplomatic Missions dated 7 December 1899, in Rio de Janeiro expresses in this sense the affectation and perplexity that the award caused Brazil, since the decision set the border between the United States of Venezuela and the United Kingdom at the limit of the Cotingo and Takutú rivers that were under litigation between the United Kingdom and Brazil[311].

The circular letter states that the award violated the principle of international law according to which arbitral awards can only decide on the basis of what has been agreed in the arbitration treaty. The violation of the limits of the dispute meant that Venezuelan territory extended into Brazilian territory, including the southern slopes of the Aracay mountain range disputed between Brazil and France[312].

It was impossible for either Venezuela or the United Kingdom to agree that their border should pass through the Cotingo and Takutú rivers, much less through the Aracay mountain range. In fact, *"Venezuela could not, because its boundary with Brazil is stipulated in the Treaty of 5 May 1859, and excludes those regions, Great Britain could not, because that boundary is the object of the litigation that it is going to submit to arbitration against Brazil"*[313].

Finally, the circular letter pointed out that the Paris Arbitral Tribunal ruled beyond the jurisdiction that had been fixed in the Treaty of Washington, or ruling *ultra petita* when it ruled on questions "*not claimed either by Venezuela or by Great Britain, attributing to Venezuela the Amazon region which it does not dispute with Brazil and attributing to British Guyana still against Venezuela, only the Schomburgk line in the part claimed against Brazil"*[314].

In the same sense, in 1938- more than eighty years ago-, Academician Dr. Carlos Álamo Ybarra pointed out in this regard that the award worsened "*the situation of Brazil by awarding to Great Britain lands*

311 Elbano PROVENZALI HEREDIA, Quoted Above, Pages 76-77.
312 *Ídem.*
313 *Ídem.*
314 *Ídem.*

that these two nations were disputing, which provoked protests from the Chancellery of Rio de Janeiro, signified in Paris and London"[315].

The Paris Arbitral Award affected States that had not signed the Treaty of Washington of 2 February 1897 and thus violated a fundamental principle of international arbitration law: the relativity of awards. This principle, derived from the contractual nature of arbitration, is the translation of the civil law principle of the relativity of contracts into the field of international arbitration.

According to this principle, in addition to the objective limits of the dispute -to not go beyond the matter in dispute- there are subjective limits -to not affect subjects not involved in the dispute- and the Paris Award transgressed both these limits.

The arbitrators ignored the rules of the Treaty of Washington by deciding on matters over which they had no jurisdiction whatsoever, thus increasing the grounds for nullity of the Paris Arbitral Award"[316]. Therefore, because the award had the flaw of arbitrators exceeding their powers and, specifically, ruling *ultra petita*, the Arbitral Award is a null and void act.

2.5. Nullity of the Arbitral Award for failure to state reasons

Both the 1897 Treaty of Washington and the general principles of international law required that, for an award to be valid, it be issued in adherence to law. That meant that the decision would include a necessary and sufficient explanation for the parties to understand the arbitrators' valuation of each of the juridical titles presented to them and have a reasoned explanation of why they decided as they did.

The duty to state reasons stems, first, from Article III of the Treaty of Washington that established that the Tribunal shall investigate and ascertain the extension of the respective territories, or the territories that could legally be claimed by the parties[317]. If the Tribunal was under

315 Carlos ÁLAMO YBARRA, Quoted Above, Page 87.

316 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 16.

317 Héctor FAÚNDEZ LEDESMA, *"La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

the obligation of ascertaining the legal grounding of the titles presented by the parties it would, then, also have to explain how it reached its findings.

Further, as previously said, at the time the decision was issued, it was already a principle in international law that, in arbitration at law, arbitrators would explain or reason their awards. It was thus the precedent was set in the Alabama case where the arbitrators drew up an award explaining in great detail the reasoning behind their decision.

Likewise, the duty to state reasons was embodied in Article 23 of the Draft Rules of International Arbitral Procedure of 1875 prepared by the Institute of International Law, according to which:

> *"The award shall be set in writing and* ***shall state the reasons on which it was based****, save as otherwise stipulated in the arbitral agreement. It shall be signed by each member of the arbitral tribunal. Should a minority refuse to sign, the signatures of the majority shall suffice, with a written declaration stating that the minority refused to sign* [318]. (Highlighting Added).

This provision highlights the importance of the statement of reasons under the principles of international law at the time of the dispute, that it was dispensable only when the parties had so agreed. But, in the Paris Arbitration, the parties never released the arbitrators from their duty to reason their findings.

It was also clear that, at the time of the dispute, reasoning was a customary demand -a source of international law- when Article 52 of the Convention for the Peaceful Settlement of International Disputes, being the main result of The Hague Conference of 1899, established:

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[318] International Law Institute, Projet de règlement pour la procédure arbitrale internationale, Session of La Haye, 1875. Page 5. Original wording in the article: "La sentence arbitrale doit être rédigée par écrit et contenir un exposé des motifs sauf dispense stipulée par le compromis. Elle doit être signée par chacun des membres du tribunal arbitral. Si une minorité refuse de signer, la signature de la majorité suffit, avec déclaration écrite que la minorité a refusé de signer" ("The arbitral award shall be in writing and contain a statement of reasons unless exempted by the special agreement. It must be signed by each member of the arbitral tribunal. If a minority refuses to sign, the signature of the majority shall suffice, together with a written declaration that the minority has refused to sign").

> *"The award, given by a majority of votes,* ***must state the reasons on which it is based****. It is drawn up in writing and signed by each member of the tribunal. Those members who are in the minority may record their dissent when signing"*[319].

Thus, the statement of reasons was a requirement for the validity of arbitration awards, which at the time were considered to be true legal settlements. Although Fyodor Fyodorovich Martens -President of the Arbitral Tribunal of Paris- tried several times at the First Hague Conference to impose his thesis that arbitral awards should not be reasoned, he did not succeed.

Indeed, in the discussions that took place at that convention, Fyodor Fyodorovich Martens put forward that one of the reasons for dispensing with the reasoning of arbitral awards was that:

> *"To require them (the arbitrators) to state the reasons of their decisions would be to impose on them one of the most sensitive obligations, even to the point of seriously embarrassing them, if their judicial consciences were not in agreement with the demands of their governments or the sensitivities of public opinion in their country"*[320].

To Federico de Martens, reasoning, from a juridical standpoint, was a great advantage, but, from a practical standpoint, not so. In this effort, the Russian was seconded only by Mr. Holls, the delegate of the United States of America.

However, other representatives who were present at the meeting, such as Dr. Phillip Zorn, a private judicial advisor, a professor at the Königsberg University, who attended as a scientific delegate for Germany; Chevalier Descamps, a Senator representing Belgium; and the plenipotentiary delegate and member of the Council of State in Holland, Tobias Michael Carel Asser; refuted his arguments and held

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319 James BROWN SCOTT (dir.), Quoted Above, Page 244. Original wording in the article: "The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal. Those members who are in the minority may record their dissent when signing".

320 *Ibidem,* Page 740.

the position of the majority at the time, according to which, awards should state the reasons on which they were based. This was in fact the prevailing position included in Article 52 of the Convention for the Peaceful Settlement of International Disputes issued at the Convention.

The arbitrators, who were all renowned and greatly experienced jurists in matters of international law and, especially so, of arbitration, knew the validity of these principles of international law. If anyone knew applicable law, that was, in fact, Federico de Martens. Perhaps the most contradictory thing was that he attended The Hague Convention I representing Russia whilst the Paris Arbitration was under way and, for that reason, required suspension of the hearings on three occasions; once at the end of June and twice in July 1899.

As Falcón Briceño pointed out with reference to Fyodor Fyodorovich Martens *"... while he is the elected President of the Arbitral Tribunal, he is also attending the sessions of the First International Peace Conference as the Russian Delegate. This conference is of paramount importance because it is there that arbitration rules are established"*[321]. He, therefore, had first-hand knowledge of all that was being discussed and the importance of the ideas that were settled at the conference.

Fyodor Fyodorovich Martens knew fully well that the duty of stating the reasons on which an award is based was an obligation that stemmed from the principles of international law. That was made quite clear when he took part as a sole arbitrator in a dispute between the United Kingdom and Holland arising from the detention of the Captain of the Whaler *Costa Rica Packet*.

The award adjudicated on 25 February 1897, was fully reasoned. *"First, Federico de Martens stated the amount of the indemnifications for damages sustained by the whaler's crew. He, then, acknowledged the law that was applicable to the case, the law of nations, ius gentium. He expounded in detail the scope of the State's territorial sovereignty on territorial waters and the legal system for and nature of merchant vessels. And, moreover, evidence was indeed evaluated in this case because the award mentions how the documents that were filed all*

321 Marcos FALCÓN BRICEÑO, Quoted Above, Page 48.

evidence the lack of a basis for the detention. Federico de Martens acted in completely different ways in this and Venezuelan cases"[322].

Added to this, is the fact that the tribunal's arbitrators knew they were under the obligation to examine each of the titles in detail but, despite this, they did not do so. Graver yet is the fact that they did not do so when it was obvious they knew fully well what the applicable law was.

For all these reasons, the award is null and void since it does not comply with the applicable law stemming from the general principles of international law. These principles were binding for the parties and gave rise to the arbitrators' obligation to decide the dispute following the law and not in an arbitrary manner or under the judicial consciences in accordance with *"the demands of their governments"* which, indeed, should embarrass those who proceeded this way, but not only for being unveiled by a reasoning not consistent with law, as suggested by Fyodor Fyodorovich Martens, but also for their pretention that the omission of reasons could legitimize such unethical actions.

The arbitral tribunal was under the obligation to explain how it arrived at its decision to award the United Kingdom these territories and what its evaluation of the evidence to that effect was.

As Héctor Faúndez states, in accordance with Article IV of the treaty *"there were three options for awarding all or part of the disputed territory to one of the parties in dispute, it was natural and obvious that it would have to indicate on the basis of which of those rules it had reached that decision, and why"*[323].

The first option was through the application of Rule "a" of Article IV, which established adverse possession or prescription, already analysed above; the second possibility was through the application of Rule "b" of Article IV according to which the arbitrators could *"recognize and enforce rights and claims resting on any other valid basis under international law"*[324] or principles of international law provided that

322 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 123-124.

323 *Ibidem,* Page 115.

324 *Ibidem,* Page 337.

they did not contravene the prescription rule; the third and last could only occur in the case of occupation by subjects of one party in the territory of the other party, in which case such occupations would be given *"such effect as, in the opinion of the Tribunal, the reason, justice, principles of international law and equity of the case, may require"*[325].

However, neither of these rules are reasoned as grounds for the decision, the arbitrators ignored this duty and rendered an insufficient award in which the boundary between two States is established without any legal justification; a matter that vitiates the decision and renders it null and void.

In this respect, we bear in mind the article published in *La Voce della Veritá,* an Italian gazette, specifically from central Italy, circulating during the 19th Century and directed by Carlo Galvani, on 29 October1899, shortly after the contents of the award became known. This source was referred to by Jesuits Hermann González and Pablo Ojer in their report: *"The Commission did not, in fact, take the arguments of both parties into consideration. It did not judge on the basis of rights, but arbitrarily laid out what was to be a commitment, which, however, grants the greater portion to the strongest party. England was, in fact, awarded five sixths (5/6) while Venezuela was awarded but one sixth (1/6), but the Tribunal did not bother to explain what legal grounds the partition was based on"*[326].

Finally, the lack of reasoning of the award was severely criticized in the publication of a French writer, in which he coined a telling phrase: *"If arbitration is, in principle, an appeal to reason against force, can reason dispense with reasons? (...) The concept of Arbitral Tribunal should not be confused with that of Arbitrary Tribunal"*[327].

2.6. Nullity of the Arbitral Award for Breach of the Duty of Impartiality

The Paris Arbitral Award is also null and void because it violated principles of international law, as the arbitrators failed in their duty

325 *Ibidem,* Page 338.

326 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 52.

327 See: Article "Laudo Arbitral de París" (The Paris Arbitral Award"). Available at: https://es.wikipedia.org/wiki/Laudo_Arbitral_de_Par%C3%ADs.

of neutrality and impartiality, since at least the Chairman of the Arbitral Tribunal, Fyodor Fyodorovich Martens, acted in an openly biased manner. There is evidence that Fyodor Fyodorovich Martens manipulated and coerced the other arbitrators to obtain a unanimous decision in favour of the United Kingdom, turning an award of law into a political settlement.

The principles of international arbitration law, all of which are binding, required that the composition of arbitral tribunals consider an indispensable element, the neutrality of the arbitrators.

Article II of the 1897 Treaty of Washington established the manner in which the arbitrators would be appointed. The tribunal would be composed of a total of five jurists, two selected "by Venezuela" who, as we have already said, would be appointed:

> *"...one by the President of the United States of Venezuela, namely the Honourable Melville Weston Fuller, Chief Justice of the United States of America, and one by the Justices of the Supreme Court of the United States of America, namely the Honourable David Josiah Brewer, Justice of the Supreme Court of the United States of America"*[328].

And another two chosen by the judicial commission of Queen Victoria's privy council who ended up being Lord Russell of Killowen and Sir Richard Henn Collins. Finally, the President of the Arbitral Tribunal would be a jurist chosen by the other four arbitrators[329].

Pursuant to this provision of the treaty, the President of the Arbitral Tribunal chosen by the English and U.S. arbitrators, was Russian Fyodor Fyodorovich Martens, who, as stated above, had expressed his concern at the First Hague Conference while the Paris Arbitration was taking place, with the demand for a statement of reasons due to the embarrassment that would be caused by the arbitrators' surrender of their judicial conscience for an action determined by the political

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328 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 336-337.

329 *Ídem.*

interests of their countries, which was precisely what happened in this case.

On the other hand, we must reiterate the provisions in Article V of the Treaty of Washington, since impartiality stems from that article, according to which, arbitrators shall *"proceed* ***impartially and carefully*** *to examine and decide the questions that have been, or shall be, laid before them"*[330]. (Highlighting Added).

Contrary, however, to what was established in the 1871 Treaty of Washington and the valid principles in the matter of international arbitration, the Russian Fyodor Fyodorovich Martens ' impartiality was doubtful from the onset. He was, in fact, an active public officer in his country, which was telling of a possibility that he was influenced more by the interests of his nation than by the idea of impartiality as Dr. Marcos Falcón Briceño pointed out, and that: *"... while being elected President of the Arbitral Tribunal, he is attending the sessions of the First International Peace Conference as the Russian Delegate. This conference is of paramount importance because it is there that arbitration rules are established"*[331].

Thus, Fyodor Fyodorovich Martens was a representative of Russia and acted out of political interests. Furthermore, it is clear that he had participated in the Hague Conference of 1899 and that he knew everything that was discussed there.

In this regard, Falcón Briceño also points out that *"in essence, De Martens was a practical man, as he himself said, a politician, so, naturally, being a public officer of the Russian Empire, his political thinking was, of course, linked to the thinking and political interests of Russia"*[332].

Fyodor Fyodorovich Martens, although a jurist, was not guided by law but by diplomacy and political relations. As Héctor Faúndez observes *"Martens did not think of International Law as something superior and different from diplomacy, but, rather, as a scholar of International Law, he considered it his professional duty to support his*

330 *Ibidem,* Page 338.
331 *Ídem.*
332 Marcos FALCÓN BRICEÑO, Quoted Above, Page 48.

government's policies at any price; his motivation was overwhelmingly -if not exclusively- political and patriotic"[333].

It is striking that, while being such an important figure at the international arbitration forum, not only were his political views known but so were his criteria on controversial matters regarding arbitration, and this could have inclined the English to choose him for his political view of arbitration and also because he sustained the idea that the reasons for the awards did not have to be reasoned, explained.

As if that did not suffice, Fyodor Fyodorovich Martens also had a colonialist view of international relations. In his mind, World Powers were superior to savage or barbarian peoples, as he liked to call the less developed countries. This view of his was what drove him to favour the United Kingdom in the Paris Arbitration. This supremacist position was clearly expressed in his works in the following terms: *"Nonetheless, one should ask oneself which of these two opinions, so divergent at their points of departure and so coherent in their final conclusions, is the true one. Is it really true that a battle between Russia and England on the banks of the Indo is an absolute necessity and a relentless fatality? Are these two great civilised powers really and inevitably under obligation by immutable law to give the savage peoples of Asia this sad spectacle of a bitter and merciless battle? Is it appropriate for Europe, represented solely by England and Russia in Central Asia, to evoke the perverted instinct of the Asian hordes and take advantage of the savage hatred these barbarians feel towards all Christian and civilised nations? Has this matter been seriously pondered?: who would ultimately benefit from this fight between England and Russia; which of these two Powers, victorious on battle fields, will be in a position to keep its dominion over all of the Asian nations and all of the savage, ravaging tribes to whose help they owe their success?"*[334].

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333 Héctor FAÚNDEZ LEDESMA, "La controversia del Esequibo y el fantasma de Federico de Martens" ("The Essequibo Controversy and the Ghost of Federico de Martens"), *Revista de Derecho Público*¸ Nº 169-170, January-June, Editorial Jurídica Venezolana, Caracas, 2022. Page 11.

334 See: Héctor GROS ESPIELL (Translator), *"Rusia e Inglaterra en Asia Central"* ("Russia and England in Central Asia"), translated and commented by Héctor GROS ESPIELL, Editors of the Presidency of the Republñic, Caracas, 1981. Page 50-51.

In the opinion of the President of the Arbitral Tribunal, civilized nations must assume the role which *"divine providence"*[335] has assigned them "*for the good of the savage nations"*[336]. This determinism about the role of nations in the international concert is key to understanding the attitude of Fyodor Fyodorovich Martens in the Paris Arbitration. He clearly only sought to favour the interests of the civilized nation in order to "*exemplify the necessary Anglo-Russian solidarity and cooperation"*[337] of which he was a supporter.

As stated by Hector Gros Espiell, in his comments on the work of Fyodor Fyodorovich Martens, there is no doubt that *"Martens' ideas on Anglo-Russian relations and on the "civilized" and the "semi-barbaric" or "semi-savage" peoples, could, indeed, have had a decisive influence on the solution adopted in the arbitration award of 1899, in view of the fact that many studies on the subject have rightly maintained that the award was in fact a political-diplomatic act, an Anglo-Russian agreement, probably linked to a contract or agreement between the two countries"*[338].

Fyodor Fyodorovich Martens argued that international law applied only to civilised nations. In his work *"Russia and England in Central Asia",* he defined international law as *"the compendium of principles governing the relations of nations in pursuit of their common aims"*[339].

To Fyodor Fyodorovich Martens, international law -thus defined- was the product of European moral and legal ideas and, consequently, not applicable to the other category of nations which he called semi-barbaric. The President of the Paris Arbitral Tribunal considered that international law did not apply to these nations, but that their relations with civilized nations should be governed by natural law. The justification for this idea is expressed in the following terms:

> *"... It would be puerile to demand from nations which are in this state of nature, actions which derive from no source other than*

335 *Ídem.*
336 *Ídem.*
337 *Ibidem,* Page 52.
338 *Ibidem,* Page 16.
339 *Ibidem,* Page 57.

> *conscience and cannot be explained by any reason other than solidarity of interests and reciprocity of efforts directed to the same social end"*[340].

In his commentaries on the work of Fyodor Fyodorovich Martens, Gros Espiell points out that this supposed *"application"* of natural law in relations between civilized and *"semi-civilized"* nations is nothing more than a facade to allow European powers to impose their will on that of weaker countries[341]. This was the case of Venezuela in the Paris Arbitration of 1899.

A fact that ratifies Fyodor Fyodorovich Martens' vision is that *"he defended the regime of capitulations- characterized by the investiture of the consular authority with judicial powers- existing since the 16th Century in Eastern countries, whereby the nationals of European powers were exempt from the territorial jurisdiction (particularly the criminal jurisdiction) of the States in which they were located, being subject only to the consular jurisdiction of the State of which they were nationals which, by this means, extended the application of its laws extraterritorially"*[342].

According to Fyodor Fyodorovich Martens' view of the capitulations, *"this institution was based on the considerable difference in the degree of cultural development between European and non-European countries; this notion would be more fully developed in his book on The International Law of Civilized Nations (1881-1882), in which he elaborates on the distinction between civilized nations (the only ones to which international law applied) and non-civilized nations (to which international law did not apply), which was a thesis more or less shared by theorists of international law in the 19th Century"*[343].

The vision of Fyodor Fyodorovich Martens is a result of his colonial past. In this regard, Héctor Faúndez indicates that Fyodor Fyodorovich Martens had a close relationship with Leopold II of Belgium "*and his*

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340 *Ibidem,* Page 59.

341 *Ídem.*

342 Héctor FAÚNDEZ LEDESMA, "La controversia del Esequibo y el fantasma de Federico de Martens" ("The Essequibo Controversy and the Ghost of Federico de Martens"), Quoted Above, Page 12.

343 *Ídem.*

pro-colonialist activities, particularly in the Congo Free State, led him to defend Leopold II's project in that personal colony of his, and to justify an unprecedented system of intensive exploitation of rubber and ivory, at the cost of forced labour, the mutilation of the hands of those who did not perform sufficiently, or even the death of the most rebellious Congolese. In Martens' opinion, thanks to the generosity and political genius of King Leopold, the Congo Free State would have a regime in full conformity with the requirements of European culture"[344].

In addition to the above considerations, the violation of the duty of impartiality on the part of Fyodor Fyodorovich Martens is supported by the investigations of the Jesuits Hermann Gonzalez Oropeza and Pablo Ojer in the Report that Venezuelan experts for the question of limits with British Guiana presented to the national government, published in 1967.

From this report it can be deduced that Venezuela has documents, communications and press releases that prove that it was all a trick, connivance. See below for some extracts of these documents:

1.- The diary of the Lord Russell's Private Secretary, J.R. Block, contains a categorical entry dated 2 October, 1899, one day before the award: *"Venezuela. De Martens' trickery gave us victory. Private Files"*[345].

2.- Diary of Mrs. Caroline Harrison, wife of President Benjamin Harrison, dated 3 October 1899, where, referring to the United Kingdom, she said: *"This morning, the Tribunal was summoned to hear the decision. It was exactly what one would have expected; when England returns something which it retains, even doubtfully, it will be the end of the world. Some of what was taken was conceded but it was evident in the allegations that much was not in legal possession. We were all most furious. Russia was the fifth one in the Tribunal and it is their diplomacy to side with the United Kingdom: the balance of power, etc. ..."*[346].

What this note reflects is that the UK did indeed return a portion of the usurped territory to Venezuela. However, this return was insufficient

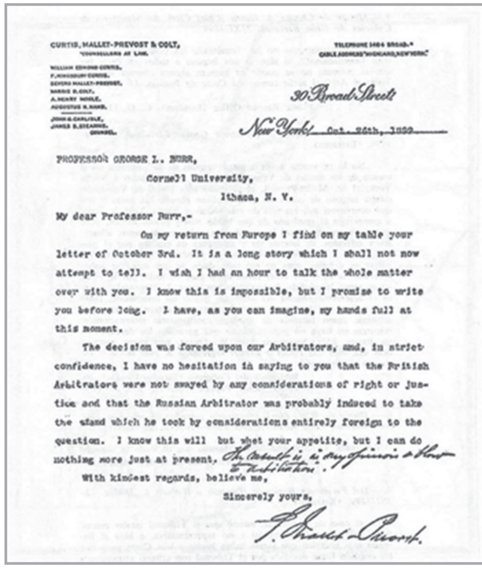
344 *Ibidem,* Page 14.
345 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 42.
346 *Ídem.*

because the parties' titles showed that Venezuela legitimately possessed more territory than the Paris Arbitral Award granted it. The reaction was one of rejection against a decision in which the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, did not act as an impartial third party, but openly favoured the English.

3. - In a letter by Lord Russell, the United Kingdom's chief arbitrator, to Lord Salisbury, dated 7 October 1899, in reference to Federico de Martens, the President of the Arbitral Tribunal: *"... he seemed to be looking for the means to come to lines of commitment, and thought his duty was to, at any cost, if at all possible, reach a unanimous decision. Moreover, I am sorry to find myself in the obligation to say that, in a private interview, he told Lord Justice Collins, since he was in a hurry to end the British claim, that, if we failed to do so, he could, in order to achieve the adhesion of Venezuelan arbitrators, find himself under the obligation to agree to a line that might not be fair with Great Britain. I have no doubt that he spoke to the contrary with Venezuelan arbitrators, and I fear that the means to incite them to accept the award as it stood was possibly much worse. Be it as it may, it is needless to say that Mr. de Martens revealed a very worrisome state of spirit"*[347].

4.- Memorandum of Severo Mallet-Prevost dated 26 October 1899, 13 days after the award was issued, sent to Professor George L. Burr, expressing that: *"Our Arbitrators were forced to accept the decision and, in strict confidence, I have no hesitation in assuring you that the British Arbitrators were not governed by any consideration of Law or Justice, and that the Russian Arbitrator was probably induced to adopt the position he took for reasons wholly foreign to the question. I know this is only going to whet your appetite, but at present I cannot do otherwise. The result, in my judgment, is a slap in the face of Arbitration"*[348].

347 *Ídem.*
348 *Ídem.*



CURTIS, MALLET-PREVOST & COLT,
COUNSELLORS AT LAW.

30 Broad Street

New York, Oct. 26th, 1899.

PROFESSOR GEORGE L. BURR,
Cornell University,
Ithaca, N. Y.

My dear Professor Burr,-

On my return from Europe I find on my table your letter of October 3rd. It is a long story which I shall not now attempt to tell. I wish I had an hour to talk the whole matter over with you. I know this is impossible, but I promise to write you before long. I have, as you can imagine, my hands full at this moment.

The decision was forced upon our Arbitrators, and, in strict confidence, I have no hesitation in saying to you that the British Arbitrators were not swayed by any considerations of right or justice and that the Russian Arbitrator was probably induced to take the stand which he took by considerations entirely foreign to the question. I know this will but whet your appetite, but I can do nothing more just at present. The result is in my opinion a blow to Arbitration.

With kindest regards, believe me,

Sincerely yours,

S. Mallet-Prevost.

Letter taken from the report prepared by Hermann González and Pablo Ojer[349].

5.- A letter from Richard Olney to President Grover Cleveland on 27 December 1899, in which he stated the following: *"I have not seen you since the sentence in Venezuelan border case. By reason of his return to New York, Mr. Mallet-Prevost the youngest attorney for Venezuela, was anxious to tell me about how it was that things had occurred and why they did so. On one of my visits to New York, I invited him to dinner where the end result was that he spoke more and ate less, and the duration of the meal was, more than eating and drinking refreshments, a bout of intense ire and bitterness of the spirit regarding the procedure and decision of the Arbitral Tribunal. I shall abstain from going into details that I have no doubt you have heard from other sources. The worst of it all, apparently, is not so much Venezuela's loss of the territory, but the general discredit of the arbitration. According to my informer, both the President of the Court and Brewer appear to be against arbitration as a formula for the resolution of international disputes in absence of a procedure that would guarantee the Parties' rights. Former Secretary John W. Foster, with whom I dined the other*

349 *Ibidem,* Page 43.

day, said that Fuller and Brewer returned to the country quite sick of arbitration"[350].

With the aforementioned letter it became clear that what happened in the arbitration and what was reflected in the Paris Arbitration Award of 1899 resulted in the loss of credibility of means for dispute resolution. The arbitrators involved in the proceedings developed a certain aversion to arbitration.

Thus, with this information and the information gathered in the investigation of the Jesuits Hermann Gonzalez Oropeza and Pablo Ojer, today *"it is far clearer that the 1899 Award was not really based on a legal analysis where there was unanimity of opinion but was, rather, the result of a pact between the members of the tribunal, who were faithful to their interests"*[351].

A person such as Fyodor Fyodorovich de Martens, who served as Counsellor to Tsar Nicholas II and was an active official in the Russian Ministry of Foreign Affairs, could not be considered impartial or independent. When the Treaty of Washington was signed on 2 February 1897, the duty of impartiality and the duty of independence were already unwritten rules of law. According to these rules, Fyodor Fyodorovich Martens could not be the President of the Paris Arbitral Tribunal *"in a matter in which he, clearly, both personally and as an official of the nation he served, had a conflict of interest which prevented him from acting impartially"*[352].

6.- Severo Mallet-Prevost's memorandum. The suspicions that the president of the Arbitral Tribunal, Fyodor Fyodorovich Martens, had seriously violated the duty of impartiality, were fully proven when the memorandum left by Severo Mallet-Prevost, one of the lawyers representing Venezuela, who died on 10 December 1948, in New York, was published. Severo Mallet-Prevost had appointed attorney Otto Schoenrich, a partner of the law firm to which he belonged (Curtis, Mallet-Prevost, Colt & Mosle) as executor and had commissioned him to publish the document after his death.

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350 *Ibidem,* Page 44.

351 William DÁVILA BARRIOS (ed.), Quoted Above, Page 14.

352 Héctor FAÚNDEZ LEDESMA, "La controversia del Esequibo y el fantasma de Federico de Martens" ("The Essequibo Controversy and the Ghost of Federico de Martens"), Quoted Above, Page 18.

The memorandum was published in July 1949, in the *American Journal of International Law* and also, that same year, in the Bulletin of the Academy of Political and Social Sciences of Venezuela, specifically in Volume 14, under the title *"A Matter of Exceptional Importance for Venezuelan Diplomatic History. The dispute over the borders between Venezuela and British Guiana"*[353].

In his memorandum, Severo Mallet-Prevost acknowledged that he and President Benjamin Harrison were aware of the collusion that existed between the President of the Arbitral Tribunal Fyodor Fyodorovich Martens and the English arbitrators Lord Russell and Lord Collins. The Times, a London newspaper, even published a statement by Reuter's news agency containing the statements of President Benjamin Harrison and Severo Mallet-Prevost where they expressed that *"there was nothing in the history of the dispute that adequately explained the boundary line established in the Award"*[354].

Lawyer Mallet-Prevost goes on to say that Russell was always reticent in attitude and inclined towards benefiting the United Kingdom, he believed arbitrators have a political bond and considered it unnecessary for international arbitration to adhere solely to legal grounds.

Severo Mallet-Prevost narrates that Lord Russell, Justice Josiah Brewer, and Severo Mallet-Prevost coincided in the city of London at an intimate dinner organized by Henry White, who held the office of Charge de Affairs of the United States of America, in the city of London. Severo Mallet-Prevost expressed in the memorandum referring of America. With reference to Lord Russell, Mallet-Prevost writes in his memorandum: *"I was seated next to him and, during the conversation, I ventured to express the opinion that international arbitrations should ground their decision on legal bases only. Lord Russell immediately replied: "I disagree with you completely. I believe international arbitration should be conducted in broader ways and take matters of international policy into consideration. From there on, I understood*

353 Otto SCHOENRICH, Quoted Above.

354 Exposition of the Venezuelan Ambassador, Dr. Carlos SOSA RODRÍGUEZ to the UN on 22 February 1962. Available athttp://esequibonuestro.blogspot.com/2012/03/exposicion-del-embajador-de-venezuela.html.

that we could not count on Lord Russell to decide the matter of the border strictly on the basis of law[355].

Completely different was Mallet-Prevost's perception of Lord Collins, whom he first met in 1899, after the speeches of the Attorney General of the United Kingdom, Sir Richard Webster, and the author of this memorandum, which lasted 26 days[356]. Collins was much more excited, willing to investigate and, most of all, to understand and analyse the dispute and the titles on which the parties' pretences were based. With reference to Lord Collins, Mallet-Prevost wrote: *"... it was quite obvious that Lord Collins was sincerely interested in being fully aware of the facts of the matter and determining the applicable law to such facts. He, of course, gave no indication of how he would vote on the matter; but, his whole attitude and numerous questions he posed were critical of the British allegations and gave the impression that he was becoming more inclined towards Venezuela's side"*[357].

However, these impressions changed radically after the two-week recess following the conclusion of the above-mentioned speeches. Right then, the English arbitrators travelled to London together with the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens.

The memorandum affirms that, when Lord Collins returned from the United Kingdom to Paris after the vacations, he was not the same as when he left. It was evident that a number of things occurred in the United Kingdom, which we do not know but probably obeyed the political interests of the powers involved in the dispute: Russia, the United Kingdom, and the United States of America. Severo Mallet-Prevost himself was convinced that something had happened. In fact: *"Mr. Mallet-Prevost said that he was sure that the attitude of the British members and the Russian member of the Arbitral Tribunal was the result of a negotiation between Great Britain and Russia whereby they induced their representatives in the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in other parts of the globe"*[358].

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355 See: the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH, Quoted Above, Page 32.

356 Cf. Otto SCHOENRICH, Quoted Above, Page 32.

357 *Ídem.*

358 *Ibidem.* Page 30.

In this connection it is well to consider the letter which Sir Richard Webster, the solicitor of the United Kingdom, sent to Lord Salisbury, Prime Minister of the United Kingdom, dated 19 July 1899, in which he expressed the following: "*I do not propose to make any concessions. If I have any reason to believe that the Court is against me in this part of the case, I shall do my best to let the British arbitrators know our views on the position"*[359].

It was obvious that none of the British arbitrators complied with the duty of impartiality which is a fundamental duty in international arbitrations. In any case, this suspicion is confirmed by another letter from Richard Webster himself sent to Joseph Chamberlain, Secretary of State for the Colonies, dated 19 July 1899, in which he expressed the following: *"If I find it necessary to take any independent action, I shall do so privately through our own Arbitrators and only when I am satisfied that, having regard to expressions of opinion on the part of any member of the Tribunal, it is desirable that our Arbitrators should appreciate our views"*[360].

Attorney Richard Webster did in fact again write to Lord Salisbury and Joseph Chamberlain again on 3 October 1899. To the former he said, *"There are one or two important matters in connection with the arbitration which I cannot express very well in writing"*[361], and to the latter he wrote: *"When you can spare me a few minutes, there are one or two matters in connection with the arbitration which I would like to talk to you about. I cannot express them very well in writing"*[362].

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359 Letter of Sir Richard E. Webster to the Marquis of Salisbury, 19 July 1899, Christ Church College, Oxford, Cecil Papers, Special Correspondence. Annex 8 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

360 Letter of Sir Richard E. Webster to Mr. Chamberlain, 19 July 1899, Chamberlain Papers, Birmingham University Library, J.C. 7/5. Annex 9 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

361 Letter of Sir Richard E. Webster to the Marquis of Salisbury, 3 October 1899, Christ Church College, Oxford, Cecil Papers, Special Correspondence. Annex 11 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

362 Letter of Sir Richard E. Webster to Mr. Chamberlain, 3 October 1899, Chamberlain Papers, Birmingham University Library, J.C. 7/5. Annex 9 to the Letter of the Agent of the

All this, confirms that Venezuela-U.K. territorial dispute cannot be fully understood without looking at the Arbitral Award of 3 October 1899 *"within a general historical framework and in terms of Anglo-Russian relations in the second half of the nineteenth century, in view of their specific interests"*[363].

The shady deal that Mallet-Prevost suspected became evident when Fyodor Fyodorovich Martens met with the American arbitrators David Josiah Brewer and Melville Weston Fuller to propose that, if they agreed to come to a unanimous decision, Venezuela would keep the Bocas del Orinoco, but, if they did not, the Russian would align itself with the English arbitrators, a matter that would redound in a worse situation for Venezuela.

On 31 August 1907, several years after the coercive enforcement of the Paris Arbitral Award, an event took place that supports the veracity of Mallet-Prevost's suspicions. On that date, the Anglo-Russian Treaty of Mutual Cordiality was signed, which eased tensions between Russia and the United Kingdom in Central Asia and improved relations between the two countries; with the convention came the independence of Afghanistan, Persia, and Tibet. This is confirmed by Dr. Gros Espiell when he observes that: "*The Anglo-Russian rapprochement, initiated in 1895, in accordance with the ideas that Martens had already put forward in 1879, would finally and definitively materialize in the Convention Relative to Persia, Afghanistan and Tibet, signed in St. Petersburg by Isvlasky, Minister of Foreign Affairs of the Russian Empire and Nicolson, English Ambassador, on 31 August 1907"*[364].

The Anglo-Russian Treaty of Mutual Cordiality was one of the agreements that together with the Franco-Russian Alliance and the Franco-British Entente Cordiale consolidated the Triple Entente,[365]

Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

363 Héctor GROS ESPIELL (Translator), Quoted Above, Page 48.

364 *Ibidem,* Page 72.

365 María SOL ALDONATE*, "A 110 años. Formación de la Triple Entente"* ("110 Years Later. Formation of the Triple Entente."), Universidad de la Plata-International Relations Institute, Buenos Aires, 2017. *"In 1912, France and Russia ratified their alliance through a protocol in which they established that both powers supported the political-strategic goals of each other and agreed to intervene should one of them be attacked. Great Britain,*

formed by France, Russia, and the United Kingdom. The main reason for this Treaty was *"the growing German aggressiveness" and, by virtue of it, the United Kingdom and Russia "finally settled their historical colonial differences"*[366].

To detract from the value and credibility of this forceful memorandum by lawyer Severo Mallet-Prevost, Guyana has argued in its application to the ICJ that the memorandum was disclosed many years after the award was rendered and that it is dubious because of the close relations of its author with Venezuelan State which even awarded him the Order of the Liberator[367]. Such a consideration is rather banal, since there is no sustainable causal relationship between the receipt of an award and the preparation of a letter with posthumous effect, from which no benefit can be extracted for the signatory or any interest that he represents at the time it comes to light.

- Other Evidence

The Severo Mallet-Prevost memorandum is not the only document that revealed the flaws of the Paris Arbitral Award. There were many reactions against the Award before the Severo Mallet-Prevost memorandum became known. The first reaction to the Paris Arbitral Award that confirms what Sever Mallet-Prevost said was the letter written by César Zumeta, a Venezuelan writer, journalist and

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on its part, having entered into an alliance for a different reason (concerned with keeping its dominance over the seas and the power of its Empire), considered it appropriate to strengthen its position in the North Sea in light of the German advances."

366 See: "The 1907 Anglo-Russian Agreement" in *Glosario de Historia de las Relaciones Internacionales durante el siglo XX*. ("Glossary of the History of International Relations during the 20th Century"). Available at: http://www.historiasiglo20.org/GLOS/angloruso.htm.

367 International Court of Justice, "Memorial of Guyana", Volume I, Page 13. "In its pursuit of this goal, Venezuela attempted to impugn the validity of the Award that respected, affirmed, and sustained till then, for over six decades.For this purpose, Venezuela invoked a secret memorandum, supposedly written in 1944 by Severo MALLET-PREVOST, a not so prominent member of the Venezuelan legal team in the 1899 arbitral process, supposedly containing instructions that it should not be published until after his death (that took place in 1949). It is said that the memorandum was written 45 years after the events that it supposedly described, and in the same year in which Venezuela bestowed the Orden del Libertador on Mr. MALLET-PREVOST "in testimony of the high esteem the Venezuelan people have and always shall have for him".

intellectual and an important ideologue of *Gómez* positivism, published in the Caracas newspaper El Tiempo, on 17 October 1899, and referred to by the Jesuits Hermann González and Pablo Ojer in their report, in which he made the negative effect that the Paris Arbitral Award had on the international arbitration forum clear, creating a sort of aversion to the mechanism. César Zumeta expressed: *"The decision of the Paris Tribunal, of which you will have already sadly informed your readers, seems to have astonished Venezuela's friends abroad as if it were unexpected news. Mr. Harrison, the former President of the United States of America, Justice Brewer, one of the arbitrators appointed by Venezuela, lawyer Mr. Mallet-Prevost, the diplomatic world, and even the English press, declare that nations will henceforth be very careful to entrust the defence of their rights to Tribunals of the likes of this one which has just condemned us"*[368].

Then, on 18 October 1899, in a publication of the Idaho Daily Statesman, a U.S. newspaper, the Paris Arbitration was strongly criticized in the following terms: *"The plan was to secure the support of Mr. de Martens, President of the tribunal. This was accomplished by the intervention of the Russians who wished him to side with Great Britain in order to obtain English support for Russian plans in China. All this was accomplished with the utmost secrecy, and it was only when the Arbitrators met for the award that the situation was made clear to the American members of the Tribunal. They came to know that the majority had agreed on what was to be done: to award to Great Britain all that it claimed"*[369].

There is also Severo Mallet-Prevost's own prior memorandum of 26 October 1899, sent 13 days after the award was rendered to Professor George L. Burr, quoted above, where – and we insist on the importance of his statements – he writes: *"Our Arbitrators were forced to accept the decision and, in strict confidence, I have no hesitation in assuring you that the British Arbitrators were not governed by any consideration of Law or Justice, and that the Russian Arbitrator was probably induced to adopt the position he took for reasons wholly foreign to the*

368 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 42.
369 *Ídem.*

question. I know this is only going to whet your appetite, but at present I cannot do otherwise. The result, in my judgment, is a slap in the face of Arbitration"[370].

Author L. de la Chanonie wrote a critique of the Paris Arbitration under Nº 3 in Volume III of the Revue d'Europe published in March 1900. In that publication, L. de la Chanonie denounced- many years earlier- the same irregularities that were later exposed in the posthumous memorandum of Severo Mallet-Prevost and noted that: "… *Mr. De Martens then proposed to the American arbitrators, to grant Venezuela, in compensation for the territories of the Schomburgk line, absolute possession of the Orinoco, withdrawing the English frontier some twenty leagues from the river; he added that if Venezuelan arbitrators did not accept this arrangement, he would vote with the English arbitrators for an immediate termination, which would secure for England the possession of one of the sides of the Orinoco delta. The perplexity of the American arbitrators was great, and their confusion profound; after some hours of reflection, they decided that it was necessary to, first of all, put the great river out of the clutches of the United Kingdom; they preferred to accept a vexatious settlement rather than to obtain nothing, and finally, constrained by an imperious necessity, they adhered to the arbitral sentence; such is the unanimity of the judges, so much vaunted by the English press which has interpreted it as irrefutable proof of the undoubted rights of Great Britain. This publication of the secret debates, puts things straight. A simple question: if the dispute, instead of having arisen between a small State and a great Power, had confronted the United Kingdom, Russia, France, or Germany, would it have ended in three days and with so much abandon, a conflict which, in case of necessity, would find in force its legitimate recourse? But Venezuela does not have the maritime and military power to speak loudly; it has not been able to support with arms the rejection of a decision that was not so much arbitral as arbitrary, the injustice of which was notorious. International law opened the way to a platonic appeal, wounded in advance of sterility (...) But that was hushed"*[371].

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370 *Ídem.*

371 *Ibidem,* Pages 50-51.

Forty-nine years before the publication of the Severo Mallet-Prevost memorandum, L. de la Chanonie stated that the President of the Arbitral Tribunal failed in his duty of impartiality and was the main architect of a shady deal that harmed Venezuela, the weakest country in the dispute.

A year later, Grover Cleveland, President of the United States of America, sent a letter to Richard Olney, Secretary of State of the United States of America, on 3 March 1901, in which he expressed the following: "*On reviewing the subject, I am surprised to see how mean and selfish the action of Great Britain really was"*[372].

There are several subsequent documents that refer to the Severo Mallet-Prevost memorandum. Among them, the letter dated 19 March 1951, written by Perry Allen, a representative of Venezuela as one of the three secretaries of the Paris Arbitral Tribunal, sent to Pulido Méndez, Venezuelan Ambassador to Mexico. The aforementioned letter reads: *"Both the government of the United States and the government of Venezuela understood that the question submitted to the Arbitral Tribunal, would have to be ruled upon in accordance with the proven facts and the laws applicable to the case, and it is easy to understand Mallet-Prevost's surprise as related by himself in his memorandum published after his death, by his associate Judge Schoenrich, in which he referred to a lunch he attended, seated next to the British arbitrator, Lord Russell, at the American Embassy in London before moving to Paris for the preliminary section of the Court of Arbitration in January 1899. I copy his own words taken from that memorandum, a copy of which I have here: "...I sat next to Lord Russell, and in the course of the conversation I ventured to express the opinion that international arbitrations should base their decisions exclusively on legal grounds. Lord Russell immediately replied "...I differ entirely from your opinion. I believe that international arbitrations should be more broadly oriented and that they should take into consideration questions of international policy..". For me, if the way indicated by Lord Russell to resolve the*

372 Library of Congress of the United States, Grover Cleveland Papers, Vol. 357, fol. 38.199. V. aussi Allan Nervins, *Letters de Grover Cleveland (1850-1908),* New York, Houghton Mifflin, 1933.

dispute between Great Britain and Venezuela had been included in the arbitration agreement as a rule of conduct, neither the Government of Venezuela nor that of the United States would have accepted it. What happened next, has highlighted the lack of a precise rule of conduct written into the protocol for the governance of the arbitrators and the "farce" actually represented by the award that was rendered. Sir Richard Webster opened the debate in Paris, and I remember that I was struck by the fact that every now and then the speaker was interrupted by the "English arbitrator Lord Russell", (...) tending to give the listeners the impression that he was one of the lawyers on behalf of Great Britain and not one of the judges of the Court of Arbitration. This seems to me to be of great importance since everyone knows that, in private litigation, judges are subject to recusal if it appears (...) that they cannot be impartial judges. And for similar reasons, if, in a court of arbitration, (...) that judge is a subject or citizen of one of the litigants, and, as such, out of obstinacy or patriotism cannot conceive that his own country should not be right in the controversy, in which case there should be a right on the part of the other nation to recuse him, if he is not challengeable and it is considered that in any case he should render his decision in favour of his own country, is he not in fact both judge and party? This cannot be tolerated in such lawsuits between private parties. If the arbitrators of each government believe that their duty imposes on them the obligation of always ruling in favour of their own, is it not obvious that in order to win the game (...) one of them will make a conquest of a third arbitrator in discord, and if this is so, is there any doubt that such arbitrations are a kind of "farce" (...). Finally, (...) when the debates were over (...) the two English arbitrators left for London, taking with them the Russian President of the Tribunal, F. de Martens (...). I well remember the day appointed by the Arbitral Tribunal to give its decision. The President De Martens (...) said (...) that in the present arbitration all the arbitrators were in agreement and, therefore, that the dispute had been decided by their "unanimous" vote: implying that he had found no difference of opinion among them, so that the award must be considered to be in all things just, legal and equitable, and must be satisfactory to all parties concerned (...) an award which by its injustice

caused consternation, not only among the lawyers of Venezuela but on the part of its government and that of the United States"[373].

The article published by Judge William Cullen Dennis in volume 44 of The *American Journal of International Law* in 1960 contains the testimony of the British agent, George Buchanan, before the Paris Arbitral Tribunal, in 1910. In that document, Judge William Cullen Dennis stated: *"I happened to have another personal contact, or near-contact, with this interesting international incident. My conversation with Mr. Mallet-Prevost took place in the State Department building, and undoubtedly before 19 July 1910, when I left the Department. At any rate, it took place before my trip to The Hague in the late summer and fall of 1910 in my capacity as Agent of the United States in the "Orinoco Steamship" Arbitration with Venezuela. Shortly after my arrival at The Hague, in accordance with custom and instructions from the American Legation, I left business cards for several members of the diplomatic corps, among them, Sir George Buchanan, then British Minister at The Hague, who had been a British Agent in the Anglo-Venezuelan arbitration over the Guiana boundary in 1899. Sir George returned the greeting; we then met and fell into conversation, which naturally, under the circumstances, turned to the arbitration of Venezuela-British Guiana boundary. I regret that I cannot recall my conversation with Sir George with the same clarity and precision as in the case of the one I had with Mallet-Prevost. Apart from our mutual presumption that the decision on Guyana boundary was a compromise; what stands out in my memory most clearly is his criticism of the detailed manner in which Sir Richard Webster, Attorney General of Great Britain, and Mr. Mallet-Prevost developed their argument before the Arbitral Tribunal. I certainly know, and I am conscious that I thought so at the time, that what Sir George said did not leave me in my mind the slightest reason to doubt the inside story of how the decision was reached as told to me by Mr. Mallet-Prevost"*[374].

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[373] See the full content of the letter in: http://bibliografilaguayanaesequibacom.blogspot.com/2012/12/extracto-de-la-comunicacion-de-perry.html.

[374] Venezuelan Ministry of the People's Power for Foreign Relations, "*Guayana Esequiba. Historia de un despojo"* ("Guiana-Essequibo. The History of a Dispossession"), Caracas, 2015. Pages 131-132.

So, it is not only Severo Mallet-Prevost's memorandum, but many other documents that prove that the arbitrators and, mainly the chairman of the arbitral tribunal, Fyodor Fyodorovich Martens, seriously violated the duty of neutrality and impartiality and turned the award of law into a political settlement.

3. Enforcement of the Award

By the time the Paris Award was rendered, Venezuela was in total chaos, within *"a terrifying anarchy, and nothing was respected anymore, there were no laws, no property, no liberty, no life, no nationality, because the only empire was that of brutal force exercised by savage hordes both governmental and rebellious"*[375].

On 23 October 1899, barely twenty days after the Award was issued, the President of the Republic, Ignacio Andrade, was overthrown by General Cipriano Castro, leader of the so-called Restorative Liberal Revolution. At that time, the Constitution that was in force in Venezuela was that of 1893 -dictated during the government of Joaquín Crespo- which established in Article 4 that the *"Sections"*, which were entities contained in the States and coincided with the federal entities existing during the validity of the Constitution of 1864 sanctioned under the government of Juan Crisóstomo Falcón, had the constitutional possibility of recovering their category of States when so agreed by two thirds of their Districts.

Venezuelan Congress, considering the need for the *"Sections"* to recover their condition of autonomous States, agreed to amend Articles 1, 2, and 4 of the Constitution of 1893. While the amendment was materializing, the Congress determined that the Sections should be organized autonomously and empowered President Ignacio Andrade to proceed with the designation of provisional presidents of the Sections[376].

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375 *Ídem.* "… The Ambassador of Italy, Giovanni Paolo RIBERA, affirmed that there was prevalence of:"…un'anarchia spaventosa, e non si rispetta più nulla, né leggi, né proprietà, né libertà, né vita, né nazionalità, ché unico impero è quello della forza brutale esercitata da orde selvagge sia governative che ribelli". ("... an appalling anarchy, and nothing is respected, not laws, nor property, nor freedom, nor life, nor nationality, because the only empire is that of brutal force exercised by savage hordes both of government and rebels".)

376 See: Allan Randolph BREWER-CARÍAS, *Historia constitucional de Venezuela* ("The Constitutional History of Venezuela"), Volume I, Editorial Alfa, Caracas, 2008. Pages 412-413.

This caused the reaction of the regional caudillos who considered that it was a rupture of the constitutional thread, and ended with *"the arrival of the Andeans to power and the end of the historical-political cycle that began after the federal wars"*[377]. Cipriano Castro sought to rescue *"the constitutional thread that Andrade claims to have broken"*[378].

Three months after the arbitral tribunal's decision became known, former U.S. President Benjamin Harrison noted that *"The decision in Venezuela case, as a compromise, gave Venezuela the strategic points, but stripped it of an immense part of territory that an impartial tribunal would have awarded it, and of that there can be no doubt. The modern European idea is that there is nothing illegal or even immoral in the appropriation of territories from weaker states"*[379].

In view of the injustice of the provisions of the Paris Award, Venezuela tried to postpone the demarcation of the boundaries. However, the United Kingdom demanded the award be executed and threatened to execute it unilaterally if Venezuela refused to participate.

On 22 October 1899, Venezuelan Ministry of Foreign Relations, addressing Felipe de Aguerrevere, commissioner in the demarcation, expressed with respect to the line established by the arbitral tribunal that*: "It is a line established de facto, without any historical, geographical or political support or foundation. Consequently, and because the award had been openly unjust to Venezuela, he instructed Venezuelan commissioners to refer everything to the most severe procedure"*[380].

In July 1900, the British delegation in Caracas intimidated the Venezuelan Government to send a demarcation commission to Punta Playa on its behalf and, if it resisted this request, the United Kingdom would proceed with the unilateral demarcation. The pressure exerted by the United Kingdom threatened to cause greater evils than those already generated by the Paris Arbitral Award.

The deadline for Venezuela to participate in the demarcation was notified by the British representative in Caracas at the end of July. The

377 *Ídem.*

378 Rafael ARRÁIZ LUCCA, *"Las Constituciones de Venezuela" ("The Constitutions of Venezuela") (1811-1999)* ("The Constitutions of Venezuela (1811-1999)"), Editorial Alfa, Caracas, 2021. Page 51.

379 René DE SOLA, Quoted Above, Page 65.

380 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 22.

date of 3 October 1900, was set for Venezuela to participate in the demarcation, with the threat of proceeding to a unilateral demarcation of the frontier if not[381].

Then, on 8 October 1900, the British representative sent another notification; this time, informing that the Governor of British Guiana had received instructions to proceed with the demarcation and, by 19 October 1900, the first border marker had already been erected at Punta Playa[382].

It was under these conditions that the demarcation commissions were set up and functioned between 1900 and 1905. Minutes were drawn up of the work carried out by these commissions, reflecting the border between Venezuela and British Guiana in the following terms:

> *"The frontier begins at Punta Playa at a post submerged by the sea... and runs in a straight line to the mouth of the Mururuma. It goes up the Mururuma River to its source in front of a post whose coordinates are 8° 19' 00" and 59° 48' 22" 7. From this post it goes in a straight line to the mouth of the Haiowa River on the Amacuro....*
> *From the mouth of the Haiowa, it follows the course of the Amacuro River to its source in the Sierra de Imataca.... From this point, it continues along the Sierra de Imataca, along the highest peaks of the mountain spur, to the highest point of this Sierra in front of the headwaters of the Barima ... and, from there, along the highest peak of the Imataca Mountain, to a point located 300 meters further ahead and whose coordinates are: 7° 10' 10" lat. and 60° 20' 39" long. ...*
> *From the source of the Acarabisi... it goes down the course of this river until its mouth at the Cuyuní... From here on, upstream of the Cuyuní and by its northern margin to the mouth of the Wenamo... It goes up the Wenamo to its westernmost source... this last point marks the beginning of a geodesic line at whose southern point, indicated by a pole, ends the border between Venezuela and British Guiana. ..."*[383].

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381 *Ibidem,* Page 21.
382 *Ídem.*
383 See: Carlos ÁLAMO YBARRA, Quoted Above, Pages 87-90.

Venezuela had no choice but to accept the enforcement of the award[384]. Indeed: *"It is true that Venezuela executed the Award. It executed it under pressure from Great Britain, because the English Consul in Caracas expressed in an inquisitive note that he was going to initiate the demarcation of the land and that they would do it unilaterally if Venezuela did not participate. They immediately began the demarcation at Punta de Barima. Venezuela was left with no other recourse but to participate in the demarcation"*[385]. According to the report prepared by Jesuits Hermann Gonzalez and Pablo Ojer: *"Venezuela's participation in the demarcation of the border was of a purely technical nature. The country was forced to do so by circumstances it could not surmount"*[386].

In 1902, while the demarcation commissions proceeded with the execution of the award, Venezuela suffered the blockade of its coasts and the threats of invasion by its creditors: Germany, Italy, and the British Empire. In addition to demanding payment of foreign debt, there were *"...the claims made by the subjects of those countries for the damages suffered by their properties during the frequent combats and skirmishes between the armed civilian paramilitary groups (montoneras), as a result of the political instability of the country at that time"*[387].

The Paris Arbitral Award was, thus, executed within an enormous political, social and economic crises: in the midst of General Cipriano Castro's overthrow of President Ignacio Andrade who fled the country in 1899; the threats of the United Kingdom to execute the award unilaterally in case Venezuela refused to participate; the fall in the price of coffee, which was one of Venezuela's most important sources of income since 1811; and the blockade of Venezuelan coasts for threats of invasion by Germany, Italy and the British Empire itself to force the country to pay its foreign debt.

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384 Manuel DONÍS RÍOS, *"La reclamación del territorio Esequibo: 1899-1966"* ("The Claim to the Essequibo Territory: 1899-1966"), *Quoted Above*. Page 5.

385 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 189.

386 *Ibidem,* Page 28.

387 Alexis PALENCIA HERNÁNDEZ, *"Escuadra venezolana en tiempos de Castro"* ("A Venezuelan Squadron in times of Castro"), in *Tiempo y Espacio*, Nº 64, Universidad Pedagógica Experimental Libertador, Caracas, 2015. Page 486. Available at: http://ve.scielo.org/pdf/te/v25n64/art22.pdf.

4. Consequences of the Nullity of the Paris Arbitral Award

The Paris Arbitral Award of 3 October 1899, is absolutely null and void, and, therefore, it is not final nor is it binding; It does not have the effects of *res judicata* and is considered a legally non-existent act, since it was rendered in violation of the rules of the arbitration treaty from which it arose, going against the international law that was in force at the time it was rendered: in violation of due process and having the flaws of arbitrators exceeding their powers and ruling *ultra petita*, in addition to completely lacking reasoning and being in violation of the duty of impartiality of the arbitrators.

The three characteristics of an arbitral award, namely, its finality, its binding nature, the effect of *res judicata,* and the principle of intangibility of *res judicata*, have a common element, i.e., the consent of the parties to arbitration as the chosen means to resolve the dispute and the subjection of the arbitrators to the terms of such consent. In the absence of freely and unequivocally expressed consent, or if the arbitrators deviate from the terms of such consent, the arbitral award could never be a final or binding decision on the dispute. Such a decision lacks justice.

If an arbitral award is not final and binding and, consequently, is not protected by the principle of intangibility of *res judicata*, it is because it has not been duly rendered. In some aspect of the compromise, the parties have failed or, in some aspect of the award, the arbitrators who have rendered such a decision have failed. It could have been the incorrect assessment of the consent expressed by one of the parties; the disrespect of the principles inherent in due process; the violation of the arbitrators' duties of impartiality and independence; or the outright violation of the principles of international law.

Whatever the reason, an arbitral award loses its own nature when it is neither final or binding, nor is it protected by the effect of *res judicata*. The only consequence of this is that the award will be considered a legally non-existent act. In other words, the value of an arbitral award that has not been duly rendered is no greater than that of a piece of paper with ink poured over it.

We will analyse each of these characteristics and their consequences in the following lines.

4.1 The Award is not Final and Binding

The Paris Arbitral Award did not definitively resolve the boundary dispute between Venezuela and the United Kingdom of Great Britain and Northern Ireland, since it is null and void and therefore lacks legal validity, is not final and is not binding or obligatory for the parties.

The definitive nature of arbitral awards implies that the decision of the arbitrators resolves the dispute definitively and without appeal. The logic of this statement is that, in international law, there is no superior or supra-state body to ensure the enforcement of decisions[388] or to function as a second level of jurisdiction for the purpose of appealing the decision. Therefore, the final decision is that of the arbitrators acting on the basis of the power conferred upon them by the parties through their respective manifestations of will.

However, *"the principle of the finality of arbitral awards is subject to the qualification that in certain circumstances awards may be null and void"*[389]. The circumstances that condition the validity of arbitral awards are precisely the appearance of serious flaws in the form in which they were rendered or in their content, which would entail their nullity and compromise the external appearance of the decision rendered. This was established in Article 54 of the Hague Convention of 1899 for the Peaceful Settlement of International Disputes: *"The Award, **duly rendered** and notified to the agents of the Parties, settles the dispute definitively and without appeal"*[390]. (Highlighting Added). Thus, an arbitral award is final only when it has been duly rendered[391], which did not occur in the case of the Paris Arbitral Award.

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388 See: Daniel GUERRA IÑÍGUEZ, Quoted Above, Page 449.

389 See: Max SORENSEN, Quoted Above, Page 643.

390 The 1899 Hague Convention for Pacific Settlement of International Disputes. Available at: https://docs.pca-cpa.org/2016/01/Convenci%C3%B3n-de-1899-para-la-resoluci%C3%B3n-pac%C3%ADfica-de-controversias-internacionales.pdf.

391 See: Héctor FAÚNDEZ LEDESMA, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899.") in Héctor FAÚNDEZ LEDESMA and Rafael BADELL MADRID (Coordinators), "*La controversia del*

We must bear in mind that the Paris Arbitral Award was rendered after the 1899 Hague Convention for the Peaceful Settlement of International Disputes was published and that the arbitrators who formed the arbitral tribunal that rendered the Paris Award were fully aware of that Convention.

The First Hague Conference was the forum where all the drafts that later became conventions were discussed, including the 1899 Hague Convention for the Peaceful Settlement of International Disputes. The president of the Paris Arbitral Tribunal, Fyodor Fyodorovich Martens, participated in the First Hague Conference of 1899, which led to the suspension of the hearings on three occasions, one at the end of June and, the other two, in July 1899.

Regarding the definitive nature of arbitral awards, it should be noted that in Venezuela in 1904, during the government of Cipriano Castro, Venezuelan Ministry of Foreign Relations took a position on the reviewability of arbitral decisions, admitting it in certain cases. Doctrine upheld by Venezuelan Ministry of Foreign Relations was that, on occasions, the presumption that arbitrators have acted correctly can be eliminated; in such cases, *"the awards should not deserve the respect nor have the authority that the commitment accords them"*[392].

On the same occasion, the Ministry of Foreign Affairs added that: *"The character of a final decision cannot always be granted to arbitral awards for the sole reason that they emanate from the persons appointed to constitute the arbitration commission, because if the Treaty attributes beforehand such character to arbitral awards, it is only within a concept that such decisions will not suffer from any flaw that would render them ineffective. The cause of arbitration would be seriously harmed, if it the principle that all arbitral decisions must be complied with were to be accepted, whatever they may be. Publicists have already pronounced themselves in favour of the right of States to request the invalidation of certain awards, and the causes which, in their opinion, may give rise to the exercise of such remedies are well known"*[393].

Esequibo", ("the Dispute with Guiana"), *Academy of Political and Social Sciences*- Editorial Jurídica Venezolana, Series Events 34, Caracas, 2022. Page 680.

392 Daniel GUERRA IÑÍGUEZ, Quoted Above, Page 450.

393 *Ídem.*

On the other hand, the binding nature of arbitral awards, as well as their finality, arises from the arbitral commitment whereby the parties express their willingness to resolve a dispute -or several of them- through arbitration. Hence the importance of preserving the binding nature of the arbitral decision and respecting the agreement entered into between them.

The importance of the will of the parties embodied in the arbitration agreement is such that even if the binding nature of the arbitral award is not established in a clause of the agreement, it remains binding for the parties. Indeed, Guerra Iñíguez explains that "*it would make no sense to resort to a procedure of this nature and leave its compliance pending to the whim or good faith of the parties"*[394]. Although, as Max Sorensen points out, *"an arbitral award is binding only on the parties in dispute and does not bind third parties"*[395]. This last idea obeys the classic principle of the relativity of contracts.

As to the binding nature of the arbitral award, the same logic applies as that for the final nature, i.e.: only the arbitral award that has been duly rendered will be binding. In this regard, it should be noted that the absolute nullity flaws committed by the Paris Arbitral Award eliminate its binding nature since, as explained above, only those arbitral awards that have complied with the necessary procedural guarantees to be considered duly rendered are valid and binding for the parties.

Indeed, as Faúndez Ledesma points out, for an arbitral award to be duly rendered it must be possible to verify that: *"...said act emanates from a tribunal duly constituted according to an arbitral commitment, that what has been decided pertains to the subject matter of the dispute as agreed by the parties, that the parties have been heard in a process developed with the due judicial guarantees, that the parties have had the opportunity to confront the evidence and to present allegations in their defence, that it has been decided according to the rules of substantive law agreed by the parties, and that there are no elements that allow doubts as to the impartiality of the tribunal or fraud of any of the parties. The issue is not whether the award is manifestly wrong or unjust, but*

394 Daniel GUERRA IÑÍGUEZ, Quoted Above, Page 449.
395 Max SORENSEN, Quoted Above, Page 643.

whether it conforms to what the parties entrusted the tribunal with and whether the procedural rules inherent to due process were observed. Although neither of these irregularities is an all too frequent occurrence in international life, neither is it unusual that they may be present in a particular case, as international jurisprudence attests"[396].

The Paris Arbitral Award was not duly rendered; on the contrary, it was rendered in violation of the rules of the Arbitration Treaty from which it arose; against the international law in force at the time, it was rendered: in violation of due process and committing the flaws of arbitrators exceeding their powers and ruling *ultra petita*, in addition to completely lacking reasoning and being in violation of the duty of impartiality of the arbitrators.

On the other hand, the fact that Venezuela participated in the demarcation does not validate the serious flaws of the Paris Arbitral Award. It does not validate them because the flaws of such entity; serious flaws by their nature implying absolute nullity, are unvalidatable.

As it has already been pointed out and will be explained in further detail below, the Paris Arbitral Award was executed within an immense political, social, and economic crisis in Venezuela at the time of the overthrow of its President, under threat of the United Kingdom to execute the award unilaterally, and in the midst of a blockade of Venezuelan coasts and threats of invasion by Germany, Italy, and the British Empire itself, to force the country to pay its foreign debt.

In view of these conditions, it is not possible to assert that Venezuela voluntarily accepted the Paris Arbitral Award whose execution was the result of coercion. Indeed: *"in the case of the 1899 award, we must reiterate that the fact that the demarcation took place does not invalidate Venezuela's reiterated position regarding the injustice committed and the pressures received to "execute" the award. Our country has not ceased to denounce its disagreement as to the development of the facts and has maintained a constant and reiterated position of not recognizing the award due to its null and void nature"*[397].

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396 Héctor FAÚNDEZ LEDESMA, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899."), Quoted Above, Page 681.

397 Milagros BETANCOURT, *"El Laudo Arbitral del 3 de octubre de 1899 a la luz de la Jurisprudencia de la Corte Internacional de Justicia"* ("The Arbitral Award of 3 October

4.2 The Award does not produce effects of *res judicata*

Being vitiated by absolute nullity, the Paris Arbitral Award does not have the effect of *res judicata*, nor does the principle of intangibility predicated of arbitral awards apply *"which means that a judicial or arbitral decision that has put an end to a proceeding cannot be reviewed"*[398]. *As Diez de Velasco states, "The legal value of the judgment [arbitral award], as we have said, is binding on the parties. This follows from the commitment in which they tacitly or expressly undertake to observe it. It is valid without need for acceptance or ratification by the parties;* ***and it produces the effect of res judicata between them****"*[399]. (Highlighting Added).

The impeditive effect of *res judicata* generates protection of the arbitral award through the principle of intangibility of *res judicata* which implies that *"a judicial or arbitral decision that has put an end to a proceeding cannot be reviewed"*[400]. The principle of intangibility of *res judicata* was expressly recognized in the aforementioned Article 54 of the Hague Convention for the Peaceful Settlement of International Disputes of 29 July 1899, which established that: *"The award, duly rendered and notified to the agents of the Parties,* ***settles the dispute finally and without appeal****"*[401]. (Highlighting Added).

However, as can be deduced from the aforementioned Article 54 of the Hague Convention, the effect of *res judicata* and the principle of intangibility that prevents the review of the arbitral decision is only

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1899, in light of the Jurisprudence of the International Court of Justice"). *Bulletin of the Academy of Political and Social Sciences*, Nº 165, July-September, Caracas, 2021, in Héctor FAÚNDEZ LEDESMA and Rafael BADELL MADRID (Coordinators), Quoted Above., Page 328.

398 Héctor FAÚNDEZ LEDESMA, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899."), Quoted Above, Page 680.

399 Manuel DIEZ DE VELASCO VALLEJO, *Instituciones de Derecho Internacional Público* ("Public International Law Institutions"), 18th Edition, Editorial Tecnos, Madrid, 2013. Page 961.

400 Héctor FAÚNDEZ LEDESMA, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899."), in *Bulletin of the Academy of Political and Social Sciences,* Nº 167, January-March, Caracas, 2022.

401 See: The Hague Convention for Pacific Settlement of International Disputes of 29 July 1899. Available at: https://docs.pca-cpa.org/2016/01/Convenci%C3%B3n-de-1899-para-la-resoluci%C3%B3n-pac%C3%ADfica-de-controversias-internacionales.pdf.

effective when the arbitral award has been duly rendered, which, in turn, implies that the intrinsic and extrinsic requirements for its validity have been met, that is, that it has been produced in accordance with the law.

For an arbitral award to be protected by the effect of res judicata and the principle of intangibility *"it is assumed that we are dealing with a document that, prima facie, presents the characteristics of an arbitral award and not an act of a different nature, such as an apocryphal document, one that emanates from one of the parties to the dispute, the statement of a third party who is not an arbitrator, or a document that was not approved as the decision of the majority of the members of the Arbitral Tribunal. But neither does an award that resolves a dispute other than the one entrusted to the Tribunal**, or an award that resolved the dispute by applying rules other than those agreed upon by the parties**, produce the effect of res judicata"*[402]. *(H*ighlighting Added).

Therefore, two indispensable elements are derived for arbitration to be protected by the effect of *res judicata* and the principle of intangibility: that it is a decision that has the nature of arbitration and resolves the controversy in accordance with what was agreed by the parties.

Both elements were violated in the Paris Award. The nature of arbitration that is predicated as a substantial element for arbitration to be valid is not fulfilled if the decision has not respected the guarantees of due process. Moreover, *res judicata* is not incompatible with a minimum control that allows verification that the procedure has been duly processed[403]. Otherwise, the most serious injustices, expressed through arbitrary decisions, would remain definitively final and nothing would be done.

In any case, the Geneva Agreement of 17 February 1966 recognized the existence of a dispute as to the validity of the Paris Arbitral Award and stated that it is necessary to reach a practical and mutually acceptable solution for the parties. The need to reach a practical solution assumes that the boundary problem between Venezuela and Guyana, formerly a colony of the United Kingdom, was never resolved.

402 *Ibidem,* Page 681.
403 *İdem.*

It is, therefore, established that, among the main effects of the Geneva Agreement, is those of "*lifting the res judicata effect of the Award and reopening the discussion on the border between the two countries"*[404]. As stated by Isidro Morales Paúl, the Geneva Agreement is the only instrument that achieves three very important things for the Venezuelan Claim on the eastern border: (i) it recognizes the existence of a dispute; (ii) it challenges the *res judicata* effect of the Paris Arbitral Award; and (iii) it officially reopens the discussion on the Paris Arbitral Award[405].

4.3. The Award is Legally Non-Existent

The Paris Arbitral Award is null and void and therefore considered a legally non-existent act from the very moment it was rendered. Indeed, an arbitral award vitiated by absolute nullity, as is the case of the Paris Arbitral Award, does not require *"that the validity of the award must be challenged, or that its nullity must be judicially declared"*[406]. The Paris Arbitral Award is a legally non-existent act by virtue of the serious flaws that were committed. Indeed, as Héctor Faúndez Ledesma has indicated: *"What makes an award null and void is not the fact that it is challenged within a certain period of time or before the instance established to assess its validity (if any), but the circumstance that it suffers from irregularities that cannot be remedied; if the flaws are of such magnitude, nullity does not have to be alleged for it to take effect. If, as in the present case, the Tribunal exceeding its powers, the irregularities in its composition, or the lack of reasoning of the award as*

404 Gabriel RUAN SANTOS, "La Academia de Ciencias Políticas y Sociales y la reclamación de Venezuela por la Guayana Esequiba. Algunos antecedents." ("The Academy of Political and Social Sciences and Venezuela's Claim to the Essequibo Territory. A Brief Background.") in Tomás Enrique CARRILLO BATALLA (Coordinator), Quoted Above, Page 62.

405 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), in Tomás Enrique CARRILLO BATALLA (Coordinator), Quoted Above, Pages 201-202.

406 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), The Academy of Political and Social Sciences. Editorial Jurídica Venezolana, Caracas, 2020. Page 157.

a consequence of its arbitrariness, are so evident, it is not necessary that the validity of the award be challenged, or that its nullity be judicially declared. Legally, that is a non-existent act"[407]. This is not the first time that the ICJ has had to decide a case in which the legal non-existence of an arbitral award is denounced, as it did on 18 November 1960, in the case of the Arbitral Award rendered by the King of Spain on 23 December 1906. On that occasion Nicaragua alleged the nullity of the award, arguing that it was non-existent because it had been rendered by an arbitrator who had no original legitimacy. The ICJ decided that since Honduras did not denounce the legitimacy of the sole arbitrator at the time and continued with the proceedings, it could not declare the award null and void for that reason.

However, the case of the Paris Award is very different from that of the King of Spain's Award. In fact, there are many more irregularities in the Paris Award, such as the violation of the rules of the arbitration treaty from which it arose; the failure to comply with the international law that was in force at the time it was rendered; the violation of due process, and arbitrators exceeding their powers and ruling *ultra petita*; it was also totally without reason and violated the duty of impartiality of the arbitrators.

5. Recapitulation

The Paris Arbitral Award of 3 October 1899, is fundamentally null and void and legally non-existent because of multiple violations of international law when it was issued; it is null and void because it violated due process and left one of the parties defenceless; it is null and void because arbitrators exceeded powers; it decided beyond what was required of the arbitral tribunal and thus ruled *ultra petita*; it is null and void because it lacked the required reasoning and the duty of impartiality of the arbitrators.

The fact that Venezuela participated in the demarcation does not validate the serious flaws of the Paris Arbitral Award. The Paris Arbitral Award was executed within an enormous political, social, and economic

[407] Héctor FAÚNDEZ LEDESMA, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899.") Quoted Above, Page 687.

crisis in Venezuela and under threat by the United Kingdom to execute the award unilaterally, if Venezuela refused to participate, and in the midst of a blockade of Venezuelan coasts and threats of invasion by Germany, Italy, and the British Empire itself.

In order to apply the principle according to which an arbitral award is final and binding, produces the effect of *res judicata,* and enjoys the protection of the principle of intangibility, it is necessary for the decision conforms to have abided by the essential characteristics of arbitration and, therefore, respects the guarantees of due process, and is also that it have been issued in accordance with the agreement between the parties. None of this occurred in the case of the Paris Arbitral Award.

Since the Paris Arbitral Award is null and void, it is neither final nor binding, it lacks the effect of *res judicata* and the principle of intangibility, and must be considered legally non-existent.

The Geneva Agreement of 17 February 1966 recognized the existence of a dispute as to the validity of the Paris Arbitral Award, and, by stating that it was necessary to reach a practical and mutually acceptable solution for the parties, implicitly recognized that it did not constitute a valid instrument for the settlement of the territorial dispute. The need to reach a practical solution implies that the boundary problem between Venezuela and Guyana was never resolved.

V. BACKGROUND OF THE GENEVA AGREEMENT

Venezuela proceeded to the execution of the Paris Arbitral Award under completely unfavourable circumstances, within an enormous political, social and economic crisis; in the midst of the overthrow by General Cipriano Castro of President Ignacio Andrade, who fled the country in 1899; the threats of the United Kingdom to execute the award unilaterally, should Venezuela refuse to participate; the fall in the price of coffee, which was one of the most important sources of income for Venezuela since 1811, and the blockade of Venezuelan coasts due to the threats of invasion by Germany, Italy and the British Empire itself to force the country to pay its foreign debt.

During the first part of the 20th Century, the Venezuelan claim for the Essequibo territory was always present. In the government of General Juan Vicente Gómez, there were several attempts by the United Kingdom to occupy territories beyond what the Paris Arbitral Award had established, with particular interest in the Bocas del Orinoco. Faced with these facts, the government's response was a strong rejection. In particular, as historian Manuel Donís Ríos points out, we must emphasize that *"...General Gómez acted firmly in 1930 when the presence of foreigners in the Gran Sabana, Bolívar State, became known. Coming from British Guiana, Adventist missionaries penetrated the region and established themselves with a house, chapel, and elementary English schools in various places. In the words of Friar Cesáreo de Armellada: "It represented a real danger to the territorial integrity, because in addition to teaching the English language, they stamped their documents with the letterhead of "British Guiana", as we could see in several papers, abandoned when they were expelled from the region when our Capuchin missions were installed"*[408].

[408] Manuel DONÍS RÍOS, *"Antecedentes de la reclamación venezolana del territorio Esequibo"* ("Background of the Venezuelan Claim to the Essequibo Territory"), in Héctor FAÚNDEZ LEDESMA and Rafael BADELL MADRID (Coordinators), Quoted Above., Page 179.

On 14 October1938, Dr. Carlos Álamo Ybarra, in his work of incorporation to the Academy of Political and Social Sciences entitled *"Frontiers of Venezuela with English Guiana"*[409], studied for the first time in a systematic way and with scientific rigor the controversy of the Essequibo and especially its antecedents.

Dr. Carlos Álamo Ybarra refers in depth to the historical and juridical titles that assist Venezuela in the claim since the arrival of the Spaniards to the American continent; the author also deals with the sad result of the deliberations of the Arbitral Tribunal of Paris, as stated in the Paris Arbitral Award of 3 October 1899. Arbitration was not on that occasion a peaceful means of obtaining justice in accordance with the rules of law; on the contrary, as Dr. Álamo Ybarra himself pointed out, *"arbitration, advocated as a plausible means of settling international disputes, was a way of giving up what they wanted to take away from us by force"*[410].

In 1944, during the government of Isaías Medina Angarita, the claim to the territory of the Essequibo was emphasized. That year, Venezuelan Minister of Foreign Relations Caracciolo Parra Pérez negotiated the incorporation of Venezuela as part of the Atlantic Charter of 14 August 1941. In that charter the President of the United States, Franklin Delano Roosevelt, and the Prime Minister of the United Kingdom, Winston Churchill, agreed on common principles of their national policy and *"their hopes for a better future for the world"*[411] was based on such principles. Among these principles were:

> *"1. Their countries seek no territorial or other aggrandizement; 2. They do not wish to see any territorial change which is not in accordance with the freely expressed votes of the peoples concerned; 3. They respect the right of all peoples to choose the form of government under which they wish to live, and wish to see the restoration of sovereign rights and the free exercise*

409 Carlos ÁLAMO YBARRA, *"Fronteras de Venezuela con la Guayana Británica"* ("Venezuela's Borders with British Guiana"), *Academy of Political and Social Sciences*-Editorial Élite, Caracas, 1938.

410 *Ibidem,* Page 87.

411 See: *"Carta del Atlántico"* ("The Atlantic Charter") of 14 August 1941. Available aquí (here)

of government to those from whom they have been forcibly taken; 4. They will endeavour, with full respect for their existing obligations, to extend to all States, small or great, victorious or vanquished, the possibility of equal access to world trade and raw materials necessary for their economic prosperity; 5. They desire to achieve among all nations the most complete collaboration in the field of economics in order to secure for all improved working conditions, economic progress and social protection; 6. After the final destruction of Nazi tyranny, they hope to see the establishment of a peace which will enable all nations the means of dwelling in safety within their own borders and which will afford assurance that all men in all lands may live out their lives in freedom from fear and want; 7. Such a peace should enable all men to sail unimpeded upon the seas and oceans; 8. It is their conviction that all nations of the world, both for practical and spiritual reasons, must totally renounce the use of force. Since no future peace can be maintained if land, naval or air weapons continue to be employed by nations which threaten or may threaten, aggression outside their frontiers, they believe that, pending the establishment of a wider, and permanent system of general security, that the disarmament of such nations is essential. They will likewise assist and encourage all practical measures which lighten for peace-loving peoples the crushing burden of armaments which weighs heavily upon peaceful peoples"[412].

In January 1944, as a consequence of Venezuela's adhesion to the Atlantic Charter, Venezuelan President Isaías Medina Angarita was in New York City, together with Venezuelan Ambassador to Washington Diógenes Escalante. There, he demanded *"the amicable reparation of the injustice committed by the award"*[413] and Ambassador Diogenes Escalante pointed out that *"Venezuela accepted the award, but Venezuela expects the injustice to be repaired"*[414].

From the previous sentence, two things are fundamental for the understanding of the national sentiment provoked by the Paris Arbitral

412 *Ídem.*

413 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 23.

414 Marcos FALCÓN BRICEÑO, Quoted Above, Page 51.

Award of 1899. In the first place, Venezuela's dissatisfaction with the decision and, on the other hand, the hope of a future reparation for what was a grave injustice.

In that visit to New York, President Isaías Medina Angarita met with Severo Mallet-Prevost, who had been part of the group of lawyers that worked in the defence of Venezuela in the Paris Arbitration and awarded him the Order of the Liberator, for his commitment to the defence of Venezuela's territorial rights[415].

Rómulo Betancourt played a very important role in the claim of Venezuela's rights over the Essequibo territory. Rómulo Betancourt built the political and legal foundations for Venezuela's justified territorial claim over the Essequibo Guiana, after the Paris Award of 1899 was issued.

The efforts of Rómulo Betancourt constitute the most important antecedent of the Geneva Agreement, whereby the existence of Venezuelan contention on the nullity of the Paris Arbitral Award was recognized. It follows from this treaty that the arbitration decision is not protected by the principle of intangibility of *res judicata* and is not final.

Rómulo Betancourt intervened in this matter on two occasions with very positive results. First, in 1948, during the government of President Rómulo Gallegos, when he headed Venezuelan delegation that attended the IX International American Conference. Later, when Rómulo Betancourt was President of the Republic between 1959 and 1964, he carried out a brilliant and successful foreign policy in which the defence of Venezuela's territorial rights was established as a priority.

Indeed, on 30 March 1948, at the IX Inter-American Conference held in the city of Bogota, where the Charter of the Organization of American States was approved, President Romulo Betancourt expressed that "*In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that in justice may belong to them, nor do we renounce what Venezuelans, in the event of a serene and cordial historical and geographical revaluation of the Americas, could assert*

415 Véase Marcos FALCÓN BRICEÑO, Quoted Above, Page 51.

in favour of their territorial aspirations over areas now under colonial tutelage and which were previously within our own sphere"[416].

In the opinion of Efraín Schacht Aristigueta, this forceful declaration *"gave for the first time after fifty years ago, when the Paris Award of 1899 was issued, the political and juridical basis for our justified territorial claim over the Essequibo Guiana"*[417].

Since the Paris Award was rendered, the whole country experienced a great sense of injustice, which increased once the memorandum of the lawyer Severo Mallet-Prevost was published in the *American Journal of International Law* in July 1949, and the collective displeasure increased when the confidential British and United States files were opened.

With the publication of Severo Mallet-Prevost's memorandum, the farce that was the Paris Arbitration became even more evident. There were now documents showing that the Paris Arbitration Award was an unfair political settlement imposed by the Chairman of the arbitral tribunal, Fyodor Fyodorovich Martens.

In 1951, during the administration of Acting President Germán Suárez Flamerich, Venezuelan Minister of Foreign Relations, Luís Gómez Ruíz, during the IV Meeting of Consultation of the Ministers of Foreign Affairs of the American Countries, expressed his support for a real settlement of the eastern border of Venezuela.

In that same meeting, Venezuelan representation stated that: *"It is the opinion of the Government of Venezuela that none of the changes of status that may occur in British Guiana as a consequence of the international situation or of the measures that may be adopted in the future, or as a result of the progress of the inhabitants of said territory towards the determination of their own destinies, will be an obstacle for Venezuela, in view of the peculiar circumstances that prevailed when its boundary line with the aforementioned colony was marked, to assert its just aspirations that the damages suffered by the Nation at that time be repaired in accordance with an equitable rectification"*[418].

In 1954, during the government of Marcos Pérez Jiménez, at the X Inter-American Conference held in the city of Caracas, Ramón

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416 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Pages 23-24.

417 *Ídem.*

418 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 152.

Carmona, acting as legal consultant to Venezuelan Ministry of Foreign Relations, ratified what had been said in 1951 when he stated that: *"As regards the specific case of British Guiana, the Government of Venezuela declares that none of the changes of "status" that may occur in that neighbouring country can be an obstacle for the National Government, interpreting the unanimous feeling of Venezuelan people, and in view of the peculiar circumstances that prevailed regarding the marking of its frontier line with the aforementioned Guyana, to assert its just aspiration that the damages suffered by the Nation on that occasion be repaired, in accordance with an equitable rectification.."*[419].

Finally, at that Tenth Inter-American Conference it was stated, as a conclusion with respect to the territorial rights of Venezuela, that: *"In accordance with the foregoing, no decision on colonial matters adopted at the present Conference may impair the rights to which Venezuela is entitled in this respect or be interpreted, in any case, as a waiver of such rights"*[420].

This view was ratified again in 1956 by the Minister of Foreign Relations of Venezuela, José Loreto Arismendi and in 1960, during the second government of Rómulo Betancourt, by the diplomat and deputy Rigoberto Henríquez Vera, who in the Chamber of Deputies of Venezuelan Congress and in front of a parliamentary delegation from the United Kingdom, pointed out that: *"A change of status in English Guyana will not be able to invalidate the just aspirations of our people to be repaired in an equitable manner and through cordial understanding, the great damages suffered by the nation by virtue of the unjust ruling of 1899, in which peculiar circumstances caused our country the loss of more than sixty thousand square miles of its territory"*[421].

During the second government of Rómulo Betancourt, the Venezuelan Claim took on even greater force for several reasons. First, Dr. Carlos Sosa Rodríguez ratified in February 1962, before the UN Trusteeship and Non-Self-Governing Territories Commission, the position held by Venezuelan Ministry of Foreign Relations that a change

419 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 23-24.
420 *Ibidem,* Pages 23-24.
421 *Ibidem,* Page 25.

in the status of the British Guiana colony would not change Venezuela's legitimate aspiration to obtain justice[422].

Later, President Romulo Betancourt, in a message to Congress on 12 March 1962, pointed out that: *"The dispute between the weak Venezuela and the arrogant Albion of Queen Victoria's days, was resolved in an iniquitous and unacceptable, and always rejected by Venezuela, award pronounced by a political court and not a court of law, in a sentence of 3 October 1898. Venezuela has never admitted nor will it admit that such an extensive portion of territory, legitimately of its own, ceases to be framed within its geography"*[423].

In this regard, the Chamber of Deputies of the Congress issued an Agreement, as a result of the sessions of 28 March and 4 April of 1962, to *"Support the policy of Venezuela on the boundary dispute between the English possession and our country as regards the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of English Guiana and its incorporation into the democratic system of life"*[424].

The diplomatic efforts carried out during the second government of President Rómulo Betancourt were very important and successful. The claim of the Essequibo was promoted by Ambassador Carlos Sosa Rodríguez before the 130th meeting of the XVI Annual Session of the United Nations General Assembly on 22 February 1962, where he ratified the position held by the Ministry of Foreign Relations of Venezuela according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[425], which he made in the following terms: *"...of particular importance for Venezuela is the process of political evolution, through which, peacefully, the people of British Guiana, which shares borders with ours and whose destiny as a sovereign nation, incorporated in the plan of equality to the concert of the other States of the continent,*

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422 *Ídem.*

423 Naudy SUÁREZ FIGUEROA (comp.), *"Rómulo Betancourt. Selección de escritos políticos (1929-1981)"* ("Rómulo Betancourt. A Selection of Political Papers (1929-1981)"), The Rómulo Betancourt Foundation, Caracas, 2006. Page 387.

424 *Ídem.*

425 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 25.

we advocate with genuine American sentiment, will have to acquire its independence. On this occasion, when we fully support the recognition of the rights of the people of British Guiana, we could not, however, without betraying our own Venezuelan people, forget their rights, their border claims, and silence in this world forum their legitimate claim for the rectification of a historical injustice"[426].

Equally fundamental was the brilliant and timely statement of Venezuelan Minister of Foreign Relations Marcos Falcón Briceño before the 348th Session of the Special Political Committee of the XVII United Nations Assembly on 12 November 1962. There, Marcos Falcon Briceño ratified the position of Ambassador Carlos Sosa Rodriguez regarding the claim and invoked the historical Venezuelan position that the Paris Arbitral Award is null and void[427].

In effect, Venezuelan Minister of Foreign Relations Dr. Marcos Falcón Briceño indicated that: *"Venezuela also wishes to ratify its frank support for the independence of British Guiana, and for this reason hopes that in the conversations it wishes to have with the United Kingdom to seek the best path to a peaceful solution of this controversy, the representatives of the government of British Guiana will also have full participation"*[428].

A year later, on 5 November 1963, on the occasion of the First Meeting of Foreign Ministers of Venezuela and the United Kingdom, Venezuelan Minister of Foreign Relations Marcos Falcón Briceño insisted and sent an *aide memoire* where he ratified Venezuela's arguments and demanded the return of the territory of which we were dispossessed[429].

In that document, the Minister of Foreign Affairs, Marcos Falcón Briceño, stated the following:

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426 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), Quoted Above, Page 33.

427 Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations, Caracas, 1967. Page 25.

428 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), Quoted Above, Page 33.

429 *Ídem.*

1) *"The line of the Award follows Schomburgk's "Expanded Line" very closely. The British Archives show that the maps on which this line was based were adulterated. Moreover, British evidence showed how the original Schomburgk Line followed along the Essequibo River and that the restricted "Schomburgk" line, which had official status, was concealed from the Tribunal.*
2) *The injustice of the award is such that it gave British Guiana about six thousand eight hundred square miles (about 17,604 km2) of territory officially recognized by Great Britain. as Venezuelan without dispute, until the appearance of the spurious "Expanded Schomburgk Line" in 1886, and this territory was only a part of the area legitimately claimed by Venezuela.*
3) *The line of the Award was virtually fixed by Great Britain in July 1899 and extrajudicially imposed by British lawyers on British Judges, who acted as biased lawyers for their country rather than as Judges.*
4) *The acceptance of the line of the Award was imposed on the Judges by undue pressure from the President of the Tribunal, Professor Frederick de Martens.*
5) *The line of the Award was not a line of law, but one of political compromise, described as a "shady deal" and a "sham" even by British officials.*
6) *The Tribunal exceeded its powers. It even went so far as to decree the free navigation of the Amacuro and Barima Rivers, a decision evidently conceived to ensure exclusively the interests of Great Britain.*
7) *By signing the Arbitration Treaty of 1897 under moral coercion, Venezuela was also deceived as to the meaning of the prescription clause.*
8) *It was not until 1899 that Venezuela had knowledge of the official and secret correspondence that led to the 1897 Treaty. Moreover, it is only now that Venezuela comes to know that the British lawyers exerted undue pressure on the American lawyers in order to force them to accept the British interpretation of the prescription clause.*

9) *Despite the fact that Venezuela was coerced into accepting the Treaty, it was nevertheless confident that the Treaty guaranteed a judicial process that excluded the possibility of any political or diplomatic transaction. However, the decision rendered on 3 October 1899 was one of a transaction, not of law.*

HISTORICAL TRUTH AND JUSTICE DEMAND THAT VENEZUELA CLAIM THE FULL RETURN OF THE TERRITORY OF WHICH IT HAS BEEN DISPOSSESSED., and in this respect it relies confidently upon the goodwill and cooperation of Her Majesty's Government"[430].

On 7 March 1964, in his message to the National Congress, President Romulo Betancourt gave an account of the steps that Venezuelan Ministry of Foreign Relations had taken with the United Kingdom and pointed out that: *"Negotiations have continued and, for the good of the Republic and to remedy an injustice done to Venezuela, they must be continued. The culmination of these negotiations must be the incorporation into the national territory of an area that, from a legal-historical point of view, never ceased to belong to Venezuela"*[431].

The claim made before these important international forums resulted in a great diplomatic triumph for Venezuela. A few days after the words of Venezuelan Minister of Foreign Relations Marcos Falcón Briceño, the UN approved an agreement under which Venezuela, the United Kingdom and the authorities of British Guiana agreed to examine the files related to the dispute.

We again ratify the importance of the investigations conducted by Jesuit Fathers Pablo Ojer Celigueta and Hermann Gonzalez Oropeza as set out in the *"Report presented to the National Government by Venezuelan experts on the matter of the limits with British Guiana"*[432], published on 18 March 1965.

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430 Ministry of Foreign Relations (1982). *"Reclamación de la Guayana Esequiba"* ("Claim to the Guiana-Essequibo"). Documentos 1962-1981, Caracas. Pages 23-24.

431 *Ídem.*

432 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, "*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional"*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967.

The report presented by Ojer and Gonzalez refers to Venezuela's titles over the Essequibo territory; the details of the controversy between Venezuela and the United Kingdom during the 19th Century; Venezuela's lack of participation in the formulation of the Treaty of Washington of 1897, and the reasons why the Paris Arbitral Award is null and void. In addition, the report includes statements by personalities who participated in the Paris Arbitration, the reactions of the international press and several maps showing that the procedure was openly in violation of Venezuela's legitimate rights.

Regarding Venezuela's titles over the Essequibo territory, the report points out how Spain was the State that discovered and colonized the territory of Guyana, an undertaking that was recognized by the other powers between the 15th and 16th centuries. When the Treaty of Münster was signed, there was no Dutch post located west of the Essequibo River.

The Jesuit experts, Ojer and Gonzalez, relate that the Dutch had only insignificant posts that lasted a very short time and that constituted violations of the Treaty of Münster. They argue that when the Treaty of London was signed in 1814, the United Kingdom obtained the territory of British Guiana. However, the boundary with Venezuela was always located at the Essequibo River. This is stated in the Cruz Cano Map, published by Francisco de Miranda in 1799 with the approval of the British government.

Ojer and González indicate in the report that, even when Venezuela was part of the Republic of Colombia, it was always made known to the United Kingdom that the border with the British Guiana Colony was the line of the Essequibo River. These statements are supported by the diplomatic declarations of Francisco Antonio Zea in 1821; José Rafael Revenga in 1823; José Manuel Hurtado in 1824 and Pedro Gual in 1825. In addition, as the Jesuit fathers indicate in their report, *"Spain, when signing the Treaty of Recognition of the sovereignty of our country over the territory known under the old name of the General Captaincy of Venezuela in Madrid on 30 March 1845, included therein the Province of Guayana, which bordered to the East by the Essequibo River"*[433].

[433] *Ibidem,* Page 8.

The report contains a study on the Anglo-Venezuelan controversy where the progressive increase of the British pretensions after the publication of the first Schomburgk line in 1835 and the formal beginning of the controversy in 1840 with the so-called pseudo-Schomburgk line are exposed.

According to information gathered by experts from the British confidential archives, *"both the Foreign Office and the Colonial Office rejected Schomburgk's arguments in favour of his 1840 pseudo-line. Those two Ministries concluded that the Prussian naturalist had misinterpreted historical documents and had used them with partiality and sectarianism"*[434].

Furthermore, the report states that when Schomburgk was again commissioned to carry out exploration work on the border between Venezuela and British Guiana- based on the 1840 line- he exceeded the instructions given to him by the government and *"erected posts, marked trees and made acts of possession that gave rise to formal protests on the part of Venezuela"*[435].

Furthermore, as Ojer and González point out, "Lord Aberdeen's minutes of 1841 qualify Schomburgk's action as premature, stating that *"as his commission was only to make a survey, he had no reason to take possession"*[436].

In any case, from the review of the British Archives by the Jesuit experts, it can be deduced that *"the internal documentation of the Foreign Office, the Colonial Office and the Demerara Government reveals that the publication of the maps bearing that pseudo-Schomburgk line of 1840 had an official nature and represented the maximum British claim against Venezuela. Thus, we know today that it was under the direction of the British Government and the Demerara Government that the following maps were prepared: (a) The Foreign Office Memorandum Map of 1857 on the Guiana controversy; (b) The Memorandum map of C. Chalmers, Crown Surveyor of the Colony (1867); (c) The Schomburgk-Walker map of 1872; (d) The Brown map*

434 *Ídem.*
435 *Ibidem,* Page 10.
436 *Ídem.*

of 1875; (e) The Stanford map of 1875"[437]*. All these maps make it clear that the United Kingdom recognized from 1840 to 1886 "as Venezuelan territories without dispute all the upper Barima and all the Cuyuní from its headwaters to the mouth of the Otomong"*[438].

The pressure of the interests of the mining industry of the United Kingdom made the British aspirations grow rapidly. The United Kingdom *"further advanced its colonialist ambitions to near Upata, a few kilometres from the Orinoco, with the so-called line of the British maximum claim"*[439].

Ojer and Gonzalez's research confirmed that *"Great Britain rejected the constant Venezuelan proposals to submit the issue to arbitration because its government considered that it lacked arguments and that a fully judicial decision would be unfavourable"*[440] and, thus, always refused to resolve the territorial dispute with Venezuela through arbitration.

Researchers Ojer and González explain the reasons why Great Britain constantly changed its position regarding the border of the British Guiana Colony with Venezuela. They state that these changes were due to the fact that the United Kingdom never trusted its title to the disputed territory[441]. That is why *"the Aberdeen (1844), Granville (1881), Rosebery (1886) lines, etc., respond to the interests of the British Guiana settlers in each period"*[442].

When the United Kingdom of Great Britain and Ireland finally agreed to settle the controversy with Venezuela through arbitration after the intervention of the United States of America, the negotiations of the Washington Arbitration Treaty began. Regarding this treaty, Ojer and Gonzalez state that *"this investigation proves that during the course of the negotiations Venezuela was kept marginalized, particularly in the final and most important phase. Consulted on the prescription clause, negotiations continued despite and against the objections of Venezuelan*

437 *Ídem.*
438 *Ídem.*
439 *Ibidem,* Page 11.
440 *Ídem.*
441 *Ídem.*
442 *Ídem.*

Ministry of Foreign Relations. Moreover, Richard Olney agreed with Great Britain to exclude Venezuela from the Arbitral Tribunal"[443].

Regarding the prescription rule included in Article IV of the Treaty of Washington, the aforementioned report leads us to conclude that even if the British misinterpretation of the prescription rule is accepted, the possibility of granting such a vast territory to the United Kingdom does not follow from it. This can be clearly seen in the map included in the report, which we analysed in the section of the study dealing with the nullity of the Paris Arbitral Award for the arbitrators having exceeded their powers, which identified the territories occupied by the English in 1840, later between 1886 and 1890 and then after 1890[444].

Another serious violation of the treaty's obligations imposed on the arbitrators is related to the so-called first Schomburgk line of 1835, which was not considered by the judges. This first Schomburgk line *"only departs from said river about 45 miles from the coast, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and from that point forms a sort of pocket, west of the Essequibo River, to the point on the coast where the Moroco River flows into it"*.[445] Previously and on the contrary, the arbitral tribunal took into account the extended line of the Hebert map of 1842, a line on which there are important indications of falsification and alteration, namely:

> *"Venezuela has evidence that the British Foreign Office did not know about this line until June 1886. This is more than a serious indication that it was a recent corruption of the original map that had been in the Colonial Office since 1842"*[446].

As for the flaws in the Paris Arbitral Award, the report states that *"the first flaw in the 1899 Award is that it purported to attribute legal*

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443 *Ídem.*

444 *Ibidem,* Page 15.

445 See: Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above. Also see: Carlos SOSA RODRÍGUEZ, "El acta de Washington y el laudo de París" ("The Washington Act and the Paris Award"), *Bulletin of the Academy of Political and Social Sciences,* Nº 91, Caracas, 1983. Page 122.

446 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 13.

value to a line adulterated by Great Britain: the so-called expanded line of the 1842 Hebert map"[447].

The lack of reasoning of the award was also denounced in the report as one of the flaws of the Paris Arbitral Award. In this regard, they stated the following: *"We are able to affirm that the Arbitral Tribunal that rendered the judgment in the British-Venezuelan border dispute did not fulfil its duty and, therefore, by submitting a decision without the required reasoning, did not proceed in accordance with the rules of international law. The decision of the Arbitral Tribunal consequently lack validity in international law, at least as of the date on which the invalidity is invoked"*[448].

Ojer and Gonzalez pointed out in their report that the Paris Arbitral Award was also flawed because arbitrators exceeded their powers. First of all, it must be borne in mind, as pointed out by the experts whose report we are commenting on, that *"the arbitral compromise, as established in 1897, had provided that the decision should be based on the principles of law and in particular on the principle of uti possidetis juris of 1810"*[449].

Despite the terms set forth in the Treaty of Washington and as confirmed by the report *"the decision of the Arbitral Tribunal did not took into account either the principle of uti possidetis juris or the stipulation contained in Rule "a" of Art. IV, and, even in the interpretation most favourable to Great Britain, the Tribunal exceeded its powers, since it did not state the reasons why it attributed to that country dominion over that territory during the fifty years prior to the award, the only certainty being that prior to 1810 these territories were part of the General Captaincy of Venezuela, a future independent state"*[450].

Furthermore, the Paris Arbitral Award had the flaw of arbitrators ruling ultra petita, since *"the Arbitral Tribunal exceeded its powers by deciding and regulating an issue whose examination had not been contemplated in the arbitral compromise; that is, it ruled on the free*

447 *Ídem.*
448 *Ibidem,* Page 14.
449 *Ídem.*
450 *Ibidem,* Page 16.

navigation of the Barima and Amacuro Rivers and regulated their use"[451].

Ojer and Gonzalez ratified in their investigation that the Paris Arbitral Award had another flaw *"consisting of it not having been a decision of law, in accordance with the agreement, but a compromise"*[452]. This was recognized by the American and European press, the members of the Paris Arbitral Tribunal, and the lawyers of the parties[453].

The documents reviewed by Ojer and Gonzalez in the British Archives indicated that *"the award was a compromise obtained by extortion"*[454] in the nature of a political deal. Several statements support this conclusion, among them, those of Severo Mallet-Prevost; George Buchanan; Perry Allen; Sir Richard Webster; Lord Russell; José María Rojas; José Andrade; L. de la Chanonie; Georges A. Parisot; Caroline Harrison; Charles Alexander Harris; A. L. Mason and R.J. Block[455].

Ojer and Gonzalez agreed with the opinion of several experts on international arbitration between States in that: *"the authors and practice of international law generally admit the nullity of awards in two cases: in the case of incompetence of the judge (absence of a valid arbitration agreement or treaty), or in the case of arbitrators exceeding their powers (extension of the decision on matters that were not included in the arbitration or judicial agreement, or the application of rules such as those of equity, for example, which had been explicitly or implicitly excluded by the parties)"*[456].

Regarding the enforcement of the Paris Arbitral Award, Ojer and Gonzalez insisted that *"if Venezuela were to concur with Great Britain in the demarcation of the so-called boundary of the award, it was because of the tremendous pressure of circumstances, to avoid greater evils"*[457]. They also pointed out that the participation of Venezuelan commission in the demarcation was of a strictly technical nature and *"did not imply assenting to the Arbitral Tribunal's purported decision"*[458].

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451 *Ídem.*
452 *Ibidem,* Page 17.
453 *Ídem.*
454 *Ídem.*
455 *Ídem.*
456 *Ibidem,* Page 16.
457 *Ibidem,* Page 22.
458 *Ídem.*

Venezuela protested the Paris Arbitral Award ever since it was issued. The experts state in their report that the first official complaint before the Paris Arbitral Award was made by José María Rojas, who was the only Venezuelan lawyer on the country's defence team during the Paris Arbitration. On 4 October 1899, once the Paris Arbitration Award was rendered, he severely criticized the decision, stating that it was a derisory decision and a manifest injustice[459]. President Ignacio Andrade also criticized the Paris Arbitral Award and indicated that the decision *"had restored to Venezuela only a part of its usurped territory"*[460].

Venezuelan press immediately reacted by criticizing the Paris Arbitral Award. In fact, the experts Ojer and Gonzalez stated in their report that on 17 October 1899, the newspaper El Tiempo denounced the arbitral decision[461].

In a note dated 4 December 1899, the British Minister in Caracas at that time, *"stated his opinion about the justice of the so-called award"*[462]. Faced with this situation, Venezuelan Minister of Foreign Relations responded a few days later and indicated that he could refute the arguments of the British Minister in Caracas[463]. In light of this, the Ministry of Foreign Affairs concluded that *the arbitration decision was so flawed that it was entitled to invoke its invalidity. It decided not to denounce it because it could not face the formidable power of its adversary, since it no longer had the support of the United States, which had entered into an entente with the United Kingdom"*[464].

The rapprochement between the United States of America and the United Kingdom during the Paris Arbitration became more evident with the words of the English press a day after the Paris Arbitral Award was rendered, which read as follows: *"We have no doubt that the United States will force Venezuela to accept the verdict and that they will act appropriately in the event that problems arise with respect to the enforcement of the decision"*[465].

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459 *Ibidem,* Page 21.
460 *İdem.*
461 *İdem.*
462 *İdem.*
463 *İdem.*
464 *İdem.*
465 *İdem.*

The Venezuelan Claim for the Essequibo territory at some moments in our history could not be raised with all the force it deserved, but this had its reasons. Indeed, the report states, *"the internal and international situation of Venezuela in the first half of the 20th Century forced it to postpone the denunciation of the award. But the press, Venezuelan authors, Venezuelan teachers, uninterruptedly taught successive generations that the border of the award did not correspond to the legitimate rights of Venezuela"*[466].

On 5 December 1899, the British Minister in Caracas sent a note to the government of the United Kingdom indicating that Venezuela intended to postpone the demarcation of the border established in the Paris Arbitral Award[467].

According to Ojer Celigueta y González *"in July 1900, the British Minister notified the Government of Venezuela that if the Commission was not sent before 3 October Great Britain alone would proceed to initiate the demarcation. On 8 October the same Minister notified Venezuelan Chancellery that the Governor of British Guiana had been instructed to begin the demarcation work. On 19 October the British Commissioners had already erected the Punta Playa milestone. Venezuela, faced with this manifest pressure, had no alternative but to send the demarcation Commission"*[468].

According to the report, from 1915 to 1917 Venezuela *"insisted in vain before Great Britain to redo the demarcation of some sectors of the frontier, the British Government resisted this on the grounds of the painful circumstances of war their country was going through"*[469]. Venezuela had to wait for better conditions to claim with all the force that an injustice of this magnitude demanded, but the position of rejecting the Paris Award had been taken since 4 October 1899.

Throughout the twentieth century, the need to redress the grave injustice suffered by Venezuela as a result of the Paris Arbitration Award was stressed on many occasions. Among them, Ojer and González point out the following:

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466 *Ibidem,* Page 22.
467 *Ibidem,* Page 21
468 *Ídem.*
469 *Ibidem,* Page 22.

i. In 1944, Venezuelan Ambassador in Washington, Diógenes Escalante, *"invoking the new spirit of equity among nations, demanded in 1944 the amicable reparation of the injustice committed by the award"*[470].

ii. On 30 June 1944, during the session of the Chamber of Deputies of Venezuelan Congress, Congressman José A. Marturet "*ratified the traditional position of Venezuela regarding the award, demanding* ***the revision of its borders with British Guyana****"*[471]. (Highlighting Added).

iii. On 17 July 1944, the President of Venezuelan Congress, Manuel Egaña, during the closing session of that legislative body, expressed his support for the position of the Executive and said: *"And here I want to take up and confirm the yearning for revision, raised before the world and in the presence of the President of the Republic by Ambassador Escalante and before this Congress, categorically, by Deputy Marturet; I want to take up and confirm, I repeat, the yearning for revision of the sentence* whereby *British imperialism stripped us of a great part of our Guyana"*[472].

iv. On 18 July 1944, press statements by members of the Standing Committees on Foreign Relations of the Legislative Chambers, *"representing different political parties, also expressed the need to review the 1899 award"*[473].

v. On 30 March 1948, Rómulo Betancourt, who headed Venezuelan delegation that attended the IX International American Conference, expressed that *"In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that in justice may belong to them, nor do we renounce what Venezuelans, in the event of a serene and cordial revaluation of the history and geography of the*

470 *Ibidem,* Page 23.
471 *Ídem.*
472 *Ídem.*
473 *Ídem.*

Americas, could assert in favour of their territorial aspirations over areas now under colonial tutelage and which were formerly within our own sphere"[474].

vi. In 1949, the memorandum of Severo Mallet-Prevost was published *"which revealed the intimacies of the Paris farce"*[475]. This led Venezuelan historians, under the instructions of Venezuelan Ministry of Foreign Relations, *"to search in the British Archives for new documents that would further clarify the details of that farce. Fifty years had passed and for the first time it was possible to study those documents in the public archives of Great Britain"*[476].

vii. In 1951, during the government of Acting President Germán Suárez Flamerich, Venezuelan Minister of Foreign Relations, Luís Gómez Ruíz, during the IV Meeting of Consultation of the Ministers of Foreign Affairs of the American Countries, demanded *"the equitable rectification of the injustice committed by the Court of Arbitration"*[477]. On the other hand, and at that same time, the Acting Minister of Foreign Affairs, Rafael Gallegos Medina, declared to the press in Caracas that: *"The Ministry of Foreign Affairs has never renounced to this just aspiration of Venezuelans"*[478].

viii. In March 1954, during the X Inter-American Conference held in Caracas, the legal consultant of the Ministry of Foreign Affairs, Ramón Carmona, expressed the following: *"In accordance with the foregoing, no decision regarding the colonies adopted at the present Conference shall impair Venezuela's rights in this respect, nor shall it be interpreted, in any case, as a waiver thereof"*[479].

ix. In February 1956, Venezuelan Minister of Foreign Relations, José Loreto Arismendi, *"ratified the traditional Venezuelan position on the boundaries with that colony, that it would not*

474 *Ibidem,* Pages 23-24.
475 *Ibidem,* Page 24.
476 *Ídem.*
477 *Ídem.*
478 *Ídem.*
479 *Ídem.*

be affected by any change of status that might take place in that border territory"[480].

x. In March 1960, the diplomat and deputy Rigoberto Henríquez Vera, in the Chamber of Deputies of Venezuelan Congress and in front of a parliamentary delegation from the United Kingdom, pointed out that: "*A change of status in English Guiana will not be able to invalidate the just aspirations of our people for equitable reparation, and through cordial understanding, of the great damages suffered by the nation by virtue of the unjust ruling of 1899, in which peculiar circumstances prevailed, causing our country the loss of more than sixty thousand square miles of its territory"*[481].

xi. In February 1962, Venezuelan Ambassador to the UN, Dr. Carlos Sosa Rodríguez, ratified before the UN Commission for Fiduciary Administration and Non-Self-Governing Territories the position held by Venezuelan Ministry of Foreign Relations, according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[482].

xii. During the sessions of 28 March and 4 April of 1962 of the Chamber of Deputies of Venezuelan Congress *"after hearing the addresses of the representatives of all political parties in support of the position of Venezuelan Ministry of Foreign Relations on the award, the following agreement was approved: To support the policy of Venezuela on the boundary dispute between the British possession and our country as regards the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of British Guiana and its incorporation into the democratic system of life"*[483].

xiii. On 12 November 1962, Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, ratified before the 348th

480 *Ibidem,* Page 25.
481 *Ídem.*
482 *Ídem.*
483 *Ibidem,* Page 25.

> Session of the Special Political Committee of the XVII United Nations Assembly the position of Ambassador Carlos Sosa Rodríguez regarding the claim and invoked the historical Venezuelan position that the Paris Arbitral Award is null and void[484].

According to the report, after the conversations between the representatives of the United Kingdom of Great Britain and Norther Ireland and Venezuela *"an agreement was reached between those two countries, with the concurrence of the Government of British Guiana, whereby the three Governments would examine the documents relating to this question, and that they would inform the United Nations on the results of the conversations. This was stated, with the authorization of the parties concerned, by the Chairman of the Special Political Committee, Mr. Leopoldo Benitez (representative of Ecuador) on 16 November 1962"*[485].

The report has an additional value which is that, as stated on the first page: *"Each of the statements contained in this report is supported by the respective documents presented to Great Britain in the expert talks held during the 15 meetings held in London between the months of February and May 1964"*[486].

The Ojer & Gonzalez report is one of the most convincing elements that Venezuela has to prove the nullity of the Paris Arbitral Award. Referring to this report, Dr. Óscar García-Velutini recalls that *"the first conclusion formulated therein is that Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure and deceit on the part of the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government in the last and decisive phase of the negotiation; and Venezuela, the Report continues, was so neglected, that the United States and Great Britain agreed from the beginning of the negotiation that no Venezuelan jurist would be part of the Arbitral Tribunal"*[487].

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484 *Ídem.*

485 *Ibidem,* Page 26.

486 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 1.

487 Oscar GARCÍA-VELUTINI, Quoted Above, Page 17.

VI. THE GENEVA AGREEMENT

The serious flaws in the Paris Award of 3 October 1899 and all the rejections and negotiations carried out throughout the 20th Century by jurists, historians, diplomats, ministers, presidents, and academies consolidated the view that the Paris Award does not have the effect of *res judicata* and was not a fair and definitive solution to the controversy raised by Venezuela over the territory of the Essequibo. As a consequence, during the government of President Raul Leoni, on 17 February 1966, the Minister of Foreign Relations of Venezuela, Ignacio Iribarren Borges, the Secretary of State for Foreign Affairs of the United Kingdom, Michael Stewart and the Prime Minister of British Guyana, Forbes Burnham, signed the so-called Geneva Agreement.

The Geneva Agreement was an *"Agreement to settle the dispute between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the border between Venezuela and British Guiana"*. The purpose of the Geneva Agreement is to put an end to the contention between Venezuela and the United Kingdom generated by the Paris Arbitral Award of 3 October 1899. With this convention both countries committed themselves to the establishment of a mixed commission in order to solve the controversy by a practical settlement.

Guyana, before achieving its independence, had actively participated in the negotiations that resulted in the Geneva Agreement[488] and then, on 26 May 1966, a few months after the Geneva Agreement was signed, the United Kingdom recognized the independence of Guyana.

Immediately thereafter, on 26 May 1966, the Minister of Foreign Affairs of Venezuela, Ignacio Iribarren Borges, sent from Caracas the respective note of recognition of the new State. This recognition was limited to the territory of the new State located east of the Essequibo

[488] Cf. Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), The Academy of Political and Social Sciences. Editorial Jurídica Venezolana, Caracas, 2020. Page 193.

River, safeguarding the rights of Venezuela over the Essequibo Guiana. In this sense, Venezuela formulated a reservation regarding the territorial claim of its eastern border and pointed out that the recognition *"that Venezuela makes of the new State of Guyana, does not imply on the part of our country any renunciation or diminution of the territorial rights claimed, nor in any way affects the sovereignty rights arising from the claim arising from Venezuelan contention that the so-called Paris Arbitral Award of 1899 on the border between Venezuela and British Guiana, is null and void"*[489].

To the above, the Venezuelan Government added the following: *"Therefore, Venezuela recognizes as the territory of the new State that which is located to the east of the right bank of the Essequibo River, and reaffirms before the new country and before the international community that it expressly reserves its rights of territorial sovereignty over the entire territory located on the left bank of the said river; consequently, the territory of Essequibo Guiana, over which Venezuela expressly reserves its sovereign rights, is bounded to the east with the new State of Guyana, by the line of the Essequibo River, taken from its source to its mouth in the Atlantic Ocean"*[490].

The United Kingdom and later, Guyana have maintained the validity of the Paris Arbitral Award, whereas for Venezuela it is a null and void decision. This contention was reflected in Article I of the Agreement:

> *"A Mixed Commission is hereby established with the task of seeking satisfactory solutions for the practical settlement of the dispute between Venezuela and the United Kingdom, arising as a consequence of Venezuelan contention that the Arbitral Award of 1899 on the boundary between Venezuela and British Guiana is* ***null and void****"*. (Highlighting Added).

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489 Rafael SUREDA DELGADO, *Venezuela y Gran Bretaña. Historia de una usurpación* ("Venezuela and Great Britain. The History of an Usurpation"), Volume I, A Paper presented to the illustrious Central University of Venezuela for promotion, on the teaching staff list, to the category of Assistant Profesor, Caracas, 1974. Page 285.

490 *Ídem.*

In accordance with Article II of the Geneva Agreement, four representatives were to be appointed. Two of them for the Venezuelan government and the other two for the government of British Guiana. These representatives would make up the mixed commission. According to Article III of the Agreement, the mixed commission would also have the obligation to submit reports every six months after the first meeting.

Article IV, on the other hand, established what was to be done if the commission did not reach an agreement within four years of the signing of the Treaty. This would consist of choosing without delay one of the settlement mechanisms provided for in Article 33 of the United Nations Charter (UNC) which states:

> *1. "The parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".*
> *2. The Security Council shall, if it deems necessary, call upon the parties to settle their disputes by such means".*

The same agreement states that in the event of failure to reach an agreement on the selection of the means of settlement, they would refer the decision of the matter to *"an appropriate international body to be agreed upon by both Governments".* In the absence of such agreement, they should refer the matter to the Secretary-General of the United Nations. If the chosen means of settlement is not effective, the body that selected it, or the UN Secretary-General, as the case may be, would choose another means of settlement under Article 33 of the UNC. This selection of means of settlement would be repeated until the dispute is resolved or the means under Article 33 are exhausted, whichever occurs first.

According to Article V of the Geneva Agreement, its contents can in no way be construed as *"a renunciation or diminution by Venezuela, the United Kingdom or British Guiana of any basis of claim to territorial sovereignty in the Territories of Venezuela or British*

Guiana". Nor would the Geneva Agreement undermine what was previously expressed in the form of previously formulated claims.

Article V of the Geneva Agreement further provides that *"No act or activity carried out while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Territories of Venezuela or British Guiana"*. The only exception would be if such acts were the result of agreements reached in the course of the work of the mixed commissions and were duly registered.

Article VI of the Geneva Agreement set the date for the meeting of the mixed commission provided for in the Agreement as follows: *"The Mixed Commission shall hold its first meeting at a date and place to be agreed upon by the Governments of Venezuela and British Guiana. This meeting shall be held as soon as possible after the appointment of its members. Thereafter, the Mixed Commission shall meet when and, in the manner, agreed upon by the Representatives"*. On the other hand, Article VII of the Geneva Agreement established that the Convention would enter into force on the day of its signature.

Article VIII of the Geneva Agreement provided that *"Upon the attainment of British Guiana's Independence, the Government of Guyana shall henceforth be a party to this Agreement, in addition to the Government of Venezuela and the Government of the United Kingdom of Great Britain and Northern Ireland"* (Highlighting Added).

The United Kingdom has always been part of the boundary problem, from the beginning of the 19th Century until Guyana was recognized as an independent State and beyond, since the United Kingdom even signed on 18 June 1970, together with Venezuela and Guyana, the Port of Spain Protocol, whereby it was agreed to suspend for a period of 12 years the application of the Geneva Agreement.

This consideration is very important in the proceedings currently before the ICJ. Based on the Geneva Agreement and the Port of Spain Protocol, the United Kingdom could be called upon to take part in the ICJ trial. This is the opinion of Antonio Remiro-Brotóns who stated that *"Guyana did not bind itself by the Geneva Agreement through the application of the rules relating to a succession of States, inheriting or subrogating itself to the obligations of the United Kingdom, but did*

so by and for itself, by virtue of a clause of the same Agreement, freely consented to by its representative"[491].

The opinion of Remiro-Brotóns is shared by Juan Carlos Sainz-Borgo who considers important *"...the need to evaluate whether or not the succession of the state between Guyana and the United Kingdom took place. This is a complex issue in international law, and there is a Vienna Convention on Succession of States in the Law of Treaties"*[492].

The Geneva Agreement produced several important achievements. As indicated by Isidro Morales Paúl, through this Agreement three important achievements were reached for the Venezuelan Claim on its eastern border: (i) the existence of a dispute was recognized; (ii) the *res judicata* effect of the Paris Arbitral Award was questioned; and (iii) the discussion on the Paris Arbitral Award was officially reactivated[493].

Acknowledging the existence of a dispute, as Article I of the Geneva Agreement does, tacitly implies that the dispute was never settled. As we analysed when referring to the characteristics of arbitral awards, in principle, an arbitral decision has a final and binding nature, which in turn, supports the protection of the decision through the effect of *res judicata* and the principle of intangibility. However, the Paris Arbitral Award is- as we have seen- a legally non-existent act due to the various flaws that it has and which render it null and void, which is recognized with the signing of the Geneva Agreement. Therefore, Article I of the Geneva Agreement does no more than recognize what has always been the case since 3 October 1899. The Paris Arbitral Award was not a full, perfect, and final settlement; consequently, the dispute has never been resolved and hence the Geneva Agreement was signed in order to find a practical and mutually satisfactory solution for the parties involved.

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491 Antonio REMIRO-BROTÓNS, *"El Acuerdo de Ginebra y la controversia del Esequibo"* ("The Geneva Agreement and the Essequibo Dispute"), in Héctor FAÚNDEZ LEDESMA y Rafael BADELL MADRID (Coordinators), Quoted Above, Page 356.

492 See: Juan Carlos SAINZ-BORGO, *"El Acuerdo de Ginebra a la luz del Derecho de los Tratados"* (The Geneva Agreement in Light of The Treaty Law"), *Bulletin of the Academy of Political and Social Sciences,* Nº167, January-March, Caracas, 2022.

493 Isidro MORALES PAÚL, "Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»", ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), in Enrique Carrillo Batalla (Coordinator), Quoted Above, Pages 201-202.

VII. PORT OF SPAIN PROTOCOL

On 18 June 1970, during the first government of President Rafael Caldera, the Port of Spain Protocol was signed between Venezuela, the United Kingdom and Guyana. The Minister of Foreign Affairs, Aristides Calvani signed on behalf of Venezuela; the High Commissioner of the United Kingdom and Northern Ireland in Trinidad and Tobago, Roland Charles Colin Hunt, signed on behalf of the United Kingdom; and the Minister of State, Shridath Surendranath Ramphal, signed on behalf of Guyana.

At the time the Port of Spain Protocol was signed, Venezuela was negotiating the delimitation of marine and submarine areas north of the Gulf of Venezuela with the Republic of Colombia[494]. For this reason, Venezuela decided to paralyze the effects of the Geneva Agreement and take care of the boundary problems it had with the Republic of Colombia[495]. In effect, *"Venezuela was threatened by both the Republic of Colombia and Guyana, so it was decided to freeze negotiations with Guyana for twelve years, in order to stabilize the border policy"*[496].

The Port of Spain Protocol was signed four years after the adoption of the Geneva Agreement, during which time the Mixed Commission failed to settle the dispute. The purpose of the Port of Spain Protocol was to suspend for a period of 12 years the application of the Geneva Agreement, paralyzing the dispute and delaying the application of the means of settlement provided for in Article 33 of the UNC.

The Port of Spain Protocol established in its preamble the following: *"Convinced that the promotion of mutual confidence and of a positive and friendly exchange between Guyana and Venezuela will lead to*

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494 On this matter, see: in general, Leandro AREA PEREIRA *"A vuelo de pájaro: La delimitación de las áreas marinas y submarinas al norte del Golfo de Venezuela"*, ("A Quick Look at the Delimitation of Marine an Submarine Areas North of the Gulf of Venezuela") in *La diplomacia venezolana en democracia (1958-1998)* ("Venezuelan Diplomacy in Democracy. Fernando GERBASI (compilation), Kalathos Ediciones, Madrid, 2018.

495 Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 49.

496 *Ídem.*

an improvement of their relations, as befits neighbouring and peace-loving nations" the following six articles that make up the Port of Spain Protocol were agreed upon.

Article I of the Port of Spain Protocol established that during its validity the governments of Venezuela and Guyana will explore every possibility to improve their reciprocal understanding, mainly through diplomatic channels of periodic reviews of their relations to improve them.

Article II stated that during the validity of the Port of Spain Protocol no claims of territorial sovereignty would be made between Venezuela and Guyana. Article II is complemented by Article III, which declared the suspension of the operation of Article IV of the Geneva Agreement and expressed that:

> *"... the operation of said Article shall be resumed at the point at which it has been suspended, that is to say, as if the Final Report of the Mixed Commission had been submitted on that date, unless the Government of Guyana and the Government of Venezuela have earlier jointly declared in writing that they have reached a comprehensive agreement for the settlement of the dispute referred to in the Geneva Agreement or have agreed to one of the means of peaceful settlement provided for in Article 33 of the United Nations".*

Article IV of the Port of Spain Protocol ratified the validity of Article V of the Geneva Agreement, regardless of the Port of Spain Protocol being in force, except that the words *"British Guiana"*- former colonial name of Guyana- be replaced by the word "Guyana". Article V of the Geneva Agreement states:

> *"(1) In order to facilitate the fullest possible extent of cooperation and mutual understanding, nothing contained in this Agreement shall be construed as a renunciation or diminution on the part of Venezuela, the United Kingdom or British Guiana of any basis of claim to territorial sovereignty in the Territories of Venezuela or British Guiana or of any rights previously asserted, or of claims to such territorial sovereignty or as prejudging their position with respect to their recognition or non-recognition of a right*

to claim or basis of claim by either of them to such territorial sovereignty.
(2) No act or activity carried out while this Agreement is in force shall constitute a basis for asserting, supporting, or denying a claim to territorial sovereignty in the Territories of Venezuela or British Guiana, or for creating rights of sovereignty in such Territories, except insofar as such acts or activities are the result of any agreement reached by the Mixed Commission and accepted in writing by the Government of Venezuela and the Government of Guyana. No new claim or extension of an existing claim to territorial sovereignty in said Territories shall be asserted while this Agreement is in force, nor shall any claim be asserted except in the Mixed Commission while such Commission exists".

Article IV of the Port of Spain Protocol, also deleted the following two sentences from Article V of the Geneva Agreement:

(a) ", except insofar as such acts or activities are the result of any agreement reached by the Mixed Commission and accepted in writing by the Government of Venezuela and the Government of Guyana", and.
(b) ", nor shall any claim be asserted except in the Mixed Commission as long as such commission exists".

Article V of the Port of Spain Protocol established the period of validity of the convention, providing that it would remain in force for an initial period of twelve years, renewable, in principle, for a further twelve years, unless the parties agreed to a different period of not less than five years. This norm also regulated the manner in which extensions of the Port of Spain Protocol were to be agreed upon, which would be through a written agreement of both nations, prior to the conclusion of the current twelve-year period.

Article V further regulated the form of termination of the Port of Spain Protocol, establishing that for such purposes it was necessary for the government intending to terminate the protocol to send a notice to the other government six months prior to the date of termination of the current period. Failure to do so would result in the tacit renewal of the Port of Spain Protocol for a further twelve years. Finally, Article VI of

the Protocol stated that it would enter into force on the date of signature.

On 4 April 1981, President Luis Herrera Campíns made public through a communiqué that the Venezuelan Government, at that time, had no disposition to extend the Port of Spain Protocol[497].

On 10 April 1981, the statement of the Minister of Foreign Affairs, José Alberto Zambrano Velasco, referring to the non-extension of the Geneva Agreement was made public. In said statement the Minister of Foreign Affairs expressed, among other things, the following:

> *"The National Government has made public, by a communiqué dated 4 April 1981, the decision of President Herrera Campíns not to extend the Port of Spain Protocol. This is, undoubtedly, a transcendental determination, which places our just claim over the Essequibo Territory in a clear perspective. Therefore, to continue the controversy on whether or not the Port of Spain Protocol should be denounced; or whether or not it should have been signed eleven years ago, seems unnecessary and even sterile. The Government's decision does not lend itself to interpretation: without stopping to assess the historical significance of the Port of Spain Protocol, it is certain that this instrument will not be renewed. The Government judges that new ways must be explored to materialize our claim and deems to interpret, with its decision, the national feeling"*[498].

On 11 December 1981, the Ministry of Foreign Affairs issued a communiqué regarding the provisions of Article IV of the Geneva Agreement, which after the decision not to renew the Port of Spain Protocol contained the route to follow to achieve the resolution of the boundary dispute between Venezuela and Guyana. That communiqué expressed:

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497 *"Del Acuerdo de Ginebra al Protocolo de Puerto España"* ("From the Geneva Agreement to the Port of Spain Protocol"), on the Web-Site: *El Espacio Acuático Venezolano* (The Venezuelan Acquatic Space). Available at: https://elespacioacuaticovenezolano.com/2015/09/24/del-acuerdo-de-ginebra-al-protocolo-de-puerto-espana-sectoracuatico-elesequiboesnuestro/.

498 "Declaration of Chancellor Doctor José Alberto ZAMBRANO VELASCO regarding the non-extension of the Port of Spain Protocol (Caracas, 10 April 1981)" on the Web-Site: *El Esequibo en nuestro*. (The Essequibo is Ours) Available at: http://esequibonuestro.blogspot.com/search?q=4+de+abril+de+1981.

"After more than eleven years of application of the Port of Spain Protocol, President Luis Herrera Campíns, interpreting a broad national consensus, and in the full conviction that such determination is the most adequate for the interest of the country and for the guarantee of international peace and security, has decided to put an end to the application of that Treaty as of 18 June 1982.

As a result of this decision, as of the aforementioned date, our claim will be governed by the Geneva Agreement and, specifically, by the provisions of its Article IV, which refers to the means of peaceful settlement set forth in Article 33 of the United Nations Charter, which are: 1) Negotiation; 2) Investigation; 3) Mediation; 4) Conciliation; 5) Arbitration; 6) Judicial Settlement; 7) Recourse to Regional Organizations or Agreements; 8) Other peaceful means.

The decision of the Venezuelan Government not to extend the Port of Spain Protocol entails the firm determination to comply and demand compliance with the Geneva Agreement. This Treaty establishes an obligation to negotiate a satisfactory solution for the practical settlement of the dispute, so that it is resolved in a manner acceptable to both parties. We have repeatedly complained that Guyana has failed to comply with this obligation to negotiate in good faith. At this moment, when a new turn is being taken on the issue, Venezuela renews the hope that Guyana will rectify this conduct and that genuine negotiations will be undertaken, aimed at resolving the dispute.

The strength of Venezuela's position lies not only in the fact it is right in the face of the injustice committed, but also, and inseparably, in its traditional respect for its international commitments assumed and its willingness to implement the Geneva Agreement"[499].

[499] "Communiqué of the Venezuelan Chancellory regarding the provisions of Article IV of the Geneva Agreement (Caracas, 11 December 1981)" on the Web-Site: *El Esequibo en nuestro*. (The Essequibo is Ours) Available at: http://esequibonuestro.blogspot.com/2012/06/comunicado-de-la-cancilleria-de.html.

VIII. APPLICATION OF THE GENEVA AGREEMENT

Once the suspension caused by the application of the Port of Spain Protocol was over, the Mixed Commission had to seek a peaceful solution to the controversy, pursuant the first paragraph of Article IV of the Geneva Agreement.

On 12 March 1982, President Luis Herrera Campíns in his message before Venezuelan Congress of Venezuela referred to the state of diplomatic relations on the occasion of the prescription of the Port of Spain Protocol and Venezuela's rejection of the Alto Mazaruni Hydroelectric Project. His words were as follows:

> *"... In April 1981 the President of Guyana, Forbes Burnham, visited Venezuela, with whom I talked on matters of common interest and, in particular, on our historical claim to the Essequibo Zone and our opposition to the construction of the Ato Mazaruni Dam, as long as the problem is not resolved"*[500].

On 1 April 1982, during the meeting of Ministers of Foreign Affairs of the Caribbean Community (CARICOM) held in Belize, a pronouncement was approved ratifying that the parties should *"scrupulously comply with the provisions of the Geneva Agreement and seek settlements of the territorial dispute by peaceful means"*[501].

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[500] Ministry of Foreign Relations *Bulletin Nº 5 of the Yellow-House Files (Archivo de la Casa Amarilla)*, Year 1998, Page 422. Quoted in: 'The Venezuelan Acquatic Space', 15th Submission: 'El territorio Esequibo recopilación histórica de la controversia 1979-1984'. ("The Essequibo Territory. A Historical Compilation of the Controversy 1979-1984") Page 6. Available at: https://www.avdm-cmi.com/_files/ugd/7a5940_a598fe76dece4d4a9d5c522538843be6.pdf.

[501] "El Espacio Aquático de Venezuela, Décima quinta entrega: 'El territorio Esequibo recopilación histórica de la controversia 1984-1989'" ("The Venezuelan Acquatic Space, 15th Submission: 'The Essequibo Territory. A Historical Compilation of the Controversy 1979-1984'"). ("The Essequibo Territory. A Historical Compilation of the Controversy 1979-1984") Page 7. Available at: https://www.avdm-cmi.com/_files/ugd/7a5940_a598fe76dece4d4a9d5c522538843be6.pdf.

On 17 June 1982, the Minister of Foreign Affairs, José Alberto Zambrano Velasco, stated in a speech before the National Congress of Venezuela the following: *"There is no doubt that, analysed with the greatest objectivity, the Port of Spain Protocol has justified its existence. It has been clearly demonstrated to the Guyanese people that their permanent economic and social crisis does not derive, as their government would have them believe, from an alleged Venezuelan harassment. The perpetuation of the existing personalist regime of Guyana, amidst accusations of electoral manipulation, has been eroding before the International Community the initial image, carefully cultivated, of a patriotic leadership recently enjoying independence, committed to the defence of its country against a greedy neighbour. Venezuela's patient and serene approach has countered the attempts to portray it as an aggressor, and a sustained diplomatic action has made the countries of the world aware of the fundamental justice of Venezuela's claim and of our country's permanent willingness to reach reasonable solutions by peaceful means"*[502].

The day after that declaration, on 18 June 1982, Venezuelan Minister of Foreign Relations, José Alberto Zambrano Velasco, sent communication GM-Nº 135 to the government of Guyana, in which he ratified the decision of the Venezuelan Government not to extend the validity of the Port of Spain Protocol beyond that same day of 18 June 1982. Zambrano Velasco issued another communication (GM-Nº 136) with the same characteristics but sent to the government of the United Kingdom and Northern Ireland[503].

Non-renewal of the Port of Spain Protocol had the immediate effect of reactivating the Geneva Agreement as the only instrument for the peaceful settlement of the dispute. In this sense, on 1 July 1982, the Venezuelan Government proposed to the government of Guyana engaging in direct negotiations in order to solve the dispute[504], based on the Geneva Agreement.

A week later, on 8 July 1982, the Minister of Foreign Affairs, José Alberto Zambrano Velasco, during the Convention of Governors held in

502 *Ídem.*
503 *Ídem.*
504 *Ibidem,* Page 8.

Ciudad Bolivar, referred to the attitude of the Venezuelan Government on the occasion of the full reactivation of the Geneva Agreement in the following terms:

> *"The Geneva Convention allows the parties a wide margin of choice as to the methods of dispute settlement that may be considered "acceptable" for the settlement of the dispute. However, this freedom, as wide as it may be, is limited by any attitude contrary to the spirit and the terms of the Agreement.. In this regard, a provision was established that a "practical" solution, "acceptable to both Parties," must be sought". It is not, therefore, just any solution that must be sought. The Parties are under a strict obligation not to do anything that would represent an obstacle to such a search. Because of this fundamental obligation, the Agreement established a very broad system of ways and means to resolve the dispute. Nothing in the foregoing, however, authorizes one of the parties to present the problem from the outset in such a way as to close off any possibility of seeking a compromise, as resulted from the Guyanese attitude during the Mixed Commission stage, and to halt the development of the negotiations, since in this case the realization of the purposes of the Agreement is so impeded that it really gives reason to believe that it is intended to be rendered ineffective"*[505].

On 2 August 1982, two important events occurred for the claim within the framework of the process of reactivation of the Geneva Agreement. First, the Minister of Foreign Relations of Venezuela, José Alberto Zambrano Velasco, by communication Nº DG-401, informed the Secretary-General of the UN, Javier Pérez de Cuéllar, that on 18 June 1982, the Geneva Agreement of 17 February 1966, regained full force and effect. The second important event was that Guyana did not accept to solve the controversy through direct negotiations- as Venezuela had proposed on 1 July 1982- and suggested solving the dispute through a judicial settlement by the ICJ[506].

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505 *Ídem.*

506 *Ibidem,* Page 9.

On 30 August 1982, by Note GM-185, the Government of Venezuela rejected the suggestion of judicial settlement made by Guyana and insisted on a negotiation on a broader basis that would make it possible to satisfactorily resolve the dispute[507].

On 19 September 1982, in view of the lack of consensus regarding the means of settlement of the dispute, the Venezuelan Government informed Guyana and the United Kingdom and Northern Ireland that it would submit the selection of the means of settlement of the dispute to the Secretary-General of the United Nations[508]. That same day, the Minister of Foreign Relations of Venezuela, José Alberto Zambrano Velasco, proceeded very diligently and by communication GM-Nº 214, expressed to the Secretary-General of the United Nations, Javier Pérez de Cuéllar, the following: *"The Government of Venezuela has come to the conviction that the most appropriate international organ to indicate the means of solution is the Secretary-General of the UN, who accepted this responsibility by note of 04ABR1966, signed by U. Thant, and whose action was expressly agreed upon by the Parties in the text of the Geneva Agreement itself"*[509].

On 27 September 1982, Venezuelan Minister of Foreign Relations, José Alberto Zambrano Velasco, during the Thirty-Seventh Session of the United Nations General Assembly, expressed: *"The history of this humiliating mutilation cannot be forgotten by Venezuelans. All our tradition, all our instincts lead us to the desire to maintain and develop with the Guyanese people, who in truth were, like us, victims of British imperialism and who, like us, belong to the peoples who seek to achieve development, the closest relations of friendship, cooperation, and solidarity... The truth is clear, neither territorial ambition nor greed for the wealth of others fuels the Venezuelan Claim"*[510].

On 28 March 1983, Guyana accepted the intervention of the Secretary-General of the United Nations, Javier Pérez de Cuéllar, to select the means of solution of the controversy. The following day, 29 March 1983, the Minister of Foreign Affairs of Guyana informed the Minister of Foreign Relations of Venezuela of his acceptance to *"refer*

507 *Ídem.*
508 *Ídem.*
509 *Ídem.*
510 *Ibidem,* Page 10.

the decision on the means of settlement to the Secretary-General of the United Nations"[511].

On 31 March 1983, the Secretary-General of the United Nations, Javier Pérez de Cuéllar, agreed to intervene in the selection of the means of settlement of the dispute, in accordance with the mandate of the second paragraph of Article IV of the Geneva Agreement[512].

Once the intervention of the Secretary-General of the United Nations was formalized, in accordance with the provisions of the second paragraph of Article IV of the Geneva Agreement, on 31 August 1983, Diego Cordovez was appointed Special Envoy of the Secretary-General of the United Nations, Javier Pérez de Cuéllar.

Diego Cordovez was entrusted with an exploratory mission which involved visiting Caracas and Georgetown between 21 and 24 August 1983, to ascertain the position of the parties regarding the choice of means for a peaceful solution. After several meetings, he proposed a solution to the parties which consisted of establishing a conciliation commission or contact group. Venezuela rejected the proposal and it was decided to use the good offices process.

On 6 June 1984, Ambassador Emilio Figueredo Planchart was appointed Personal Representative of the Minister of Foreign Relations of Venezuela, Isidro Morales Paúl, before Shridath Ramphal, in order to negotiate informal approaches in the search for a solution to the controversy between Venezuela and Guyana. These were ex officio demarches that were attempted outside the mechanisms provided in the Geneva Agreement[513].

On 20 September 1984, in view of the granting of oil exploitation concessions in the disputed area by the government of Guyana, the Minister of Foreign Relations of Venezuela, Isidro Morales Paúl, sent a letter to the Minister of Foreign Affairs of Guyana, Rashleigh Jackson, in which he expressed the following:

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511 *Ibidem,* Page 12.

512 *Ídem.*

513 "El Espacio Aquático de Venezuela, Décima sexta entrega: 'El territorio Esequibo recopilación histórica de la controversia 1984-1989'" ("The Venezuelan Acquatic Space, 16th Submission: 'The Essequibo Territory. A Historical Compilation of the Controversy 1984-1989'") Page 1. Available at: https://www.avdm-cmi.com/_files/ugd/7a5940_03ed442c422f4dbf86baca55b30ec88a.pdf.

> *"...On the other hand, although the Government of Venezuela views with complacency any activity tending to the economic and social improvement of Guyana, at the same time it is pertinent, within the climate of cordiality that has characterized the relations between both countries, that the Government of Guyana considers the concern caused by the agreements made with the participation of third parties, within the area of claim..."*[514].

On 6 February 1985, Emilio Figueredo Planchart was officially certified as Ambassador-at-Large to the United Nations for the application of the Geneva Agreement[515]. After his designation, between 20 and 22 of March 1985, several meetings were held which crystallized in the informal proposal of Representative Diego Cordovez, also known as the Cordovez formula, which was not compatible with the national interests of Venezuela[516]. On 4 July 1985, Venezuelan Ministry of Foreign Relations, in a joint analysis with advisors, determined the inconvenience of the Cordovez formula and agreed to suggest a good offices process[517].

During the month of September, Venezuelan Minister of Foreign Relations, Simon Alberto Consalvi, explained to the Minister of Foreign Affairs of Guyana, Rashleigh Jackson, what Venezuela's reservations were regarding the Cordovez formula and advanced the good offices process which would work through the appointment of a personality chosen by both parties to assist them in the controversial points of the territorial dispute[518].

Venezuela's reservations were taken into consideration by Diego Cordovez, who revised his first proposal and presented a new one which was not accepted by Venezuela either, who deemed it *"improvable"*[519]. In November, Rubén Carpio Castillo and Oswaldo Álvarez Paz held a meeting with Diego Cordovez and proposed new modifications. This materialized in a third version of the Cordovez formula which was

514 *Ibidem,* Page 2.
515 *Ídem.*
516 *Ídem.*
517 *Ibidem,* Page 3.
518 *Ídem.*
519 *Ídem.*

presented to the parties in July 1986, together with an Aide Memoire from the United Nations.

The mechanism proposed by Cordovez consisted of *"the creation of a Contact Group to resolve the dispute, consisting of five members. Each government would appoint two members, one of his/her own nationality, and the other of another nationality. The four members would choose the fifth member, who would be the chairman of the Contact Group; but the nationality had to be different from that of the other four members selected. The Contact Group would take its decisions by consensus and its purpose would be to reach an acceptable and definitive solution; it could submit progress reports to the Secretary-General, and at the end of its work would submit the final Report to the Secretary-General"*[520].

Although the third version of the Cordovez formula -explained in the previous paragraph- was much better than the first, it was also rejected by the parties for its excessive formalism and rigidity "*which limited the possibility of direct contact between the Governments of Venezuela and Guyana"*[521].

In February 1987, the Venezuelan Government instructed Ambassador Pedro Sorensen to propose *"to the highest Guyanese level a good offices process that would be as flexible, simple, less elaborate and less specific as possible: a procedure in which everything flows naturally and allows the parties to address the problem without being obligated to adopt formal positions"*[522].

On March 10 and 11 of March 1987, a meeting was held in Georgetown between the Minister of Foreign Relations of Venezuela, Simón Alberto Consalvi, and the Minister of Foreign Affairs of Guyana, Rashleigh Jackson. At that meeting, Minister Jackson stated that *"they were prepared to be flexible, and suggested to advise the UN Secretary-General that both countries were discussing the matter in order to specify the terms of a new proposal. He demanded that the details and modalities of the good offices be presented to him"*[523]. For his part, Minister Simon Alberto Consalvi indicated the benefits to be obtained

520 *Ibidem,* Page 5
521 *Ídem.*
522 *Ibidem,* Page7.
523 *Ídem.*

by such good offices to the President of Guyana, Desmond Hoyte, who had no critical remarks in this respect[524].

Between 24 and 28 of March 1987, the President of Guyana, Desmond Hoyte, paid an official visit to Venezuela. During that visit a joint communiqué was issued as follows:

> *The two Heads of State discussed the issue of the dispute between the two countries and noted that the climate of friendship and understanding that exists between Guyana and Venezuela is suitable for dealing with this fundamental aspect of bilateral relations with flexibility and goodwill... In expressing their appreciation to Dr. Javier Pérez de Cuellar... they reiterated their determination to continue to cooperate fully with the Secretary-General in the selection of a means of solution". In conversations of Presidents and Foreign Ministers it was informally agreed: "to suggest to the Secretary-General to propose a Good Offices process, entrusted to a person chosen by the Secretary-General"*[525].

In 1989, UN Secretary-General Javier Perez de Cuellar appointed Meredith Alister McIntyre as his representative and good officer[526].

On 2 February 1989, Venezuelan President Carlos Andres Perez met with Guyanese President Desmond Hoyte during his inauguration in Caracas. President Carlos Andres Perez inherited a framework of cooperation with Guyana and hoped to find a constructive solution to the territorial dispute[527].

From 3 to 7 July, 1989, the tenth meeting of the Conference of Heads of Government of the Caribbean Community was held in Grand Anse, Grenada. The Heads of Government expressed their satisfaction with the improvements in relations between Guyana and Venezuela, stressing the existing cooperation for mutual benefit and the search for

524 *Ídem.*

525 *Ídem.*

526 "El Espacio Aquático de Venezuela, Décima séptima entrega: 'El territorio Esequibo recopilación histórica de la controversia 1989-1993'. ("The Venezuelan Acquatic Space, 17th Submission: 'The Essequibo Territory. A Historical Compilation of the Controversy 1989-1993'") Available at: https://www.avdm-cmi.com/_files/ugd/7a5940_eb21f9b693b94b0aaac3669445c65f06.pdf.

527 *Ídem.*

new forms of cooperation. They also recognized that both countries have continued to cooperate with the Secretary-General of the United Nations in fulfilling the mandate of the 1966 Geneva Agreement to find a peaceful solution to the territorial dispute[528].

In 26 October 1989, Guyana's President Desmond Hoyte offered 360,000 hectares of rainforest in the Claimed Area to the international community under the auspices of the British Commonwealth for a pilot project to study sustained forest utilization and species conservation[529].

On 8 November 1989, the President of Venezuela, Carlos Andres Perez, met with the President of Guyana, Desmond Hoyte, in Puerto Ordaz, Venezuela, and they accepted the appointment of Alister McIntyre as Good Officer for the solution of the territorial dispute. Guyana agreed to leave the dispute to the UN Secretary-General and therefore accepted the appointment of the Good Officer. Despite criticism in Guyana, Perez maintained friendship with Guyana and signed important cooperation agreements for the neighbouring country[530].

On 11 November 1989, Mr. Alister McIntyre was appointed Good Officer for the solution of the conflict by President Carlos Andres Perez. The Good Officer began his duties in March 1990, after visiting Venezuela to gather information[531].

On 11 February 1990, Venezuelan Minister of Foreign Relations Reinaldo Figueredo signed a Protocol of Intent on an electrical interconnection project with his counterpart Rashleigh Jackson in Guyana. Both Foreign Ministers expressed their satisfaction with the appointment of Allister McIntyre as Good Officer for the solution of the territorial controversy between Venezuela and Guyana[532].

On 18 April 1990, the Treaty of Delimitation of Marine and Submarine Areas between Venezuela and Trinidad and Tobago was signed in Caracas, consolidating Venezuela's priority interest in obtaining a sovereign and free outlet from the Orinoco River basin to the Atlantic Ocean and allowing access to the 200 nautical miles and the exploitation and exploration of areas that unequivocally belong to each

528 *Ídem.*
529 *Ídem.*
530 *Ídem.*
531 *Ídem.*
532 *Ídem.*

country. The Treaty also established a field unity clause to facilitate the solution of problems related to any shared resources[533].

On 28 April 1990, the Foreign Ministers of Venezuela and Guyana, Reinaldo Figueredo Planchart and Rashleigh Jackson, respectively, met with Good Officer Allister McIntyre at UN Headquarters in New York to establish the mechanism to be applied in the Good Offices process. The Facilitators' approach was adopted, which allowed for a flexible and discreet mechanism, outside the official and formal channels, to discuss and explore settlement parameters without diplomatic commitments[534].

On the same day, Ministers Consalvi and Jackson agreed to implement the facilitators' mechanism, flexible and discreet, to allow the discussion and exploration of solution parameters without the rigidity of diplomatic commitments[535].

From 13 to 16 June 1990, Guyana's Minister of Foreign Affairs, Rashleigh Jackson, visited Venezuela and the two foreign ministers discussed several bilateral cooperation issues, such as Venezuela's entry into CARICOM as an observer, the revision of the inter-American system to facilitate Guyana's entry into the OAS, the electrical interconnection, the revision of the oil agreement and the granting of credit lines to Guyana[536].

From 31 July to 2 August 1990, the Tenth First Meeting of the Conference of Heads of Government of the Caribbean Community was held in Kingston, Jamaica. The heads of government expressed their satisfaction with the fact that the basis for cooperation between Guyana and Venezuela had been strengthened by the mutual benefit of continued functional cooperation in a number of specific areas. They also noted that the process initiated with the appointment of Mr. Alister McIntyre as Personal Representative of the Secretary-General of the United Nations to exercise the functions of "Good Officer" had been further strengthened as a result of meetings and exchanges of views between him and officials of both governments[537].

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533 *Ídem.*
534 *Ídem.*
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On 13 August 1990, the first meeting of Facilitators was held in New York. On 16-17 August of the same year, the President of Venezuela, Carlos Andres Perez, visited Guyana for the second time and several issues of bilateral cooperation were discussed, such as the construction of a multi-purpose gymnasium and a building for the Georgetown University medical school by Venezuela, the possibility of electrical interconnection, the supply of bauxite and the convening of a meeting to address the issue of the illicit use of drugs. Also, during this visit, the President of Guyana, Hugh Desmond Hoyte, was awarded the Collar of the Order of the Liberator[538].

On 11 October 1990, an agreement was signed between the Defence Force, the National Army of Guyana and the Army of Venezuela[539].

On 7 December of the same year, the Canadian companies Golden Star's Resources and CAMBIOR reported having completed the exploration phase of the OMAI concession and prepared for gold mining in this area of the zone under claim[540].

On 10 December 1990, after twenty-four years of independence, Guyana was admitted as a full member of the OAS. This was possible after the modification of Article 8 was facilitated by the efforts of the foreign ministries of Belize and Guyana. Venezuela did not oppose this accession due to the historical, legal and social rights it was entitled to for the territories located west of the Essequibo River. On that occasion, Venezuela's anti-colonialist tradition and vocation, its respect for the self-determination of peoples, its democratic vocation and its good faith in the negotiations in search of a practical settlement of the dispute over the territories located west of the Essequibo River[541] were once again demonstrated.

In January 1991, Guyana joined the OAS, after the 10 December 1990 Cartagena de India's Protocol ceased the application of Article 8, which prevented its incorporation[542].

538 *Ídem.*
539 *Ídem.*
540 *Ídem.*
541 *Ídem.*
542 *Ídem.*

On 1 April 1991, the President of Guyana, Desmond Hoyte, promulgated a resolution establishing an exclusive economic zone. This resolution had been signed on 23 February 1991. With this measure, the fishing zone established in 1977 became an area where Guyana claims rights of exploration, exploitation, conservation and management of natural resources and the exploitation of wind and marine energy sources[543].

Also in April, an informative meeting was held in New York between the Governments of Venezuela and Guyana, where the Ministers of Foreign Affairs of both countries and the representative of the UN Secretary, the Good Officer Allister McIntyre, analysed the functions that the latter had been fulfilling. There was a coincidence of opinions, concluding that the management was based on the *"Good Offices"* and did not have a *"mediating"* character, as it has been pretended, agreeing to continue with the same procedure[544].

On 14 June 1991, the President of Guyana, Mr. Desmond Hoyte, and the President of Venezuela, Carlos Andres Perez, met in Kanavayen, Bolivar State, to discuss the state of bilateral cooperation and issues of regional and international interest. At the meeting, they reviewed Allister McIntyre's management of the border dispute, describing it as *"satisfactory"*[545].

Between 2 and 4 July, 1991, the Twelfth Meeting of the Conference of Heads of Government of the Caribbean Community was held in Basseterre, St. Kitts and Nevis. The communiqué indicated that the heads of government reviewed the state of relations between Guyana and Venezuela and expressed satisfaction with the continued expansion of functional cooperation in several areas, including the private sector, the military and health, education and energy sectors. They also expressed confidence that Venezuela would desist from any action or threat of action that would affect Guyana's economic development[546].

On 17 September 1991, Venezuelan Minister of Foreign Relations Armando Duran visited Guyana to attend the inauguration of the

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Georgetown University Multipurpose Gymnasium and Medical School facilities that Venezuela donated to Guyana. In September, Chancellor Armando Duran also met with Good Officer Allister McIntyre in New York[547].

On 17 October 1991, the Government of Guyana granted the South Korean Barama Company Limited a 4,126-acre concession for logging in the area under claim, which covered the North West and Mazaruni-Potaro districts[548].

Between 20 and 23 November of 1991, the IV Meeting of Venezuelan-Guyanese Mixed Commission was held in Georgetown, where the Joint Activities Plan for the Cooperation area was approved[549].

On 2 April 1992, a concession for logging in the Reclamation Zone was granted by the Guyanese Government to a company with Korean and Malaysian capital[550].

In June 1922, the new Secretary-General of the United Nations, Boutros Gahili, ratified Allister McIntyre as his representative after consultation with the governments of Venezuela and Guyana. During the XIII Summit of the countries belonging to the Caribbean Common Market (CARICOM) held in Port of Spain, Trinidad, the Minister of Foreign Relations of Venezuela, Fernando Ochoa Antich, met with Allister McIntyre. The latter stated that he believed in a practical arrangement in the Essequibo, in view of the good relations between the two countries. He also stated that Venezuela's forthcoming agreement with CARICOM would benefit discussions on the Essequibo territory[551].

From 29 June to 2 July, 1992, the Thirteenth Meeting of the Conference of Heads of Government of the Caribbean Community was held in Port of Spain, Trinidad and Tobago. In their communiqué, the Heads of Government expressed the developments in relations between Guyana and Venezuela and their satisfaction with the expansion of functional cooperation in various areas between the two countries. They also reaffirmed their confidence that Guyana and Venezuela would

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continue to explore all initiatives under the auspices of the Secretary-General of the United Nations to advance the dispute arising from Venezuela's territorial claim[552].

On 6 September 1992, during the Tenth Conference of Heads of State and Government of the Non-Aligned Movement, held in Jakarta, Indonesia, the following paragraph was adopted: *"They noted with satisfaction the deepening of relations between Guyana and Venezuela, as reflected in the growing levels of effective cooperation. They welcomed the intention shown by both countries to strengthen the process of dialogue to resolve the differences between them and to cooperate with the UN Secretary-General in fulfilling the mandate given to him by the Geneva Agreement of 1966"*[553]. On 9 October 1992, Dr. Cheddi Jagan of the People's Progressive Party (PPP) assumed the presidency of Guyana[554].

On 10 February 1993, the Sunkyong Company and the Canadian company Homeoil reported a partnership to carry out an oil exploration project in the concessions granted by the Guianese Government[555].

Between 17 and 19 February, 1993, Cheddi Jagan, President of Guyana, paid an official visit to Venezuela. During his visit, a Memorandum of Understanding on Coordination, Consultation and Evaluation of Cooperation between Venezuela and Guyana was signed. In addition, issues such as fishing, oil, sanitary matters, electrical interconnection, anti-narcotics and illegal mining operations in the respective areas were discussed, as well as restrictive measures on mining activities in the Cuyuní, Venamo, Amacuro and Akarabisi rivers, and control and restriction of immigration in the border area[556].

During the visit, a Joint Declaration was signed emphasizing support for the Good Offices efforts of Allister McIntyre in the search for an understanding for a practical solution to the claim maintained by both nations. President Cheddi Jagan announced that he would appoint

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Barton Scotland as Guyana's facilitator in the negotiation process in search of a practical solution to the dispute[557].

On 31 March 1993, Alyster McIntyre, the Good Officer, visited Venezuela, while on 4 April 1993, he met with the Government and the Attorney General in Guyana[558].

Between 5 and 8 July 1993, the CARICOM Heads of Government issued a communiqué stressing their satisfaction and confidence in the decision of Venezuela and Guyana to continue in the search for a peaceful solution to their boundary dispute under the auspices of the Secretary-General of the United Nations through the Good Offices exercised by Allister McIntyre. The Fourteenth Meeting of the Conference of Heads of Government of the Caribbean Community, held in Nassau, The Bahamas, expressed its support for the sovereignty and territorial integrity of Guyana[559].

On 10 August 1993, Venezuela issued a Note of Protest to the Government of Guyana for the granting of oil concessions to the Mobil company, currently ExxonMobil offshore, in the marine and submarine areas of the Reclamation Zone and the state of Delta Amacuro. Venezuela asserted that, although the granting of concessions had no effect on the claim, the adoption of a unilateral layout leading to the granting of concessions in maritime areas corresponding to the projection of the maritime frontage extending between Punta Araguapiche and Punta Playa constituted areas over which Venezuela effectively and fully exercised its sovereignty and jurisdiction[560].

On 11 October 1993, Allister McIntyre visited Venezuela to meet with the Government and different political sectors. On 14 October the Good Officer visited Guyana to meet with the Government, the Armed Forces, Police Forces and the University Sectors[561].

In February 1994, Good Officer Allister McIntyre expressed his desire to resume talks between the governments of Venezuela and

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Guyana. In March of that year, it was agreed to hold a joint meeting in New York[562].

On 15 March 1994, Mr. Barton Scotland was replaced as facilitator in the Good Offices negotiation process, and Ralph Ramkarram was appointed in his place. Venezuela received the corresponding notification from the Ministry of Foreign Affairs of Guyana[563].

On 3 May 1994, Venezuelan Ministry of Foreign Relations issued a press release reiterating its position on the granting of concessions by Guyana to foreign companies in the Essequibo territory. The communiqué stated that these new concessions did not affect Venezuela's titles or rights, which were protected under Article V of the 1966 Geneva Agreement. On 25 May, Good Officer Alyster McIntyre visited Venezuela again[564].

From 4 to 7 July, 1994, the Fifteenth Meeting of the Conference of Heads of Government of the Caribbean Community was held in Bridgetown, Barbados. In the corresponding communiqué, the progress of the Good Offices Process of the Personal Representative of the Secretary-General of the United Nations, which aims at a peaceful and lasting solution to the controversy between Guyana and Venezuela, was highlighted. In addition, support for the sovereignty and territorial integrity of Guyana was reiterated and that bilateral relations between the two countries had progressed normally[565].

On 4 January 1995, Guyana Special Unit was activated, under the coordination of Vice Admiral Elías R. Daniels Hernández, in charge of investigating all aspects related to the claim of the Essequibo territory. The unit had several tasks, such as maintaining updated information on national and international aspects, preparing conclusive analyses and coordinating support with related institutions[566].

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562 "'The Venezuelan Acquatic Space, Decima octava Entrega: 'El territorio Esequibo recopilación histórica de la controversia 1993-1999'. ("The Essequibo Territory, 18th Submission: 'A Historical Compilation of the Controversy 1993-1999'") Available at: https://www.avdm-cmi.com/_files/ugd/7a5940_a8473729e6ae415e9fce13923d6b53c6.pdf.

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On March 3rd of that same year, the Minister of Foreign Relations of Venezuela, Miguel Angel Burelli Rivas, visited Guyana and met with President Cheddi Jagan and the Minister of Foreign Affairs of that country, Clement Rohee. During the meeting, a global approach to bilateral relations was proposed to discuss and propose solutions to common problems, including the territorial claim. The new globality strategy was a current and methodology of negotiations known as integrative negotiation, which consists in the complementarity of interests[567].

The mechanism and method applied in the negotiations of mutual agreement, to set a global agenda of outstanding common issues, are applied due to the nature and characteristics of the negotiation. With this globality, the aim was to reduce the conflictive aspects of the Essequibo claim, looking for a better political moment for its solution[568].

Both nations formally accepted the already agreed procedure of going to the UN Secretary. On the other hand, it was not possible to include all the domestic problems along the eastern border without considering the different degree of importance they have, nor to try to solve them at the same time, without first ordering their solutions[569].

The most important, delicate and transcendental thing was not to compromise, under any circumstances, the traditional Venezuelan position on the claim to the territories located west of the Essequibo River in a fair negotiation that would lead to a practical settlement of the injustice committed at the Paris Arbitral Tribunal in 1899, which took away 159,500 square kilometres of territory from Venezuela[570].

On 7 July 1995, during the Sixth Meeting of CARICOM Heads of Government in Georgetown, a Communiqué was issued indicating that the Heads of Government were pleased by Guyana's intention to establish a Parliamentary Select Committee on Border Affairs to address this issue. They were also pleased by Guyana's continued commitment to the Good Offices process conducted by Allister McIntyre as a

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means of resolving the border dispute and reaffirming their support for Guyana's sovereignty and territorial integrity[571].

On 18 July 1995, during the meeting of Good Officer Alyster McIntyre with President Rafael Caldera and Foreign Minister Miguel Angel Burelli Rivas, the McIntyre'95 proposal was formulated. That same day, Ambassador Emilio Figueredo Planchart resigned as Facilitator in the Good Offices Process[572].

During the I Summit of Heads of State and Government and Representatives of the Association of Caribbean States, which took place on 19 August 1995, President Rafael Caldera and President Cheddi Jagan addressed the Territorial Dispute[573].

On 24 August 1995, the Venezuelan Government expressed through a press release its concern for the human, ecological and material consequences that the toxic waste dam located between the Omai River and the town of Bartica in the Essequibo territory could have. The firm opposition of the Venezuelan Government to any action adopted by the Guyanese government in the Essequibo Territory that permanently and irreversibly alters said region over which they claim sovereignty was reiterated[574]. On 2 and 3 October of 1995, between two and three million cubic meters of cyanide waste fell into the Essequibo River[575].

From 8 to 16 October of 1995, the President of Guyana, Cheddi Jagan, made a private visit to Margarita Island, during which he had a brief interview with Venezuelan Minister of Foreign Relations, Miguel Angel Burelli Rivas. Subsequently, he went to Caracas where he paid a courtesy visit to President Rafael Caldera[576].

On 20 October 1995, a paragraph was adopted at the Eleventh Summit of the Non-Aligned Movement, held in Cartagena de Indias, Colombia, where the continuation of the dispute between Guyana and Venezuela was highlighted. The state of relations between the two countries was also noted and satisfaction was expressed with the

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progress achieved through the UN Secretary-General's Good Offices. The need for the parties to continue the process of dialogue with a view to reaching a definitive solution on the basis of the principles established in International Law and in the Geneva Agreement of 1966 was reiterated[577].

On 1 November 1995, Carlos Ayala Corao was appointed Venezuelan facilitator in the Good Offices process. Ayala Corao held that position from 1996 to 1999 before Good Officer Alister McIntyre[578], and the latter resigned on 20 September 1999, without achieving a solution to the dispute[579].

The second good officer was Oliver Jackman, who served from 1 November 1999 until 24 January 2007. Then, on 9 October 2009, the Secretary-General of the United Nations appointed Norman Girvan, who died of on 9 April 2014 without having had any success in resolving the dispute. So, the good offices never yielded positive results.

On 15 December 2016, the Secretary-General of the United Nations, Ban Ki-Moon, proposed to incorporate an element of mediation to the good offices, whose term was set for the end of 2017 and, in addition, warned that if this new method failed, the ICJ would be established as an instance for the resolution of the conflict.

On 23 February 2017, the new Secretary of the United Nations, Antonio Guterres, considering what had already been established by his predecessor, Ban Ki-moon, appointed Dag Nylander as good officer to find a solution to the territorial dispute between Venezuela and Guyana, under the modality of good offices, with an element of mediation incorporated.

Dag Nylander's functions as good officer lasted until 30 November 2017, the deadline set to assess progress in resolving the dispute. After failing to demonstrate results, Antonio Guterres decided to choose judicial settlement through the ICJ, in accordance with his interpretation of the second paragraph of Article IV of the Geneva Agreement.

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578 Héctor FAÚNDEZ LEDESMA, "Presentation", in Héctor FAÚNDEZ LEDESMA y Rafael BADELL MADRID (Coordinatoirs), Quoted Above, Pages 25-26.

579 *Ídem.*

Indeed, by letter dated 30 January 2018, the Secretary-General of the United Nations, Antonio Guterres, based on Article IV.2 of the Geneva Agreement and Article 33 of the UNC, determined that the next mechanism to reach a solution to the dispute between Venezuela and Guyana would be the judicial settlement before the ICJ.

The Geneva Agreement, the purpose of which is to reach a practical and mutually acceptable solution to the territorial dispute between Venezuela and the Republic of Guyana, is still in force for both countries and Article IV.2 has been the basis used by the ICJ to declare itself competent to hear the matter.

Venezuela and Guyana recognize that the Geneva Agreement constitutes the legal mechanism governing the settlement of the boundary dispute. However, they have differed on fundamental aspects of the Agreement as to its meaning and scope.

The interpretations of the Geneva Agreement fall under Article IV. Currently Guyana maintains that the selection of one of the means of settlement by the Secretary-General of the United Nations is sufficient for the ICJ to have jurisdiction and insists on judicializing the dispute, while Venezuela maintains that the selection by itself is insufficient to confer jurisdiction on the ICJ and that the choice of the Secretary of the United Nations must be ratified by a special agreement in order to be effective. This has been the focus of the incidental dispute before the ICJ.

IX. THE INTERNATIONAL COURT OF JUSTICE

1. General Considerations

As previously indicated, on 29 March 2018, Guyana sued Venezuela before the ICJ, pursuant to the provisions of the first paragraph of Article 36 of the ICJ Statute, the first paragraph of Article 40 of the Statute, and Article 38 of the ICJ Rules and, by judgment of 18 December, 2020, the ICJ declared itself competent to hear the claim, based on Paragraph 2 of Article IV of the Geneva Agreement of 17 February 1966.

In the aforementioned decision, with twelve votes in favour and four against, the ICJ decided that it is competent to hear the claim filed by Guyana regarding the validity of the Arbitral Award of 3 October 1899, and the related issue of the definitive solution of the land boundary dispute between Guyana and Venezuela. To that end, the ICJ will have to analyse the legal and historical titles of the disputing States.

At the same time, the ICJ recognized that declaring the nullity or validity of the Paris Arbitral Award would not put an end to the conflict. Indeed, the ICJ will have to rule on an additional or related issue which is the final resolution of the dispute. If the ICJ determines that the Paris Arbitral Award is valid, the boundary situation between Venezuela and Guyana shall be maintained as established in said award.

On the other hand, if the ICJ declares the nullity of the Paris Arbitral Award, it will then have to rule on other important aspects. One of them is the new territorial delimitation, which could no longer be the border established by the arbitrators in 1899. Another equally important aspect is the marine delimitation between the two territories, which has a special commercial impact due to the presence of abundant oil deposits.

The interpretation of the scope of its own jurisdiction will determine whether the ICJ will be able to directly resolve the related issues referred to above or whether it will entrust this task to another international jurisdictional or political body.

In the same judgment, the ICJ unanimously decided that it does not have jurisdiction to hear the claims of Guyana arising from events occurring after the Geneva Agreement of 17 February 1966, was signed.[580] With this, the ICJ established a critical date, that is to say, 17 February 1966, when the Geneva Agreement was signed.

1.1. The International Court of Justice and its legal regime: Statute, Rules, Practice Directions and Resolutions

The ICJ is the most important judicial organ of the UN and has two fundamental functions, a contentious function and an advisory function. The contentious function is used to resolve disputes between States, based on compliance with the criteria for the attribution of jurisdiction in a particular case. The advisory function, on the other hand, allows the ICJ to pronounce itself on legal matters submitted to its consideration by the organs of the UN and specialized agents. The advisory function is established in Article 65.1 of the Statute in the following terms: "*The Court may give advisory opinions on any legal question at the request of anybody authorized to do so by the United Nations Charter, or in accordance with the provisions thereof*".

We recall that the ICJ has as its predecessor[581] the Permanent Court of International Justice (PCIJ), which was created in 1922 by the League of Nations to provide solutions of a judicial nature to disputes between States and also issue opinions on legal questions in an advisory capacity. However, the PCIJ was short-lived because of the Second

[580] See: International Court of Justice, "Judgment of 18 December 2020. Jurisdiction of the Court", Page 42. Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171_20201218_JUD_01-00-EN.pdf

[581] Even though judicial settlements imply taking into considertion the most important precedents in the matter of dispute resolution, the judicial settlement is, in fact, a pacific means for the solution of controversies between States and is preceded by other mechanisms such as mediation, conciliation, and arbitration. In the evolution of these mechanisims, there have been three emblematic international arbitrations that influence their subsequent development. The first, was the arbitration between England and the United States of America in 1794, followed by the arbitration between the United States of America and the Kingdom of Spain in 1795. The third arbitration of importance was the Arbitral Award rendered in September 1872 in virtue of the claims made by Alabama and was based on the Treaty of Washington of May 1871.

World War, ending its activities in December 1939. The PCIJ laid the groundwork for the development of today's ICJ, which continues the work of resolving disputes between states through the judicial process and in a peaceful manner[582].

The ICJ is regulated by two fundamental instruments: the Statute of the International Court of Justice (Statute) and the Rules of Court of the International Court of Justice (Rules of Court). There are other important Rules of Court such as the Practice Directions of the International Court of Justice (Practice Directions) and the resolutions adopted by the ICJ, especially those relating to internal judicial practice, issued under Article 19 of the Rules of Court (Resolutions).

The Statute is an annex to the UNC and is considered an integral part thereof[583], contrary to what happened with the PCIJ, which was established independently of the League of Nations through a Protocol of Signature.

Chapter I of the Statute regulates the organization of the ICJ; Chapter II its jurisdiction; Chapter III its procedure; Chapter IV its advisory opinions; and Chapter V its reform. The first paragraph of Article 30 of the Statute provides: *"The Court shall adopt its Rules by which it shall determine the manner in which it shall exercise its functions. It shall, in particular, adopt its Rules of Court"*.

The ICJ Rules of Court dated 14 April 1978, entered into force on 1 July 1978, and replaced the Rules of Court of 6 May 1946. The Rules have been modified several times by amendments that came into force on 10 May 1972; 1 February 2001, (Article 80); 14 April 2005, (Article 52); 29 September 2005, (Article 43); 21 October 2019, (Articles 22, 23, 29, 76, 79; and Articles 79bis and 79ter were added); and was modified again on 25 June 2020, to allow for public and oral hearings to be held telematically.

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582 See: Eduardo RODRÍGUEZ VELTZÉ y Farit ROJAS TUDELA, "Justicia en el ámbito internacional" ("Justice in the International Sphere"), *Revista Jurídica Derecho*, Nº 7, La Paz, 2017. Available at: http://www.scielo.org.bo/scielo.php?script=sci_arttext&pid=S2413-28102017000200004&lng=es&nrm=iso Also see: Max SORENSEN, Quoted Above, Pages 648 ff *"In 1940, the operation of the Court practically came to an end, a consequence of the onslaught of the war. After the war, the matter of establishing a court was included as part of the program at the San Francisco Conference."*

583 *Ídem.*

In addition to the Statute and the Rules, there are ICJ Practice Directions that complement the Rules and in no way constitute a modification of the former. In this regard, the first footnote to Practice Directions expressly states: *"The Court adopted Practice Directions I to VI on 31 October 2001, for use by States appearing before it. The date of subsequent adoption or amendment of the Practice Directions is indicated in the footnotes to this document. Practice Directions do not imply any modification of the Rules of Court, but are a supplement to them"*[584].

Practice Directions supplement the Rules of Court with practical directions that facilitate the work of the ICJ and clarify aspects of the Rules of Court that the ICJ deems necessary. As stated in the publication entitled *The International Court of Justice Handbook*: *"In addition, since 26 October 2001, the International Court of Justice has issued Practice Directions for the use of States appearing before it. These Directions do not modify the Rules of Court, but supplement them. They are the result of the constant review of the Court's working methods, in response to the need to adapt to the considerable increase in its activities in recent years"*[585].

Practice Directions I to VI were adopted by the ICJ on 31 October 2001. There are currently a total of thirteen Practice Directions. This means that since the date on which the first six Practice Directions were adopted, seven more have been added thereto. Indeed, Practice Directions VII to XIII were adopted on 7 February 2002, (VII and VIII); on 4 April 2002, with amendment dated 3 December 2006 (IX); 3 December 2006 (IXbis and IXter); 11 April 2013, (IXquater); 30 July 2004(X); 30 July 2004 with an amendment dated 3 December 2006, (XI); 30 July 2004(XII); and 30 January 2009, (XIII).

Practice Directions are a response to the ICJ's need to adapt as a result of its growing jurisdictional activity and they serve to optimize

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584 See: "Practice Directions" of the International Court of Justice. Available at: https://www.icj-cij.org/en/practice-directions.

585 See: International Court of Justice, *The International Court of Justice Handbook*, retrieved from the official website files of the International Court of Justice, at 'Publications'. Page 18. Available at: https://www.icj-cij.org/public/files/publications/handbook-of-the-court-en.pdf

the ICJ's functions, always in abidance by the Statute and the Rules of Court.

The Resolutions should also be considered as they develop certain provisions of the Statute and the Rules of Court in greater detail. In particular, Resolution 9 adopted by the UN Security Council on 15 October 1946, issued in accordance with the second paragraph of Article 35 of the Statute, regulates the admission of States not party to the Statute.

In addition, it is worth considering the Resolution on the Internal Judicial Practice of the Court adopted on 12 April 1976, which is based on Article 19 of the Statute of the Court. The Resolution sets out the procedures of internal judicial practice to be followed at the ICJ, which include discussions and deliberations at various stages of the proceedings, before and after oral hearings. Judges will have the opportunity to express their views and submit written notes, which will then be discussed at subsequent meetings. The resolution also sets out how the committee responsible for drafting the final decision will be selected and how the separate or dissenting opinions of the judges will be considered. However, the ICJ is free to depart from the resolution, should it see fit in a particular case.

2. Procedural Aspects

As indicated above, the ICJ has several instruments that regulate its operation, including the Statute, the Rules of Court, Practice Directions, and Resolutions. All of them regulate the organizational and procedural aspects of the ICJ.

We will refer to the procedural aspects by dividing the process before the ICJ into three stages: (i) initiation of proceedings; (ii) substantiation of proceedings; and (iii) termination of proceedings. To that end, we will refer to the general regulatory framework that regulates each of the particular procedural aspects contained in each of the instruments governing the ICJ proceedings.

2.1. Initiation of Proceedings

In accordance with the provisions of Article 40.1 of the Statute, proceedings before the ICJ may be instituted by any party to a dispute

by filing an application with the Registrar of the ICJ, including an undertaking, stating the subject matter of the dispute and the identity of the parties[586].

2.1.1. Initiation of Proceedings by filing an Application for Institution of Proceedings (Article 40.1 of Statute)

Pursuant to Article 40.1 of the Statute, proceedings before the ICJ may be instituted by one of the parties to a dispute by filing an application with the Registrar of the ICJ indicating the subject matter of the dispute and the identification of the parties. As to legal standing, any of the parties may have legal standing to sue and be sued as long as they are parties to the ICJ Statute.

The dispute between Guyana and Venezuela before the ICJ was initiated by Guyana by filing an application dated 29 March 2018. Guyana requested the ICJ to: (i) declare the validity and binding effect of the 1899 Award and respect for the boundary established in the 1905 Agreement; (ii) that Venezuela withdraw its occupation of the eastern part of Anacoco Island and other territories recognised by the Paris Award and the 1905 Agreement; (iii) that Venezuela refrain from threatening or using force to prevent the development of Guyana's economic activities in its territory; and (iv) declare Venezuela responsible for the violation of Guyana's sovereignty and, consequently, for any violation of Guyana's rights.

The Registrar of the ICJ then proceeded, as required by Article 40.2, to notify all interested parties to the dispute of the application. The members of the UN, through its Secretary-General and the other States entitled to appear before the ICJ should also have been notified in accordance with Article 40.3.

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586 Article 40.1 of the Statute of the International Court of Justice: "1. Cases shall be brought before the Court, as the case may be, either by the notification of the special agreement or by a written application sentaddressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated."

2.1.2. Initiation of Proceedings by Notification of Special Agreement (Article 40.1 of Statute; Art. 46 of Rules of Court; Practice Direction I)

Under Article 40(1) of the Statute, proceedings before the ICJ may be instituted by notifying of the undertaking signed by the parties. This undertaking is the instrument on which the jurisdiction of the ICJ is based.

2.1.3. Initiation of Proceedings by Special Referral (Article 87 of Rules of Court)

Proceedings before the ICJ may also be instituted by special referral to the ICJ in accordance with the provisions of a treaty or convention in force, when the dispute to be settled has already been heard by another international body. Article 87 of the Rules of Court provides in the first paragraph as follows:

> *"1. When, in accordance with a treaty or convention in force, a contentious matter is brought before the Court concerning an issue that has already been the subject of proceedings before another international body, the provisions of the Statute and of these Rules on contentious matters shall apply".*

Article 87, second paragraph, of the Rules of Court also provides for the formal requisites that must be met by the application to institute proceedings through the mechanism of special referral to the ICJ. Said rule states:

> *"2. The application to institute proceedings shall specify the decision or act of the international organ concerned and shall be accompanied by a copy of the decision or act, the questions raised by that decision or act, which shall be specified in the application and shall constitute the subject-matter of the dispute before the Court".*

2.1.4. Jurisdiction

Chapter II of the Statute governs the jurisdiction of the ICJ. On the basis of the articles that make up this chapter, the ICJ decides

which cases it is legally empowered to hear, which is why this issue is fundamental to understanding how the ICJ works.

It should be noted that states are the only parties that can bring cases before the ICJ. Other types of organisations and natural persons may not be parties to ICJ proceedings. In accordance with the Statute, the ICJ may at any time request and receive from public international organisations information on matters submitted to the ICJ (Article 34 of the Statute).

2.1.4.1. Jurisdiction *ratione personae*

Jurisdiction *ratione personae* is the jurisdictional competence by reason or the nature of the person, when this aspect is relevant to determine the judicial competence to hear a particular litigation case[587]. In the context of the ICJ, *jurisdiction ratione personae* to hear a particular case allows a State to bring a contentious case before that international court.

Access to the ICJ is restricted to UN member states and to non-members who are admitted in accordance with Article 93.2 of the UNC, which provides that *"A State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice in accordance with conditions to be determined in each case by the General Assembly on the recommendation of the Security Council"*[588].

In principle, the ICJ is an instance available to the States that are party to the Statute. However, as established in Article 35 of the Statute, the ICJ shall be open to other States provided that they comply with the conditions set by the UN Security Council, in observance of the special provisions of the treaties in force.

Article 35 of the Statute must be consistent with Article 41 of the Rules of Court, which provides that *"The filing of proceedings by a State which is not a party to the Statute but which has accepted the jurisdiction of the Court under Article 35, Paragraph 2, of the Statute, shall be made* ***by filing a declaration pursuant to a resolution adopted***

587 Manuel OSSORIO, "*Diccionario de ciencias jurídicas, políticas y sociales"* ("Dictionary of the Juridical, Political, and Social Sciences"), Heliasta, Buenos Aires, 2005. Page 802.

588 *Cf.* Max SORENSEN, Quoted Above, Page 650.

by the Security Council in accordance with that Article, *which declaration shall be deposited with the Secretariat of the Court, unless it has previously been deposited. The Court shall decide any question which may arise as to the validity or effect of such a declaration".* (Highlighting Added).

The UN Security Council resolution referred to in Article 41 of the Rules of Court is that adopted on 15 October 1946, according to which, States which are not a party to the Statute may *"have access to the Court by depositing with the Court's Registrar a general or special declaration, i.e., a declaration extending to a generality of cases, or to a particular case or group of cases"*[589].

However, the conditions imposed must not place one of the parties in an unequal position before the ICJ. This condition, together with the acceptance of the Statute, and Article 94 of the UNC, have been decisive in admitting the jurisdiction of the ICJ with respect to a State that is not a member of the *Statute*[590].

The conditions for becoming a party to the Statute mentioned in Article 93.2 of the UNC were established by the UN General Assembly in December 1946, these requirements were: *"acceptance of the Statute, undertaking to comply with the decisions of the Court, and contribution to the expenses of the Court"*[591].

States that are not members of the UN, which have access to the ICJ and meet the conditions for becoming a party, must contribute to the expenses of the ICJ in accordance with Article 35 of the Statute.

2.1.4.2. Jurisdiction *ratione materiae*

Jurisdiction ratione materiae is the jurisdiction of the court determined on the basis of *"the merits of the case and the substance of the matter"*[592]. In fact, *"it refers to the rules of jurisdiction of judges and courts"*[593]. Jurisdiction ratione materiae is, in turn, subdivided into

589 *Ibidem,* Page 651.
590 *Ídem.*
591 Hugo LLANOS MANSILLA, "*Teoría y práctica del Derecho Internacional Público"* ("Theory and Practice of Public International Law") First Edition, Editorial Jurídica de Chile, Santiago, 1980. Page 590.
592 Manuel OSSORIO, Quoted Above, Page 802.
593 *Ídem.*

compulsory and conventional[594]. The jurisdiction of the ICJ is mandatory when it is based on Article 36.1 of the Statute. This rule provides that the ICJ's jurisdiction extends to all disputes brought before it by the parties. Likewise, the ICJ has jurisdiction over the matters provided in the UNC and other treaties and conventions in force (Article 36 of the Statute).

As regards compulsory jurisdiction *ratione materiae*, by virtue of the second paragraph of Article 36 of the Statute, the States that are a party to the Statute may express their recognition of the jurisdiction of the ICJ as compulsory *ipso facto* with no need for a special agreement. Logically, this requires the same expression of will on the part of the other State involved in the case in question, which may deal with:

> *"a. the interpretation of a treaty;*
> *b. any question of international law;*
> *c. the existence of any fact which, if established, would constitute a breach of an international obligation;*
> *d. the nature or extent of the reparation to be made for the breach of an international obligation".*

Article 36.3 of the Statute sets out the so-called optional clause which allows the parties to make their declaration by recognizing the jurisdiction of the ICJ, subject to a condition of reciprocity or a condition of time. The condition of reciprocity implies that a party declares that it accepts the jurisdiction of the ICJ, subject to the condition that the other party also accepts the jurisdiction of the ICJ. As to time conditions, a party declares to accept the ICJ's jurisdiction only if the other party accepts it within a certain period of time. Such declarations need not be identical. Indeed, in the Anglo-Iranian Oil Company case of 1952 and the Norwegian Loans case of 1957, the ICJ held that *"identical declarations by both parties are not required, but that both declarations* must *confer jurisdiction in respect of the dispute submitted for adjudication"*[595].

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[594] *Cf.* Max SORENSEN, Quoted Above, Page 651.

[595] See paying special attention: Max SORENSEN, Quoted Above, Page 653. It was likewise established in decisions of the Permanent International Court of Justice such as in the cases of *Phosphates in Morocco* (Year 1938) and *Electricity Co. of Sofia* (Year 1939).

Such declarations establishing the jurisdiction of the ICJ must be filed with the Secretary-General of the UN, who will send copies of these declarations of will to the parties to the Statute and to the Registrar of the ICJ (Article 36 of the Statute, fourth paragraph).

On the other hand, jurisdiction is conventional when the parties decide to submit the matter to the ICJ. On many occasions the ICJ *"declared that its jurisdiction was based on the will of the parties, on their consent to submit to its jurisdiction"*[596]. This occurred during the existence of the Permanent Court of International Justice, in the case of the Minorities Schools in Upper Silesia in 1922 and, among others, the 1954 Monetary Gold case decided by the current ICJ[597].

In the Corfu Channel case, the jurisdiction of the ICJ was conventional, as the ICJ stated *"that even if Albania -which was not a party to the Statute- had been entitled to object to the jurisdiction of the Court by virtue of the unilateral initiation of the proceedings by the United Kingdom, could no longer do so as in its letter of 2 July 1947 to the Court,* ***it stated that it had accepted the recommendation of the Security Council and the jurisdiction of the Court over this case***"[598]. (Highlighting Added).

In a judgment of 18 December 2020, the ICJ declared itself competent to hear the dispute relating to Case Nº 171 initiated by Guyana against Venezuela as follows: *"As to its jurisdiction ratione materiae, the Tribunal recalls that Article I of the Geneva Agreement refers to the dispute that has arisen between the parties to the Geneva Agreement as a result of Venezuela's claim that the 1899 Award on the boundary between British Guiana and Venezuela is null and void"*[599].

2.1.4.3. Jurisdiction *ratione temporis*

Jurisdiction *ratione temporis* relates, first and foremost, to the right of the State Parties to have access to the ICJ at the time the

596 *Ibíd*, Page 652.
597 *Ídem.*
598 *Ídem.*
599 Judgement of 18 December 2020, in which the International Court of Justice pronounces itself competent to hear the dispute filed by the Cooperative Republic of Guiana against Venezuela on 29 March 2018. Available at: https://www.icj-cij.org/public/files/case-related/171/171_20201218_JUD_01-00-EN.pdf

proceedings[600] are initiated. Jurisdiction *ratione temporis* also refers to the temporal limitation of the scope of the ICJ's jurisdiction, which may be determined by the parties to the commitment or subsequently by the ICJ itself.

In particular, in the case concerning the dispute between Guyana and Venezuela, the ICJ unanimously decided in the judgment on jurisdiction dated 18 December 2020, that it is only competent to decide facts prior to the signature of the Geneva Agreement of 17 February 1966, and subsequent occurrences will not be assessed.

The ICJ stated that: *"The dispute referred to in the Geneva Agreement is that which had crystallized at the time of the conclusion of the Agreement. The Tribunal has no jurisdiction to hear Guyana's claims arising out of events occurring after the signature of the Geneva Agreement"*[601].

2.1.4.4. The Issue of Jurisdiction

After the lawsuit was introduced by Guyana on 28 March 2018, the written phase of the proceedings began. At this stage, on 19 November 2018, Guyana filed a memorial with its arguments on the issue of jurisdiction.

Guyana has argued that the ICJ has jurisdiction to hear the matter. To that end, it relied on Article IV.2 of the Geneva Agreement which contains a cross-reference to Article 33 of the United Nations Charter which, in turn, provides for several means of peaceful settlement of disputes between States. Indeed Article 33 of the United Nations Charter states:

> *"The parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resorting*

600 Max SORENSEN, Quoted Above, Page 654.

601 Judgement of 18 December 2020, in which the International Court of Justice pronounces itself competent to hear the dispute filed by the Cooperative Republic of Guiana against Venezuela on 29 March 2018. Available at: https://www.icj-cij.org/public/files/case-related/171/171_20201218_JUD_01-00-EN.pdf.

to regional agencies or arrangements, or other peaceful means of their own choice".

For Guyana, it is undisputed that the jurisdiction of the ICJ is based on the consent expressed by the parties, as provided for in Article 36.1 of the Statute of the ICJ. Guyana argued that the consent does not have to be expressed in a particular form in order to trigger the jurisdiction of the ICJ and considered that Article IV.2 of the Geneva Agreement, in accordance with Article 33 of the Charter of the United Nations, is equivalent to the consent of the parties required to establish the jurisdiction of the ICJ.

Venezuela, on the other hand, did not file a counter-memorial, confining itself to sending two letters and a memorandum rejecting the ICJ's jurisdiction over the territorial dispute, without formally appearing in the ICJ proceedings.

- **Letter from the Minister of Foreign Relations, Jorge Arreaza, dated 28 November 2019 sent to the President of the ICJ, Abdulqawui Ahmed Yusuf.**

This letter was intended to submit the memorandum of the same date and its annexes, thus facilitating the ICJ's compliance with the duty imposed by Article 53.2 of the Statute which reads as follows:

"Before rendering its decision, the Court must satisfy itself not only that it has jurisdiction under the provisions of Articles 36 and 37, but also that the lawsuit is well founded in fact and law".

- **Memorandum sent to the ICJ, dated 28 November 2019, in connection with the Application filed by Guyana on 29 March 2021.**

This memorandum, issued by the Venezuelan Government and signed by Venezuelan Minister of Foreign Relations, Jorge Arreaza, explains to the ICJ Venezuela's position in the case brought by the Cooperative Republic of Guyana.

The memorandum is structured in three chapters, each one in support of the position assumed by the National Government of not

participating in the proceedings before the ICJ as it believes that the ICJ does not have jurisdiction to settle the dispute.

The first chapter explains the general principles of the Geneva Convention of 17 January 1966 and the experiences since its inception, starting with the failure of the Mixed Commission and the freezing of the dispute with the signing of the Port of Spain Protocol, up to the events that led the Secretary-General of the United Nations, Antonio Guterres, to choose the ICJ as the body entrusted with the final settlement of the dispute by judicial means.

The second chapter analyses the provisions of Article IV.2 of the Geneva Accord which, as explained above, established the powers of the UN Secretary-General. This analysis was made considering the context in which the Geneva Accord was created and the intention of the parties in signing it, which follows from the practice, discussions and preparatory work of the convention. This leads us to conclude that the choice of a means of settlement by the Secretary of the United Nations is not a sufficient basis for the jurisdiction of the ICJ.

Finally, the third chapter of the Memorandum highlights the inconsistency between the subject matter of the dispute under the Geneva Agreement and the subject matter of the claim brought by the Republic of Guyana before the ICJ. The Geneva Agreement is not intended to determine the validity or invalidity of the Paris Award, as is Guyana's claim before the ICJ. Such a discussion would have made it impossible to adopt the Geneva Agreement because of the antagonistic views of the parties. On the contrary, the purpose of the Geneva Agreement is to resolve in a practical and peaceful manner the controversy over the sovereignty of the disputed territory, which does not involve the issue of the award. At the time, the government's position was to deny the jurisdiction of the ICJ, rule out the possibility of a judicial settlement and invite its counterpart to negotiations, along with the implementation of political means, in accordance with the provisions of the Geneva Agreement.

- **Letter from the Minister of Foreign Relations of Venezuela, Jorge Arreaza, dated 24 July 2020, sent to the President of the ICJ, Abdulqawui Ahmed Yusuf, where in view of the cooperation that Venezuela undertook to provide in the proceedings, the reasons why the ICJ does not have jurisdiction to hear the case are confirmed.**

By this letter, the national government confirmed the arguments already stated in the memorandum sent on 28 November 2019. The ICJ was reminded that the purpose of the Geneva Agreement is to overcome the dispute regarding the validity of the Paris Arbitral Award of 3 October 1899, and the need to find another way for a practical settlement which is acceptable for both parties.

It was emphasised that, according to Article IV.2 of the Geneva Agreement, the choice of means of settlement by the UN Secretary-General must be done gradually, so that a new means is only chosen when the previous one has failed, and such choice must be previously agreed by both parties. This has not happened in this case.

Finally, Venezuela noted that the choice of one of the means of settlement by the Secretary of the United Nations cannot be made automatically without a special agreement of the parties and thus no jurisdiction can be claimed to allow a judicial settlement by the ICJ.

It follows from the above that Venezuela's initial position was to deny the jurisdiction of the ICJ to hear the territorial dispute. Indeed: *"as Venezuela has stated, the Court manifestly lacks jurisdiction and that is why Venezuela decided not to participate in the proceedings)"*[602].

Pursuant to the memorandum and letters summarized above, Venezuela based its rejection of the ICJ's jurisdiction on the following arguments:

a) The Geneva Agreement, a convention binding on the parties, provides that the settlement of the dispute between Venezuela and Guyana must be reached by a practical arrangement. Thus,

602 For a synthesis on the position assumed by Venezuela in relation to the jurisdiction of the International Court of Justice See: the Letter of the Minister of the People's Power for Foreign Relations sentaddressed to the International Court of Justice on 24 July 2020. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20200724-OTH-01-00-EN.pdf.

"according to the preamble, it must be settled amicably in a manner acceptable to both parties"[603]. For the Venezuelan Government, this is the essence that must be maintained in any interpretation of the Agreement.

b) In the negotiations of the Geneva Agreement, both the United Kingdom and Guyana *"vigorously resisted the legal means of settlement, including recourse to the Court, proposed as a last resort by Mr. Iribarren Borges, who was then Minister of Foreign Relations of Venezuela"*[604], so that the idea of resorting now to the ICJ is contradictory.

(c) The dispute settlement mechanisms provided for in Article 33 of the United Nations Charter must be applied *"successively, gradually and progressively"*[605] and not in a discretionary manner. There are other means of a political nature, such as mediation, which have not yet been exhausted. To go directly to the choice of the ICJ as the instance to settle the dispute *"is a leap that is not consistent with the agreed procedure and is clearly not the most appropriate way to achieve the purpose and objective of the Geneva Agreement"*[606].

(d) The provision of Article IV.2 of the Geneva Agreement does not amount to consent by the parties to submit to the jurisdiction of the ICJ. Although Article IV.2 refers to Article 33 of the United Nations Charter, it is indispensable to enter into an agreement in which the express consent of the parties to submit the dispute to the jurisdiction of the ICJ is clearly stated. Such an agreement is *"indispensable to establish the role of the Court, the subject matter of the dispute, and the sources of law and elements of equity"*[607] to be considered by the ICJ.

e) Because it believes that the ICJ lacks jurisdiction to hear the matter, the Venezuelan Government has determined that there is no need to respond to the substantive arguments presented by Guyana in the claim of 29 March 2018.

603 *Ídem.*
604 *Ídem.*
605 *Ídem.*
606 *Ídem.*
607 *Ídem.*

Subsequently, in view of Venezuela's position on the jurisdiction of the ICJ, as expressed in the letters and the memorandum, an ancillary proceeding on the jurisdiction of the ICJ was initiated, consisting of a public and virtual hearing held on Tuesday 30 June 2020 at 2 p.m. at the Peace Palace in The Hague, presided over by the President of the ICJ, Abdulqawi Ahmed Yusuf. The hearing lasted three hours and forty minutes..

In this case, the ICJ proceeded in accordance with Article 36(6) of the Statute, which provides that in the event of a dispute as to the jurisdiction of the ICJ, the ICJ itself shall decide the matter. Article 36.6 states: *"In the event of a dispute as to the jurisdiction of the Court, the Court shall decide"*.

2.1.4.5. Judgment on Jurisdiction dated 18 December 2020

By judgment dated 18 December 2020, the ICJ decided the matter of jurisdiction initiated pursuant to Article 36.6 of the Statute and declared itself competent to hear the claim brought by Guyana against Venezuela[608]. Through this judgment the ICJ made two very important decisions, one regarding its own jurisdiction to hear the case and the other regarding the scope of such jurisdiction. In effect, the ICJ decided the following:

1. With twelve votes in favour and four against, the Court decided that it has jurisdiction to hear the claim filed by Guyana on 29 March 2018, regarding 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 ICJ established the subject matter of the dispute in a positive manner. Thus, the ICJ stated that it will be competent to pronounce itself on the legal validity of the Paris Arbitral Award of 3 October 1899. In order to do so, the ICJ will have to analyse the legal and historical titles of the disputing States. At the same

608 See: International Court of Justice, *Judgment of 18 December 2020* on the court's jurisdiction. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-00-EN.pdf

time, the ICJ recognizes that declaring the nullity or validity of the Paris Arbitral Award would not put an end to the dispute. Indeed, the ICJ will have to rule on additional or related issues that are decisive for the final resolution of the dispute.

If the ICJ determines that the Paris Arbitral Award is valid, the boundary situation between Venezuela and Guyana shall be maintained as established in said award. On the other hand, if the ICJ declares the nullity of the Paris Arbitral Award, then it will have to rule on other important aspects. One of them is the new territorial delimitation, which could no longer be the border established by the arbitrators in 1899. Another aspect that is equally important is the maritime delimitation between the two territories, which has a special commercial impact due to the presence of abundant oil fields in the area.

The interpretation of the scope of its own jurisdiction will determine whether the ICJ will be able to directly resolve the related issues referred to above or whether it will entrust this task to another international jurisdictional or political body.

2. The ICJ unanimously decided that it does not have jurisdiction to hear the claims of Guyana arising out of events occurring after the Geneva Agreement was signed on 17 February 1966[609]. With this, the ICJ set a critical date of 17 February 1966, when the Geneva Agreement was signed.

The ICJ based its decision on paragraph 2 of Article IV of the Geneva Agreement of 17 February 1966, which states:

> *"If, within three months after the receipt of the Final Report, the Government of Venezuela and the Government of Guyana have not reached an agreement with respect to the choice of one of the means of settlement provided for in Article 33 of the United Nations Charter, they shall refer the decision on the means of settlement to an appropriate international body to be agreed*

609 See: International Court of Justice, *"Judgment of 18 December 2020 Jurisdiction of the Court",* Page 42. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-00-EN.pdf

> *upon between the two Governments,* ***or, if no agreement is reached on this point, to the Secretary-General of the United Nations****. If the means thus chosen does not lead to a settlement of the dispute, that organ,* ***or, as the case may be, the Secretary-General of the United Nations, shall choose another of the means provided for in Article 33 of the United Nations Charter****, and so on, until the dispute has been settled, or until all the means of peaceful settlement contemplated in the said Article have been exhausted"*[610]. (Highlighting Added).

In the case of the dispute between Venezuela and Guyana, the decision was referred to the UN Secretary-General. According to the ICJ, the UN Secretary-General could choose another of the mechanisms established in Article 33 of the UNC. Said provision states under Nº 1:

> *"The parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice"*[611]. (Highlighting Added).

The ICJ considered that the aforementioned article mentions judicial settlement among the settlement mechanisms. Thus, Article IV.2 empowers the UN Secretary-General to choose the means set forth in Article 33 of the UNC and, consequently, allows him to choose judicial settlement as a means for solution.

In exercising that power, the UN Secretary-General, Antonio Guterres, in a letter dated 30 January 2018 sent to both parties stated that he had chosen the ICJ as the next instance in the resolution of the dispute.

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610 See: Véase Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 349 & ff.

611 *Ídem.*

According to the ICJ, the above was based ono Article 36 of the Statute that, in number first, which allows extending its jurisdiction to all disputes submitted to it by the parties:

> *"The jurisdiction of the Court extends to all disputes submitted to it by the parties and to all matters specially provided in the United Nations Charter or in treaties and conventions in force"*[612].

The above-mentioned ICJ judgment sets a critical date that determines the scope of its jurisdiction, limiting it to the time of the signing of the Geneva Agreement. This is tantamount to saying that the ICJ will hear the case in relation to events that took place before 17 February 1966. But of course, the provisions of the Geneva Agreement must also be considered, as this is the instrument on which the ICJ based its jurisdiction to hear the case.

We now emphasize the importance of the Geneva Agreement, whose signature not only constitutes the temporal limit of the ICJ's jurisdiction, but also makes it a binding instrument for Venezuela, the United Kingdom, and Guyana, that recognizes the historical Venezuelan claim regarding the nullity of the Paris Arbitral Award of 3 October 1899.

The recognition of a dispute regarding the validity of the Paris Arbitral Award through the Geneva Agreement suggests that the award is not protected by the principle of intangibility of *res judicata*. Even if the Geneva Agreement did not exist, the Paris Arbitral Award would still not be protected by the principle of intangibility, since it is a decision that suffers from obvious flaws that render it null and void, and only judgments that have been duly rendered are protected by the principle of intangibility of *res judicata*.

In this regard, it is important to consider the content of the memorandum sent by Dr. Andrés Aguilar Madwsley to Dr. Rafael Caldera in April 1966 referring to the Geneva Agreement signed on February 17th that same year:

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612 See: Statute of the International Court of Justice. Available at: https://www.icj-cij.org/public/files/statute-of-the-court/statute-of-the-court-es.pdf.

"The possibility should not be ruled out that on these points or on others, after lengthy and laborious discussions, the conclusion may be reached that it is not possible to reach an arbitral compromise acceptable to both parties. In such a case, there would be no other recourse than judicial settlement. According to the official interpretation, the Agreement implies the recognition of the jurisdiction of the International Court of Justice by the United Kingdom and eventually the new State of Guyana. Although there are those who think that this interpretation is debatable, because the Agreement does not expressly refer to the International Court of Justice, let us suppose that this question does not arise or if it does arise, the Court declares it does have jurisdiction to hear the dispute.... Under this assumption, the Court may take the view that its jurisdiction is limited exclusively to examining the dispute between Venezuela and the United Kingdom arising out of Venezuelan contention that the Arbitral Award of 1899 on the boundary between Venezuela and British Guiana is null and void under the terms of Article 1 of the Agreement. In other words, the Court can only decide on the validity of the Award... One must admit, on the other hand, that the Agreement weakens the Award, not because it recognizes the existence of the dispute -as some have argued- but because the United Kingdom has agreed to a procedure which, at least theoretically, could have the effect of rendering it null and void. This undoubtedly improves the legal position of Venezuela, which previously had no means of forcing the United Kingdom to submit the matter to an arbitral or judicial tribunal. This is undoubtedly the most positive aspect of the Geneva Agreement, which it would be unkind to silence or disregard but which would be imprudent to exaggerate. It is therefore, necessary to emphasize that an objective interpretation of the Agreement does not allow us to affirm that the question will necessarily be settled by the means contemplated therein... That said, the United Kingdom and the new State of Guyana may allege before the International Court of Justice the authority of res judicata of the Arbitral Award of 1899 and the acquiescence of Venezuela. Indeed, according to the provisions of Paragraph (1) in Article V of the Agreement ".... nothing in this Agreement shall be construed as a waiver or reduction by Venezuela, the United Kingdom, or British Guiana of any basis of claim to

territorial sovereignty in the Territories of Venezuela or British Guiana, or of any rights previously asserted or claims to such territorial sovereignty, or to prejudge their position with respect to their recognition or non-recognition of a right to claim or basis of claim by either of them to such territorial sovereignty. On these exceptions and defences, Venezuela could argue that the very conclusion of the Agreement is an express or at least tacit recognition that there has been no such acquiescence and that in any event, by accepting the procedure therein provided, the United Kingdom has tacitly renounced to avail itself of these means of defence. It could also allege that the internal and international conditions prevailing in 1899 and in the following years, as well as the discovery many years later of documents confirming Venezuela's vehement suspicions that it had been the victim of an arrangement between two great powers, did not allow it to assert its claim earlier.... Even so, and this must be stated clearly to avoid misunderstandings and disappointments, the Court could declare the United Kingdom's defences admissible without even examining the merits of our arguments to challenge the very validity of the Award (lack of reasoning, arbitrators exceeding their powers, ultrapetita). It is necessary to examine the decisions rendered by this High Court in similar cases to be convinced that this is a hypothesis that may occur"[613].

As predicted by Dr. Andres Aguilar Madwsley, the ICJ has declared itself competent to decide on the question of the nullity or validity of the Paris Arbitral Award of 1899.

The Geneva Agreement is fundamental to the dispute and has been recognised by the ICJ. Indeed, the critical date established to determine the ICJ's jurisdiction ratione temporis, which coincides with the signing of the Geneva Agreement, has positive implications for Venezuela. The ICJ can only consider valid the arguments relating to facts prior to 17 February 1966. In this respect, Venezuela has a great advantage, since it has historical and legal titles that support its rights over the eastern

[613] Quoted in Luis COVA ARRIA, "La Academia de Ciencias Políticas y Sociales y la defensa del territorio Essequibo" "The Academy of Political and Social Sciences and the Defense of the Essequibo Territory", *Bulletin of the Academy of Political and Social Sciences*, Nº 164, Caracas, 2021. Pages 80-81.

border, and it has solid evidence of the flaws in the Paris Award, which would allow the ICJ to declare it null and void.

2.1.4.6. Dissenting Opinions in the International Court of Justice Judgment of 18 December 2020 on Jurisdiction

The ICJ judgment was issued with twelve votes in favour and four votes against. The dissenting votes were those of Judges Ronny Abraham, Mohamed Bennouna, Kirill Gevorgian and Giorgio Gaja. Among the main arguments of the dissent was that the spirit of the Geneva Agreement was violated by the interpretation given to Article IV.2, since reference to Article 33 of the UNC in Article IV.2 of the Geneva Agreement is not sufficient to support the consent of the parties to turn to the ICJ. In their opinion, in order for the parties to express their willingness to settle the territorial dispute at the ICJ, it was necessary to sign a special agreement[614]. They also considered that special importance should have been given to the issue of consent because one of the parties, Venezuela, decided not go to the ICJ[615]. Consent, according to ICJ jurisprudence, must be *"certain, unequivocal and indisputable",* as stated by Judge Kirill Gevorgian[616].

At this point, it is worth making an important clarification about how the ICJ's jurisdiction is accepted. This serves two purposes. The first is to clarify what are the common ways in which ICJ jurisdiction is established. The second is that it helps to understand the reasons for the dissenting votes of some judges. Let us be very specific about them:[617]

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614 On this matter, see: International Court of Justice, *Dissenting opinion of Judge ABRAHAM*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-02-EN.pdf.

615 See: International Court of Justice, *Dissenting opinion of Judge BENNOUNA*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-03-EN.pdf

616 See: International Court of Justice, *Dissenting opinion of Judge GEVORGIAN*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-06-EN.pdf

617 See: the discourse of Juan Carlos SAINZ-BORGO at the event of *Academy of Political and Social Sciences* entitledtitled "Jurisdiction of the International Court of Justice and the determination of the terrestrial border between Guiana and Venezuela" held on 20 January 2022. Available at: https://www.youtube.com/watch?v=UCFlmNhatQg.

It should be noted that the ICJ may have *ad hoc* jurisdiction by virtue of a special agreement or compromise, and it may also have *ad hoc* jurisdiction by virtue of a treaty or convention. The ICJ may also hear a case by virtue of an *ante hoc* jurisdiction based on a declaration of jurisdiction through an optional provision. Finally, the ICJ may declare itself competent on the basis of a *post hoc* declaration, known as a *forum prorogatum*[618].

As we know, the fundamental criticism of the dissenting judges is that there was no consent by both parties to go to the ICJ. The parties must always state their express consent through an agreement, which did not occur. The function of Article IV.2 of the Geneva Agreement is to empower the Secretary-General of the United Nations to select one of the mechanisms established therein or, alternatively, one of those established in Article 33 of the UNC. It was precisely that selection that, in the opinion of the dissenting judges, did not constitute a sufficiently solid basis to justify the ICJ's jurisdiction.

Dissenting arguments also stated that, by the time the ICJ rendered its judgment on 18 December 2020, Venezuela had not made a *post hoc* manifestation that would activate the figure of *forum prorogatum* which functions as a form of tacit submission of a State that has carried out acts from which it can be understood that it accepts the jurisdiction of the ICJ.

Therefore, they point out that the ICJ's declaration of jurisdiction ratione materiae is not only nonsensical for the reasons already mentioned, but also because it hinders the solution, since it violates

618 This is a supervening expression of a State's will that allows us to conclude that it consents to or accepts the jurisdiction of the International Court of Justice. See: Max SORENSEN, *"Manual de Derecho Internacional* Público*"* ("Public International Law Handbook"), Fondo de Cultura Económica, México, 1973. Page 652. As the author points out: *"The Court, on several occasions, declared that its jurisdiction was based on the will of the parties, on their consent to submit to its jurisdiction (Minorities Schools in Upper Silesia (1928), Sec. A. Nº 15, Page 22; Interpretation of Peace Treaties (First Phase) (1950), ICJ Rep. 65, 71; Case: Monetary Gold (1954),ICJ Rep. 19, 32). But the Court also sustained that it would not grant 'form' the same importance it has in internal law (Case: Mavrommatis (1924), PCIJ Ser. A, Nº 2, Page 34), and has maintained its jurisdiction even when such consent is granted after the beginning of the procedure, implicitly, informally, or by a succession of actions ..."*

fundamental principles of international law, such as the principle of *pacta sunt servanda*, which implies the respect of agreements made by the parties through their respective expressions of will, which must be complied with in good faith..

Finally, it is argued that, from the point of view of objective law, the decision contravenes the provisions of Article 2 of the United Nations Charter which provides:

> *"In carrying out the Purposes set forth in Article 1, the Organization and its Members shall proceed in accordance with the following Principles:*
> *1. The Organization is based on the principle of the sovereign equality of all its Members.*
> *2. The Members of the Organization shall, in order to secure to themselves the rights and benefits inherent in their membership,* ***fulfil in good faith the obligations assumed by them in accordance with this Charter****.*
> *3. The Members of the Organization shall settle their international disputes by peaceful means* ***in such a manner that international peace and security and justice are not endangered****.*
> *4. The Members of the Organization shall refrain in their international relations from the threatening to use or using force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*
> *5. The Members of the Organization shall give the Organization every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the Organization is taking preventive or enforcement action.*
> *6. The Organization shall cause states which are not Members of the United Nations to conduct themselves in accordance with these Principles to the extent necessary for the maintenance of international peace and security.*
> *7. Nothing in this Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, nor shall it require the Members to submit such matters to settlement procedures in accordance with the present Charter; but this principle does not preclude the*

application of the coercive measures prescribed in Chapter VII" (Highlighting Added).

From the aforementioned article, paragraphs 2 and 3 stand out. Paragraph 2 ratifies the requirement of compliance with obligations in good faith. Paragraph 3 indicates that the resolution of disputes through peaceful means must not jeopardize peace, international security, and justice.

The position of the dissenting judges seems reasonable, not only because there is no special agreement that would allow one to conclude that Venezuela accepted to submit the dispute to the jurisdiction of the ICJ, but also because neither Venezuela nor Guyana have ratified the ICJ Statute.

a. Judge Ronny Abraham[619]

Judge Ronny Abraham argued in his withheld vote that Antonio Guterres, the UN Secretary-General, could have chosen the ICJ as the body entrusted with resolving the territorial dispute. In fact, the ICJ is the main dispute settlement mechanism in the UNC.

In the opinion of Judge Ronny Abraham, the UN Secretary-General did not have to choose the means of settlement provided in Article 33 in a specific order. On the contrary, he could have chosen any of them regardless of the order. This choice cannot be understood as a recommendation to the parties, but as a decision binding on them under the Geneva Agreement[620].

On all the previous points, he agreed with the sentence. He then explains the aspects on which he does not agree with the opinion of the majority, and gives his reasons:

1. **Consent:** One thing is the validity of the selection of a means of settlement by the Secretary-General of the United Nations, which creates obligations for the parties, and quite another is to

619 On this matter, see: International Court of Justice, *Dissenting opinion of Judge ABRAHAM*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-02-EN.pdf.

620 Everything therefore indicates that the Secretary-General's choice of a means of settlement constitutes a decision which imposes certain obligations on the parties.

rely on the consent of the parties to go to the ICJ in Article IV.2 of the Geneva Agreement[621].

2. **Need to Sign a Special Agreement:** To resort to any of the other mechanism of Article 33 of the UNC, for example, arbitration, would have required a special and subsequent agreement in which the parties expressed, in good faith and after a series of negotiations, their willingness to submit the dispute to a third party. This did not occur and the validity of the action of the Secretary-General of the United Nations is being confused with the commitment between the parties, which never existed and which is what could really establish the ICJ's jurisdiction.
3. **Object of the Geneva Agreement:** For the ICJ, the signing of a special agreement subsequent to the selection made by the Secretary-General of the United Nations is contrary to the spirit of the Geneva Agreement because it would allow the dispute to extend in time if the parties do not reach an agreement. For Judge Ronny Abraham, such interpretation of the Geneva Agreement is contrary to its true object and purpose. Indeed, the agreement does not indicate that the mechanism selected must definitively resolve the dispute. On the contrary, it states that if one means fails, an attempt may be made to reach a practical solution through one of the other contemplated mechanisms.
4. **Criticism of the Clarity of the Decision:** Regarding the reasoning of the tribunal, especially when reading Paragraph 86 of the decision, it can be noted that ideas have been formulated in a complex manner that do not seem to have clarity of exposition as their goal[622].

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621 "It is one thing to say that the choice of a means in this instance, judicial settlement by the Secretary-General creates obligations for the parties; it is quite another to see in Article IV, paragraph 2, of the Agreement, combined with the Secretary-General's decision, the expression of both parties' consent to the settlement of their dispute by the Court".

622 Paragraph 86: "The Court points out that its conclusión that the Parties consented to the judicial solution in virtue of Article IV of the Geneva Agreement is not to be questioned by the phrase "or until all the means of peaceful settlement there contemplated have been exhausted" in Paragraph 2 of the article, which could suggest that the Parties had contemplated the possibility that the General Secretary's choice out of the means provided for in Article 33 of the Charter, that include a judicial solution, would not lead to the resolution of the controversy. There are several reasons for a judicial decisión, that has the

5. **Position regarding the ICJ's Jurisdiction:** In view of all the above reasoning, the ICJ should have declared that it lacked jurisdiction to resolve this case.

b. Judge Mohamed Bennouna[623]

1. **Consent**: The fact that one of the parties did not appear before the ICJ is an indication of the particular importance that should have been attached to the question of consent. This is one of the essential requirements for resorting to this body.
   On consent, he echoes Judge Ronny Abraham's criticism of the same order when, referring to the ICJ's interpretation of Article IV of the Geneva Agreement, he asks: *"But is this sufficient to conclude, as the Court blithely does, that the parties have consented to its jurisdiction?"*[624].
2. **The Geneva Agreement does not amount to delegation of power to consent**: The possibility set out in Article IV.2 of the Geneva Agreement for the UN Secretary-General to choose one of the means of settlement of Article 33 of the UNC did not amount to the parties having delegated to him the power to consent as to the ICJ's jurisdiction[625]. What the UN Secretary-General should have done in this case is to choose the means of settlement and then the parties decide whether or not to accept such chosen method.
3. **Interpretation**: The Geneva Agreement provided for the possibility of exhausting all means of settlement under Article 33

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strength of a matter adjudged and clarifies the rights and obligations of the Parties, may in fact not lead to producing a final solution to the controversy. The Court of Justice has only to consider that, in this case, a judicial decision declaring the nullity of the 1899 Award without delimiting the border between the Parties would not lead to a final resolution of the controversy, which would be contrary to the object and purpose of the Geneva Agreement.

623 See: International Court of Justice, *Dissenting opinion of Judge BENNOUNA*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-03-EN.pdf

624 *"... but is this sufficient to infer, as the Court blithely does, that the Parties have consented to its jurisdiction?"*

625 "… in international practice, there is no precedent in which States can be said to have delegated to a third party, such as the Secretary-General, their power to consent to the Court's jurisdiction".

of the UNC. However, the Tribunal eliminated this possibility by interpreting Article IV.2 of the Agreement to mean that the ICJ must finally resolve the dispute, thus violating its effectiveness, one of the maxims of treaty hermeneutics[626] .

4. **Scope of Jurisdiction**: The ICJ could not declare itself competent to decide on the delimitation of the boundary between the disputing States. The dispute is over the validity of the Paris Arbitral Award, which formally arose in 1962. If the award is 0declared invalid, the parties would have to reach an agreement on their boundary status through the means they shall see fit.
5. **The decision is a reputational risk for the ICJ**: In a case as sensitive as this one, only a careful and rigorous decision could guarantee the credibility of the ICJ among the signatory countries of its Statute.

c. Judge Kirill Gevorgian[627]

1. **Consent**: The ICJ's judgment of 18 December 2020 violated one of the fundamental principles that the ICJ has upheld both in the Statute and in its decisions, that the consent of the parties to its jurisdiction must be *"certain, unequivocal and indisputable"*[628]. The provision of Article IV.2 of the Geneva Agreement does not amount to the parties' recognition of the United Nations Secretary-General's power to consent for them. On the contrary, and as the other dissenting opinions reviewed in this study

626 "Unfortunately, the Court itself, in interpreting Article IV, paragraph 2, has not allowed the terms of this second alternative to produce fully their effects, thereby departing from "one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely that of effectiveness" (Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, Page 25, para. 51; Also see Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978, Page 22, para. 52; application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), Pages 125-126, para. 133)".

627 See: International Court of Justice, *Dissenting opinion of Judge GEVORGIAN*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-06-EN.pdf

628 "…certain, unequivocal and indisputable".

have affirmed, Judge Kirill Gevorgian argues that it is the UN Secretary-General who chooses the means, but it is the parties who consent to its application.

2. **Insufficient analysis of the Venezuelan Government's position**: Venezuela's memorandum, which by the time the judgment of 18 December 2020 was rendered had decided not participate in the proceedings, was completely disregarded despite its great value and the considerable size of the territorial dispute.
3. **Interpretation violates the purpose of the Geneva Agreement**: Under the Geneva Agreement, one of two things could happen: (i) the dispute between the parties would be resolved by one of the means of settlement provided for, or (ii) the means of settlement would be exhausted. The ICJ's interpretation eliminated the second possibility and violated the purpose of the Geneva Agreement by establishing that it would be the body of choice for the final settlement of the dispute.
4. **Denial of the position historically held by Venezuela**: Venezuela has historically stated on several occasions its willingness not to allow third parties, such as the Secretary-General of the United Nations, to decide without its express consent on issues as relevant to the nation as its territorial integrity, but this was completely ignored by the ICJ[629].

d. Judge Giorgio Gaja[630]

It should be noted that Judge Giorgio Gaja's withheld vote is not shown as such on the ICJ website, but as *"Statement by Judge Gaja"*.

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629 Judge Kirill GEVORGIAN points out that: "…*Venezuela had concluded, in 1939, a bilateral treaty with Colombia providing, in general, for submission of disputes to conciliation or judicial settlement. However, Article II of that treaty expressly excluded any disputes relating to the territorial integrity of the Parties from being submitted to third-party settlement*. A similar 1940 bilateral treaty between Venezuela and Brazil required, at Article IV, that the Parties attempt to conclude a special agreement before any disputes could be submitted to judicial settlement …"

630 See: International Court of Justice, *Declaration of Judge Gaja*. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-04-EN.pdf.

The reason for Judge Gaja's dissenting vote was the lack of consent of the parties.

1. He agrees that the parties may refer the dispute to the ICJ for settlement, as provided for in Article IV, paragraph 2, of the Geneva Convention. However, he disagrees that the decision of the UN Secretary-General should prevail over the consent of the parties..
2. The obligation to resort to judicial settlement does not require that the decision of the Secretary-General be confirmed by agreement between the parties, but this does not necessarily mean that the means chosen can be implemented without the consent of both parties. Each of the means of dispute settlement listed in Article 33 of the Charter of the United Nations requires the agreement of the parties. For example, mediation requires agreement on who will act as mediator, and arbitration requires agreement on the appointment of arbitrators and the acceptance of the jurisdiction of the arbitral tribunal. In the case of judicial settlement, jurisdiction can be conferred on the court without an agreement providing for additional specifications, for example, when the parties make statements under the optional clause covering the dispute. This does not mean, however, that if judicial settlement is chosen, no agreement is required to confer jurisdiction on the court. In short, the obligation to resort to judicial settlement does not necessarily mean that the means chosen can be implemented without the consent of both parties[631].
3. The Geneva Agreement contemplated the possibility that, even after exhaustion of the mechanisms provided therein, the dispute might not be finally settled. The interpretation given by the ICJ to Article IV, especially Paragraph 2, of the Geneva Agreement violates the purpose of the convention by establishing that the judicial instance has jurisdiction to definitively settle the dispute.

631 *Ídem.*

2.1.4.7. Procedure subsequent to the judgment of 18 December 2020

By judgment of 18 December 2020, the ICJ declared itself competent to hear the claim filed by Guyana. To that end, the ICJ had to determine the subsequent procedure and establish the deadlines for filing of the memorial and counter-memorial on the merits of the dispute.

By order dated 8 March 2021, the ICJ set the deadline for the submission of the memorial and counter-memorial. The aforementioned order was issued in compliance with Paragraph 1 of Article 45 of the Rules of Court, according to which *"In proceedings initiated by an application, the written pleadings shall consist, in their order, of a memorial of the claimant and a counter-memorial of the respondent"*[632]. According to said order, Guyana had to file its memorial before 8 March 2022, -which has already occurred- and Venezuela had to file its counter-memorial before 8 March 2023. However, the course of the proceedings set by the ICJ changed when Venezuela decided to participate in the proceedings and raised preliminary objections regarding the admissibility of the claim of Guyana.

Due to this course of action, the deadline for Venezuela to file its counter-memorial will have to be reset, once the preliminary objections to the admissibility of Guyana's claim are resolved, unless the preliminary objections raised by Venezuela are declared admissible, in which case the proceedings would be extinguished.

2.1.5. Notifications (Articles 40.2 and 40.3 of the Statute)

Notifications to be given during the ICJ proceedings shall be served on the agents, counsel, or attorneys of each of the parties. However, Article 44 of the Statute sets Rout that for serving notices on persons other than those named above, the ICJ shall contact the government of the State in which the document is to be served. The same mechanism shall be used when gathering evidence at the place of the facts (Article 44 of the Statute).

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632 See: Rules of CourtProcedure of the International Court of Justice. Available at: https://www.icj-cij.org/public/files/rules-of-court//rules-of-court-es.pdf.

Regarding the initiation of proceedings by an application sent to the Registrar of the ICJ, the second and third paragraphs of Article 40 provide:

> *"2. The Registrar shall immediately communicate the application to all interested parties.*
> *3. The Registrar shall also notify the Members of the United Nations through the Secretary-General, as well as other States entitled to appear before the Court".*

2.1.6. The Written Pleadings of the Parties (Article 46 of the Rules of Court; Practice Direction II and Practice Direction III)

As regards the initiation of contentious proceedings before the ICJ through special agreements, it is necessary to refer to the ICJ Practice Directions, especially Practice Direction I which states:

> *"The International Court of Justice wishes to discourage the practice of simultaneous filing of pleadings in cases brought by special agreement.*
> *The Court expects future special agreements to contain provisions on the number and order of pleadings, in accordance with Article 46(1) of the ICJ's Rules of Court. Such provisions shall be without prejudice to any issue in the case, including the matter of burden of proof.*
> *If the special agreement does not contain provisions on the number and order of pleadings, the Court shall expect the parties to reach an agreement to that effect, in accordance with Article 46(2) of the Rules of the Court"*[633].

2.1.7. Agents (Article 42 of the Statute; Article 42 of the Rules)

The representation of State-Parties in proceedings before the ICJ is exercised by agents, who, in turn, may rely on counsel or advocates.

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633 See: "Practice Directions" at the oficial Web-Site of the International Court of Justice. Available at: https://www.icj-cij.org/en/practice-directions.

The parties must designate the agents who will represent their interests before the ICJ, as established in Article 42 of the Statute. Likewise, Article 40 of the Rules of Court states that *"all acts performed on behalf of the parties after proceedings have been instituted shall be performed by agents"*[634].

Agents play an important role in ICJ proceedings as representatives of the participating States. They are subjects who perform functions similar to those of a lawyer before the domestic courts of a State with the particularity that they act *"...as if they were at the head of a special diplomatic mission and shall have powers to bind a sovereign State. They will receive communications from the Registrar regarding the case and will, in turn, send him all correspondence and pleadings, duly signed or certified. At public hearings, an agent presents the pleadings on behalf of the government he or she represents. In general, the agent is responsible for all formal acts to be performed by the government he or she represents"*[635].

The form and procedural timing for establishing the agents of each of the litigating States in the proceeding is regulated in Article 40(2) of the Rules of Court: *"When a proceeding is instituted by a petition, the name of the petitioner's agent shall be indicated. The defendant shall inform the Court of the name of his agent upon receipt of the certified true copy of the application or as soon as possible thereafter"*[636].

As representatives of the interests of the State before the ICJ, agents do not act alone; instead, *"they are sometimes assisted by co-agents, deputy agents or sub-agents, and they always have counsellors whose work they coordinate in order to assist them in the preparation of pleadings and their presentation. Since there is no special authorisation for counsellors to participate in proceedings before the International Court of Justice, counsellors or advocates do not have to fulfil any conditions for doing so, other than being appointed for that purpose by a government"*[637].

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634 *Ídem.*

635 International Court of Justice, "Court Operation", a section on the contentious procedure before the international jurisdictional organ. Available at: https://www.un.org/es/icj/how.shtml

636 *Ídem.*

637 *Ídem.*

Several provisions of the Statute and the Rules of Court regulate the functions of agents in proceedings before the ICJ. First, account should be taken of Article 17 of the Statute, which sets out certain aspects limiting the participation of ICJ judges as agents, as stated below.

> *"1. Members of the Court may not act as agents, counsellors, or advocates in any matter.*
> *2. They may not participate in the decision of any case in which they have previously been involved as agents, counsellors, or advocates of any party, or as members of a national or international tribunal or of a commission of inquiry, or in any other capacity.*
> *3. In case of doubt, the Court shall decide".*

All of the above is predicated on the duty of impartiality and the duty of independence that ICJ judges must fulfil.

With regard to ICJ's hearings, Article 49 sets out that this high jurisdictional body has the power to request the agents of the States-Party to clarify or submit specific documents related to the case. Thus, the aforementioned rule provides: *"Even before the commencement of a hearing, the Court may request agents to produce any documents or to give any explanations. If they refuse to do so, a formal record of the fact shall be made".*

The hearing will be terminated only after the presentation of the case by counsel, attorneys and, primarily, agents has been completed. This illustrates that the role of agents is fundamental to properly defend the interests of the State they represent. Article 54 states:

> *"1. When the agents, advisors, and counsellors, as provided by the Court, have completed the presentation of their case, the President shall declare the hearing closed.*
> *2. The Court shall then retire to deliberate.*
> *3. The deliberations of the Court shall be held in private and shall remain secret".*

The judgment rendered by the ICJ to resolve the dispute must be duly notified to the agents of State-parties, who receive most of the notices made during the proceedings. Indeed, Article 58 states that *"the*

Judgment shall be signed by the President and the Registrar and shall be read in open court after due notice has been given to the agents". On occasion, the ICJ must serve notices on persons other than agents of State-parties. This is the case when new proceedings are initiated where the ICJ Registrar must notify the States concerned and the members of the UN through the UN Secretary-General (Article 40 of the Statute); or when dealing with a convention interpretation in which States that are not participating in the proceedings are involved (Article 63 of the Statute). In such a case, Article 44 applies:

> *"1. All notices to be served on persons other than agents, counsel, or attorneys shall be sent by the Court directly to the government of the State in whose territory the matter is to be adjudicated.*
> *2. The same procedure shall be followed when evidence is to be obtained at the place where the facts occurred"*.

On the other hand, the Statute's provisions on agents should be read together with the Rules of Court, which explain this topic in more detail.

According to Article 31 of the Rules of Court, agents are responsible for informing the President of the ICJ what their State thinks about procedural matters. This rule means that:

> *"In any matter brought to the consideration of the Tribunal, the President shall be informed of the views of each of the parties on procedural matters. The agents of the parties shall be summoned to that effect by the President as soon as possible after their appointment and thereafter whenever necessary"*.

Article 38 of the Rules also refers to agents in its third paragraph by stating that if a State starts an ICJ proceeding by an application, the agent should usually sign the original document. The article reads:

> *"The application´s original must have the signature of the party's agent, its diplomat in the Court's country, or someone with proper authorization. If someone else signs it, the diplomat or the party's foreign ministry must verify the signature"*.

Article 52 of the Rules provides that agents must sign the written pleadings they submit in the ICJ's written phase:

> *"The agent must sign the original of each written allegation and file it together with a certified copy of the allegations and the attached documents and their translations with the Court's Registry. The other party will be notified as stated in Article 43(4) of the Statute. The agent must also provide the Court's Registrar with the number of required extra copies, and any additional copies later if needed".*

Rule 52 of the Rules of Court contains a footnote stating that "the agents of the parties are advised to inquire with the Court's Registrar the current format for written allegations and under what conditions the Court would assume part of the printing cost".

Another important requisite that must be met during the oral phase of the proceedings before the ICJ is that agents must state their final conclusions to ICJ judges without repeating previous arguments and a copy thereof to be sent by them to the other party, all in abidance by Article 60.2 of the Rules of Court:

> *"At the conclusion of the last allegation presented by a party during the oral proceedings, the part's agent shall read out the final conclusions of the party concerned without repeating the argumentation. A copy of the written closing arguments signed by the agent shall be communicated to the Court and transmitted to the other party".*

Article 61 says that the ICJ can question the parties' agents. The agents can reply immediately or later, as the judges decide. The rule reads:

> *"1. The Court may, at any time before or during hearings, indicate the points or problems which it would like the parties to especially address, and those points that it considers to have been sufficiently discussed.*
> *2. The Court may, during the hearings, ask questions of agents, counsel and counsellors or request clarification from them.*

> *3. Each judge shall have the same power, but, before exercising it, he shall make his intention known to the President, who is responsible for conducting the hearings in accordance with Article 45 of the Statute.*
> *4. The agents, counsel and counsellors may reply immediately or within a time limit fixed by the President".*

Agents play an important role in gathering evidence, as they usually question the witnesses and experts, as stated in Article 65 of the Rules of Court:

> *"The parties' agents, counsel or counsellors will question the witnesses and experts under the President's authority. The Presiding Judge and the Judges can also ask them questions. The witnesses must stay outside the courtroom until they testify".*

Agents are also important when third States want to join the process. They must ask for permission to intervene. The application must have the name of the agent of the third State in abidance by the first part of Article 81(2), which reads: *"The application shall state the name of the agent".*

Article 95 provides that the final judgment must state the names of the agents, counsel and counsellors of the States in the dispute, as clearly stated in Article 95.1 of the Rules of Court:

> *"1. The Judgment must indicate whether it was issued by the Court or by a Court division and shall state: the date it was read; the judges who took part in it; the parties' names;* ***the names of the agents, counsel and counsellors****; a summary of the proceedings; the parties' conclusions; the legal reasons; the judgment's operative part; the decision on the costs, if any; the number and names of the judges who formed the majority; the text of the judgment that is official" (Highlighting Added).*

To exercise their functions, the agents and advisors and attorneys of each of the parties shall enjoy the privileges required to perform their work with full freedom. Indeed, Article 42 of the Statute provides:

> *"1. The parties shall be represented by agents.*
> *2. They may have counsel or advocates before the Court.*
> *3. The agents, counsel, and counsellors of the parties acting before the Court shall enjoy the necessary privileges and immunities to freely perform their functions"*[638].

On 7 June 2022, Venezuela appointed an Agent and two Co-Agents. The order issued by the ICJ dated 13 June 2022, stated the following: *"By letter dated 6 June 2022, H.E. Ms. Delcy Eloína Rodríguez Gómez, Executive Vice-President of Venezuela, informed the Court that the Venezuelan Government had appointed H.E. Mr. Samuel Reinaldo Moncada Acosta, Permanent Representative of Venezuela to the United Nations, as Agent, and H.E. Mr. Félix Plasencia González, Former Minister of People's Power for Foreign Relations of Venezuela, and Ms. Elsie Rosales García, Professor at the Central University of Venezuela, as Co-Agents for the purposes of the case ..."*[639].

Note that Venezuela appointed two Co-Agents in addition to an Agent. From the reference to *"agents"* made in the plural and in some ICJ cases in which Co-Agents were appointed we can infer that there are several types of agents, even though they are not expressly regulated in the Statute or the Rules. The International Court of Justice Handbook explains the nature of Co-Agents, who assist the Principal Agent. Indeed, *"an agent is sometimes assisted by a co-agent, a deputy agent or an additional agent, and he or she will always have an advisor or counsel to provide assistance in the preparation of pleadings and the presentation of oral arguments"*[640].

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638 See: Statute of the International Court of Justice, adopted in San Francisco on 26 June 1945. Available at: https://www.icj-cij.org/public/files/statute-of-the-court/statute-of-the-court-es.pdf.

639 See: Order of 13 June 2022 that estblishes the term for the observations and allegations document of the Cooperative Republic of Guiana as it relates to the preliminary objects brought by Venezuela on 7 June 2022. Available at: https://www.icj-cij.org/public/files/case-related/171/171-202206613-ORD-01-00-EN.pdf.

640 International Court of Justice, *The International Court of Justice Handbook*, recovered from the files of the official Web-Site of the International Court of Justice in the "Publications" section. Page 18. Available at: https://www.icj-cij.org/public/files/publications/handbook-of-the-court-en.pdf.

Thus, the Venezuelan Government has appointed the agent and co-agents who will represent the country's interests before the ICJ, as provided for in Article 42 of the Statute. According to Article 40 of the Statute, *"all acts performed on behalf of the parties after the commencement of the proceedings shall be performed by agents"*[641].

Guyana, for its part, appointed its Second Vice-President and Minister of Foreign Affairs Mr. Carl B. Greenidge as its Agent[642], who has received all Guyana's documents sent to the ICJ since filing its Application of 29 March 2018. It also appointed Sir Shridath Ramphal and Audrey Waddell as Co-Agents.

2.1.8. *Ad hoc* Judges

The State-Parties to a given dispute brought before the ICJ may appoint an *ad hoc* judge in the absence of a judge of their nationality. Indeed, the third paragraph of Article 31 of the Statute states:

> *"If the Court does not include a judge of the nationality of the parties, each of the parties may appoint one in accordance with Paragraph 2 of this Article ".*

Thus, the parties will be able to nominate a person to sit on the ICJ as a judge, preferably chosen from the group of individuals who were previously candidates for the judgeship.. In fact:

When a party decides to exercise its right to appoint an *ad hoc* judge, it must, in accordance with paragraph one of Article 35 of the Rules, *"notify the Court of its intention as soon as possible"*. At the same time, it must include relevant details of the designated judge, such as his or her name and nationality, but if it does not provide this information, the party designating the *ad hoc* judge must, pursuant to the first paragraph of Article 35 of the Rules:

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641 *Ídem.*

642 Economist and Minister of Finance of the Co-Opertive Republic of Guyana from 1983 to 1992. Has held positions of importance such as General Secretary of the African, Caribbean, and Pacific States Group, and as the opposition speaker at the 10th Parrliament in matters of finance and international economic cooperation. See the Official Web-Site of the Co-Opertive Republic of Guyana for this investigative endeavour. Available at: https://parliament.gov.gy/about-parliament/parliamentarian/carl-greenidge/.

> *"...not later than two months before the date set for the submission of the counter-memorial, make the name and nationality of the appointed person known to the Court and provide a brief biographical note of the appointed person".*

The last part of the first paragraph of Article 35 of the Rules indicates that "the ad hoc judge may be of a nationality other than that of the Party appointing him or her".

There is also the possibility that both parties may agree not appoint an *ad hoc* judge even though they have the right to do so. Indeed, the second paragraph of Article 35 of the Rules states:

> *"Where a party is willing to refrain from appointing an ad hoc judge on condition that the other party does the same, it shall notify the Court and the Court shall inform the other party. If the other party expresses its intention to appoint an ad hoc judge or does appoint one, the President may extend the time limit granted to the party that had previously refrained from making a designation".*

If a party designates an *ad hoc* judge, the other party is entitled to be notified accordingly by the Registrar of the ICJ. It may also, within a time limit set by the President of the ICJ, make such observations as it deems appropriate. If there is no objection to the appointment of an *ad hoc* judge and the ICJ has no objection, the parties shall also be informed of this (Article 35, third paragraph of the Rules of Court).

When considering the regulation of *ad hoc* judges, careful consideration should be given to Practical Direction VII, which establishes limitations on the persons who may be appointed *ad hoc* judges. It is not appropriate for a person to be an *ad hoc* judge if, for example, in the three years prior to his or her appointment he or she has served as agent, counsel or advisor in another ICJ case. Indeed, Practice Direction VII provides:

> *"The International Court of Justice considers that it is not in the interests of the proper administration of justice for a person to serve as an ad hoc judge in a case if that person also serves*

or has recently served as agent, counsel or adviser in another case before the International Court of Justice. Accordingly, the parties, when electing a ad hoc judge in accordance with Article 31 of the Statute and Article 35 of the Rules of Court, should refrain from appointing persons who are acting as agent, counsel or advocate in another case before the Court or who have acted in that capacity in the three years preceding the date of the appointment. Likewise, parties must refrain from appointing as agent, counsel or lawyer in a case before the Court a person who is acting as an ad hoc judge in another case before the Court"[643].

In the event of opposition by the other party or doubts of the ICJ regarding the appointment of an *ad hoc* judge, the ICJ will decide the matter *"after hearing the parties if necessary"* (Article 35, fourth paragraph of the Rules of Court).

Guyana initially appointed Dr. Hilary Charlesworth[644] judge *ad hoc*. However, in November 2021, Dr. Hilary Charlesworth was elected judge of the ICJ after the death of Judge James Richard Crawford in The Hague on 31 May 2021[645]. It is now Dr. Hilary Charlesworth's turn to complete the nine-year term of Dr. James Crawford, so she will be in office for two years and has obviously ceased to be an *ad hoc* judge in the case concerning the dispute between Guyana and Venezuela.

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643 See: "Practice Directions" of the International Court of Justice. Available at: https://www.icj-cij.org/en/practice-directions.

644 Hilary CHARLESWORTH is Australian, Harrison Moore Professor of Law and Melbourne Laureate Professor at the University of Melbourne, and a visiting professor at several prestigious universities around the world. She does research on the matterof international law. Has been a member of the Executive Council of the Asian International Law Association and the American Society of International Law, as well as President of the International Law Society of Australia and New Zealand. In 2016, she was named Doctor Honoris Causa by the Catholic University of Leuven (Belgium). She taught the General Course on Public International Law at The Hague Academy in 2019; is a member of the Institut de Droit International and was an *ad hoc* judge at the International Court of Justice in the Antarctic Whaling case (Australia v. Japan) (2011-2014). For more detailed information see the original source on the official website of the University of Melbourne. Available at: https://law.unimelb.edu.au/about/staff/hilary-charlesworth.

645 United Nations News, "Veteran Australian Judge Hilary Charlesworth elected to the International Court of Justice", published on 5 November 2021. Available at: https://news.un.org/en/story/2021/11/1105002.

Guyana then appointed Dr. Rüdiger Wolfrum[646] judge *ad hoc*. It should be noted that Dr. Hilary Charlesworth, now a judge of the ICJ, decided not to intervene in the dispute between Guyana and Venezuela in keeping with the duty of impartiality and independence that ICJ judges must fulfil.

Venezuela, on its part, appointed Belgian jurist Philippe Couvreur *ad hoc* judge before the ICJ, in accordance with Article 31 of the ICJ Statute and Article 35 of the Rules of Court. Dr. Couvreur is a specialist in international law and was a former ICJ registrar in The Hague (2000-2019), a position from which he retired on 1 July 2019.

The ad hoc judges on both sides were sworn in on 17 November 2022 under Article 20 of the Statute, which provides that, "Before assuming the duties of his/her office, each member of the Court shall solemnly declare, in open court, that he/she will exercise his/her powers impartially and conscientiously". This provision also applies to ad hoc judges under paragraph sixth of Article 31 of the Statute, which states: "The judges appointed as provided in Paragraphs 2, 3, and 4 of this Article shall have the qualifications required in Articles 2, 17 (Paragraph 2), 20, and 24 of this Statute, and shall participate in the decisions of the Court on terms of absolute equality with their colleagues".

2.1.9. Orders (Article 44 of the Rules)

The ICJ has the power to issue orders for proceedings under Article 48 of the Statute which provides: "The Tribunal shall make such orders

646 Rüdiger WOLFRUM studied law at the Universities of Tübingen and Bonn from 1964 to 1969 and holds a PhD in International Law since 1973. He was Vice-President of the German Research Foundation in the period from 1996 to 2002 and was also Vice-President of the Max Planck Society in 2002-2006. In 1996, he was appointed Judge of the International Court for the Law of the Sea; From 2005 to 2008, he was presided the Court. He was President of the German Association of International Law and a member of many national and international councils and academies, such as the United Nations Commission on the Elimination of Racial Discrimination, and the Institute of International Law. He has briefed Senior Judges in Afghanistan and Sudan and acted as a United Nations mediator in the Darfur Conflict. He holds an Honorary Doctorate from the Russian Academy of Sciences, Mongolian Shikhutug Law School, University of Hamburg and University of Pretoria. In 2008, he received the Grand Certificate of Merit from the Federal Republic of Germany. Since January 2013 he has been one of the directors of the Max Planck Foundation for International Peace and the Rule of Law. See also the Official Web-Site of the International Court of Justice in the section "Current Judges *ad hoc*". Available at: https://www.icj-cij.org/en/current-judges-ad-hoc.

as are necessary for the conduct of the proceedings, shall prescribe the form and procedure to be followed by the parties in their pleadings and shall take such measures as are necessary for the taking of evidence".

The ICJ issues orders, for example, to determine the time limits within which the parties may submit their memorial and counter-memorial. It did so in the case of the dispute between Guyana and Venezuela, when on 19 June 2018, it issued an order setting the time limits for the submission of the memorial and counter-memorial relating to the incidental proceedings on its jurisdiction. By that order, it determined that Guyana had up to 18 November 2018, to file its memorial and Venezuela would have up to 19 April 2019, to file its counter-memorial.

In the case of the dispute between Guyana and Venezuela, two more orders have been issued. One, on 8 March 2021, whereby the ICJ determined the time limits for the submission of the memorial of Guyana and the counter-memorial of Venezuela, this time on the merits of the dispute. Pursuant to this order, the ICJ determined that Guyana would have up to 8 March 2022 to submit its memorial and Venezuela would have up to 8 March 2023 to submit its counter-memorial.

A third order was issued on 13 June 2022, after Venezuela initiated an incidental proceeding filing preliminary objections regarding the admissibility of the claim of Guyana. The ICJ issued this third order in order to set 7 October 2022, as the last day of the period within which Guyana could file its brief of observations and arguments on the preliminary objections raised by Venezuela.

2.1.10. Official Languages

Article 39 of the Statute sets out the official languages of the ICJ, which also govern the proceedings before that jurisdictional body, namely, English and French. The language selected by the parties determines the language to be used by the ICJ in its judgment.

The same Article 39 provides that if there is no consensus between the parties as to the language to be used, they may present their arguments in the language of their choice. In this case, the ICJ shall also render a judgment in one of its two official languages; i.e., English or French.

Likewise, if one of the parties requests the ICJ to allow it to use a language other than the official languages, the ICJ must authorize it to

do so. We find no reason why Spanish has not also been established as an official language and hope that this absurd omission will be remedied some time.

Regarding the translations that may be requested by the parties with respect to the pleadings submitted by them or their counterpart into another official language of the ICJ, the provisions of Practice Direction IV should be considered, which states:

> *"Where a party has a full or partial translation of its own or the other party's pleadings in the other official language of the Court, such translations should be transmitted ex officio to the Registry of the Court. The same applies to any annexes.*
> *These translations shall be examined by the Registrar and communicated to the other party. The latter will also be informed of the manner in which they were prepared"*[647].

At the request of Venezuela, as reported by the President of the ICJ at the beginning of the oral hearings held on 17 November, the ICJ agreed to the translation from and into Spanish in addition to the official languages of the ICJ.

2.2. Substantiation of the Proceedings

The conduct of the proceedings before the ICJ is divided into two phases, one written and one oral. At these stages, the State-parties to the proceedings present their substantive arguments on the dispute between them.

In ICJ proceedings, substantiation begins with the written phase in which the claimant submits a Memorial expressing its allegations and claims and, in response, the respondent submits a Counter-Memorial containing its defence to the claimant's claims.

It is also possible for the parties to initiate an incidental proceeding, which suspends the normal course of the case and opens a separate phase of the case solely to deal with the incidental matter submitted to the ICJ for consideration. Ancillary proceedings include, in the order

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647 See: "Practice Directions" of the International Court of Justice. Available at: https://www.icj-cij.org/en/practice-directions.

in which they are presented in the Rules of Court, applications for provisional measures, preliminary objections, counterclaims and the intervention of third parties.

2.2.1. Pleadings and Defences

2.2.1.1. Memorial (Art. 43 of Statute; Art. 45 & 49 of the Rules of Court)

The memorial is the first procedural act of the written phase and contains the claims of the Claimant State. It is the first pleading in which the claimant develops each of its arguments in detail. It is the second procedural act of the claimant when proceedings before the ICJ are initiated by an application to institute proceedings.

The claimant's arguments expressed in the memorial must contain a statement of legally relevant facts and the legal reasoning justifying such claims. The fundamental rule governing this procedural act is the second paragraph of Article 43 of the Statute, which states the following:

> *"The written procedure shall include the submission to the Court and to the parties, of memorials, counter-memorials and, if necessary, replies, as well as any documents in support thereof".*

The Rules of Court of first paragraph of Article 45, refer to the memorial and counter-memorial in proceedings initiated by filing an application, as follows: *"In a proceeding instituted by an application, the written pleadings shall consist of a memorial by the plaintiff and a counter-memorial by the defendant, in that order"*[648].

As to the contents of the memorial, the first paragraph of Article 49 of the Rules of Court states: *"1. The memorial shall contain a statement of the facts, the grounds of law on which the application is based and the conclusions"*[649].

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[648] See: Rules of CourtProcedure of the International Court of Justice. Available at: https://www.icj-cij.org/public/files/rules-of-court//rules-of-court-es.pdf.

[649] *Ídem.*

a. Arguments of Guiana

Guiana supported its claim with the following arguments:

i. The Paris Arbitral Award is valid and binding on the parties inasmuch as the Treaty of Washington established in Article XIII that the decision of the arbitral tribunal would be *"a full, perfect and final settlement"* and that it should be so considered by the high contracting parties.

ii. The validity of the award was ratified by the decision that materialized between November 1900 and June 1904 with the work of the mixed demarcation commission. All of the above was accepted on 10 January 1905 by the commissioners who signed the 1905 Agreement.

iii. Venezuela always expressed its acceptance of the Paris Arbitral Award and the 1905 Agreement.

iv. Venezuela received the Paris Arbitral Award happily because it was awarded the Bocas del Orinoco, the most valuable territory in the dispute. Guyana's representatives at the ICJ quote the words of José Andrade, Venezuelan Minister in London:
"The truth is that justice was vindicated when, in spite of everything, we were granted exclusive domain of the Orinoco in the delimitation of the border, which was the main objective we sought to achieve through arbitration. I believe that the modest efforts that I personally devoted to this end during the last six years of my public life were well spent"[650].

v. Severo Mallet-Prevost's posthumous memorandum was not invoked until 1962. This document did not contain any claim or evidence of direct knowledge of the alleged shady deal.

vi. Venezuela had accepted the Paris Arbitral Award and then changed its position on the matter. In Guyana's opinion, this change of heart conveniently occurred while the independence of Guyana was playing out.

vii. Guyana argues that after searching the archives of the UK and the US it found no evidence to back Venezuela's claim that the Paris Arbitral Award was null and void.

650 *Ídem.*

viii. Guyana claims that its sovereignty and territorial integrity were violated on multiple occasions by Venezuela. It points out that, since Guyana's independence, there have been military occupations in the territory that belongs to them according to the Paris Arbitral Award of 3 October 1899.

ix. Guyana claims that a series of actions by Venezuela have impeded the economic development of said nation, obstructing the activities of investors in territories that belong to them in accordance with the Paris Arbitral Award.

b. Reply to the Arguments of Guyana

It is now appropriate to make some considerations about the arguments put forth by Guyana.

Argument (i) refers to the full, perfect, and final nature of the Paris Arbitral Award of 3 October 1899, in accordance with the provisions of the Washington Arbitration Treaty of 1897, although in fact, as we shall see, the aforementioned award never had such character due to its multiple flaws, which had a direct impact on its legal effectiveness.

Arguments (ii), (iii), (iv), (v) and (vi) refer to Venezuela's alleged acquiescence with respect to the Paris Arbitral Award. These arguments, as previously explained in detail are quite far from the truth, which is none other than that Venezuela never accepted the Paris Award; this will all be dealt with in a subsequent paragraph given their close connection with each other.

Argument (vii) is used by Guyana to insist that Venezuela failed to gather evidence to prove that the Paris Arbitral Award is null and void during the investigations of the British and U.S. archives after they were opened.

Argument (viii) relates to Venezuela's alleged conduct in violation of the sovereignty of Guyana,

Finally, argument (ix) indicates that Guyana has had limited economic development by the obstruction of investor activities in the territories awarded to it by the Paris Arbitral Award.

(i) Reply to Guyana's argument that the Paris Arbitral Award is valid and binding on the parties because the Treaty of Washington, Article XIII, established that the decision of the arbitral tribunal would be "a full, perfect and final settlement" and that the High Contracting Parties should so consider it.

The actual fact is completely contrary to Guyana's contention, since the Paris Award of 3 October 1899, is not a *"full settlement"* nor is it *"perfect"* and cannot, therefore, be considered *"final",* as precisely recognized by the Geneva Agreement signed by the parties. In fact, the Paris Award is absolutely null and void and for this reason is neither definitive nor binding, does not produce the effects of *res judicata* and is considered a legally non-existent act, since it was rendered in violation of the rules of the arbitration treaty that gave rise to it, it was rendered contrary to international law in force at the time it was produced, it was also rendered in violation of due process and had the flaw of arbitrators exceeding their powers and ruling *ultra petita*; It also totally lacked any reasoning and violated the duty of impartiality of the arbitrators. This issue has already been dealt with previously and is recapitulated below:

- **The Paris Arbitral Award is null and void for it violates due process and therefore has no effect, is not final, does not produce res judicata and is not a full, perfect and final settlement.**

In accordance with the provisions of Articles III and IV of the Treaty of Washington, the dispute between Venezuela and the United Kingdom was to be settled by arbitration at law. This necessarily implied that the arbitrators had to respect the letter and spirit of the Treaty of Washington. The arbitrators could only fulfil this duty if they studied, investigated, and ascertained the legal titles of the parties involved in the dispute, always considering the international law in force at the time.

However, the Paris Arbitral Tribunal neither investigated nor ascertained the legitimacy and legality of Venezuela's titles, but, on the contrary, ignored them in contravention of Article III of the arbitration treaty which states: *"**The tribunal shall investigate and ascertain** the*

extent of the territories which are or may be lawfully claimed by the parties at the time of the acquisition by Great Britain of the colony of British Guiana, and shall determine the boundary between the United States of Venezuela and the colony of British Guiana"[651]. (Highlighting Added).

The obligation to investigate and ascertain, expressly established in the Treaty of Washington, implied that the arbitrators had consider the legal titles of each of the parties and corroborate that they were indeed susceptible of being considered evidence of their claims.

This obligation is also present in Article V of the Treaty of Washington, according to which, the arbitrators were "*to examine and decide impartially and carefully the questions submitted to them"*. Indeed, Article V of the Treaty of Washington provided that: *"The Arbitrators shall meet in Paris within sixty days after the delivery of the printed arguments referred to in Article VIII, and* ***shall proceed to examine and decide impartially and carefully the questions submitted or presented to them,*** *as herein provided, by the Governments of the United States of Venezuela and of Her Britannic Majesty respectively"*[652]. (Highlighting Added).

It is clear from the above articles that the arbitrators were to consider the issues submitted to them and then decide on them in an impartial and diligent manner. This was not the case. The arbitrators decided with total arbitrariness, since they did not consider any of Venezuela's valid titles.

The expression *legally claimed* implied that the arbitrators were to consider only those titles that the parties could prove in light of the principles of international law in force at the time.

On the other hand, Rule "c" of Article IV should have also be considered, which also specifies the application of international law, in the following terms:

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651 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

652 *Ibidem,* Page 338.

> *"The Arbitrators can also uphold rights and claims based on any other valid international legal grounds or any international law principles that they think apply to the case"*[653].

Contrary to the above, the arbitrators decided with total arbitrariness, without considering the valid titles of Venezuela and in open violation of due process and the applicable law at the time, notwithstanding the fact that Venezuela has legal titles to support its legitimate ownership of the Essequibo territory.

Furthermore, there is evidence in different historical sources that Spain -during colonial times- exercised real acts of sovereignty over the disputed territory. As Guerra Iñiguez points out *"the occupation is intimately linked to the discovery"*[654]. It is easy to understand that Spain acquired these territories through this means.

In public international law, occupation is one of the original means of acquiring territory and thus the occupation of territories by human settlements and the exercise of power in them has enormous legal relevance and is indisputably recognized by the doctrine of international law[655].

While acts of occupation do not have the same value as a legal title, they are conclusive evidence that the territories west of the Essequibo River had been occupied and administered by Spain. Later, Venezuela exercised sovereignty under the principle of *uti possidetis iuris* and its rights over the territory were subsequently recognized through the Treaty of Peace and Recognition, whereby Spain waived all the rights it had over Venezuelan territory after its independence.

Venezuela's titles are clearly established not only in historical documents, but also in normative bodies of domestic and international law and none of them were considered by the arbitral tribunal, which neither investigated nor ascertained the legitimacy and legality of Venezuela's titles.

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653 *Ídem.*

654 Daniel GUERRA IÑIGUEZ, Quoted Above, Page 179.

655 See the presentation of Luís GARCÍA CORROCHANO at the event on The Rules of the Washington Treaty of 1897 held within the framework of the Cycle of Conferences on the Essequibo Controversy organized by *Academy of Political and Social Sciences* on July 15, 2021. Available at: https://www.youtube.com/watch?v=j0EhW5TrA0I.

The obligation to *"investigate and ascertain"* implied that the arbitrators had to consider the legal titles of each of the parties and confirm that they could indeed be considered as evidence of their claims, but, on the contrary, the arbitrators decided with absolute arbitrariness and without considering any of Venezuela's valid titles.

If the arbitrators had complied with their duties to ascertain and verify the validity of the legal titles of the parties in accordance with the international law then in force, it would have been impossible for them to award such a vast territory to the United Kingdom.

- **The Paris Award is null and void for having the flaw of arbitrators exceeding their powers and therefore has no effect, is not final, does not produce *res judicata,* and is not a *full, perfect, and final settlement***.

The Paris Arbitral Award is null and void for having the flaw of arbitrators exceeding their powers, as it erroneously applied Article IV of the Treaty of Washington of 1897, whose first part states *"in deciding the matters submitted to the arbitrators,* ***they shall ascertain all the facts they deem necessary for the decision of the dispute****"* (Highlighting Added).

The Paris Arbitral Tribunal did not consider it necessary to ascertain the facts in favour of Venezuela's interests. Nor did it consider it convenient to correctly assess the numerous legal and historical titles that Venezuela had over the disputed territory. All this, despite the fact that this was arbitration at law.

The Paris Arbitral Tribunal ignored the first part of Article IV of the Treaty of Washington and directly applied Rule "a" of the same instrument, which contained a prescription clause that established: "*Adverse possession or prescription for the term of fifty years shall constitute good title. The arbitrators may deem that the exclusive political domination of a District, as well as the effective colonization of it, are sufficient to constitute adverse possession or create prescription titles"*[656].

[656] Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

This in no way meant that the arbitrators were competent to dismiss, without any analysis whatsoever, the documentary evidence supporting Venezuela's right over the territory under claim. Nonetheless, the interpretation given by the tribunal to Rule "a" was absolutely favourable to the United Kingdom, in clear violation of Article IV of the Treaty of Washington.

Rule "a" included in the Treaty of Washington, known as the prescription clause, induced Venezuelan party into an interpretative error, causing the principle of *uti possidetis facti* to be imposed over *uti possidetis iuris*[657].

This was done under the argument that *uti possidetis iuris*, being a principle of American international law, was only applicable between the States of the region under conquest. So, the United Kingdom, not being a part of the states under colonial rule, argued that this principle had no application in the case and the arbitral tribunal supported this unjust assertion.

The correct interpretation and application of Article IV of the Treaty of Washington implied the application of the *uti possidetis iuris* principle, which would have led to a pronouncement in favour of Venezuela because it was by law that Venezuela acquired all the territories under the General Captaincy of Venezuela in 1777.

The need then arose to establish the critical date, understood as the specific moment from which the tribunal should apply the prescription rule. In order to determine the critical date of the controversy, the arbitral tribunal had to consider the manifestations of will of duly authorized officials expressed through an exchange of diplomatic notes, which constituted the *Statu quo* Treaty of 1850, which *"had as its essential purpose to put an end to the state of tension and hostility existing at that time between Venezuela and Great Britain and at the same time to achieve legal certainty by freezing the usurping appetite of Imperial Great Britain"*[658].

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657 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 192.

658 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 359.

The court did not consider the critical date established by the *Statu quo* Treaty of 18 November 1850. The critical date considered by the tribunal was 13 August 1814, when Holland ceded to the United Kingdom its dominions east of the Essequibo River through the Treaty of London.

Venezuela was led to believe, through its representatives, that the tribunal would apply the prescription rule to a period prior to 13 August 1814 and that, moreover, it would only apply to a small portion of territory. What the Paris tribunal finally did was very different. Instead of applying prescription rule to the period prior to 13 August 1814, it decided to apply it to the period after that date. That was surprisingly maintained before the tribunal by the former President of the United States, Benjamin Harrison, acting on behalf of Venezuela when, referring to the secret correspondence between Secretary of State Richard Olney and the United Kingdom's Ambassador in Washington, Julian Pauncefote, he stated that: "*It would be naive on my part if I did not say that they clearly seem to indicate that Mr. Olney and Mr. Julian Pauncefote understood that the prescription rule applies to the years after 1814"*[659].

In other words, confidential letters were taken from two people who had no authority to bind Venezuela, in a manifestation of will completely contrary to Venezuela's interests in the dispute. This was the most unfortunate interpretation of the statute of limitations.

Thus, with the consent of one of Venezuela's lawyers, the correspondence of two individuals who were not representatives was taken as an interpretative declaration that only harmed Venezuela and benefited the United Kingdom. As has been pointed out in an investigation related to this matter *"we are not dealing with a duly accredited representative here, but with the representative of a third State that enters into a secret agreement, without any authority to bind anyone, an agreement that was amazingly admitted in the process and accepted as evidence consequently having full procedural effects. No greater outrage can be found in the judicial history of nations, to the*

[659] *Ibidem,* Page 374.

detriment and behind the back of the country whose interests were being debated"[660].

Although we must also insist that the prescription rule, even when interpreted in this incorrect manner, would not have allowed the award of such a large portion of territory to the United Kingdom as was awarded. Indeed, the map included in the report by Jesuits Hermann Gonzalez and Pablo Ojer shows that the territory that could have been acquired by the United Kingdom through the prescription rule was much smaller than the territory finally awarded it in the Award[661].

- **The Paris Award is null and void for arbitrators ruled *ultra petita* and therefore has no effect, is not final, does not produce *res judicata* and is not a full, perfect, and final settlement.**

Article I of the Treaty of Washington established that the purpose of the arbitral tribunal was *"to determine the dividing line between the United States of Venezuela and the Colony of British Guiana"*[662]. On the other hand, Article III established that the tribunal was to investigate and ascertain the extent of the territories or those that could legally be claimed, and was to determine the dividing line between the United States of Venezuela and the Colony of British Guiana.

Thus, the award was flawed because arbitrators ruled *ultra petita* when they decided on the regime of navigation in the Barima and Amacuro rivers and, which involved and affected States that did not subscribe the arbitration treaty, and it ruled on boundary issues that were still in discussion at that time, such as the border between British Guiana and Brazil. Therefore, because the arbitrators exceeded their powers and, specifically, ruled *ultra petita*, the Arbitral Award is a null and void act and legally non-existent.

660 *Ibidem,* Pages 376-378.

661 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 15.

662 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 336.

- **The Paris Award is null and void because it has the flaw of lacking the required reasoning and thus has no valid effect, is not final, it does not result in *res judicata* and is not a full, perfect, and final settlement.**

For the Paris Arbitral Award to be valid, the 1897 Treaty of Washington and the general principles of international law required that it be rendered in accordance with the law. This meant including the necessary and sufficient reasoning in the decision that would allow the parties to know the arbitrators' assessment of each of the legal titles presented and the reasoned explanation of why they decided as they did.

The duty to state reasons was established in Article III of the Treaty of Washington which sets out that the Tribunal *shall investigate and ascertain the extent of the territories or those which may be legally claimed by the parties*[663]. If the tribunal was under the obligation to look into the legal basis of the titles of each of the parties, then it had to explain in detail how it had done so and how it assessed and valued such evidence.

By the time the decision was rendered, the principle of international law that arbitration awards must state the grounds on which they are based was already in effect. The award is null and void for not complying with applicable law, which derived from the general principles of international law. These principles were binding on the parties and arbitrators had the obligation of resolving the dispute according to the law and not in a discretionary manner. The arbitrators ignored the duty to state reasons and rendered an inadequate award that set the boundary between two States without any reasoning.

- **The Paris Award is null and void for having seriously breached the duty of impartiality and therefore is not final, does not result in *res judicata* and is not a full, perfect, and final settlement.**

The Paris Arbitral Award is also null and void because it violated principles of international law, since the arbitrators failed in their duty

663 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

of neutrality and impartiality. The breach of this duty can be clearly observed by examining the actions of the President of the arbitral tribunal, Fyodor Fedor Fedorovich Martens. Indeed, there is evidence that Fedor Fedorovich Martens manipulated and coerced the other arbitrators to obtain a unanimous decision in favour of the United Kingdom, turning an award of law into a political settlement.

Fyodor Fyodorovich Martens' violation of the duty of impartiality is supported by the investigations of Jesuits Hermann Gonzalez Oropeza and Pablo Ojer in *the Report that Venezuelan experts for the question of limits with British Guyana presented to the national government*, published in 1967. It follows from this report that Venezuela has documents, letters, and press notes that demonstrate it was a shady deal and not a decision dictated in accordance with the law in force at the time.

Moreover, the suspicion that the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, had seriously violated the duty of impartiality was fully confirmed by the publication of the memorandum left by Severo Mallet-Prevost, one of the lawyers representing Venezuela, who died in New York on 10 December 1948.

In the memorandum, Severo Mallet-Prevost acknowledged that he and President Benjamin Harrison were aware of the collusion that existed between the President of the Arbitral Tribunal Fyodor Fyodorovich Martens and English arbitrators Lord Russell and Lord Collins. *The Times*, a London newspaper, even published a statement by Reuter's news agency with statements of President Benjamin Harrison and Severo Mallet-Prevost where they expressed that *"there was nothing in the history of the dispute that adequately explained the boundary line established in the Award"*[664].

The Severo Mallet-Prevost memorandum is not the only document that exposed the flaws of the Paris Arbitral Award. There were many press reactions confirming this. Among them, the letter of César Zumeta published in the Caracas newspaper El Tiempo on 17 October 1899,

[664] Presentation by Doctor Carlos SOSA RODRÍGUEZ, the Venezuelan Ambassador to the UN, on 22 February 1962. Available at http://esequibonuestro.blogspot.com/2012/03/exposicion-del-embajador-de-venezuela.html.

referred to by Jesuits Hermann González and Pablo Ojer in their report, which elucidated the negative effect that the Paris Arbitral Award had on the international arbitration forum, creating a sort of aversion to this method of dispute settlement. The same occurred on 18 October 1899, in a publication of the Idaho Daily Statesman, a U.S. newspaper, which strongly criticized the Paris Arbitration.

We recall Severo Mallet-Prevost's own letter to Professor George L. Burr dated 26 October 1899, thirteen days after the award was rendered, in which he stated that the arbitrators did not act in accordance with the law and insisted that it was a political settlement and not a true arbitration award[665].

So, it was not only the memorandum of Severo Mallet-Prevost, but many other documents that prove that the arbitrators and primarily the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, seriously violated the duty of neutrality and impartiality and turned an award of law into a political settlement, which leads to its nullity for violating the rules of the arbitration agreement.

- **Consequences of the Nullity of the Paris Arbitral Award**

The Paris Arbitral Award is null and void because it was rendered in violation of the rules of the arbitration treaty from which it stemmed; against the international law in force at the time it was rendered, in violation of the due process, and had the flaw of arbitrators exceeding their powers and ruling *ultra petita*; it was also totally unreasoned and violated the duty of impartiality of the arbitrators.

The flaws of the Paris Arbitral Award result in the loss of its purpose, because it is not possible to resolve a dispute on the basis of violating the rights of one of the parties and disrespecting the principles of international law.

The binding effect only operates when an award has been duly rendered. The *res judicata* effect and the principle of intangibility of the award have never protected the Paris Arbitral Award. *Res judicata* is the status attributed to a judgment which implies that the decision has become final and there is no appeal against it. It must be a judgment

665 *Ídem.*

in the full sense of the word, that is to say, the product of exercising the jurisdictional function with impartiality and in compliance with the formal and substantial rules that govern it.

The Paris Arbitral Award does not have the status of *res judicata* because it does not meet the minimum requirements of validity of an arbitral award. There was no exercise of jurisdictional function when it was rendered, it was the product of a political agreement, there was no judgment of law, and hence its multiple flaws, which is why it is an absolutely null act that must be considered non-existent, a fact that was tacitly recognized by signing the Geneva Agreement. If the matter had been definitively settled by an arbitration decision considered valid by the parties, the Geneva Agreement would not have been signed.

The dispute in the judicial process can and must be settled only by, provided the parties have recourse to it, an authority who respects the guarantees of due process, or submits to the international law in force, does not commit the fault of exceeding its powers, does not decide beyond the object of the dispute as delimited by the parties, explains the factual and legal reasons that guided his decision, and respects the duties of impartiality and independence of those who decide.

The Paris Arbitral Award which, in accordance with the Treaty of Washington of 2 February 1897, should have been a full, perfect, and final settlement, never had any of these three characteristics, which is absolutely confirmed by Venezuela, the United Kingdom and the Colony of British Guiana -today Guyana- signing the Geneva Agreement on 17 February 1966, which recognizes the existence of a contention that the Paris Arbitral Award is null and void and insists on the need to reach practical and mutually satisfactory solutions. The Geneva Agreement confirms that Venezuela has always questioned the Paris Arbitral Award and ratifies that the Paris Arbitral Award was not a full, perfect and final settlement; and that the claimant party has recognized its nullity and ineffectiveness, hence the recognition of the need to seek new solutions.

Furthermore, it is incontestable evidence that the Paris Arbitral Award is a null act from the moment it was rendered, which is equivalent to its legal non-existence, because, as Dr. Héctor Faúndez Ledesma states*, "If it is so obvious that the award is valid, why has Guyana*

resorted to the International Court of Justice to confirm its validity and has not simply requested that its enforcement be ordered?"[666].

The Paris Arbitral Award is a legally non-existent act and Guyana seeks to have the ICJ endow it with the legal validity it never had.

(ii) Reply to Arguments (ii); (iii); (iv); (v), and (vi) of Guyana, referring to the alleged acquiescence of Venezuela with respect to the Paris Arbitral Award.

The Paris Arbitral Award cannot be understood to have been legitimately executed because Venezuela always opposed it, in view of the very illegitimacy of the arbitral award. The acts of execution were carried out under undue British coercion and, for that reason, Venezuela tried to postpone the demarcation of the boundaries. However, the United Kingdom demanded the award be executed and threatened to execute it unilaterally if Venezuela refused to participate.

This being so, on 22 October 1899, Venezuelan Ministry of Foreign Relations, addressing Felipe de Aguerrevere, commissioner in the demarcation, expressed with respect to the line established by the arbitral tribunal that: *"It is a line established in fact, without any historical, geographical or political support or foundation. Consequently, and because the award had been openly unjust to Venezuela, he instructed Venezuelan commissioners to refer everything to the most severe procedure"*[667].

In July 1900, the British delegation in Caracas intimidated the Venezuelan Government to send a demarcation commission to Punta Playa on its behalf and, if it resisted this request, the United Kingdom would proceed with the unilateral demarcation. The pressure exerted by the United Kingdom threatened to cause greater evils than those already generated by the Paris Arbitral Award.

The deadline for Venezuela to participate in the demarcation was notified by the British representative in Caracas at the end of July. 3 October 1900, was set for Venezuela to participate in the demarcation,

666 *Ibidem,* Page 688.
667 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 22.

with the threat of proceeding to a unilateral demarcation of the frontier if not[668].

Then, on 8 October 1900, the British representative sent another notification; this time, informing that the Governor of British Guiana had received instructions to proceed with the demarcation and, by 19 October 1900, the first border marker had already been erected at Punta Playa[669]. It was under these conditions that the demarcation commissions were set up and functioned between 1900 and 1905.

Venezuela had no choice but to accept the enforcement of the award[670]. Indeed: *"It is true that Venezuela executed the Award. It executed it under pressure from Great Britain, because the English Consul in Caracas expressed in an inquisitive note that he was going to initiate the demarcation of the land and that they would do it unilaterally if Venezuela did not participate. They immediately began the demarcation at Punta de Barima. Venezuela was left with no other recourse but to participate in the demarcation"*[671]. According to the report prepared by Jesuits Hermann Gonzalez and Pablo Ojer: *"Venezuela's participation in the demarcation of the border was of a purely technical nature. The country was forced to do so by circumstances it could not surmount"*[672].

The evidence of this execution under coercion is even more evident when in 1902, while the demarcation commissions proceeded with the execution of the award, Venezuela suffered the blockade of its coasts and the threats of invasion by its creditors: Germany, Italy and the British Empire. In addition to demanding payment of foreign debt, there were *"...the claims made by the subjects of those countries for the damages suffered by their properties during the frequent combats and skirmishes between the armed civilian paramilitary groups (montoneras), as a result of the political instability of the country at that time"*[673].

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668 *Ibidem,* Page 21.

669 *Ídem.*

670 Manuel DONÍS RÍOS, *"La reclamación del territorio Esequibo: 1899-1966"* ("The Claim to the Essequibo Territory: 1899-1966"), Quoted Above, Page 5.

671 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 189.

672 *Ibidem,* Page 28.

673 Alexis Palencia Hernández, Quoted Above, Page 486.

For Guyana, the fact that an agreement was concluded in 1905 to determine the border in accordance with the provisions of the Paris Arbitral Award, shows that it was a final solution. They claim that the United Kingdom had considered the decision as a final settlement from the time the tribunal rendered the Paris Arbitral Award until the independence of Guyana in 1966.

According to the claim filed by Guyana, between 1899 and 1962 Venezuela unconditionally expressed its acceptance of the Paris Arbitral Award. For Guyana, it was not until 1962 when Venezuela changed its position, in the midst of the process of independence of the British Guiana Colony.

Guyana claims that Venezuela tried not recognize it as a new independent state. This is completely untrue since Ambassador Carlos Sosa Rodriguez at the 130th Meeting of the XVI Annual Session of the General Assembly of the United Nations held on 22 February 1962, ratified the position held by the Ministry of Foreign Relations of Venezuela according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[674], pronounced in the following terms: *"...of particular importance to Venezuela is the process of political evolution, through which, peacefully, the people of British Guiana, which shares its borders with ours and whose destiny as a sovereign nation incorporated in the plan of equality in concert with the other States of the continent we propitiate with genuine American sentiment, will acquire their independence. On this occasion, when we fully support the knowledge of the rights that belong to the population of British Guiana, we could not, however, without betraying our own Venezuelan people, forget their rights, their border claims, and, in this world forum, silence their legitimate claim for the rectification of a historical injustice"*[675].

Likewise, Venezuelan Minister of Foreign Relations, Marcos Falcón Briceño, at the 348th Session of the Special Political Committee of the XVII United Nations Assembly on 12 November 1962, ratified

674 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 25.

675 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), Quoted Above, Page 33.

the support for the independence of Guyana, ratified the position of Ambassador Carlos Sosa Rodríguez regarding the claim, and invoked the historical Venezuelan position that the Paris Arbitration Award is null and void[676].

In effect, Venezuelan Minister of Foreign Relations, Dr. Marcos Falcón Briceño, indicated that: *"Venezuela also wishes to ratify its frank support for the independence of British Guiana, and, for this reason, it hopes that in the conversations it wishes to have with the United Kingdom to seek the best path to a peaceful solution to this controversy, the representatives of the government of British Guiana will also have full participation"*[677].

As Venezuelan academician and historian, Manuel Donís Ríos, points out: *"Venezuela, victim of the outrage and injustice of the 1899 Award, maintained its consistent and uninterrupted anti-colonialist position, hastening to recognize the new State of Guyana by a Note dated 26 May 1966"*[678].

Thus, it is indisputable that Venezuela never showed acquiescence with respect to the Paris Arbitral Award, because, from very early on, considering the abuses that took place since the negotiation of the Treaty of Washington, it always believed that the Paris Arbitral Award was an unjust decision with significant flaws which lead to its legal non-existence. The territorial dispute has never been resolved.

Venezuela opposed the execution of the Paris Arbitral Award since 4 October 1899, just one day after the decision was known, through Jesús María Rojas, the only Venezuelan lawyer who was part of Venezuelan defence team in the Paris Arbitration, and that rejection was also evident in the instructions given to Felipe de Aguerrevere, a member of the boundary demarcation commission, according to which the line set by the Paris Arbitral Award was a *de facto* delimitation without historical or legal grounds.

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676 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 25.

677 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), Quoted Above, Page 33.

678 Manuel DONÍS RÍOS, *"La reclamación del territorio Esequibo: 1899-1966"* ("The Claim to the Essequibo Territory: 1899-1966"), Quoted Above, Page 11.

The representation of Guyana before the ICJ considers Venezuela's participation on the commission for the demarcation of the limits between the two countries in 1905 as *"conclusive evidence"* of acquiescence on the part of Venezuela.

We have already mentioned the economic, political, social, and legal context in which the Paris Arbitral Award was rendered. It is true that Venezuela participated in the demarcation, but not because it accepted the Paris Arbitral Award, but because it had no alternative. The United Kingdom's threat that if Venezuela did not participate they would execute the award unilaterally, obligated Venezuela to at least be present to prevent, or claim against, any new arbitrariness. Furthermore, after the Liberal Restoration Revolution Venezuela was convulsed and weak and could in no way refuse to execute the award that condemned it in the face of a power such as the United Kingdom at that time.

We insist that, by the time the coercive execution of the Paris Arbitral Award took place, Venezuelan coasts had been blockaded by foreign warships. These actions sought to force Venezuela to pay the public debt it had accumulated since the beginning of the 19th century as a result of Century with the events of its independence, in addition to the fall in coffee prices, a very important item for the national economy since 1811.

There were several factors that threatened the country that largely contrived to take advantage of Venezuela's weakness at that time. Several powers were aligned in this task and to make matters wors the United States of America improved its relations with the United Kingdom and withdrew its support from Venezuelan case.

Considering these conditions, it cannot be said that Venezuela accepted the Paris Arbitral Award, which was executed under duress, and Venezuela protested at all times and never accepted the outcome. Therefore, the supposed acquiescence alleged by Guyana before the ICJ an invalid argument.

It must be borne in mind that the burden of proving acquiescence lies with the State claiming it. Proof of acquiescence means proving that the party has accepted the decision -which has not happened- or, in any case, that a State's silence -which has not happened in the case

of Venezuela - is a sufficient basis for interpreting a specific will on its part.

During the government of General Juan Vicente Gómez, there were many attempts by the United Kingdom to occupy territories beyond those that the Paris Arbitral Award had established, with particular interest in the Bocas del Orinoco. Faced with these facts, the Venezuelan Government's response was once again a forceful rejection.

The 1905 Demarcation Agreement has never been valid or binding for Venezuela. Moreover, that document is not really an agreement, it is only a record reflecting the manner in which the award was executed; a purely technical document drawn up as a consequence of the unilateral imposition of an arbitration award that was and is null and void from the outset.

Accordingly, it is incongruous to invoke, as Guyana has done, certain jurisprudential precedents of the ICJ, such as those of the Preah Vihear Temple case (Cambodia v. Thailand) decided by judgment of 15 June 1962[679]. The decision was based on the fact that Cambodia submitted to the ICJ from which it was inferred that the temple was in Cambodian territory, although Thailand stated that it had never accepted that map. This is a clear case in which the concept of acquiescence is key to determining who will win and who will lose in the process.

The map invoked by Cambodia was never challenged by Thailand and, although maps do not have the value of titles, they are evidence of the parties' aspirations and the tacit acceptance by the Thai government at the time Cambodia disclosed that map was sufficient to establish acquiescence. For this reason, the ICJ determined that the temple was located in the territory belonging to Cambodia and not Thailand.

Our case is completely the opposite to the *Preah Vihear* Temple case, as there are express manifestations of non-acquiescence. The argument that Venezuela only began to claim the nullity of the Paris Arbitral Award on 1966 is not admissible, when in fact the first complaint was made earlier, barely twenty-four hours after the Paris Arbitral Award was rendered.

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679 See: International Court of Justice, Judgement of 15 June 1962. Available at: https://www.icj-cij.org/public/files/case-related/45/045-19620615-JUD-01-00-EN.pdf.

We recall the various Venezuelan pronouncements during the 20th Century, which led to signing the Geneva Agreement:

1. In his paper entitled *"Frontiers of Venezuela with the English Guyana"* upon joining the Academy of Political and Social Sciences on 14 October1938, Dr. Carlos Álamo Ybarra, for the first time, systematically and with scientific rigor studied the controversy of the Essequibo and especially its history. In his dense study, Dr. Carlos Álamo Ybarra refers to the historical and juridical titles that assist Venezuela in the claim since the arrival of the Spaniards to the American continent; the author also deals with the sad result of the deliberations of the Paris Arbitral Tribunal as expressed in the Paris Arbitral Award of 3 October 1899. On that occasion, arbitration was not a peaceful means to obtain justice in accordance with the rules of law; on the contrary, as Dr. Alamo Ybarra pointed out, *"the arbitration advocated as a plausible means of settling international disputes was the way to give up peacefully what they wanted to snatch from us by force"*[680].
2. In 1944, the Venezuelan Ambassador in Washington, Diógenes Escalante, *"invoking the new spirit of equity among nations, demanded in 1944 the friendly reparation of the injustice committed by the award"*[681].
3. On 30 June 1944, during the session of the Chamber of Deputies of Venezuelan Congress, Congressman José A. Marturet *"ratified the traditional position of Venezuela regarding the award, demanding the revision of its borders with English Guyana"*[682]. (Highlighting Added).
4. On 17 July 1944, the president of Venezuelan Congress, Manuel Egaña, during the closing session of that legislative body stated his support for the position of the executive and said: *"And, here, I want to pick up and confirm the yearning for revision raised before the world and in the presence of the President of the Republic by Ambassador Escalante and before*

680 Carlos Álamo Ybarra, Quoted Above, Page 87.
681 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 23.
682 *Ídem.*

this Congress, categorically by Deputy Marturet; I want to pick up and confirm, I repeat, the yearning for revision of the sentence whereby *British imperialism stripped us of a large part of our Guyana"*[683].

5. On 18 July 1944, press releases issued by members of the Permanent Commissions for Foreign Relations of the Legislative Chambers stated: *"representing different political parties also pronounced themselves on the need to review the 1899 Award"*[684].
6. On 30 March 1948, Rómulo Betancourt, who headed Venezuelan delegation attending the IX International American Conference, expressed that *"In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that may belong to them in justice, nor do we renounce what Venezuelans, in the event of a serene and cordial revaluation of the history and geography of the Americas, could assert in favour of their territorial aspirations over areas now under colonial tutelage and which were formerly within our own sphere"*[685].
7. In 1949, Severo Mallet-Prevost's memorandum was published *"which revealed the intimacies of the Paris farce"*[686]. This caused Venezuelan historians, under the instructions of Venezuelan Ministry of Foreign Relations, *"to search in the British Archives for new documents that would further clarify the details of that farce. Fifty years had passed and for the* first *time it was possible to study those documents in the public archives of Great Britain"*[687].
8. In 1951, during the government of Acting President Germán Suárez Flamerich, Venezuelan Minister of Foreign Relations, Luís Gómez Ruíz, during the IV Meeting for Consultation of the

683 *Ídem.*
684 *Ídem.*
685 *Ibidem,* Pages 23-24.
686 *Ibidem,* Page 24.
687 *Ídem.*

Foreign Affairs Ministers of the American Countries, demanded *"the equitable rectification of the injustice committed by the Arbitral Tribunal"*[688], while the Acting Minister of Foreign Affairs, Rafael Gallegos Medina, simultaneously declared to the Caracas that: *"The Ministry of Foreign Affairs has never renounced to this just aspiration of Venezuelan people"*[689].

9. In March 1954, during the X Inter-American Conference held in Caracas, the legal consultant of the Ministry of Foreign Affairs, Ramón Carmona, stated: *"In accordance with the foregoing, no decision taken at this Conference on the subject of colonies shall be construed as diminishing Venezuela's rights in this respect, nor shall it be interpreted, in any case, as a waiver thereof"*[690].
10. In February 1956, Venezuelan Minister of Foreign Relations, José Loreto Arismendi, *"ratified the traditional Venezuelan position on the boundaries with that colony, that it would not be affected by any change of status that might occur in that border territory"*[691].
11. In March 1960, the diplomat and deputy Rigoberto Henríquez Vera, in the Chamber of Deputies of Venezuelan Congress and in the presence of a parliamentary delegation from the United Kingdom, stated that: *"Our people's just aspirations will not be invalidated by a change of status in English Guiana. We seek a fair and friendly resolution to the great harm inflicted on our nation by the unjust decision of 1899, which deprived our country of more than sixty thousand square miles of its territory under peculiar circumstances"*[692].
12. In February 1962, Venezuelan Ambassador to the UN, Dr. Carlos Sosa Rodríguez, at the UN Commission on Trusteeship and Non-Self-Governing Territories, ratified the position held by Venezuelan Ministry of Foreign Relations according to which: a change in the status of the colony of British Guiana

688 *Ídem.*
689 *Ídem.*
690 *Ídem.*
691 *Ibidem,* Page 25.
692 *Ídem.*

would not change the legitimate Venezuelan aspiration to obtain justice[693].

13. During the sessions held on 28 March and 4 April of 1962, by the Chamber of Deputies of Venezuelan Congress *"after hearing the addresses of the representatives of all political parties in support of the position of Venezuelan Ministry of Foreign Relations on the award, the following agreement was approved: "To endorse the policy of Venezuela on the boundary dispute between the English possession and our country regarding the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of English Guiana and its incorporation into the democratic system of life"*[694].
14. On 12 November 1962, Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, at the 348th Session of the Special Political Committee of the XVII United Nations Assembly, ratified the position of Ambassador Carlos Sosa Rodríguez regarding the claim and invoked the historic Venezuelan position that the Paris Arbitral Award is null and void[695].
15. Later, during the government of Rómulo Betancourt, the Venezuelan Claim took on even greater force, until we finally reached the Geneva Agreement of 17 February 1966, which recognized the existence of Venezuelan contention that the Paris Arbitral Award is null and void.

b.1. When there is, in fact, acquiescence: The case of the Arbitral Award rendered by King Alfonso XIII of Spain on 23 December 1906.

The Arbitral Award issued by the King of Spain, Alfonso XIII, on 23 December 1906, which resolved the boundary dispute between Honduras and Nicaragua, was denounced by the Nicaraguan Minister of Foreign Relations by a note dated 19 March 1912. From that moment

693 *Ídem.*
694 *Ibidem,* Page 25.
695 *Ídem.*

on, the discussion was reopened between both parties who, after several unsuccessful attempts at a solution, agreed to submit the issue to the ICJ on 21 July 1957 in the city of Washington.

One of the main arguments of Honduras was the acquiescence demonstrated by Nicaragua. We recall that the tacit or implicit acceptance of the decision by officials with sufficient authority to bind the State gives binding force to arbitral decisions. This case serves to illustrate when there is, in fact, acquiescence in accordance with ICJ criteria.

Honduras arguments to demonstrate Nicaragua's acquiescence can be summarized as follows:

1. On 25 December 1906, the President of Nicaragua wrote to the President of Honduras expressing his satisfaction that the dispute had been adequately settled, and also congratulating him on the victory.
2. The nullity of the award was denounced six years after the decision was pronounced. It was on 19 March 1912, when the Nicaraguan Minister of Foreign Relations pointed out that the award was not *"clear, really valid, effective and binding"*. On this occasion, the ICJ ratified the validity of the award, considering that there had been acquiescence on the part of Nicaragua. In this regard, the ICJ stated the following:

> *"In the opinion of the Court, Nicaragua, by an express declaration and by its conduct, recognized the Award as valid, and it is no longer possible for Nicaragua to go back on that recognition and challenge the validity of the Award. The fact that Nicaragua has not raised any issue with respect to the validity of the Award for several years after it became aware of the full terms of the Award, further confirms the conclusion reached by the Tribunal. The attitude of Nicaraguan authorities during that period was in accordance with Article VII of the Gámez-Bonilla Treaty, which provided that the arbitral decision, whatever it may be, and this, in the opinion of the Tribunal, includes the decision of the King of Spain as arbitrator "shall be considered as a perfect, binding and perpetual Treaty between the High Contracting Parties, and shall be without appeal"*[696].

[696] The case concerning the Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960 : I.C.J. Reports 1960, Page 192. Available at: *:* https://www.icj-cij.org/public/files/case-related/39/039-19601118-JUD-01-00-EN.pdf.

The case of Venezuela regarding the Paris Arbitral Award of 1899 is completely different, since Venezuela never expressed accepting it. The execution of the Paris Arbitral Award was carried out under the coercion of the United Kingdom and other powers, and Venezuela always expressed its disagreement with the decision, and it is on the basis of these protests and disregard, stated repeatedly and expressly, that the parties accepted that the controversy had not concluded and hence signed the Geneva Agreement.

The case of the King of Spain Award is certainly very different because Nicaragua requested the nullity six years after it was rendered, after having expressly accepted it and not having denounced it. In the case of the Paris Arbitral Award of 3 October 1899, criticisms were filed on 4 October 1899, one day after the decision was rendered.

The Paris Arbitral Award was criticized and rejected by the international press -including English newspapers- and, during the 20th Century, Venezuelan position regarding the nullity of the decision was always constant. All this follows from the facts that we have stated above, in the reply to the argument of Guyana according to which Venezuela had supposedly shown its acquiescence with respect to the Paris Arbitral Award, an argument that is invalid.

On the contrary, it was precisely Venezuela's insistence in denouncing the Paris Arbitral Award that led to signing the Geneva Agreement, which recognizes the existence of Venezuelan contention and its position that the Paris Arbitral Award is null and void.

b.2. The Argument of the Greater Benefit to Venezuela

Guyana has argued that the dispute was definitively settled by the Paris Arbitral Award whereby -according to them- Venezuela obtained a greater benefit than the United Kingdom by granting Venezuela the entire mouth of the Orinoco River and the lands on both sides of such river, while the United Kingdom only obtained the territory to the east extending to the Essequibo River, which was then considered less valuable than that granted to Venezuela.

Guyana argued in its claim before the ICJ that Venezuela considered obtaining the mouths of the Orinoco a success and, to support its claim, quoted the words of José Andrade, Minister Plenipotentiary in London

for Venezuela, who on 7 October 1899, stated: *"The truth is that justice shone when, despite it all, we were granted exclusive domain of the Orinoco in the determination of the border, which was the main objective we set out to obtain through arbitration. I believe that the humble efforts I personally devoted to this end during the last six years of my public life were well spent"*[697].

However, what Minister José Andrade said did not in any way signify celebration or joy on the part of Venezuela. When the Minister Plenipotentiary used the expression *"despite it all"* he made it clear that the arbitration had irregularities. The Paris Arbitral Award was not a victory for Venezuela, on the contrary, it was a serious violation of its territorial integrity. Keeping the mouth of the Orinoco was not the product of a benefit granted by the arbitrators. It actually demonstrated that, although the arbitrators were biased and there was no Venezuelan representation within the tribunal, the United Kingdom could not take the mouths of the Orinoco from Venezuela, as it did with that great territorial expansion that in law belonged to it and whose importance from a value point of view is irrelevant.

We note that Venezuela only kept the mouths of the Orinoco because arbitrators Josiah Brewer and Weston Fuller accepted the shady deal of the Arbitral Tribunal's President, Fyodor Fyodorovich Martens, who threatened them by saying that, if they did not agree to make a unanimous decision, they would also lose that portion of the disputed territory[698]. All this is recorded in the memorandum of Severo Mallet-Prevost[699].

However, as we will see below when analysing the evidence referring to the infringement of the arbitrators' duties of impartiality and independence, that Severo Mallet-Prevost's memorandum was not the only document that narrated these facts. So did L. de la Chanonie in volume III of the Revue d'Europe when he wrote:

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697 See: Pages 15 and 16 of the Claim made by the Co-Operative Republic of Guiana on 29 March 2018. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20180329-APP-01-00-EN.pdf.

698 Carlos SOSA RODRÍGUEZ, Quoted Above.

699 Otto SCHOENRICH, Quoted Above.

> *"...Mr. De Martens then proposed to the American arbitrators to grant Venezuela, in compensation for the territories of the Schomburgk line, absolute possession of the Orinoco, withdrawing the English frontier some twenty leagu0es from the river; he added that if Venezuelan arbitrators did not accept this arrangement, he would vote with the English arbitrators for an immediate termination, which would secure for England the possession of one of the sides of the Orinoco delta"*[700]. (Partial transcription of quote).

The value of the territory granted mattered little, since the Paris Arbitral Tribunal was not constituted to perform mediation or conciliation functions. Nor was the procedure that took place in Paris a transaction. On the contrary, it was a legal arbitration in which the arbitrators had to investigate and ascertain the legal titles of each of the parties, which was not the case.

(iii) Reply to Guyana's argument (vii) according to which Venezuela did not gather evidence to prove that the Paris Arbitral Award is null and void during the investigations carried out in British and U.S. archives after they were opened

It is untrue that Venezuela did not collect evidence confirming the flaws that render the Paris Arbitral Award of 3 October 1899 null and void. In fact, when the UN approved the review of the United Kingdom's archives, Jesuit fathers Pablo Ojer Celigueta and Hermann Gonzalez Oropeza dedicated themselves to investigating those documents.

Their investigations were carried out in two stages. The first stage was between 1951 and 1956. Then, in February 1963, they travelled to London to continue the research in the British Archives on the claim of the Essequibo territory. A few days after arriving in London, aforementioned Venezuelan representatives were appointed experts *"for the discussions to be held with the representatives of Great Britain and then colony of British Guiana on the documentation proving the nullity of the 1899 award"*[701].

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700 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Pages 50-51.
701 *Ídem.*

Ojer and Gonzalez included all the information they gathered in their Report to the national government, published on March 18, 1965[702]. Because this report is an important response to Guyana's argument (vii), we will highlight its key points in the next paragraphs.

The report presented by Ojer and Gonzalez refers to Venezuela's titles over the Essequibo territory; the details of the controversy between Venezuela and the United Kingdom during the 19th Century; Venezuela's lack of participation in the formulation of the 1897 Treaty of Washington, and the reasons of why the Paris Arbitral Award is null and void. Additionally, the report includes statements by personalities who participated in the Paris Arbitration, the reactions of the international press, and several maps showing that the procedure was openly in violation of Venezuela's legitimate rights.

The report explains that Spain discovered and colonized the Guyanese territory and that other powers acknowledged this between the 15th and 16th centuries. The Dutch had no posts west of the Essequibo River when the Treaty of Münster was signed. The Jesuit experts, Ojer and Gonzalez, also state that the Dutch briefly established some minor posts that violated the treaty.

They claim that the Treaty of London in 1814 gave the United Kingdom the territory of British Guiana. However, the Essequibo River was always the border with Venezuela. The Cruz Cano Map, approved by the British government and published by Francisco de Miranda in 1799, confirms this.

Ojer and González state in the report that, even when Venezuela was part of the Republic of Colombia, it was always made known to the United Kingdom that the border with the British Guiana Colony was the line of the Essequibo River. These statements are supported by the diplomatic declarations of Francisco Antonio Zea in 1821; José Rafael Revenga in 1823; José Manuel Hurtado in 1824 and Pedro Gual in 1825. In addition, as the Jesuit fathers stated in their report, *"The Treaty of Recognition in Madrid on March 30, 1845 confirmed Spain's recognition of our country's territory over the former General Captaincy of Venezuela. This territory included the Province of Guayana, which had the Essequibo River as its eastern border"*[703].

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[702] *Ídem.*

[703] *Ibidem,* Page 8.

The report contains a study on the Anglo-Venezuelan controversy where both the progressive increase of British pretensions after the publication of the first Schomburgk line in 1835 and the formal beginning of the controversy in 1840 with the so-called Schomburgk pseudo-line are exposed.

According to information gathered by experts from the British confidential archives, *"both the Foreign Office and the Colonial Office rejected Schomburgk's arguments in favour of his 1840 pseudo-line. Those two Ministries concluded that the Prussian naturalist had misinterpreted historical documents and used them with partiality and sectarianism"*[704].

Furthermore, the report states that when Schomburgk was again commissioned to carry out exploration work on the border between Venezuela and the British Guiana Colony -based on the 1840 line- he exceeded the instructions given to him by the government and *"erected posts, marked trees, and made acts of possession that gave rise to formal protests on the part of Venezuela"*[705]. Furthermore, as Ojer and González point out, *"Lord Aberdeen's minutes in 1841 qualify Schomburgk's actions as premature and affirm that, his commission being for survey (exploration), he had no reason to take possession"*[706].

In any case, from the review of the British Archives by the Jesuit experts it follows that *"the internal documentation of the Foreign Office, the Colonial Office, and the Government of Demerara reveals that the publication of the maps that carried that pseudo-Schomburgk line of 1840 had an official nature and represented the maximum British claim against Venezuela. Thus, we know today that it was under the direction of the British Government and the Demerara Government that the following maps were prepared: (a) The Foreign Office Memorandum Map of 1857 on the Guiana controversy; (b) The Memorandum map of C. Chalmers, Crown Surveyor of the Colony (1867); (c) The Schomburgk-Walker map of 1872; (d) The Brown map of 1875; (e) The Stanford map of 1875"*[707]. *All these maps make it clear that the United*

704 *Ídem.*
705 *Ibidem,* Page 10.
706 *Ídem.*
707 *Ídem.*

Kingdom recognized from 1840 to 1886 "as Venezuelan territories without dispute the entire upper Barima and the entire Cuyuní from its sources to the mouth of the Otomong"[708].

The pressure of the interests of the mining industry of the United Kingdom made the British aspirations grow rapidly. The United Kingdom *"further advanced its colonialist ambitions to near Upata, a few kilometres from the Orinoco, with the so-called line of the British maximum claim"*[709].

Ojer and Gonzalez's research confirmed that *"Great Britain rejected the constant Venezuelan proposals to submit the issue to arbitration because its government considered that it lacked arguments and that a fully judicial decision would be unfavourable to it"*[710] and thereby always refused to resolve the territorial dispute with Venezuela through arbitration.

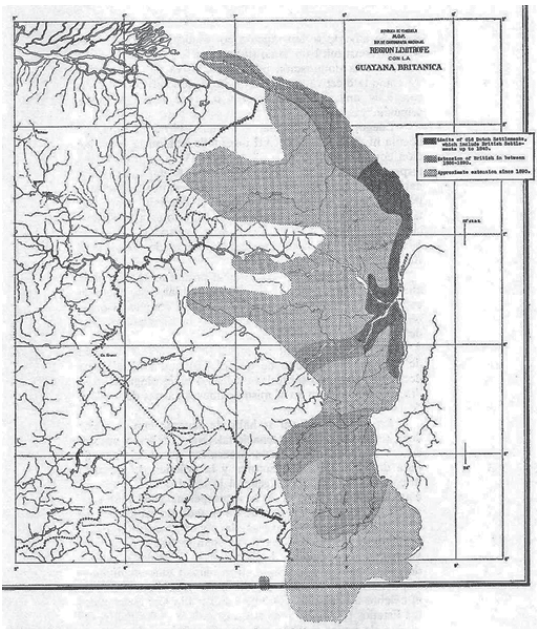
Researchers Ojer and González explain the reasons why the United Kingdom constantly changed its position regarding the border of the British Guiana Colony with Venezuela. They state that these changes were due to the fact that the United Kingdom never trusted its title to the disputed territory[711]. That is why *"the Aberdeen (1844), Granville (1881), Rosebery (1886) lines, etc., respond to the interests of the British Guiana settlers in each period"*[712].

When the United Kingdom finally agreed to settle the controversy with Venezuela through arbitration after the intervention of the United States of America, the negotiations of the Washington Arbitration Treaty began. Regarding this treaty, Ojer and Gonzalez indicate with respect to Venezuela that *"the present investigation proves that during the course of the negotiations it was kept marginalized, particularly in the final and most important phase. When consulted on the prescription clause, negotiations continued despite and against the objections of Venezuelan Ministry of Foreign Relations. Moreover, Richard Olney agreed with Great Britain to exclude Venezuela from the Arbitral Tribunal"*[713].

708 *Ídem.*
709 *Ibidem,* Page 11.
710 *Ídem.*
711 *Ídem.*
712 *Ídem.*
713 *Ídem.*

As regards the prescription rule, included in Article IV of the Treaty of Washington, the aforementioned report allows us to conclude that even if the British misinterpretation of the prescription rule is accepted, the possibility of granting such a vast territory to the United Kingdom does not follow from it.

The map included in the report does, in fact, demonstrate that the territory that the United Kingdom could acquire through the prescription rule was much smaller than the territory that was finally awarded to the United Kingdom. The map clearly shows which territories were occupied by the English in 1840; and, later, between 1886 and 1890; and, then, after 1890. Therefore, the prescription rule could not be applied to such a vast territory as was finally awarded to the United Kingdom; on the contrary, the prescription rule could only be applied to a considerably smaller territorial portion[714].



Caption:
Territories occupied by Great Britain in 1840 (Black),
Territories occupied by Great Britain between 1886 and 1890 (Dark Grey),
Territories occupied by Great Britain after 1890 (Light Grey).

714 *Ibidem,* Page 15.

This map was based on British maps and other confidential documents.

It shows that even then, 50-year Prescription was applied to only a small part of the Guayana Esequiba.

There is no doubt that the territory shown on the map is significantly smaller than that awarded to the United Kingdom in the Paris Arbitral Award, since, even on the worst interpretation, it was to these the territories the prescription rule could be applied. Therefore, the Paris Arbitral Award wrongly applied the prescription rule in favour of the United Kingdom, thereby violating Article IV of the arbitration treaty and it was flawed because the arbitrators exceeded their powers.

Another serious violation of the treaty obligations imposed on the arbitrators is related to the so-called first Schomburgk line of 1835, which was not considered by the judges. This first Schomburgk line *"only departs from said river about 45 miles approximately from the coast, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and from that point forms a sort of pocket, west of the Essequibo River, to the point on the coast where the Moroco River flows into it"*[715].

The Arbitral Tribunal, on the contrary, readily and preferably took into account the expanded line of Hebert's map of 1842, a line on which there are important indications of falsification and alteration, namely:

> *"Venezuela has evidence that the British Foreign Office was not aware of that line until June 1886. Already this is more than a serious indication that it was a recent corruption of the original map that rested since 1842 in the Colonial Office"*[716].

As for the flaws in the Paris Arbitral Award, the report states that *"the first flaw in the 1899 Award is that it purported to attribute legal value to a line adulterated by Great Britain: the so-called expanded line of the 1842 Hebert map"*[717].

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715 Véase Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above. Véase también Carlos Sosa Rodríguez, Quoted Above, Page 122.

716 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 13.

717 *Ídem.*

The lack of reasoning was also denounced in the report as one of the flaws of the Paris Arbitral Award. In this regard, they stated the following: "*We are able to affirm that the Arbitral Tribunal that rendered the judgment in the British-Venezuelan border dispute did not fulfil its duty and, therefore, by presenting a decision without the corresponding reasoning, did not proceed in accordance with the norms of international law. The decision of the Arbitral Tribunal lacks, consequently, validity in international law, at least as of the date on which the invalidity is invoked"*[718].

Ojer and Gonzalez pointed out in their report that the Paris Arbitral Award was also invalidated by the arbitrators exceeding their powers. First of all, as the experts whose report we are commenting on point out, *"the arbitral commitment, as established in 1897, had provided that the decision should be based on the principles of law and in particular on the principle of uti possidetis juris of 1810"*[719].

Despite the terms set forth in the Treaty of Washington and as confirmed by the report *"the decision of the Arbitral Tribunal took into account neither the principle of uti possidetis juris nor the stipulation contained in Rule "a" of Art. IV, and, even in the interpretation most favourable to Great Britain, the Tribunal exceeded its powers, since it did not state the reasons for which it attributed to that country the dominion over that territory during the fifty years prior to the award, the only certainty being that those territories, before 1810, belonged to the General Captaincy of Venezuela, a future independent State"*[720].

In addition, the Paris Arbitral Award was flawed for arbitrators ruling *ultra petita* since *"the Arbitral Tribunal exceeded its powers by deciding and regulating an issue whose examination had not been provided in the arbitral commitment; that is, it decided and regulated the free navigation of the Barima and Amacuro rivers"*[721].

In their investigation, Ojer and Gonzalez ratified that the Paris Arbitral Award had another flaw that *"consists of it not having been a decision of law, according to what was agreed, but a compromise"*[722].

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718 *Ibidem,* Page 14.
719 *Ídem.*
720 *Ibidem,* Page 16.
721 *Ídem.*
722 *Ibidem,* Page 17.

This was recognized by the American and European press, the members of the Paris Arbitral Tribunal and the lawyers of the parties.[723]

The documents reviewed by Ojer and Gonzalez in the British Archives showed that *"the award was a compromise obtained by extortion"*[724], with the nature of a political deal. Several statements concur in this conclusion, among them, those of Severo Mallet-Prevost, George Buchanan, Perry Allen, Sir Richard Webster, Lord Russell, José María Rojas, José Andrade, L. de la Chanonie, Georges A. Pariset, Caroline Harrison, Charles Alexander Harris, A. L. Mason and R.J. Block.[725]

Ojer and Gonzalez agreed with the opinion of several experts in international arbitration between States that: *"the authors and practice of international law generally admit the nullity of awards in two cases: in the case of incompetence of the judge (absence of a valid arbitration agreement or treaty), or in the case of arbitrators exceeding their powers (extension of the decision on matters that were not included in the arbitration or judicial convention, or application of rules such as those of equity, for example, which had been explicitly or implicitly excluded by the parties)"*[726].

Regarding the enforcement of the Paris Arbitral Award, Ojer and Gonzalez insisted that *"if Venezuela concurred with Great Britain in the demarcation of the so-called boundary of the award, it was because of the tremendous pressure of circumstances, to avoid greater evils"*[727]. *They also pointed out that the participation of Venezuelan commission in the demarcation was of a strictly technical nature and "did not imply assent to the alleged judgment of the Arbitral Tribunal"*[728].

Venezuela protested the Paris Arbitral Award since the moment it was rendered. The experts state in their report that the first official claim before the Paris Arbitral Award was formulated by José María Rojas, who was the only Venezuelan lawyer who was part of the country's

723 *Ídem.*
724 *Ídem.*
725 *Ídem.*
726 *Ibidem,* Page 16.
727 *Ibidem,* Page 22.
728 *Ídem.*

defence team during the Paris Arbitration. On 4 October 1899, once the Paris Arbitration Award was rendered, he severely criticized the decision, stating that it was a derisory decision and a manifest injustice[729]. President Ignacio Andrade also criticized the Paris Arbitral Award and indicated that the decision *"had only restored to Venezuela a part of its usurped territory"*[730].

Venezuelan press immediately reacted by criticizing the Paris Arbitral Award. In fact, the experts Ojer and Gonzalez reported in their report that on 17 October 1899, the newspaper El Tiempo denounced the arbitral decision[731].

In a note dated 4 December 1899, the British Minister in Caracas at that time *"stated his opinion about the justice of the so-called award"*[732]. Faced with this situation, Venezuelan Minister of Foreign Relations responded a few days later and indicated that he could refute the arguments of the British Minister in Caracas.[733] On the matter, the Ministry of Foreign Affairs *"came to the conclusion that the arbitration decision contained such flaws that authorized it to invoke its invalidity. It decided not to denounce it because it could not face the formidable power of its adversary, since it no longer had the support of the United States, which had entered into an entente with the United Kingdom"*[734].

The rapprochement between the United States of America and the United Kingdom during the Paris Arbitration became more evident with the words of the English press a day after the Paris Arbitral Award was rendered, which read as follows: *"We have no doubt that the United States will force Venezuela to accept the verdict and that they will act appropriately in the event that problems arise with respect to the enforcement of the decision"*[735].

At certain times throughout our history, the Venezuelan Claim for the Essequibo territory could not be raised with all the strength it

729 *Ibidem,* Page 21.
730 *Ídem.*
731 *Ídem.*
732 *Ídem.*
733 *Ídem.*
734 *Ídem.*
735 *Ídem.*

deserved, but there were reasons for this. Indeed, the report states, "*the internal and international situation of Venezuela in the* first *half of the 20th Century forced it to postpone the denunciation of the award. But the press, Venezuelan authors, Venezuelan teachers, uninterruptedly taught successive generations that the border of the award did not correspond to the legitimate rights of Venezuela"*[736].

On 5 December 1899, the British Minister in Caracas sent a note to the government of the United Kingdom informing them that Venezuela intended to postpone the demarcation of the border established in the Paris Arbitral Award[737].

According to Ojer y Gonzalez *"in July 1900, the British Minister notified the Government of Venezuela that if the Commission was not sent before 3 October Great Britain alone would proceed to initiate the demarcation. On 8 October the same Minister notified Venezuelan Chancellery that the Governor of British Guiana had been instructed to begin the demarcation work. On the 19th, the British Commissioners had already erected the Punta Playa milestone. Venezuela, facing this manifest pressure, had no other alternative but to send the demarcation Commission"*[738].

According to the report, Venezuela, from 1915 to 1917, *"insisted in vain before Great Britain to redo the demarcation of some sectors of the frontier, the British Government resisted this on the grounds of the painful circumstances of war through which their country was passing"*[739].

Venezuela had to wait for better conditions to tender its claim with all the force that an injustice of that magnitude demanded, but its position of rejection of the Paris Arbitral Award had been established since 4 October 1899.

During the 20th Century, there was on many occasions insistence on the need to repair the grave injustice Venezuela as a consequence of the Paris Arbitral Award. Among such insistence, Ojer and González point out the following:

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736 *Ibidem,* Page 22.
737 *Ibidem,* Page 21
738 *Ídem.*
739 *Ibidem,* Page 22.

i. In 1944, Venezuelan Ambassador in Washington, Diógenes Escalante, *"invoking the new spirit of equity among nations, demanded in 1944 amicable reparation of the injustice committed by the Award"*[740].

ii. On 30 June 1944, during the session of the Chamber of Deputies of Venezuelan Congress, Congressman José A. Marturet *"ratified the traditional position of Venezuela with respect to the award, demanding* ***the revision of its borders with English Guyana****"*[741]. (Highlighting Added).

iii. On 17 July 1944, the president of Venezuelan Congress, Manuel Egaña, during the closing session of that legislative body, pronounced himself in support of the position of the executive and said: *"And, here, I want to take up and confirm the yearning for revision, raised before the world and in the presence of the citizen President of the Republic by Ambassador Escalante and before this Congress, categorically, by Deputy Marturet; I want to take up and confirm, I repeat, the yearning for revision of the sentence* whereby *British imperialism stripped us of a large part of our Guyana"*[742].

iv. On 18 July 1944, the press releases by the members of the Permanent Commissions of Foreign Relations of the Legislative Chambers, *"who represented different political parties, also expressed themselves on the need to revise the 1899 award"*[743].

v. On 30 March 1948, Rómulo Betancourt, who headed Venezuelan delegation at the IX International American Conference, expressed that "*In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that in justice may belong to them, nor do we renounce what*

740 *Ibidem,* Page 23.
741 *Ídem.*
742 *Ídem.*
743 *Ídem.*

Venezuelans, in the event of a serene and cordial revaluation of the history and geography of the Americas, could assert in favour of their territorial aspirations over areas now under colonial tutelage and which were formerly within our own sphere"[744].

vi. In 1949 the memorandum of Severo Mallet-Prevost was published "*which revealed the intimacies of the Paris farce"*[745]. This caused Venezuelan historians, under the instructions of Venezuelan Ministry of Foreign Relations, *"to hasten to search in the British Archives for new documents that would further clarify the details of that farce. Fifty years had passed and for the* first *time, it was possible to study those documents in the public archives of Great Britain"*[746].

vii. In 1951, during the government of Acting President Germán Suárez Flamerich, Venezuelan Minister of Foreign Relations, Luís Gómez Ruíz, during the IV Meeting of Consultation of the Ministers of Foreign Relations of the American Countries, demanded *"the equitable rectification of the injustice committed by the Arbitral Tribunal"*[747]. On the other hand and at that same time, the Acting Minister of Foreign Affairs, Rafael Gallegos Medina, declared before the press in Caracas that: *"The Ministry of Foreign Affairs has never renounced to this just aspiration of Venezuelans"*[748].

viii. In March 1954, during the X Inter-American Conference held in Caracas, the legal consultant of the Ministry of Foreign Affairs, Ramón Carmona, expressed the following: *"In accordance with the foregoing, no decision regarding colonies adopted at the present Conference shall impair Venezuela's rights in this respect, nor shall it be interpreted, in any case, as a waiver thereof"*[749].

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744 *Ibidem,* Pages 23-24.
745 *Ibidem,* Page 24.
746 *Ídem.*
747 *Ídem.*
748 *Ídem.*
749 *Ídem.*

ix. In February 1956, Venezuelan Minister of Foreign Relations, José Loreto Arismendi, *"ratified the traditional Venezuelan position on the boundaries with that colony, that it would not be affected by any change of status that might take place in that border territory"*[750].

x. In March 1960, the diplomat and deputy Rigoberto Henríquez Vera, in the Chamber of Deputies of Venezuelan Congress and in the presence of a parliamentary delegation from the United Kingdom, pointed out that: "*Our people's just aspirations will not be invalidated by a change of status in English Guiana. We seek a fair and friendly resolution to the great harm inflicted on our nation by the unjust decision of 1899, which deprived our country of more than sixty thousand square miles of its territory under peculiar circumstances"*[751].

xi. In February 1962, Venezuelan Ambassador to the UN, Dr. Carlos Sosa Rodríguez, ratified before the UN Commission for Fiduciary Administration and Non-Self-Governing Territories the position held by Venezuelan Ministry of Foreign Relations according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[752].

xii. During the sessions of 28 March and 4 April of 1962 of the Chamber of Deputies of Venezuelan Congress *"after hearing the addresses of the representatives of all political parties in support of the position of Venezuelan Ministry of Foreign Relations on the award, the following agreement was approved: To support the policy of Venezuela on the boundary dispute between the British possession and our country as regards the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of British Guiana and its incorporation into the democratic system of life"*[753].

750 *Ibidem,* Page 25.
751 *Ídem.*
752 *Ídem.*
753 *Ibidem,* Page 25.

xiii. On 12 November 1962, Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, ratified before the 348th Session of the Special Political Committee of the XVII United Nations Assembly the position of Ambassador Carlos Sosa Rodríguez regarding the claim and invoked the historical Venezuelan position that the Paris Arbitral Award is null and void[754].

According to the report, after the conversations between the representatives of the United Kingdom and Northern Ireland and Venezuela *"an agreement was reached between those two countries, with the concurrence of the Government of British Guiana, that the three Governments would examine the documents relating to this question, and that they would inform the United Nations on the results of the conversations. This was stated, with the authorization of the parties concerned, by the Chairman of the Special Political Committee, Mr. Leopoldo Benitez (representative of Ecuador) on 16 November 1962"*[755].

In November 1963, after some agreements had been reached through diplomatic channels, *"the Foreign Ministers of Venezuela and the United Kingdom, Dr. Marcos Falcón Briceño and the Hon. A. Butler, respectively, met in London"*[756].

On 5 November 1963, the Venezuelan Minister of Foreign Relations, Marcos Falcón Briceño, *"presented to Her Britannic Majesty's Foreign Secretary an Aide-Memoire on Venezuela's views on the dispute"*[757]. The conclusion of that aide-memoire was that: *"Historical truth and justice demand that Venezuela claim the full return of the territory of which it has been dispossessed"*[758]. In that same meeting, Ojer participated as an exponent of the historical side of the Venezuelan Claim over the Essequibo territory, in case it became necessary to expand on the explanations of the Minister of Foreign Relations, Marcos Falcón Briceño[759].

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754 *Ídem.*
755 *Ibidem,* Page 26.
756 *Ídem.*
757 *Ídem.*
758 *Ídem.*
759 Pablo OJER CELIGUETA, Quoted Above, Page 44.

The report has an additional value in that, as its first page indicates: *"Each of the statements contained in this Report are supported by their respective documents, which were presented to Great Britain in the conversations between experts, during the 15 sessions that took place in London between the months of February and May 1964"*[760].

The Ojer & Gonzalez report is one of the most convincing elements that Venezuela has to prove the nullity of the Paris Arbitral Award. Referring to this report, Dr. Óscar García-Velutini recalls that *"the* first *conclusion formulated therein is that Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure and deceit on the part of the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government in the last and decisive phase of the negotiation; and Venezuela, the Report continues, was in such a way preyed upon that the United States and Great Britain agreed from the beginning of the negotiation that no Venezuelan jurist would be part of the Arbitral Tribunal"*[761].

Thus, we insist on our categorical rejection of Guyana's argument (vii) according to which Venezuela did not gather evidence from the archives that were opened in the middle of the 20th Century, since the truth is that there is abundant evidence to demonstrate the fraudulent nature of the Paris Award and the absolute nullity thereof.

(iv) Reply to Guyana's argument (viii) regarding Venezuela's alleged conduct of violating the sovereignty of Guyana and to argument (ix), according to which that country has been limited in its economic development by obstructing the activities of investors in the territories awarded to it by the Paris Arbitral Award.

These claims of Guyana regarding the violation of its sovereignty must be categorically rejected. We must remember that, contrary to what Guyana has stated, Venezuela has consistently supported Guyana's initiatives since the beginning of its efforts to obtain independence.

760 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 1.
761 Oscar GARCÍA-VELUTINI, Quoted Above, Page 17.

At no time has Venezuela ever violated the sovereignty of Guyana. On the contrary, Guyana has insisted on granting concessions and carrying out exploration works in territories that belong to the area under claim and even in spaces that indisputably belong to Venezuela.

It should be recalled that on 22 October 2013, the Venezuelan Navy's ocean patrol vessel "Yekuana" intercepted the Panamanian vessel Teknik Perdana contracted by the government of Guyana and the oil company Anadarko Petroleum Corporation, which was carrying out seismic exploration work in Venezuelan waters. Anadarko Petroleum Corporation *"confirmed that the vessel had been examining the seabed in preparation for possible oil exploration"*[762].

The vessel Teknik Perdana was navigating *"in maritime space corresponding to Venezuelan Exclusive Economic Zone above azimuth 70º (at RV 259º, at a speed of 7 knots, in geographical position, latitude: 1Ø°20'3Ø "N and longitude: Ø57°3Ø'Ø7 "W)"*[763]. This fact was the subject of a pronouncement by the Academy of Political and Social Sciences dated 22 October 2013, which, among other aspects, stated that: *"the Government of Venezuela cannot be satisfied with the isolated and plausible act of the interception of the vessel Teknik Perdana, but it is also constitutionally obligated to compel the Government of Guyana to revoke the concessions granted in areas of the exclusive sovereignty of Venezuela, and to formally express to it that Venezuela will disavow any legal act and any de facto situation of any country, which contradicts its sovereignty over maritime spaces"*.

So, the vessel Teknik Perdana was not carrying out exploration work in Guyanese territory as the government of Guyana wanted to make it appear; neither did these spaces belong to the known area under claim, but were, rather, territories that exclusively and indisputably belong to Venezuela. As stated at the time by the former Venezuelan Ambassador

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762 Daniel PARDO, *"El barco que revive el reclamo venezolano sobre la Guayana Esequiba"* ("The Ship that revived the Venezuelan Claim to the Guyana-Essequiba"), on BBC News, published on 14 October2013. Available at: https://www.bbc.com/mundo/noticias/2013/10/131014_venezuela_guyana_barco_disputa_dp.

763 "Words of the Academician Carlos AYALA CORAO, at the opening of the Tenth Meeting on the Continental Shelf and the Maritime Border between Guiana and Venezuela", Héctor FAÚNDEZ LEDESMA y Rafael BADELL MADRID (Coordinators), Quoted Above, Page 562.

to the UN, Emilio Figueredo, *"the Venezuelan navy saw the ship in the delta of the Orinoco River, in the Venezuelan continental shelf, where Venezuela has sovereign rights over the resources"*[764].

We must also clarify that the incident that occurred with the Panamanian vessel Teknik Perdana has not been the only infringement upon Venezuela's sovereignty. In 2018, the Oceanic Patrol Vessel Kariña (O-14) of the Venezuelan National Navy once again intercepted two vessels contracted by the transnational oil company Exxon Mobil that were carrying out seismic exploration work in marine spaces belonging to Venezuela.

The vessels intercepted by the Bolivarian National Navy were identified as the vessel Ramform Tethys, flagged by the Bahamas, and the vessel Delta Monarch, flagged by Trinidad and Tobago. Both vessels were intercepted in the maritime projection of the Orinoco Delta, specifically *"the Ramford Tethys was located at the coordinates Latitude 09° 17' 4"N and Longitude 058°15' 7" W, and the Delta Monarch at the coordinates Latitude 09° 15' 0" and Longitude 058° 17' 3"W"*[765].

The oil company Exxon Mobil explained at that time that it had the permission of Guyana to carry out the seismic exploration work. However, this does in no way change the fact that they were operating in spaces corresponding to the maritime projection of the Orinoco Delta, a territory that is undoubtedly Venezuelan.

Venezuelan government protested these activities before the Secretary-General of the United Nations and the government of Guyana and stated that *"in view of this unacceptable violation of national sovereignty which, far beyond the territorial controversy over the Essequibo Guiana, has crossed all limits with this unprecedented incursion, attempting to make use of maritime spaces at the projection*

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764 Daniel PARDO, *"El barco que revive el reclamo venezolano sobre la Guayana Esequiba"* ("The Ship that revived the Venezuelan Claim to the Guyana-Essequiba"), on BBC News, published on 14 October2013. Available at: https://www.bbc.com/mundo/noticias/2013/10/131014_venezuela_guyana_barco_disputa_dp.

765 Victoria KORN, *"Venezuela intercepta dos buques de la Exxon y acusa a Guyana de violar su soberanía"* ("Venezuela intercepts two Exxon vessels and accuses Guyana of violating its sovereignty") published in *Rebelión*, 26 December 2018. Available at: https://rebelion.org/venezuela-intercepta-dos-buques-de-la-exxon-y-acusa-a-guyana-de-violar-su-soberania/.

of the Amacuro Delta, which undoubtedly infringing on Venezuelan sovereignty"[766].

Then, in January 2021, the Venezuelan Navy detained the vessels Nady Nayera and Sea Wolf, which were committing the crime of illegally fishing in waters belonging to the maritime projection of Venezuela, for which their crew members were apprehended.

The arrest of the crew members of the vessels Nady Nayera and Sea Wolf resulted in a communiqué from Venezuelan Ministry of Foreign Relations dated 26 January 2021, which stated the following:

> *"The Minister of the People's Power for Foreign Affairs, Jorge Arreaza, announced that on 25 January he held a video conference with his counterpart, the Foreign Minister of Guyana, Hugh Todd, in which they discussed Venezuela's legitimate custody of its territories by the Venezuelan Navy, and in which he was discussed.*
> *In this videoconference, the Minister of the People's Power for Foreign Affairs conveyed to the Guyanese Minister Venezuela's concerns regarding the handling of the case by the Guyanese Ministry of Foreign Affairs and International Cooperation, even showing him the evidence and location coordinates that prove that the vessels were carrying out illegal fishing activities in Venezuela's jurisdictional waters.*
> *In the same spirit, Minister Jorge Arreaza delivered today a Note of Protest to the Chargé d'Affaires of Guyana, Robert McKenzie, in rejection of the Guyanese defamations and accusations following the unauthorized incursion of these vessels.*
> *Venezuela ratifies its repudiation of the false accusations and misrepresentations made by the Ministry of Foreign Affairs and International Cooperation of Guyana, considering that they are not based on good faith, while it simultaneously qualifies Guyana's claim to call said territory its "Exclusive Economic Zone and continental shelf inadmissible". Venezuela will continue to guard its jurisdictional waters in protection of its sovereignty and territorial integrity.*
> *Venezuela, in accordance with the principles of International Law, reaffirms its disposition to a sincere dialogue to jointly address*

766 *Ídem.*

any situation that could affect regional peace and stability. In this regard, it reiterates its interest in maintaining relations of respect, communication, and cooperation with Guyana"[767].

2.2.1.2. Counter-Memorial (Art. 43 of the Statute; Art. 45 and 49 of the Rules of Court)

The counter-memorial is, in the ordinary course of proceedings before the ICJ, the second procedural act of the written phase, which contains the defences of the respondent State to the allegations of the claimant State expressed in its memorial.

The claimant's defences, expressed in the counter-memorial, contain the statement of legally relevant facts and the legal reasoning whereby the respondent State contends the claimant State's claim. The fundamental rule governing this procedural act is the second paragraph of Article 43 of the Statute, which states the following:

"The written procedure shall include the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, the replies and any documents in support thereof".

The Rules of Court, in the first paragraph of Article 45, refer to the memorial and counter-memorial in proceedings initiated by an application filed with the ICJ as follows: *"In proceedings instituted by filing an application, the written pleadings shall consist of a memorial by the plaintiff and a counter-memorial by the defendant, in that order"*[768].

As to the contents of the memorial, the first paragraph of Article 49 of the Rules of Court states: *"2. The counter-memorial shall contain: an acknowledgment or denial of the facts set forth in the memorial, an additional statement of facts, if any, observations relating to the points*

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767 MPPRE (The Ministry of the People's Power for Foreign Relations) holds a telematic meeting with the Chancellor of Guiana and hands the Chargé d'Affairs a Note Diplomatique of Protest". Available at: http://www.presidencia.gob.ve/Site/Web/Principal/paginas/classMostrarEvento3.php?id_evento=17468.

768 See: Rules of CourtProcedure of the International Court of Justice. Available at: https://www.icj-cij.org/public/files/rules-of-court//rules-of-court-es.pdf.

of law set forth in the memorial, a statement of points of law in reply, and the conclusions"[769].

2.2.2. Incidental Proceedings

2.2.2.1. Provisional measures (Article 41 of the Statute, Articles 73 to 78 of the Rules of Court)

2.2.2.1.1. General Considerations

On 6 April 2023, the International Court of Justice (ICJ) issued a judgment by which it ruled on the preliminary objection of inadmissibility of the claim proposed on 7 June 2022 by Venezuela, in ICJ Case 171 concerning the dispute between Guyana and Venezuela on the nullity or validity of the Paris Arbitral Award of 3 October 1899.

In this incidental decision, the ICJ first unanimously declared the preliminary objection presented by Venezuela admissible. Then, with fourteen votes in favour and Judge ad hoc Philippe Couvreur voting against, it declared it inadmissible.

Finally, with fourteen votes in favour and Judge ad hoc Couvreur voting against, the ICJ confirmed that it has jurisdiction to decide on the merits of the Guyana's claims insofar as they fall within the scope of paragraph 138, sub-paragraph 1, of the judgment of 18 December 2020, by which it had established its jurisdiction to hear the case.

The judgment was accompanied by four separate statements and a so-called partly individual and partly dissenting opinion. The four separate statements are by Indian judge Dalveer Bhandari, Jamaican judge Patrick Robinson, Japanese judge Yuji Iwasawa and German ad hoc judge appointed by Guyana, Rüdiger Wolfrum. The partially individual and partially dissenting opinion was delivered by the Belgian ad hoc judge appointed by Venezuela, Philippe Couvreur.

The trial now continues and the ICJ has set 8 April 2024 as the deadline for Venezuela to present its counter-memorial. This is obviously the most important action, in which Venezuela must produce substantive arguments in defence of its territorial interests.

769 *Ídem.*

In the meantime, Venezuela could consider the advisability of asking the ICJ to grant provisional measures, in accordance with the provisions of Article 41(1) of the Statute of the International Court of Justice (Statute) and 73 et seq. of the Rules of Court.

It does not escape my attention that this possibility could be considered a dangerous strategy, since Guyana could oppose it and, with or without such opposition, the ICJ could reject the aforementioned request for provisional measures and consider this as a new defeat in the procedural strategies of the case.

However, that is not my opinion. I do not believe that for fear of an adverse decision this very important defence should be waived. Venezuela could ask the ICJ to grant provisional measures to prevent the damage caused to the territory under claim and to the environment by the exploitation of natural resources and, in particular, Venezuela could ask the ICJ to order the suspension of the concessions granted by Guyana in the disputed territory and, in general, to suspend any type of exploitation or exercise of sovereignty over it. In response to such a request, the ICJ has the power to order, if it considers that the circumstances so require, such provisional measures, general or particular, as it deems relevant or appropriate to safeguard the rights invoked, until such time as a final judgment is rendered.

Provisional measures are general or specific precautionary measures, precisely provisional, temporary, and obligatory, issued by the ICJ, ex officio or at the request of one of the parties, whenever the circumstances so require to preserve the rights of the parties. Provisional measures are *"those actions or abstentions ordered by the international judges (and arbitrators) with prima facie jurisdiction in a case, in case of urgency, in order to preserve the rights of the disputing parties or the property in dispute, as well as the effectiveness of the proceedings themselves, including the protection of the evidence and persons involved, or to prevent the aggravation or extension of the dispute, pending the final judgment or the main proceedings"*[770].

[770] See: Conference by Silvina GONZÁLEZ NAPOLITANO, *"Marco teórico y normativo de las medidas cautelares en la CIJ"* ("Theoretical and Regulatory Framewowrk for Precautionary Measures at the ICJ"), at the event *El caso Guyana con Venezuela y una eventual solicitud de medidas provisionales ante la CIJ* (The Guiana-Venezuela Case and an Eventual Petition of Provisional Measures at the ICJ) organized by the Political

Provisional measures are *"a procedural step by which the ICJ indicates measures of a preventive nature which are based on Article 41.1 of the ICJ Statute and whose purpose is to safeguard the rights on which the court will have to decide in the proceedings in question. They are therefore to be ordered by the courts that hear the merits of a case when in their opinion they are objectively necessary"*[771].

Provisional measures serve to preserve the rights of the parties and even the effectiveness of the proceedings themselves. They are of particular importance in the field of international law. The development of *"...international and Community jurisdictional systems has meant the reception in these systems of the institute of interim measures"*[772].

2.2.2.1.2. Proceedings for interim measures

a. Statute of the International Court of Justice

The Statute provides in Article 41 that the ICJ is empowered to order such provisional measures, general or specific, as it considers necessary to preserve the respective rights of both parties to a case, to avoid irreparable damage being caused during the proceedings, whenever the circumstances so require. In other words, the ICJ has the power, ex officio or at the request of a party, to issue this type of preventive measures.

Indeed, the first paragraph of Article 41 states:

> *"The Court shall have the power to indicate, if it considers that the circumstances so require, the provisional measures to be taken to safeguard the rights of each of the parties."*

This rule allows the ICJ to order, on its own motion or at the request of the parties, provisional measures at any time during a proceeding, even before the proceedings have begun.

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771 Soledad GARCÍA-LOZANO, "Indication of precutionary measusres by the International Court of Justice: The Breard matter. (Paraguay v. the United States of America)", *Themis*, Nº 40, Pontificia Universidad Católica del Perú, Lima, 2000. p. 281.

772 See Héctor GROS ESPIELL, "Las medidas cautelares (provisionales) en los tribunales internacionales. El caso de la Corte Internacional de Justicia y el medio ambiente" ("Precautionary Measures (Provisional) in International Courts. The case of the International Court of Justice and the Environment"), *Anuario Hispano-Luso-Americano de derecho internacional* (Spanish-Portuguese-American Yearbook of International Law, Nº 18, Imprenta Hispano-Arábiga, Granada, 2007. p. 949.

Article 41 of the Statute also provides that the parties and the Security Council must be notified immediately of any provisional measures granted by the ICJ.

Article 41 of the ICJ Statute, while providing for the possibility for the ICJ to grant provisional measures, does not regulate in detail the incidental procedure for requesting such measures. It is the ICJ's Rules of Court, which is the set of rules governing the functioning of the Court, that sets out in detail the entire interim measures procedure.

b. Rules of the International Court of Justice

The procedure for interim measures before the ICJ is set out in Section D of the Rules of Court, specifically in Articles 73 to 78. The rules contained in this section implement Article 41 of the Statute.

According to Article 73 of the Rules, any party may apply to the ICJ in writing for provisional measures at any time during the proceedings, provided that the request is related to the case in question. The request must specify the reasons, the possible consequences if they are not granted, and the measures requested. In addition, the ICJ Secretariat must immediately transmit a certified copy to the other parties involved in the case.

The request for provisional measures takes precedence over any other matter, in accordance with Article 74 of the Rules of Court. If the ICJ is not in session when the request is made, it shall be convened immediately to proceed to take the respective decision as a matter of urgency. A date will also be set for a hearing to allow the parties to be represented and to make observations before the closure of the oral hearings. In the meantime, the President of the ICJ may urge the parties to act so that any provisional measures granted by the ICJ take effect.

Articles 54 and 74 of the Rules of Court are to be interpreted in a concordant manner. Article 54 sets out the rules for the opening of oral sessions of the ICJ and, in this regard, provides that in fixing the date for the opening of oral sessions, the ICJ must consider the priority required by Article 74 of the Rules of Court in relation to requests for provisional measures and any other special circumstances, including the urgency of a particular case. So, Articles 54 and 74 of the Rules of Court complement each other to ensure that the necessary measures are

taken to protect the rights of the parties and that a fair and equitable process is conducted.

Under Article 75 of the Rules of Court, the ICJ may decide of its own motion, if the circumstances of the case so require, to grant provisional measures to be complied with by any or all the parties.

The ICJ may grant the provisional measures requested by the parties or may grant provisional measures wholly or partly different from those requested, considering the circumstances of the case, and if it were to deny any or all the provisional measures requested, this does not prevent the requesting party from making a new request based on new facts or different elements, as permitted by Article 75(3) of the Rules.

Similarly, at the request of a party or on its own motion, the ICJ may at any time before final judgment revoke or modify any decision on provisional measures it has granted if it considers that a change in the situation so warrants. Any request by a party proposing the revocation or modification of a provisional measure must specify the change in the situation that is considered relevant. Before taking a decision on the matter, the ICJ shall give the parties an opportunity to present their observations, in accordance with Article 76 of the Rules.

According to Article 77 of the Rules of Court, any provisional measures granted by the ICJ under Articles 73 and 75, as well as any decision taken by the ICJ under Article 76(1), shall be immediately communicated to the Secretary-General of the United Nations for transmission to the Security Council, in accordance with Article 41(2) of the Statute.

Finally, Article 78 of the Rules of Court provides that the ICJ may request information from the parties on any matter relating to the application of the provisional measures it has granted.

c. Requirements for the ICJ to grant provisional measures

For the ICJ to grant provisional measures, three essential requirements must be met. The first of these requirements is that the jurisdiction of the court has been verified, at least prima facie; the second requirement is that the relationship between the specific provisional measure requested and the rights affected, which must be the subject

of litigation, has been proven; and thirdly, it must be proven that there is a risk that could be fatal and irreparable for the rights of one of the parties.

2.2.2.1.3. Characteristics

a. Provisionality and Temporariness

Provisionality is a fundamental and common characteristic of ICJ interim measures. This is because these measures are not final decisions and do not resolve the merits of the dispute between the parties. Their purpose is to preserve the rights of the parties while the ICJ proceedings take place. In fact, provisional measures are granted by means of orders and not in the form of judgments, which are precisely those that definitively resolve a case. However, both judgments and provisional measures are binding.

Once a final judgment is given in the dispute, the provisional measure loses its validity. This is because the final judgment resolves the merits of the case and determines the rights and obligations of the parties. In this sense, the final judgment causes the provisional measure to lapse. It is the final and binding decision in the dispute.

Interim measures are necessary and useful to ensure that justice is delivered effectively. Many cases take considerable time to resolve and it can take years before a judgment on the merits is rendered. Provisional measures allow the ICJ to take immediate action to protect the rights of the parties involved while the proceedings are ongoing, thus ensuring that irreversible damage is not done while the proceedings are ongoing and a final decision is rendered.

Provisional measures are important in cases where a late decision may have serious or irreparable consequences. If a state is engaging in conduct that causes harm to another state, the ICJ may grant provisional measures to stop that conduct. Provisional measures can even have a significant impact on the outcome of a case, especially in relation to the effective enforcement of the final decision.

Moreover, provisional measures are temporary in nature because they can be modified or withdrawn at any time if circumstances so warrant. Indeed, Article 76 of the Regulation allows the parties to

request the revocation or modification of the provisional measures in case of changed circumstances.

This possibility gives the parties greater flexibility and allows them to adapt to the changing particularities of the case. The request should include detailed information on the change in the situation that is considered relevant, which helps the Court to assess whether the modification or revocation is justified.

Indeed, Article 76 of the Rules of Court reinforces the temporary nature of interim measures by recognising that these measures may be modified or revoked at any time before a final judgment on the merits of the case is rendered.

b. Preventive or precautionary nature

The second characteristic of provisional measures is their preventive or precautionary purpose which, precisely, seeks to avoid damage and reduce the dangers that may adversely affect the rights of the parties. In ICJ proceedings, the preventive purpose of provisional measures may be to prevent the dispute from extending beyond the limits within which it was originally brought.

The precautionary nature of provisional measures helps to prevent the dispute from exceeding the limits originally established by the parties. Let us bear in mind that Guyana, through the exploitation of natural resources, has disturbed Venezuela's rights even in territories that are not the subject of the dispute before the ICJ, as is the case of part of the maritime zone corresponding to the state of Delta Amacuro. This situation makes it possible to affirm the need for precautionary measures to prevent the conflict from exceeding the original limits. In effect: *"If provisional measures are not ordered, the conflict will worsen, extending to the consequences derived from the exploitation of natural resources by the plaintiff in these judicial proceedings, and extending to areas that were not originally in dispute, as is the case of part of the maritime zone corresponding to the state of Delta Amacuro"*[773].

[773] See: Héctor FAÚNDEZ LEDESMA, "*Medidas cautelares en el caso Guyana c. Venezuela"* ("Precautionary Measures in the Case of Guiana v. Venezuela") an article published in *El Nacional* newspaper on 19 November 2021. Available at: https://www.elnacional.com/opinion/medidas-cautelares-en-el-caso-guyana-c-venezuela/.

c. Obligatory nature

The third characteristic of provisional measures is that they are mandatory. That is to say, provisional measures have binding effect. The obligatory nature of provisional measures was recognised by the jurisprudential criterion upheld by the ICJ since 2001 in the *La Grand* case[774], in which provisional measures were requested to protect the fundamental rights of two German citizens, including the right to life.

With the judgment in the LaGrand case, the ICJ upheld for the first time the view according to which the provisional measures granted by it *"have the same binding, final and non-appealable character as*

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774 International Court of Justice, *La Grand Case (Germany v. the United States of America)* of 27 June 2001. Available at: https://www.icj-cij.org/public/files/case-related/104/104-20010627-JUD-01-00-EN.pdf. en detenidos por las autoridades del Estado de Arizona, violando el derecho de los detenidos a ser informados sobre sus derechos e ignorando la notificación diplomática y, en consecuencia, la protección diplomática prevista en el artículo 36 de la Convención de Viena sobre Relaciones Consulares de fecha 24 de abril de 1963. The La Grand Case was a controversy arising from a lawsuit by Germany v the United States over the detention, trial and death penalty execution of two Germans detained by Arizona State authorities, in violation of the detainees' right to be informed of their rights and ignoring diplomatic notification and, consequently, diplomatic protection provided in Art. 36 of the Vienna Convention on Consular Relations dated 24 April 1963. Available at: https://www.oas.org/legal/spanish/documentos/convvienaconsulares.htm. *Article 36: 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State; (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph; (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action. 2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended*

judgments"[775], in accordance with Article 94 of the United Nations Charter (UN Charter) and Articles 59 and 60 of the Statute.

In the Venezuelan case -as we shall see below- it concerns the rights of historical peoples, environmental rights and the sensitive issue of the sovereignty and territorial integrity of the State[776].

2.2.2.1.4. *Ad hoc* Committee for the supervision of provisional measures and its relationship with the United Nations Charter

On 21 December 2020, the ICJ announced the adoption of the new Article 11 of its Internal Judicial Practice Resolution. The new text provides for the creation of an ad hoc committee, consisting of three judges, to assist in monitoring the implementation of provisional measures granted by the ICJ.

The ad hoc committee is tasked with examining the information submitted by the parties, reporting to the Members of the Court, and making recommendations, and the ICJ will decide on the next steps. Prior to the amendment, monitoring of compliance with provisional measures was assessed while claims for breach of an obligation arising from provisional measures were being decided. In the LaGrand case, for example, the ICJ found, at Germany's request, that the United States had not taken all the measures it could have taken to give effect to the provisional measures. In the Bosnian genocide case, the ICJ found that not all that could have been done to prevent the genocide had been done since the original order was issued, and that the conflict had therefore worsened.

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775 Héctor GROS ESPIELL, "Las medidas cautelares (provisionales) en los tribunales internacionales. El caso de la Corte Internacional de Justicia y el medio ambiente" ("Precautionary Measures (Provisional) in International Courts. The case of the International Court of Justice and the Environment"), Quoted Above, Page 952.

776 On the importance of the adoption of provisional measures by the International Court of Justice, see Soledad GARCÍA LOZANO, "*La sentencia de la Corte Internacional de Justicia del 27 de junio de 2001 en el caso La Grand"* ("The Sentence of 27 June 2001 by the International Court of Justice in the La Grand case.") *Boletín mexicano de derecho comparado (Mexican Comparative-Law Bulletin)*, Nº 109, Universidad Nacional Autónoma de México, Mexico City, 2004. Pages 240-241.

It was unclear at the time how the ICJ could take further steps to monitor or give effect to its provisional measures while the proceedings were ongoing. The implementation of this mechanism from 2020 does not resolve this doubt as to whether the ICJ has an inherent power to enforce compliance.

Article 94 of the UNC creates an obligation for member states to comply with ICJ decisions and, at the same time, empowers the Security Council to make recommendations or take measures to give effect to judgments. The question then remains open as to whether the Security Council can do the same with decisions that do not formally have the character of judgments[777].

The practice of the ICJ and the Security Council seems to indicate that the ICJ's powers are concerned with verifying compliance at the merits stage, with an obligation arising from a decision on provisional measures. In the case of *Avena and other Mexican nationals (Mexico v. United States of America*), the ICJ held that its competence to interpret judgments *"necessarily implies incidental jurisdiction"* to deal with alleged violations of orders for provisional measures[778].

2.2.2.1.5. Provisional measures in International Court of Justice jurisprudence

a. The Precedent of the Permanent Court of International Justice

Provisional measures were first granted by the Permanent Court of International Justice (PCIJ) in its order of 5 December 1939 in the Electricity Company of Sofia and Bulgaria case. The PCIJ included in its order a measure obligating Bulgaria to *"ensure that no measures of any kind capable of aggravating or extending the dispute before*

777 Paola PATARROYO, "Monitoring Provisional Measures at the International Court of Justice: the recent amendment to the Internal Judicial Practice", EJIL:Talk! Blog of the European Journal of International Law, 2021. Available at: https://www.ejiltalk.org/monitoring-provisional-measures-at-the-international-court-of-justice-the-recent-amendment-to-the-internal-judicial-practice/.

778 *Ídem.*

the Tribunal are taken"[779]. However, the order did not provide a clear explanation of the reasons that led the CCIJ to grant this measure and the CCIJ did not clarify whether it considered that the power to grant interim measures of a general nature was merely complementary to the power to grant measures aimed at avoiding irreparable prejudice to the rights of the parties, i.e., interim measures of a specific nature[780].

It should be recalled that the ICJPC and the ICJ are two international jurisdictional bodies that have a historical and legal connection. The ICJC, established in 1922 as part of the Treaty of Versailles, was the first permanent international court created to resolve disputes between states. After the Second World War, this Court became the ICJ under the United Nations Charter of 1945.

The ICJ has followed the jurisprudence established by the ICJPC in many respects, including the interpretation of treaties and international agreements and the application of customary international law. Explicit recognition of the continuity of the jurisprudence of the ICJ has been manifested in several ICJ decisions, including the case of *the United Nations Jurisdiction over Apartheid Matters (1962) and the North Sea Continental Shelf case (1969)*.

b. First stage of the International Court of Justice jurisprudence

During the first stage of its jurisprudence, the ICJ frequently granted measures of a general nature. In many cases, the ICJ included in the operative parts of its orders granting interim decisions related to the duty of the parties to "*ensure that no measures of any kind are taken which might aggravate or extend the dispute before the Tribunal"*[781]. However, these provisions appeared to be standard models that merely complemented more specific measures.

Among the circumstances considered to justify the decision to grant interim protection, the ICJ orders did not address the question of aggravation of the dispute. The focus was on the preservation of

779 Paolo PALCHETTI, *"The ICJ and Provisional Measures to Prevent the Aggravation of a Dispute",* Leiden Journal of International Law, Nº 21, 2008, Page 624. Available at: https://u-pad.unimc.it/retrieve/de3e5026-5492-83cd-e053-3a05fe0a1d44/LJLarticolo.pdf.

780 *Ídem.*

781 Cfr. *Ídem.*

rights related to the subject matter of the dispute. Accordingly, the granting of provisional measures by the ICJ was conditional on specific requirements, i.e., urgency and the risk of irreparable damage to the rights at issue in the main case.

In the Aegean Continental Shelf case, the question arose as to whether the ICJ had the power to grant provisional measures for the sole purpose of avoiding the extension or aggravation of a dispute. However, the ICJ did not consider it necessary to examine this issue, as it excluded the possibility that there was a real risk of aggravation of the dispute in that case.

In that case, the ICJ was tasked with resolving the border delimitation dispute between Burkina Faso and the Republic of Mali. Both parties requested provisional measures on the occasion of armed actions in the disputed area. In its order of 10 January 1986, the ICJ held that, irrespective of the requests made by the parties, the ICJ has the power under Article 41 of the Statute to grant provisional measures to prevent the aggravation or extension of the conflict when it deems it necessary.

The ICJ's intention was to highlight the importance of the question of the aggravation of a dispute as a circumstance that could justify the granting of provisional measures. The first general measure granted ordered both parties not to engage in any conduct that might aggravate or extend the dispute. The position adopted by the ICJ in that case was subsequently ratified in the Cameroon-Nigeria Land and Maritime Boundary Dispute case, as well as in the Armed Activities in the Territory of the Congo case.

c. La Grand Case

The La Grand case, which we discussed when referring to the binding nature of provisional measures granted by the ICJ, concerns a dispute between the United States of America and Germany before the ICJ in 1999. The German LaGrand brothers had been sentenced to death by a US court for their involvement in an armed bank robbery that resulted in the death of two employees. The brothers' defence argued that they had not been provided with the consular assistance required by Article 36 of the Vienna Convention on Consular Relations. The

German government filed a claim with the ICJ alleging that the United States of America had violated its consular obligations.

The ICJ ordered the United States to stay the executions of the LaGrand brothers until the ICJ could examine the merits of the case. However, the United States rejected the enforceability of the interim measure and proceeded to execute the brothers. Germany filed a new application with the ICJ accusing the United States of violating the binding nature of the provisional measure granted by the ICJ.

The ICJ issued its ruling in 2001, in which it found that the United States violated its international obligations by failing to comply with the provisional measure granted by the ICJ. In addition, the ICJ noted that provisional measures are mandatory and binding on all parties to a case and that the parties have an obligation to comply with them while the merits of the case are being resolved.

The ICJ's decision in the LaGrand case set an important precedent in international law by affirming the binding nature of provisional measures ordered by the ICJ. This means that parties to a case before the ICJ have an obligation to comply with any provisional measures granted by the ICJ and can be held liable for non-compliance.

d. Provisional measures of a general nature and provisional measures of a specific nature

Provisional measures may be of a general or specific nature. General provisional measures are those that aim to avoid aggravation of the dispute by maintaining the situation at a *statu quo*. On the other hand, specific provisional measures are those that aim to protect and preserve specific rights of the parties that are the subject of the dispute.

The question arises as to whether the ICJ can exercise its power to grant provisional measures to prevent the aggravation of the dispute in cases where one party engages in conduct that increases the tension of the dispute, but which nevertheless does not constitute a threat to the rights of the other party. That is, whether the ICJ can grant provisional measures of a general nature in cases where there are insufficient grounds for granting provisional measures of a specific nature.

ICJ jurisprudence has established that interim measures of a general nature cannot be granted individually, but in conjunction with interim

measures of a specific nature. An example is the case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)[782]. In that case, the third and fourth interim measures requested by the United Arab Emirates were intended to prevent the aggravation of the dispute through a general interim measure. The specific interim measures requested in that case were declared to be without merit and, consequently, the general interim measures were also declared to be without merit.

Although the ICJ has admitted that it has the power to grant general measures independently of requests for specific measures, it has never based the granting of provisional measures solely on the need to prevent the aggravation of the dispute. On the contrary, the ICJ has always required the existence of a risk of irreparable damage to the rights that are the subject of the dispute.

In the Pulp Mills on the River Uruguay case (Uruguay v. Argentina), Uruguay requested three different provisional measures from the ICJ. The first measure requested was specific and required Argentina to take all measures at its disposal to prevent or put an end to the interruption of transit between Uruguay and Argentina. The other two measures were general and required Argentina to refrain from taking any measures that might aggravate the dispute and to refrain from any other measures that might prejudice Uruguay's rights in the case.

The ICJ, in an order issued on 23 January 2007 during the proceedings in the Pulp Mills on the River Uruguay case, rejected the first specific measure because it considered that there was no risk of irreparable damage to Uruguay's disputed rights.

With respect to the second and third measures requested by Uruguay, the ICJ noted that in all cases in which it had granted general provisional measures, other measures of a specific nature had also been granted.

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782 International Court of Justice, "Ruling dated June 14, 2019 in the contentious case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates) concerning the request by the United Arab Emirates for the indication of provisional measures". Available at: https://www.icj-cij.org/public/files/case-related/172/172-20190614-ORD-01-00-EN.pdf.

Therefore, not having accepted the first provisional measure requested by Uruguay, it could not grant measures of a general nature[783].

2.2.2.1.6. Provisional measures as a procedural strategy of Venezuela in the International Court of Justice case 171

As mentioned above, Venezuela could consider the advisability of requesting the ICJ to grant provisional, specific, and general measures, in accordance with the provisions of Article 41(1) of the Statute and Article 73 et seq. of the Rules of Court.

Some people have pointed out that this could be a mistaken strategy, because if the ICJ were to declare the case inadmissible, it could be seen as a major defeat for Venezuela. In particular, we believe that for fear of an adverse decision we should not give up this defence which, if successful, could have extraordinary immediate results for the country.

Venezuela could ask the ICJ to grant provisional measures of a specific nature with the aim of paralysing the concessions of Guyana in the disputed territory, to avoid the damage caused in the territory by the exploitation of natural resources. Certainly, the oil exploitation carried out by transnational companies through concessions granted by Guyana has caused, and continues to cause, serious damage to the environment. In this regard, Faúndez Ledesma states:

> *"The required measures are not intended to avoid an imminent risk, but to avoid a very concrete damage that is occurring at this moment, and that has been caused at least since 1965, when Great Britain granted concessions to a Canadian company to exploit an oil field in the Rupununi district; then, in 2009, concessions were granted to Shell and Exxon for exploitation in the so-called Stabroek block, in which -beyond ideological lines- the Chinese company Cnooc also has a stake"*[784].

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783 Cfr. Paolo PALCHETTI, Quoted Above. Page 635.

784 See: Héctor FAÚNDEZ LEDESMA, "*Medidas cautelares en el caso Guyana c. Venezuela"* ("Precautionary Measures in the Case of Guiana v. Venezuela") an article published in *El Nacional* newspaper on 19 November 2021. Available at: https://www.elnacional.com/opinion/medidas-cautelares-en-el-caso-guyana-c-venezuela/.

Furthermore, provisional measures can serve to guarantee the protection of human rights that are being violated because of the conduct of one of the parties in dispute. This is the case of indigenous peoples who have been severely affected by oil exploitation. Most seriously, some of the exploitation activities carried out by Guyana do not have the approval of the Environmental Protection Agency of Guyana.

The UN Declaration on the Rights of Indigenous Peoples adopted at the plenary session of the UN General Assembly on 13 September 2007 should be considered. It is worth citing the provisions of Article 29:

> *"1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement programmes of assistance to indigenous peoples to ensure such conservation and protection, without discrimination.*
> *2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place on the lands or territories of indigenous peoples without their free, prior, and informed consent.*
> *3. States shall also take effective measures to ensure, as necessary, that programmes for the control, maintenance and restoration of the health of indigenous peoples affected by such materials are duly implemented, developed and carried out by indigenous peoples"*[785].

Note also that the UN Human Rights Council on 8 October 2021 decided that *"a clean, healthy and sustainable environment is a human right and called upon all States to work together, in conjunction with other actors, to implement it"*[786]. This resolution was adopted by a total of 43 votes in favour and 4 abstentions[787]. It was also said that the

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785 United Nations Declaration on the Rights of Indigenous Peoples adopted at the plenary session of the United Nations General Assembly on 13 September 2007. Available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_es.pdf.

786 United Nations, "Human Rights Council declares that a clean and healthy environment is a human right", UN News section, published on 8 October 2021. Available at: https://news.un.org/es/story/2021/10/1498132.

787 *Ídem*. Abstentions came from Russia, China, India, and Japan.

UN General Assembly would soon discuss the issue to consider the possibility of a similar decision.

Environmental law is particularly relevant in this case. Advocacy for the protection of the environment through international law mechanisms is essential. It is worth recalling that the precautionary principle applies to environmental law. In this sense, Blanco-Uribe Quintero affirms, referring to environmental law, that *"like all branches of law, it acts curatively, but its great speciality lies in its primarily preventive nature, given the often-irreversible condition of environmental damage and the extra-commercial nature of many of the environmental goods"*[788].

Severe and irreparable damage has already been caused in the disputed territory. It is up to the ICJ, at its discretion, to determine the need to avoid the deepening of the undeniable negative consequences of the activity of Guyana, in the interest of the protection of environmental rights.

These elements, of central relevance in the case of the border dispute between Venezuela and Guyana, must be considered by the ICJ, which, if it issues provisional measures to safeguard Venezuela's rights, would be -by way of consequence- protecting essential legal assets for humanity, such as the environment and the indigenous peoples who "*are located in the lowest social stratum within Guyana, where they are barely considered human beings"*[789].

It would not be the first time that the ICJ, by granting provisional measures, protects the rights and interests of the parties to the conflict. The endangerment of fundamental rights such as the right to life has served in the past as a basis for the ICJ to grant provisional measures[790].

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788 Alberto BLANCO-URIBE QUINTERO, "La protección del ambiente y el contencioso administrative" ("Environmental Protection and the Contentious Administrative Process"), Editorial Sherwood, Collection: Cuadernos, Caracas, 1998. Page 17.

789 Claudio BRICEÑO MONZÓN, José Alberto OLIVAR y Luis Alberto BUTTÓ (Coordinators), *"La cuestión Esequibo. Memoria y soberanía"*. ("The Essequibo Issue. Memorial and Sovereignty"), Universidad Metropolitana, Caracas, 2016. Page 266.

790 In this respect, See: The International Court of Justice, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar)". Available at: https://www.icj-cij.org/en/case/178. The Gambia v. Myanmar case began on 11 November 2019 by the Republic of the Gambia's lawsuit against the Republic of the Union of Myanmar following the occurrence of genocidal acts against a protected group - the Rohingya - in violation of the Convention on the Prevention and Punishment of the

With the activities of exploitation of natural resources and the serious impact that they entail, Venezuela's right over the disputed territory is being harmed, worsening its condition, producing irreparable damage and, furthermore, hindering the eventual exercise of sovereignty of our Republic in those domains, if we are victorious in the dispute.

All these unfavourable and detrimental elements to Venezuela's rights over the claimed territory are further aggravated by the lack of control by the Guyanese authorities over the 159,500 square kilometres that are the subject of the dispute. These governance problems result in the proliferation of activities such as illegal mining, human trafficking, drug trafficking, smuggling and organised crime[791].

Persons from Brazil have been actively involved in these illicit activities, becoming progressively more involved in the region, and taking advantage of the lack of military dominance resulting from the limited number of military officials in Guyana. This has been the case, at least more so, *"since the inauguration in September 2009 of the bridge over the Tacuctu River located southwest of the Essequibo Territory on the border with Brazil"*[792].

Guyana, contrary to Venezuela's rights, has also improperly exercised sovereignty in territories that belong to Venezuela and are not the subject of a dispute. This is an important element for the ICJ to consider in granting provisional measures.

In addition to this specific measure, Venezuela could seek general interim measures to ensure that the disputed area is no longer exploited, directly or indirectly, by Guyana. The need for a general measure to avoid aggravation of the dispute can certainly be raised.

2.2.2.1.7. Final Considerations

We consider that Venezuela may apply to the ICJ for provisional measures in the dispute with Guyana over the validity of the Paris

Crime of Genocide. On 23 January 2020, the International Court of Justice unanimously ordered provisional measures to protect the rights of the Rohingya. In order to determine the need for provisional measures, the ICJ verified that two essential requirements were met: (i) the relationship or link between the rights claimed and the measures requested and (ii) the danger of irreparable harm (actual and imminent risk).

791 See: Claudio BRICEÑO MONZÓN, José Alberto OLIVAR y Luis Alberto BUTTÓ (Coordinators). Quoted Above. Page 266.

792 *Ídem.*

Arbitral Award of 1899. In particular, Venezuela could request specific provisional measures to stop Guyana's concessions in the disputed territory to the detriment of Venezuela's rights and to prevent the damage caused by the exploitation of natural resources that have seriously affected the environment and the human rights of the indigenous peoples in the area. Likewise, a specific precautionary measure can be requested for the cessation of all exploitation activities that are being carried out clandestinely with the consent of Guyana.

At the same time, a general measure should be requested ordering Guyana to cease all conduct that could extend the scope of the dispute.

2.2.2.2. Preliminary Objections (Art. 79, 79bis & 79ter Rules of Court)

2.2.2.2.1. General Considerations

Preliminary objections are a procedural defence mechanism granted to State-Parties in contentious proceedings before the ICJ. Preliminary objections are regulated in the Rules of Court, specifically in Subsection 2 of Section D on incidental proceedings. Article 79 sets out the regulation of preliminary objections. Said article was amended and a new wording took effect on 1 February 2001. A further amendment resulted in the creation of articles 79bis and 79ter which came into force on 21 October 2019.

Article 79 of the Rules of the Court consists of two paragraphs and provides that, after the submission of the claim and after the meetings which the President of the ICJ is to hold with each of the parties, the ICJ may decide that questions concerning its own jurisdiction and the admissibility of the claim shall be determined separately. All of the above, provided that there are circumstances justifying it. (first paragraph).

Should the ICJ decide to initiate this incidental proceeding, the parties must adhere to the time limits established by this high jurisdictional body for such purpose. The pleadings of the parties shall contain their observations and arguments. The evidence supporting their position must be included in such pleadings by attaching the supporting documents (second paragraph). Article 79 of the Rules of Court provides:

> *"1. After the claim has been filed and after the President has met and consulted with the parties, the Tribunal may decide, if the circumstances so warrant, that questions relating to its jurisdiction or to the admissibility of the application shall be decided separately.*
> *2. Where the Court so decides, the parties shall submit pleadings relating to jurisdiction or admissibility within the time limits and in the order set by the Court. Each pleading shall contain the observations and arguments of the party, including the evidence relied on, and shall be accompanied by copies of the supporting documents".*

Article 79bis, which entered into force by an amendment on 21 October 2019, sets out several relevant aspects related to preliminary objections. Thus, it states in its first paragraph that in cases in which the ICJ has not made any decision regarding the legal possibility of Article 79 on preliminary objections, any objection regarding jurisdiction, admissibility of the claim, or anything else that needs to be decided before entering into the merits of the dispute must be submitted in writing.

Regarding the above, the first paragraph of Article 79bis establishes a maximum period of three months after the memorial is filed for this brief to be submitted. It even addresses the possibility that such objections of jurisdiction, admissibility of the claim, and, in general, any other pertinent objections, may be raised by a party other than the respondent, and, for this purpose, sets the same time limit as for the submission of that party's first brief. In fact:

> *"1. Where no decision has been made by the Court under Article 79, an objection to the jurisdiction of the Court or to the admissibility of the application, or any other objection on which a decision is sought before further proceedings on the merits, must be made in writing as soon as possible and at the latest within three months of the delivery of the Memorial. Any such objection made by a party other than the respondent must be filed within the time limit fixed for the delivery of the first written submission of that party".*

The second paragraph of Article 79bis of the Rules of Court requires that the preliminary objections state their legal and factual grounds. In addition, together with its pleadings, the opposing party must submit a list of supporting documents, including the evidence on which it relies. The aforementioned rule provides:

> *"2. The preliminary objection shall state the facts and law on which the objection is based, the allegations and a list of the documents supporting it; it shall include any evidence on which the party relies and copies of supporting documents shall be attached".*

The procedural effects of filing preliminary objections are stated in the third paragraph of Article 79bis of the Rules. This provision states that receipt of preliminary objections by the Registrar of the ICJ shall consequently suspend the proceedings on the merits of the dispute. This implies that, if the preliminary objection is declared admissible, the proceedings are extinguished, but if it is declared inadmissible, the proceedings shall continue and the ICJ shall set the time limits for the subsequent procedural acts, in accordance with the provisions of paragraph five of Article 79ter of the Rules of Court.

In addition, the ICJ shall set the corresponding time period to file the opposing party's brief presenting its pleadings, observations, and relevant evidence. The third paragraph of Article 79bis of the Rules of Court states:

> *"3. When the Secretariat receives a preliminary objection, the proceedings on the merits shall be suspended and the Court, or the President, if the Court is not in session, shall fix a time limit for the other party to file a brief containing its observations and arguments, which shall include the evidence relied upon by the party and copies of the supporting documents shall be attached".*

The fourth and last paragraph of Article 79bis sets out the possibility for the parties to agree that the preliminary objections may be resolved jointly with the merits of the case. The rule expressly provides: *"4. The Court shall give effect to any agreement between the parties*

that an objection under paragraph 1 shall be heard and determined on the merits".

Article 79ter of the Rules, comprised of four paragraphs, establishes, in the first paragraph, that preliminary objections may only be raised regarding matters that are relevant. It does not specify what these cases are; however, from the wording of the articles described above, it is clear that, preliminary objections may be raised at least regarding issues of jurisdiction of the ICJ and admissibility of the claim. The first paragraph states:

> *"Arguments relating to preliminary objections or objections under Article 79(2) or Article 79bis (1) and (3) shall be limited to matters which are relevant to the preliminary matters or objections".*

Next, the second paragraph of Article 79ter of the Rules of Court provides that the incidental procedure rule establishes that preliminary objections shall be made orally, without prejudice to the possibility granted to the ICJ of choosing a different modality. The second paragraph does, in fact, state that "Unless the Tribunal decides otherwise, subsequent proceedings shall be oral".

The ICJ may, in accordance with the third paragraph of Article 79ter of the Rules of Court and whenever the circumstances so require, exercise its power to request State-Parties to present all issues of fact and law, as well as all evidence relating to the preliminary objections. Article 79ter, in its third paragraph, provides:

> *"3. The Tribunal may, whenever necessary, request the parties to plead all issues of fact and law and to submit all the evidence relevant to the preliminary issues or objections".*

When preliminary objections are presented, the ICJ shall, after hearing the parties, have three alternatives: first, to declare the preliminary objections admissible; second, to refuse to admit them; or third, to declare that, in view of the particularities of the case, the objection is not of a purely preliminary nature. This is contemplated in the fourth paragraph of Article 79ter:

> *"4. After hearing the parties, the Court shall rule on a preliminary question by admitting or rejecting it. However, the Tribunal may declare that, in the circumstances of the case, a question or objection is not of an exclusively preliminary nature".*

The fifth and last paragraph of Article 79ter provides that preliminary objections shall be decided by judgments. However, in the event that the judgment does not resolve the preliminary question in question, the ICJ shall set the procedural lapses of the subsequent proceedings[793]. As the aforementioned rule states:

> *"5. The Court of Justice shall decide in the form of a judgment. If the judgment does not settle the case, the Court shall set the time limits for further proceedings".*

When analysing the preliminary objections, it is important to note that the ICJ must set the time period for the opposing party to submit its observations, which shall not exceed four months; this is in accordance with the ICJ Practice Directions, especially, Practice Direction V, which states:

> *"In order to expedite the procedure relating to preliminary objections raised by a party under Article 79bis(1) of the Rules of Court, the time limit for the other party to file a written statement containing its observations and arguments under Article 79bis(3) shall generally not exceed four months from the date preliminary objections were filed"*[794].

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[793] It is important to bear in mind the wording of this rule before the amendment of 21 October 2019. There was no Article 79ter before then; the rule was established in Paragraph 7th of Art. 79, which read: (Resaltado añadido) (Highlighting Added) - *"After hearing the parties, the Court shall issue its sentence, in which it shall decide whether to uphold or reject a preliminary objection or it shall declare that, under the circumstances of the case, the preliminary objection is not of an exclusively preliminary carácter.* ***Should the Court reject the preliminary objection or declare it is not of an exclusively preliminary character, it shall set the time limits for the further proceedings****."* (Highlighting Added) - Thus, the practice has always been that when preliminary objections raised by a member State are rejected, the ICJ sets the time limits for subsequent procedural acts, which will be the same as those provided before the suspension of the proceedings upon initiation of the case for preliminary objections.

[794] See: "Practice Directions" of the International Court of Justice. Available at: https://www.icj-cij.org/en/practice-directions.

2.2.2.2.2. Preliminary Objections raised by Venezuela

The procedural time limits to file the Memorial and Counter-Memorial were set by ICJ Order dated 8 March 2021. According to the order, Guyana had to file its Memorial by 8 March 2022 and Venezuela had to file its Counter-Memorial by 8 March 2023.

Accordingly, on 8 March 2022, Guyana filed its Memorial on the merits of the dispute regarding the nullity or validity of the Paris Arbitral Award of 3 October 1899, before this high judicial body.

On 7 June 2022, when the time set for filing the Counter-Memorial had elapsed, Venezuela filed preliminary objections with the ICJ on the admissibility of Guyana's claim, in order to settle the dispute by a negotiated solution in accordance with the provisions of the Geneva Agreement of 17 February 1966.

The regulation of preliminary objections is found in Article 79 of the Rules of Court. Article 79bis of the Rules, in particular, states the following: "*1. Where no decision has been made by the Court under Article 79, an objection to the jurisdiction of the Court or to the admissibility of the application, or any other objection on which a decision is sought before further proceedings on the merits,* must *be made in writing as soon as possible and, at the latest, within three months of the delivery of the Memorial. Any such objection made by a party other than the respondent must be filed within the time limit set for delivery of the first written pleadings of such party".*

Venezuela's filing of preliminary objections with the ICJ was informed to the country by a communiqué of the Ministry of People's Power for Foreign Relations of Venezuela, dated 8 June 2022, expressing that: *"The government of Venezuela, in order to defend the highest interests of the Republic and its territorial integrity, informs Venezuelan people that on 7 June 2022, in accordance with applicable regulations, the Republic was forced to present to the International Court of Justice preliminary objections to the admission of Guyana's unilateral claim against Venezuela"*[795].

[795] See: "Communiqué of the Ministry of the People's Power for Foreign Relations, dated 8 June 2022. Available at: https://mppre.gob.ve/comunicado/venezuela-objeciones-preliminares-admisibilidad-demanda-unilateral-guyana/

The aforementioned Communiqué of the Ministry of People's Power for Foreign Relations dated 8 June 2022 further states that: *"Venezuela rejects the instrumentalisation of the International Court of Justice to settle a dispute that demands a negotiated solution, without detriment to the due respect for this instance as the main judicial organ of the United Nations"*[796].

In the same communiqué, the Venezuelan Government pointed out that the ICJ had declared its jurisdiction over an issue that had already been resolved, while at the same time insisting that the intention of the representative of Guyana was to evade negotiations by resorting to the ICJ, a matter stated as follows: *"However, we are obligated to point out, without any doubt, the course of procedure that has been followed from Guyana's unilateral claim, as well as the decision of 18 December 2020, in which, against all precedents, the Court arrogates jurisdiction to pronounce itself on "the validity of the Arbitral Award of 1899", a matter that has been resolved and which was artificially proposed in Guyana's unilateral claim, endeavouring to get out of its commitment to negotiate, to which it is bound under the Geneva Agreement"*[797].

By submitting preliminary objections, Venezuela has performed an act within the procedure, which is formally equivalent to appearing before the ICJ. In this regard, Guyana has issued a press release dated 8 June 2022, in which it announces the receipt of a letter from the Registrar of the ICJ informing it that Venezuela has submitted preliminary objections regarding the admissibility of the claim by Guyana.

Furthermore, as we have previously stated, Venezuela appointed an *ad hoc* judge and actively participated in the preliminary-objections proceedings. There is no doubt that Venezuela has made the decision to appear before the ICJ, which necessarily implies that, in the event that the preliminary objections are declared inadmissible, it will have to present its arguments on the merits at the time the ICJ sets the opportunity to file the counter-memorial.

Guyana acknowledged that the Rules of Court grant Venezuela the legal possibility of raising preliminary objections with the effect

796 *Ídem.*
797 *Ídem.*

of suspending the proceedings until they are resolved by the ICJ. Likewise, Guyana stated that it will state its observations as soon as the ICJ opens the period of time therefor. The foregoing is based on the third paragraph of Article 79 of the Rules of Court.

In the aforementioned communiqué, Guyana additionally expressed that Venezuela, by the submission of preliminary objections, is attempting to delay the ICJ' final judgment on the dispute. Guyana expressed the following: *"Noting that Venezuela had not previously recognized the jurisdiction of the Court to consider the case, the Ministry of Foreign Affairs and International Cooperation also notes that, by filing an objection at this late stage in the ICJ proceedings, the Government of Venezuela is clearly participating in an effort to delay the final judgment of the Court on the merits of the case"*[798].

Guyana welcomes the fact that Venezuela, by filing preliminary objections, has appeared in the proceedings before the ICJ, which it expresses in the following terms: *"However, with its action, the Venezuelan Government joins the judicial process to which Guyana had always urged it, a step that Guyana welcomes, aware of the validity of its position on the merits of the case"*[799].

In response to the preliminary objections raised by Venezuela, the ICJ, by its ruling of 13 June 2022, set the date of 7 October 2022, as the deadline for Guyana to file its observations on the preliminary objections raised by Venezuela, in accordance with Practice Direction V, whereby *"the time limit for filing remarks and arguments under Article 79bis(3) shall not generally exceed four months from the date of filing preliminary objections"*[800].

The ICJ, by a new order issued on 13 June 2022, also reserved the right to determine the procedure to be followed by Guyana for filing its written remarks. In fact, the ICJ *"set 7 October 2022, as the deadline for Guyana to file a written statement on the preliminary objections*

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798 See: Press Release of the Co-Opertive Republic of Guyana dated 8 June 2022. Available at: https://dpi.gov.gy/press-statement-from-the-ministry-of-foreign-affairs-and-international-cooperation-of-guyana-regarding-the-guyana-venezuela-case-before-the-icj/.

799 *Ídem.*

800 See: "Practice Directions" of the International Court of Justice. Available at: https://www.icj-cij.org/en/practice-directions

raised by Venezuela and reserves the right to determine the subsequent procedure to be followed for a new ruling to be issued"[801].

The representatives of Guyana submitted their observations on the preliminary objections relative to the admissibility of the claim raised by Venezuela, after which the ICJ agreed by Press Release No. 2022/57, to establish the dates and times for public hearings to be held between Thursday, 17 November and Tuesday, 22 November of 2022. The hearings *"shall deliberate on the preliminary objections raised by Venezuela"*[802].

Venezuela's representatives were responsible for presenting their arguments during the first public hearing held on Thursday, 17 November 2022. The representatives of Guyana likewise presented their arguments on the inadmissibility of the preliminary objections on Friday, 18 November, 2022.

On Monday, 21 November 2022, Venezuela submitted its reply to the arguments of Guyana and on Tuesday, 22 November 2022, Guyana submitted its counter-reply.

Having heard the arguments of the parties, the ICJ now has two options: (i) to declare the preliminary objection proposed by Venezuela admissible, which would extinguish the contentious process initiated by Guyana against Venezuela, or (ii) to declare the preliminary objection proposed by Venezuela inadmissible, which would continue the course of the process and terminate the suspensive effect of the incidental question.

Venezuela's position, as demonstrated during this round of hearings, is based on respect for the ICJ. However, this does not mean that Venezuela agrees with the judgment whereby the ICJ declared itself competent to resolve the dispute. Furthermore, at this stage, Venezuela declared that it understands the effects of *res judicata* of such decision, despite the fact that it goes against national interests.

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801 See: Press Release of Order of 13 June 2022 that estblishes the term for the observations and allegations document of the Cooperative Republic of Guiana as it relates to the preliminary objects brought by Venezuela on 7 June 2022. Available at: https://www.icj-cij.org/public/files/case-related/171/171-202206613-ORD-01-00-EN.pdf.

802 See: Press Release of the International Court of Justice, Nº 2022/57 of 21 October 2022. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20221021-PRE-01-00-EN.pdf.

At this point of the proceedings, it may be concluded that Venezuela has assumed its participation in the process and shall make use of all the procedural mechanisms provided in the ICJ Statute and Rules, in addition to considering its Practice Directions, in order to guarantee the best possible defence of the highest interests of the Republic.

2.2.2.2.3 Arguments of Venezuela in the Preliminary-Objections Proceedings on the Admissibility of the Guyana's Claim

Venezuela made several general considerations regarding the inadmissibility of Guyana's claim, due to the fact that an indispensable third party, namely the United Kingdom and Northern Ireland, is not participating in the proceedings before the ICJ. Venezuela's other general consideration was with respect to the *res judicata* effect of the ICJ judgment dated 18 December 2020, which is restricted to the question of the ICJ's jurisdiction and does not cover aspects related to the admissibility of the claim introduced by Guyana.

Delcy Rodriguez
Vice-President of Venezuela

A. The United Kingdom and Northern Ireland is an indispensable third party in the proceedings.

The main argument invoked by Venezuela in support of the proposed preliminary objection is that the United Kingdom and Norther Ireland

is an indispensable third party that must participate in the proceedings. This argument is based on the ICJ's own jurisprudence, according to which, in certain cases, participation in the proceedings before this international body is necessary when a third State has interests and/or rights that have elements of a connection with the dispute.

It is a maxim of a legal-procedural nature arising from the practice of the ICJ and implies that, in cases where the decision on the merits is related to the interest of a third party that is not part of the process, the ICJ must abstain from exercising its jurisdiction, regardless of whether the parties involved in the proceedings accept the judicial settlement through the ICJ.

Venezuela's argument that the United Kingdom is an indispensable third party to the proceedings is based on the following:

1. It was the United Kingdom that resorted to the falsification of maps and documents in order to dispossess Venezuelan of a part of its territory with a view to the appropriation of its natural resources and to normalize a completely unacceptable situation.
2. It was the United Kingdom that relied on the system of law existing at the time, which did not consider the principles of sovereign equality and mutual respect between States.
3. It was the United Kingdom that signed the Treaty of Washington of 17 February 1897.
4. It was the United Kingdom that made sure that the tribunal would not have any Venezuelan arbitrator, even in the event of the death or incapacity of any of the previously appointed arbitrators.
5. It was the United Kingdom that participated in the arbitration that resulted in the Paris Arbitral Award of 3 October 1897.
6. It was the United Kingdom that fostered improper contacts with its national arbitrators during the Paris Arbitration proceedings in 1899, resulting in an inappropriate relationship between arbitrators and counsel for the party. This vitiates any arbitration proceedings.
7. The United Kingdom and Northern Ireland remains a party to the Geneva Agreement of 17 February 1966.

8. A ICJ decision on the subject matter of this dispute necessarily implies a pronouncement on the conduct of the United Kingdom and Northern Ireland and establishing the international responsibility of that State, without its participation in the proceedings.

To justify their request, the representatives of Venezuela argued that the *res judicata* effect of the judgment of 18 December 2020 on jurisdiction does not prevent the filing of preliminary objections relative to the admissibility of Guyana's claim; and that there is a clear distinction between jurisdiction and admissibility, as deduced from the jurisprudence of the ICJ.

Dr. Antonio Remiro-Brotóns
Counsel and Lawyer appointed by Venezuela

Venezuela likewise invoked the jurisprudential doctrine established in the judgment of the Case: "Monetary Gold Removed from Rome in 1943" (Italy v. France, the United Kingdom and Northern Ireland, and the United States of America)[803] and the "East Timor" judgment (Portugal v. Australia)[804].

a. Venezuela invoked the Principle of Monetary Gold

The principle of monetary gold is a maxim of a legal-procedural nature arising from ICJ practice and implies that, in cases where the

803 Available at: https://www.icj-cij.org/en/case/19.
804 Available at: https://www.icj-cij.org/en/case/84.

decision on the merits is related to the interest of a third party that is not involved in the dispute and does not accept the jurisdiction of the ICJ, that high jurisdictional body must abstain from exercising its jurisdiction, regardless of whether the parties involved in the proceedings accept the judicial settlement through the ICJ.

Venezuela explained the nature of the exception based on the principle of monetary gold and clarified that the ICJ has accepted, at least implicitly and contrary to what Guyana would have us believe, that the principle of monetary gold is an objection that effectively relates to the admissibility of a given case.

The monetary gold principle is a product of ICJ jurisprudence. The first case in which it was applied -and hence its name- was the Case: *"Monetary Gold removed from Rome in 1943"*. The controversy arose because a certain amount of monetary gold was removed by the Germans from Rome in 1943.

Subsequently, the gold was recovered in Germany and was found to belong to Albania. The German Reparation Agreement of 1946 stated that the monetary gold found in Germany was to be pooled for distribution among the countries entitled to receive a share of that gold. The United Kingdom claimed that the gold should be handed over to it in partial compliance with the 1949 ICJ judgment in the Corfu Channel case. Italy, on the other hand, claimed that the gold should be delivered to it in partial satisfaction of the damages it claimed to have suffered as a result of an Albanian law of 13 January 1945.

In the Washington Declaration of 25 April 1951, the Governments of France, the United Kingdom and the United States, which had been entrusted with the implementation of the reparations agreement, decided that the gold should be handed over to the United Kingdom, unless, within a specified time, either Italy or Albania requested the ICJ to rule on their respective rights. Albania took no action, but Italy submitted a request to the ICJ. However, Italy raised the preliminary question of whether the ICJ was competent to rule on the validity of its claim against Albania and, from this, arises the principle of monetary gold, because the ICJ stated in its judgment of 15 June 1954 that, without the consent of Albania, it could not hear a dispute between that country and Italy and, therefore, could not decide the issues raised.

Venezuela explained the reasons that justify the relationship of the United Kingdom and Norther Ireland to the dispute and, consequently, allow the application of the principle of monetary gold.

The first reason is that the real object of the dispute is to determine whether the United Kingdom and Northern Ireland have been responsible for fraudulent behaviour. The second is that a decision on the conduct of the United Kingdom Norther Ireland is a prerequisite to a decision on the merits of the dispute.

Dr. Andrea Zimmermann
Counsel and counsellors appointed by Venezuela

b. The real subject matter of the dispute is to determine whether the United Kingdom and Northern Ireland has been responsible for fraudulent conduct.

The determination of the existence of fraudulent conduct is an issue that undoubtedly affects the dignity of a State. Venezuela submits that the United Kingdom and Northern Ireland is an indispensable party that must join the proceedings to face this very serious accusation. Indeed, it is not only a question of the land boundary, as Guyana claims, but of the validity of the arbitral commitment and award which are the real subject matter of the dispute.

Guyana did not pronounce itself on the consequences of the nullity of the commitment and the arbitral award. These legal consequences are extremely important. It is an issue of international responsibility involving the United Kingdom and Norther Ireland. As the Vienna

Convention on the Law of Treaties states in Article 69.2 concerning the consequences of the invalidity of a treaty:

> *"2.If acts have nevertheless been performed in reliance on such a treaty:*
> *a) any party may require any other party to establish as far as possible in their mutual relations the situation which would have existed if those acts had not been performed;*
> *b) acts performed in good faith before the nullity has been pleaded shall not become unlawful by reason only of the nullity of the treaty...".*

Thus, Venezuela asserted that a decision on the merits of the case would necessarily imply that the ICJ should rule on the conduct of the United Kingdom before and during the arbitral proceedings. Consequently, the United Kingdom is an indispensable party in this case.

Dr. Esperanza Orihuela
Counsel and Lawyer appointed by Venezuela

c. A ruling on the conduct of the United Kingdom is a prerequisite to a decision on the merits of the dispute.

The representatives of Guyana only asserted that it is not sufficient that the decision have *"mere implications"* on third parties such as the United Kingdom for the monetary gold doctrine to apply, but that the legal interests of an absent third State must constitute *"the very subject matter"* of a dispute. This argument is misleading because Venezuela

had exactly stated that if the ICJ exercised its jurisdiction and considered the claim of Guyana admissible, it would have to decide on the legal interests of the United Kingdom, which would, therefore, be the object of the dispute.

If, as a prerequisite for deciding the parties' claims on the merits, the ICJ has to rule on the conduct of an absent third State, then the interests of that absent third State constitute *"the object itself",* and the doctrine of monetary gold applies. Otherwise, we are in the realm of *"mere implications"*.

Guyana emphasized the argument that the United Kingdom has no interest in the disputed territory and was strangely silent on the question of the right to due process.

In order to rule on the plaintiff's claims, the ICJ would first have to analyse the legality of the conduct of a third State in the absence of the latter's consent. In our case, it is sufficient to show that it would be necessary for the ICJ, in order to rule on the validity of the arbitral commitment or the award, to first establish the fraudulent and therefore unlawful nature of the United Kingdom's conduct.

Dr. Carlos Esposito
Counsel and Lawyer appointed by Venezuela

d. The United Kingdom and Northern Ireland are a party to the Geneva Agreement of 17 February 1966.

The United Kingdom and Northern Ireland are a party to the Geneva Agreement of 17 February 1966, which serves as the basis for the jurisdiction of the ICJ. This demonstrates that Guyana is not the sole successor in rights and obligations. The Geneva Agreement merely

states that, once Guyana achieves independence, it will also be a party to the agreement without excluding the United Kingdom and Northern Ireland from the compromise.

Guyana downplays the importance of the Geneva Agreement by saying that it relates only to procedural matters. This has no relevance for the application of the monetary gold principle, and it seems artificial to separate substantive and procedural obligations, since they are intimately linked to each other.

In Venezuela's opinion, the representatives of Guyana insist on asserting that under Article IV, Paragraph 2, of the Geneva Agreement, the United Kingdom would have consented to the exercise of its jurisdiction by the ICJ, without the need for its participation in the proceedings. There is no basis in the text of Article IV for this interpretation.

Article IV contains no reference to consent or, more generally, to the position of the United Kingdom regarding the procedures referred to in that provision. These procedures relate to dialogue and cooperation between Venezuela and Guyana following the decolonization of British Guiana. The object and purpose of Article IV is to resolve the border dispute by a practical agreement acceptable to all parties. No link can be established between Article IV and the consent of the United Kingdom to the ICJ procedure, especially since, in 1966, the United Kingdom had excluded the possibility of an arbitral or jurisdictional settlement of the dispute.

Even if the United Kingdom and Northern Ireland are deemed to have given its consent, only if the third State accepts the jurisdiction of the ICJ and becomes a party to the case, can the ICJ decide on the rights and obligations of that State. Judge Crawford made it clear: "*the claim is inadmissible unless the necessary third State is joined as a full party to the proceedings"*.

The absence of the indispensable party has other unacceptable consequences, particularly with regard to evidence.. If a State is a party to the dispute, that State, as the ICJ has observed, has a *"duty to cooperate 'by producing all evidence in its possession, which may assist the Court in resolving the dispute submitted to it'"*. However, this duty to cooperate is not binding on the United Kingdom, which is not a party to the proceedings.

The foregoing risks creating a situation of great inequality between the parties to the present dispute. Despite this, Guyana has the audacity to ask the ICJ to rule on the obligations of the United Kingdom towards Venezuela, without the United Kingdom being obligated either to comply with its judgment or to cooperate in good faith with the proper conduct of the proceedings.

In its memorial, Guyana asserted that the 1897 Treaty was concluded in accordance with the relevant rules and that the constitution of the 1899 arbitral tribunal was also valid. In doing so, it completely ignores the conduct of the United Kingdom. Moreover, Guyana is reticent to taking the concrete elements demonstrating the wrongfulness of this conduct into consideration, and prefers to refer to the arbitration in abstract terms.

Dr. Christian J. Tams
Counsellor and Lawyer appointed by Venezuela

B. The res judicata effect of the judgment of 18 December 2020, on jurisdiction does not preclude filing preliminary objections regarding the admissibility of the claim of Guyana.

The preliminary objection on admissibility raised by Venezuela against Guyana's claim is excluded from the *res judicata* effect of the Judgment of 18 December 2020, because this decision only concerns the ICJ's jurisdiction.

The judgment of 18 December 2020, made it clear that it is the conduct of the United Kingdom and Northern Ireland and its

responsibility under international law that constitute the subject matter of the dispute. It was only after becoming aware of the content of the reference judgment that Venezuela was able to raise an objection to admissibility based on the jurisprudential doctrine established by the ICJ in the judgment of the Case: *"Monetary Gold Removed from Rome in 1943"* (Italy v. France, the United Kingdom and Northern Ireland, and the United States of America)[805] and the judgment of the "East Timor" case (Portugal v. Australia)[806].

In this case, the judgment of 18 December 2020, did not refer, either explicitly or implicitly, in word or in substance, to the exception of the monetary gold principle. However, it did decide on jurisdiction *ratione materiae* and jurisdiction *ratione temporis*. This confirms that the *res judicata* effect of the judgment of 18 December 2020 does not prevent the ICJ from considering Venezuela's preliminary objection because that decision only referred to the ICJ's jurisdiction and did not cover the issue of the admissibility of Guyana's claim.

The ICJ, by its Ruling of 19 June 2018, decided that the pleadings had to abide by the issue of its jurisdiction. Indeed, this is the only issue dealt with in that Ruling and the only point that was debated by the parties at the time. On that occasion, Venezuela had stated that it considered that the Court manifestly lacked jurisdiction and, in response, Guyana merely indicated that it wished to proceed with the case, without referring to any other issue. Thus, there was no debate on the admissibility of the claim.

Additionally, it is necessary to note the ICJ's Ruling of 13 June 2022, which not only confirmed that Venezuela's preliminary objection had the effect of suspending the proceedings on the merits pursuant to Article 79bis, Paragraph 3, of the Rules of Court, but also specifically stated that Venezuela's preliminary objection was related to the admissibility of the application and not to the jurisdiction of the ICJ.

The ICJ, by Order of 13 June 2022, before noting the nature of admissibility in Venezuela's objection, recalled that in its Order of 19 June 2018, it had expressly noted the possibility for Venezuela to make use of its procedural rights as a party to the case. In that regard, Venezuela exercised its right to raise preliminary objections on the admissibility

805 Available at: https://www.icj-cij.org/en/case/19.
806 Available at: https://www.icj-cij.org/en/case/84.

of Guyana's claim, an issue that, so far, had not been discussed by the parties before the ICJ.

Dr. Paolo Palchetti
Counsel and Counsellor designated by Venezuela

a. Venezuela insisted that there is a clear distinction between jurisdiction and admissibility which is deduced from The ICJ's jurisprudence.

The inadmissibility of Guyana's claim is based on the ICJ's own practice. First, the ICJ has distinguished between questions of jurisdiction and admissibility in accordance with the judgment of 18 November, 2008, in the Croatia v. Serbia case on the Convention on the Prevention and Punishment of the Crime of Genocide. The aforementioned decision stated that *"In essence, this objection consists of a claim that, even if the court has jurisdiction, there is a legal reason why it should decline to hear the case or, more usually, a particular claim in the case"*[807].

The precedent of the Croatia v. Serbia decision applies to the case at hand. Indeed, in the ICJ Order of 19 June 2018, the ICJ indicated to the parties that, during that first incidence on jurisdiction resolved by the judgment of 18 December 2020, they should refer only to questions of jurisdiction and not to questions of admissibility.

807 Available at: https://www.icj-cij.org/public/files/case-related/118/118-20081118-JUD-01-00-EN.pdf.

2.2.2.2.4. Arguments of Co-Operative Republic of Guyana in the incidental reliminary objections proceedings on admissibility of the claim of Guyana

Carl Barrington Greenidge
Agent and Former Vice-President of Guyana

A. Response of Guyana to Venezuela's argument that the United Kingdom and Northern Ireland is an indispensable third party to the proceedings based on the monetary gold principle

The representatives of Guyana only asserted that it is not sufficient that its decision have *"mere implications"* on third parties such as the United Kingdom and Northern Ireland, for the monetary gold doctrine to apply, but that the legal interests of an absent third State must constitute *"the very object"* of a dispute.

Guyana indicated that, under the legal principle first established by the ICJ in the Case: *"Monetary Gold Removed from Rome in 1943"* (Italy v. France, the United Kingdom and Northern Ireland, and the United States of America)[808] and explained in its subsequent jurisprudence that the United Kingdom is not an indispensable party to these proceedings.

In Guyana's view, the doctrine does not apply, and cannot apply in this case, for two reasons: first, that the United Kingdom has no

808 Available at: https://www.icj-cij.org/en/case/19.

legal interests or legal rights or obligations that would be affected by an ICJ judgment on the merits of this case; and second, that the United Kingdom has given its consent, expressed in Article IV of the 1966 Geneva Agreement, for the ICJ to resolve this dispute between Guyana and Venezuela.

The case came to the ICJ as a result of an arbitration that determined that certain gold, looted by German forces in Rome during World War II, belonged to Albania. Italy claimed the right to the same gold on the basis of an alleged international wrong that Albania had committed against it. Italy's claim therefore required the ICJ to determine whether Albania, which was not a party to the Monetary Gold case, had committed any international legal breach that would render it liable to Italy. As the ICJ explained *"Therefore, in order to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether it is obligated to pay Italy compensation"*.

On this basis, the ICJ concluded that it could not exercise its jurisdiction because, "In the present case, Albania's legal interests would not only be affected by a decision, but would constitute the object of such decision". This is the essence of the ICJ's judgment and the rule that, for future cases, establishes that, for the ICJ not to exercise its jurisdiction, there must be a need to determine whether the legal interests of an absent party would not only be affected by, but would constitute the very subject matter of, the ICJ's decision on the merits. In particular, would an ICJ judgment directly affect the legal rights or obligations of an absent State, as in the case of Albania, which has not consented to its jurisdiction?

The ICJ revisited this question and elaborated on the standard it set out in Monetary Gold; in Phosphates, Nauru v. Australia, in which it rejected Australia's argument that the case should be dismissed under the Monetary Gold standard on the basis that, as Australia argued, its legal interests were identical to those of the United Kingdom and New Zealand, and that any adjudication of its interests would inevitably affect the legal interests of the two absent States; the ICJ explained that: "*In the present case, the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to*

be rendered on the merits of Nauru's application and the situation is, in that respect, different from that which the ICJ had to deal with in the Monetary Gold case".

The ICJ's decision to exercise jurisdiction did not mean that it considered that the legal interests of New Zealand and the United Kingdom would not be affected by the judgment Nauru sought. On the contrary, the ICJ recognized that *"a finding by the Court on the existence or content of the responsibility attributed to Australia by Nauru could have implications for the legal position of the other two affected States"*. In the Phosphates case, the ICJ took a very different approach: it rejected Australia's preliminary objection because *"the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered",* because the judgment would not directly affect the legal rights or obligations of those States.

Three years later, the ICJ had to re-interpret and apply its Monetary Gold judgment in the East Timor case (Portugal v. Australia). Venezuela's counsel cited this case, but did so very selectively. In its key passage, the ICJ upheld Australia's preliminary objection based on the Monetary Gold judgment, because, in its own words *"in this case, the effects of the judgment sought by Portugal would amount to a determination that Indonesia's entry and continued presence in East Timor is unlawful and that, consequently, it has no treaty-making power in matters relating to East Timor's continental shelf resources. Indonesia's rights and obligations would therefore constitute the very subject matter of such a judgment rendered in the absence of that State's consent"*.

In this passage, the ICJ made it clear, especially in the last quoted sentence, that the legal interests of an absent State *"shall constitute the very subject-matter"* of the case when its judgment directly affects the *"rights and obligations"* of the absent State. Even in upholding Australia's objection, the ICJ took care to reaffirm what it said in the Phosphates case: that the Monetary Gold did not prevent it from exercising its jurisdiction and rendering a judgment that might affect the legal interests of an absent State, provided that the interests of that State did not constitute the very subject matter of the dispute: *"the ICJ*

emphasizes that it is not necessarily precluded from ruling when the judgment it is called upon to render may affect the legal interests of a State which is not a party to the case".

The ICJ reaffirmed this principle once again in its 1998 judgment in Cameroon v. Nigeria. Nigeria objected to Cameroon's request that the Court establish the boundary of the parties across Lake Chad on the grounds that this would touch the tri-junction with Chad and thus affect the legal interests of an absent State in violation of the Monetary Gold precedent. The Court rejected Nigeria's objection on the now familiar argument that it "*is not necessarily estopped from ruling when the judgment sought from it may affect the legal interests of a State that is not a party to the case"*. In that case, unlike the present case between Guyana and Venezuela, the absent State had a real legal interest in a part of the international boundary to be drawn by the Court. However, the Court ruled that *"the legal interests of Chad, as a third State not a party in the case, do not constitute the very subject-matter of the judgment to be rendered on the merits of Cameroon's claim"*.

What this review of relevant jurisprudence shows is that the ICJ has declined to exercise jurisdiction under the Monetary Gold standard in only two cases. In both, the Monetary Gold case itself and the East Timor case, it considered that it could not decide the case without directly affecting the legal rights or obligations of an absent third State -Albania in the first case, Indonesia in the second- and that the legal interests of the absent State constituted the very object of the decision to be rendered.

To answer this question with respect to the case between Guyana and Venezuela -whether the legal interests of the United Kingdom constitute the very object of the judgment to be rendered by the ICJ here- we must consider what is the very object of the present dispute between Guyana and Venezuela.

In the opinion of the representatives of Guyana, this is a matter on which the parties agree. Venezuela submits, and we agree, that the subject matter of this dispute is set out in Paragraph 137 of the ICJ Judgment of 18 December 2020. In it: *"the Court concludes that it has jurisdiction to hear Guyana's claims concerning the validity of the 1899*

Award on the boundary between British Guiana and Venezuela and the related question of the final settlement of the dispute concerning the land boundary between the territories of the Parties".

To the same effect, in the first paragraph of the dispositif, the Court "Declares that it has jurisdiction to hear the Application filed by Guyana on 29 March 2018, regarding the validity of the Arbitral Award of 3 October 1899, and the related question of the definitive settlement of the dispute concerning the land boundary between Guyana and Venezuela".

Therefore, the object of the judgment to be rendered by the Court is the validity of the Arbitral Award of 3 October 1899, and the related question of the final settlement of the land boundary dispute between Guyana and Venezuela.

In these circumstances, the ICJ's task, in considering Venezuela's preliminary objections under the Monetary Gold standard, is to determine whether the United Kingdom has legal interests that would not only be affected by, but would form the very subject matter of, an ICJ judgment on the validity of the 1899 Arbitral Award and the related question of the definitive settlement of the land boundary between Guyana and Venezuela.

And this, then brings us to the fundamental question at the heart of this proceeding: what legal interests, if any, does the United Kingdom have in the validity of the 1899 Arbitral Award, or the definitive settlement of the land boundary between Guyana and Venezuela? And, more importantly, if these legal interests exist, do they constitute the very subject matter of the dispute to be decided by the ICJ?

To Guyana, the answers to these questions are clear: the United Kingdom has no legal interest in the validity of the 1899 Arbitral Award, nor in the final settlement of the land boundary between Guyana and Venezuela. It, therefore, has no legal interests that could constitute the very subject matter of this dispute. In rendering its judgment on the validity of the Arbitral Award of 1899, or the definitive settlement of the land boundary, there are no legal rights or obligations of the United Kingdom that the ICJ could affect. So, there would be no basis, having regard to the Monetary Gold case and subsequent jurisprudence, for the ICJ to decline to exercise its jurisdiction because of the absence of

the United Kingdom, regardless of whether the United Kingdom has consented to the adjudication of these issues by Guyana and Venezuela.

It might be useful for us to ask ourselves this question: does the United Kingdom itself consider that it has legal interests that could be affected by a judgment on the merits in this case, such that it could oppose the ICJ's exercise of jurisdiction over the issues that have been raised by Guyana? This is a question that Venezuela avoided addressing in its presentation. However, the representatives of Guyana considered it important to consider the following statements in which the United Kingdom joined other States in welcoming the Court's Judgment of 18 December 2020, and, specifically, the ICJ's decision to resolve Guyana's claims on the validity of the 1899 Award and the definitive settlement of the land boundary between Guyana and Venezuela.

1. This, for example, is apparent from the communiqué issued by the Commonwealth Heads of Government at the conclusion of their meeting in Rwanda on 25 June 2022, in Tab 2 of their folders and which was signed by all Heads, including the Prime Minister of the United Kingdom:

> *"The Chiefs noted the decision taken by the ICJ on 18 December 2020, that it has jurisdiction to hear the Application filed by Guyana on 29 March 2018, paving the way for the ICJ to consider the merits of the case relating to the Arbitral Award of 3 October 1899, (Guyana v. Venezuela).... The Heads reiterated their full support for the ongoing judicial process aimed at bringing a peaceful and definitive end to the long-standing dispute between the two countries".*

2. On 14 September 2021, the final statement of the Commonwealth Ministerial Group on Guyana, which included the United Kingdom, found in Tab 4 of their folders, contained this paragraph, *"The Group expressed its unwavering support for the ongoing judicial process before the International Court of Justice chosen by the Secretary-General of the United Nations under the 1966 Geneva Agreement and the Group continues to encourage Venezuela to participate in that process".*

3. A similar statement was signed by the UK Foreign Secretary and his counterparts from CARICOM and the Dominican Republic at the conclusion of the 10th UK-Caribbean Forum on 18 March 2021. The final communiqué, in Tab 3 of the folders, included this paragraph, *"Ministers welcomed the 18 December 2020, decision of the International Court of Justice that it has jurisdiction to consider Guyana's claim concerning the validity of the 1899 arbitral award, which fixed the land boundary between then British Guiana and Venezuela"*.

ICJ jurisprudence is clear as to the mandatory nature of the objection to the exercise of jurisdiction, which, based on the principle of the Monetary Gold case, distinguishes the objection from an objection to admissibility, and its jurisprudence is also very clear that the legal effect of such an objection is not to render the application initiating the proceedings inadmissible.

In the Monetary Gold case, the Italian Government "requested the ICJ to rule on the preliminary question of its jurisdiction to hear the merits of the claim". This was not a question of admissibility of the claim, but a "preliminary matter regarding the jurisdiction of the International Court of Justice" to hear one of the allegations made in the claim. On this matter of jurisdiction, the ICJ states that "the jurisdiction conferred on it by common agreement [between the parties] does not authorize it, in absence of Albania's consent, to rule on the Italian Government's first submission of the application". Albania's lack of consent is a matter of jurisdiction that limits the ICJ's jurisdiction and has the effect of compelling it not exercise its jurisdiction.

In the East Timor case -the only other case in which the ICJ applied the Monetary Gold principle- Australia argued that "[Portugal's] claim ... contravenes the principle of consent which precludes the adjudication of Indonesia's legal liability without its agreement". In the operative part of its counter-memorial, Australia concluded that "the ICJ lacks jurisdiction to decide on the Portuguese claims, or the claims are inadmissible". The question of the admissibility of Portugal's claims is not a matter for the ICJ to decide. Thus, the question of the admissibility of the claims made in the Portuguese application was raised by Australia only in the alternative, on the understanding that the question of the

third party absent from the proceedings raised primarily a question of jurisdiction linked to the lack of consent of such third party. Only in the latter respect did the ICJ identify the nature and legal effect of the objection raised by Australia.

Also, in the East Timor case the ICJ insisted that one of the fundamental principles of its Statute is that it cannot decide a dispute between States unless they have consented to its jurisdiction". As in the Monetary Gold case, the ICJ examined the Australian objection in light of the cardinal principle of consent, which governs its jurisdiction. Without declaring the Australian objection inadmissible, and in accordance with its previous jurisprudence, the ICJ placed the objection within the scope of the matter of its jurisdiction, and did so both in terms of its merits and its effects. In the operative part of its judgment, the ICJ "did not know how to exercise the jurisdiction conferred upon it in the present case".

Moreover, for Guyana, the preliminary objection on admissibility of the claim proposed by Venezuela is meaningless since the ICJ, in Paragraph 115 of its judgment of 18 December 2020, held that the decision taken by the Secretary-General of the United Nations, based on Article IV.2 of the Geneva Agreement, would be hindered if the subsequent consent of the parties involved in the territorial dispute were required for it to take effect.

The application of the Monetary Gold principle, according to Guyana, would violate the succession between States and the principle of self-determination of peoples, and points out that the only purpose of this argument is to divert attention from what is really important.

Guyana has sought to stress the importance of the fact that the ICJ, in its Ruling of 19 June 2018, had considered it necessary *"to be informed of all the factual and legal grounds on which the Parties rely as to their jurisdiction"*, a formula which, in Guyana's view, was intended to encompass *"any potential limits to the ICJ's jurisdiction regarding any of the claims"* contained in the application.

Guyana asserted in its memorial that the 1897 Treaty was concluded in accordance with the relevant rules and that the constitution of the 1899 arbitral tribunal was also valid.

Prof. Philippe Sands
Counsel appointed by Guyana

B. Response of Guyana to Venezuela's argument that the res judicata effect of the judgment of 18 December 2020 on jurisdiction does not preclude the raising of preliminary objections concerning the admissibility of Guyana's claim

The representatives of Guyana pointed out that Venezuela's preliminary objections are barred by the *res judicata* effects of the ICJ's judgment of 18 December 2020. Guyana indicated that what Venezuela is asking the ICJ for by its preliminary objections is to undo its judgment, and holds that Venezuela's preliminary objections are essentially jurisdictional and, therefore, belated under Article 79bis of the Rules. The representatives of Guyana were emphatic that the only way Venezuela can find to avoid this is to argue that the grounds for the preliminary objections did not exist prior to the Judgment, but arose out of it.

Guyana invoked the primacy of the *res judicata* principle that applies to all ICJ judgments under Articles 59 and 60 of the Statute and the ICJ's own jurisprudence, which has long recognized that judgments are final and not subject to appeal.

In the Bosnian Genocide case, the ICJ dealt with a Serbian attempt to reopen the judgment confirming its jurisdiction. The ICJ decided that:

> *"In accordance with Article 36, Paragraph 6, of the Statute, and once a decision in favour of jurisdiction has been rendered with*

the force of res judicata, it is not susceptible to being questioned or re-examined, except by way of review under Article 61 of the Statute"[809].

The ICJ went on to substantiate its decision, elucidating the two main purposes of *res judicata*. It stated: "*This result is required by the nature of the judicial function"* and the universally recognized need for *"stability of legal relations"*. Guyana, using the same words as the ICJ, points out that Venezuela's objection: *"would deprive a litigant [in this case, Guyana] of the benefit of a judgment it has already obtained",* which must be considered *"in general, as a violation of the principles governing the legal settlement of disputes"*.

They argue that the judgment of 18 December 2020, has the nature of *res judicata*, so that what was decided by the ICJ can only be questioned under the very strict conditions of a request for review. The review can only be requested "*when it is based on the discovery of some fact"* of a decisive nature that was *"unknown to the Court"* and to *"the party claiming the review"* of the judgment. Those conditions, they indicate, are not met in this case.

a. The representatives of Guyana indicated that Venezuela's preliminary objection is not one of admissibility, but one of jurisdiction, so that it is excluded by virtue of the res judicata effect

The order of 13 June 2022, did not rule on the question of whether the Venezuelan objection fell within the category of exceptions to admissibility. The order merely referred to the qualification that Venezuela itself gave to its preliminary objections in describing the fact that it had filed them.

The parties differ as to whether the ICJ's exercise of jurisdiction is included in the *"matter of jurisdiction"* referred to in the 19 June 2018 Order. However, the terms of the order did not require the parties to inform the ICJ of its possible lack of jurisdiction. In the opinion

809 Page 101. Available at: https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf.

of Guyana's counsel, jurisdiction is a term that encompasses both the question of the existence of jurisdiction and the question of the exercise thereof.

Guyana's representatives said that their position is not that the terms of the order cover matters of admissibility as such. They only stated that the objection raised by Venezuela does not fall into this category, both because of its profound nature and consequences if admitted and because of the very particular context of the Geneva Agreement.

Moreover, at the time the 19 June 2018 Order was adopted, it was already very clear that the issue of the validity of the Award was the subject matter of the dispute. The Statement of Claim is explicit on this point, as is the Geneva Agreement. Moreover, it was already quite clear that Venezuela was challenging the validity of the Award on the basis of the conduct of the United Kingdom.

In 1962, when Venezuela first argued that the Award was invalid, it did so allegedly because it was the result of a political transaction carried out behind Venezuela's back. As reproduced verbatim in the Statement of Claim, this Venezuelan claim was known to the ICJ when it adopted the 19 June 2018 Order.

Furthermore, counsel for Guyana contend that the merits of the preliminary objection cannot be considered and maintained because of the judgment of 18 December 2020. Venezuela's representatives have said nothing about the fact that the judgment decided that the ICJ has jurisdiction to hear the claim, words that indicate *res judicata* that the Court has jurisdiction to consider the merits of the case and that it has decided to exercise that power.

So, the question to be decided by the ICJ is whether the objection based on the Monetary Gold principle, which is the subject of the present incidental proceedings and which arises in the very particular context of this case, is admissible at this stage of the proceedings or whether, as Guyana argues, Venezuela should have raised this argument within the time limit established by the order, and would thus no longer be entitled to do so by way of the preliminary objections raised in June 2022.

b. Guyana's representatives pointed out that Venezuela's preliminary objections are barred by the res judicata effects of the ICJ's judgment of 18 December 2020

Guyana's representatives of pointed out that Venezuela's preliminary objections are barred by the *res judicata* effects of the ICJ's judgment of 18 December 2020. Guyana indicated that what Venezuela is asking the ICJ for by its preliminary objections is to undo its judgment, and holds that Venezuela's preliminary objections are essentially jurisdictional and, therefore, belated under Article 79bis of the Rules. The representatives of Guyana were emphatic that the only way Venezuela can find to avoid this is to argue that the grounds for the preliminary objections did not exist prior to the Judgment, but arose out of it.

Guyana invoked the primacy of the *res judicata* principle that applies to all ICJ judgments under Articles 59 and 60 of the Statute and the ICJ's own jurisprudence, which has long recognized that judgments are final and not subject to appeal.

In the Bosnian Genocide case, the ICJ dealt with a Serbian attempt to reopen the judgment confirming its jurisdiction. The ICJ decided that:

> *"In accordance with Article 36, Paragraph 6, of the Statute, and once a decision in favour of jurisdiction has been rendered with the force of res judicata, it is not susceptible to being questioned or re-examined, except by way of review under Article 61 of the Statute"*[810].

The ICJ went on to substantiate its decision, elucidating the two main purposes of *res judicata*. It stated: "*This result is required by the nature of the judicial function"* and the universally recognized need for *"stability of legal relations"*. Guyana, therefore, argues that there is no doubt that the judgment of 18 December 2020, is *res judicata* and the ICJ's decision can only be challenged under the very strict conditions of an application for review. The review can only be requested "*when it is based on the discovery of some fact"* of a decisive nature that was *"unknown to the Court"* and to *"the party claiming the review"* of the judgment; conditions that -Guyana's representatives hold- have not been met in this case.

[810] *Ídem.*

c. The representatives of Guyana indicated that Venezuela's preliminary objection is not one of admissibility, but one of jurisdiction, so that it is excluded by virtue of the res judicata effect

They argue that the 13 June 2022 order did not rule on the matter of whether Venezuelan objection fell within the category of objections to admissibility, but that the order merely referred to the qualification that Venezuela itself gave to its preliminary objections in describing the fact that it had filed them.

The parties differ as to whether the ICJ's exercise of jurisdiction is included in the *"matter of jurisdiction"* referred to in the 19 June 2018 Order. However, the terms of the order did not require the parties to inform the ICJ of its possible lack of jurisdiction. In the opinion of Guyana's counsel, jurisdiction is a term that encompasses both the question of the existence of jurisdiction and the question of the exercise thereof.

Guyana's representatives said that their position is not that the terms of the order cover matters of admissibility as such. They only stated that the objection raised by Venezuela does not fall into this category, both because of its profound nature and consequences if admitted and because of the very particular context of the Geneva Agreement.

Moreover, at the time the 19 June 2018 Order was adopted, it was already very clear that the issue of the validity of the Award was the subject matter of the dispute. The Statement of Claim is explicit on this point, as is the Geneva Agreement. Moreover, it was already quite clear that Venezuela was challenging the validity of the Award on the basis of the conduct of the United Kingdom.

In 1962, when Venezuela first argued that the Award was invalid, it did so allegedly because it was the result of a political transaction carried out behind Venezuela's back. As reproduced verbatim in the Statement of Claim, this Venezuelan claim was known to the ICJ when it adopted the 19 June 2018 Order.

Furthermore, the counsel for Guyana contend that the merits of the preliminary objection cannot be considered and maintained because of the judgment of 18 December 2020. Venezuela's representatives

said nothing about the fact that its judgment had decided that the ICJ had jurisdiction to hear the case, words which have the nature of *res iudicata*, meaning that the Court has jurisdiction to examine the merits of the case and has decided to exercise that power..

So, the question to be decided by the ICJ is whether the objection based on the Monetary Gold principle, which is the subject of the present incidental proceedings and which arises in the very particular context of this case, is admissible at this stage of the proceedings or whether, as Guyana argues, Venezuela should have raised this argument within the time limit established by the order, and would thus no longer be entitled to do so by way of the preliminary objections raised in June 2022.

2.2.2.2.5. Request of the Parties to the International Court of Justice

Based on all the reasons stated above and because the perpetrator of this fraudulent conduct -the United Kingdom- is absent from the proceedings in Case 171, Venezuela requests that the claim filed by Guyana be declared inadmissible. On its part, Guyana requested the ICJ, in accordance with Articles 60 and 79ter, Paragraph 4, of the Rules of Court, to declare Venezuela's preliminary objections inadmissible or to reject them on the basis of the submissions of the parties. Guyana also requested the ICJ to set a date for filing Venezuela's Counter-Memorial on the merits, no later than nine months after the date of the Court's decision on Venezuela's preliminary objections.

2.2.2.2.6. Judgment of the International Court of Justice dated 6 April 2023 on the Preliminary Objections filed by Venezuela

On 6 April 2023, the ICJ rendered a judgment by which it ruled on the preliminary objection filed on 7 June 2022 by Venezuela regarding the admissibility of the claim brought by Guyana[811].

[811] International Court of Justice, "*Judgment of 6 April 2023"*. Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-00-EN.pdf

The ICJ examined the arguments of Venezuela and Guyana and ruled on the relevant issues raised in this incidental proceeding. Among those points were mainly the admissibility of Venezuela's preliminary objections and the analysis of the merits of the preliminary objections.

In addition, the judgment addressed other important issues not only for the specific case, but also for the evolution of the ICJ's jurisprudence in relation to the preliminary objection of admissibility of the claim based on the monetary gold principle; the requirements necessary for a third State to acquire the character of indispensable party and the interpretation of treaties under the Vienna Convention on the Law of Treaties.

Judge Joan E. Donoghue,
President of the International Court of Justice[812]

The judgment, adopted by a majority of the judges, was accompanied by four separate statements and a so-called partly individual and partly dissenting opinion. The four separate statements are by Indian judge Dalveer Bhandari, Jamaican judge Patrick Robinson, Japanese judge Yuji Iwasawa and German ad hoc judge, appointed by Guyana, Rüdiger Wolfrum. The so-called partially individual and partially dissenting opinion was delivered by the Belgian ad hoc judge, appointed by Venezuela, Philippe Couvreur.

First, the ICJ unanimously declared the preliminary objection presented by Venezuela admissible. Then, with fourteen votes in favour

[812] Image extracted from the multimedia gallery of the International Court of Justice.. Available at: https://www.icj-cij.org/sites/default/files/multimedia_galleries/2_1.jpg.

and Judge ad hoc Philippe Couvreur voting against, the ICJ declared the preliminary objection inadmissible.

Finally, with fourteen votes in favour and Judge ad hoc Couvreur voting against, the ICJ confirmed that it has jurisdiction to decide on the merits of the claims of Guyana, insofar as they fall within the scope of paragraph 138, sub-paragraph 1, of the judgment of 18 December 2020.

The ICJ, after ruling on the preliminary objection's procedure, issued an order establishing 8 April 2024 as the deadline by which Venezuela must submit its Counter-Memorial on the merits of the dispute with Guyana concerning the nullity or validity of the Paris Arbitral Award of 3 October 1899.

a. Admissibility of the Preliminary Objections submitted by Venezuela

The ICJ first examined the admissibility of the Preliminary Objections submitted by Venezuela before proceeding to consider their content. The ICJ reviewed the arguments presented by both parties -Venezuela and Guyana- and ruled on the legal-procedural nature of the preliminary objection presented by Venezuela.

The preliminary objection questioned the admissibility of the claim submitted by Guyana and was based on ICJ jurisprudence, in particular the precedent of the Monetary Gold case *("Monetary Gold"*), according to which the ICJ cannot exercise its jurisdiction when it is called upon to rule on the interests of a third State which is not a party to the proceedings and must be regarded as an indispensable party.

Furthermore, the ICJ took into consideration Venezuela's argument that the preliminary objection was admissible because it related to the admissibility of the claim and not to the ICJ's jurisdiction. The ICJ also held that its December 2020 decision only concerned jurisdiction and not admissibility. The ICJ considered that Venezuela argued that its objection was not limited by the time limit set by the ICJ in its order of 19 June 2018.

It is important to note that the preliminary objections submitted by Venezuela attacked the admissibility of Guyana's claim and challenged the exercise of the ICJ's jurisdiction and not the existence of jurisdiction *per se*.

This distinction was admitted by the ICJ. If the preliminary objections had been related to the existence of jurisdiction, they would have been inadmissible for the ICJ, because the issues related to the existence of jurisdiction were already decided by the ICJ in the judgment of 18 December 2020 and enjoy the protection of *res iudicata*.

The ICJ examined Guyana's argument that the preliminary objection raised by Venezuela concerned the exercise of ICJ jurisdiction and should therefore be rejected as inadmissible. It also considered Guyana's argument that Venezuela was no longer entitled to raise a preliminary objection challenging the ICJ's jurisdiction after the judgment of 18 December 2020, in which the ICJ found that it had jurisdiction over part of Guyana's claims.

The ICJ concluded that the preliminary objection raised by Venezuela is admissible and that it was not limited by the time limit set out in the order issued by the ICJ on 19 June 2018.

The ICJ recalled that in the past it had decided that when a preliminary objection relating to the indispensability of a third State is rejected, the objection is deemed to relate to the exercise of jurisdiction rather than to the existence of jurisdiction.

b. Substantive Examination of the Preliminary Objection

Having established its admissibility, the ICJ proceeded to examine the merits of the preliminary objection raised by Venezuela. The preliminary objection was based on the consideration that the United Kingdom and Northern Ireland was an indispensable third party in the case and that the ICJ could not decide the question of the validity of the Award of 3 October 1899 without its participation.

Venezuela submitted that a decision on the merits of the case would necessarily involve an assessment of the fraudulent conduct allegedly attributable to the United Kingdom and Northern Ireland in relation to the Award of 3 October 1899. It alleged that it had been coerced and deceived by the United Kingdom into entering into the 1897 Treaty of Washington. It further argued that during the arbitral proceedings there were certain improper communications between the United Kingdom lawyers and the arbitrators it had appointed. In addition, Venezuela argued that the United Kingdom submitted forged maps to the arbitral tribunal, which invalidated the Paris Arbitral Award.

Guyana argued that the United Kingdom and Northern Ireland was not an indispensable third party in the case and that it had no legal interest that could be affected by the ICJ's decision on the validity of the Paris Arbitral Award.

The ICJ rejected the preliminary objection raised by Venezuela and decided that the United Kingdom and Northern Ireland is not an indispensable party to the case and that it could decide the question of the validity of the 1899 Award without its participation. The ICJ concluded that the case concerned a dispute between Guyana and Venezuela. Furthermore, the ICJ clarified that the United Kingdom and Northern Ireland had no legal interests that could be affected by the ICJ's decision on the validity of the Paris Arbitral Award.

b.1. The ICJ's particular Analysis of the Geneva Agreement of 17 February 1966

The judgment concerns the interpretation of the 1966 Geneva Agreement signed between Guyana and Venezuela. Venezuela argued that the legal interests of the United Kingdom and Northern Ireland would be the main subject of the ICJ's decision, based on the principle of monetary gold.

However, the ICJ noted that the two countries currently involved in the case, as well as the United Kingdom and Northern Ireland, are parties to the Geneva Agreement, the instrument on which the ICJ's jurisdiction is based. Therefore, the ICJ considered it appropriate to analyse the legal implications of the United Kingdom and Northern Ireland being party to the Geneva Agreement, which in turn requires an interpretation of the relevant provisions of the Geneva Agreement.

The ICJ noted that in interpreting the Geneva Agreement it applied the rules of treaty interpretation found in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties, which reflect the rules of customary international law. These provisions set out rules on the correct interpretation of international treaties.

Article 31 of the Vienna Convention on the Law of Treaties enshrines the general rule governing the interpretation of international treaties. Indeed, the aforementioned article provides:

> *"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
> *2. For the purpose of the interpretation of a treaty, the context shall comprise, in addition to the text, including its preamble and annexes:*
> *a) any agreement which relates to the treaty and was agreed between all the parties in connection with the conclusion of the treaty;*
> *b) any instrument formulated by one or more parties in connection with entering into the treaty and accepted by the other parties as an instrument relating to the treaty.*
> *3. Together with the context, account shall be taken of:*
> *a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; and*
> *b) any subsequent practice in the application of the treaty embodying the agreement of the parties regarding the interpretation of the treaty.*
> *c) any relevant rules of international law applicable in the relations between the parties.*
> *4. A term shall be given a special meaning if it is established that such was the intention of the parties"*[813].

Article 32 of the Vienna Convention on the Law of Treaties provides for supplementary means of interpretation, the function of which is to verify the interpretation resulting from the application of the general rule of Article 31 or to determine its meaning in specific cases. In fact, the above-mentioned provision states that:

> *"Recourse may be had to supplementary means of interpretation, in particular to the preparatory work of the treaty and to the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation given in accordance with article 31:*

[813] United Nations, Vienna Convention on the Law of Treaties, in force since 27 January 1980. Available at: https://www.oas.org/36ag/espanol/doc_referencia/convencion_viena.pdf.

(a) leaves the meaning ambiguous or obscure; or
(b) would lead to a result which would be manifestly absurd or unreasonable"[814].

Article 33 of the Vienna Convention on the Law of Treaties refers to the rules of interpretation of treaties that have been translated into several languages. Indeed, the aforementioned article provides:

"1. Where a treaty has been authenticated in two or more languages, the text shall be equally authoritative in each language, unless the treaty provides or the parties agree that if there is a discrepancy one of the texts shall prevail.
2. A version of the treaty in a language other than that in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty shall be presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails as provided in paragraph 1, when a comparison of the authentic texts reveals a difference of meaning which cannot be resolved by the application of Articles 31 and 39, the meaning which best reconciles those texts, having regard to the object and purpose of the treaty, shall be adopted"[815].

The ICJ stressed that it interpreted the Geneva Agreement in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

The ICJ considered that the context of the Geneva Agreement included the independence of British Guiana, which was achieved three months after the signing of the Geneva Agreement.

Articles I and II of the Geneva Agreement regulate the initial stage of the process for the settlement of the dispute between the parties and indicate the role of Venezuela and British Guiana in that process.

Article I of the Geneva Agreement provides for the creation of a Mixed Commission to seek satisfactory solutions for the practical

814 *Ídem*.
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settlement of the dispute between Venezuela and the United Kingdom and s. The first paragraph of Article II provides that, within two months of the Agreement entering into force, two representatives of the Mixed Commission shall be appointed by the Government of British Guiana and two by the Government of Venezuela.

The ICJ concluded that, while Article I of the Geneva Agreement describes the dispute as existing between the United Kingdom and Ireland and Venezuela, Article II gives no role to the United Kingdom and Northern Ireland in the initial stage of the dispute settlement process. Instead, it assigns responsibility for the appointment of representatives to the Mixed Commission to British Guiana and Venezuela.

Article IV of the Geneva Agreement, which establishes the mechanism for the final settlement of the dispute, contains no reference to the United Kingdom and Northern Ireland in paragraphs 1 and 2. These paragraphs state that if the Mixed Commission does not reach a comprehensive agreement for the settlement of the dispute within four years from the date of the Agreement, it shall refer any outstanding questions to the Governments of Guyana and Venezuela, who shall choose one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations.

The ICJ stated that the Geneva Agreement assigns specific roles to Guyana and Venezuela. It further noted that the provisions of the Geneva Agreement do not give the United Kingdom and Northern Ireland any role in the choice or participation in the means of settlement of the dispute.

Therefore, the ICJ considered that the scheme established by Articles II and IV of the Geneva Agreement reflects a common understanding of all parties that the dispute was to be settled by Guyana and Venezuela.

The ICJ also indicated that when the United Kingdom and Northern Ireland accepted the Geneva Agreement, it was aware that settlement of the dispute between Guyana and Venezuela without its participation might involve consideration of certain allegations by Venezuela of wrongdoing by the United Kingdom's authorities during the Paris arbitration.

This is because, in February 1962, Venezuela informed the Secretary-General of the United Nations of the existence of a dispute

between the United Kingdom and Northern Ireland and Venezuela over the delimitation of the border between Venezuela and British Guiana. In its letter, Venezuela stated that the award was the result of a political transaction made behind the country's back and that it does not recognise an award made in such circumstances.

Therefore, the ICJ concluded that the United Kingdom and Northern Ireland has no role in the settlement of the territorial dispute between Guyana and Venezuela and that the settlement process established in the Geneva Agreement should go ahead without its participation.

c. The International Court of Justice Confirmed its Jurisdiction

In the last operative paragraph of the Judgment of 6 April 2023, the ICJ ratified its jurisdiction to decide on the merits of the claims of Guyana, insofar as they fall within the scope of paragraph 138, sub-paragraph 1, of the Judgment of 18 December 2020, which stated that the ICJ:

> *"1. Declares itself competent to hear the Application filed by Guyana on 29 March 2018, insofar as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the final settlement of the land boundary dispute between Guyana and Venezuela".*

Thus, the ICJ has jurisdiction to rule on the validity or nullity of the Paris Arbitral Award of 3 October 1899 and on the related question of the settlement of the land boundary dispute between the two countries. Furthermore, the ICJ, in its judgment of 6 April 2023, clarified the scope of jurisdiction by admitting that it is possible to rule on the fraud committed by the United Kingdom in the course of the Paris arbitration proceedings in 1899.

The fact that the ICJ is ruling on the fraudulent actions of the United Kingdom during the Paris arbitration does not mean that the participation of that State is necessary for the proceedings to continue. On the contrary, as can be seen from the ruling of 6 April 2023, the ICJ found that the United Kingdom and Northern Ireland knew very well that this could happen and accepted it definitively through the Geneva

Agreement of 17 February 1966. Therefore, the ICJ will be able to rule on the arguments of Venezuela related to the conduct of the United Kingdom by the time the Washington Arbitration Treaty was signed, during the arbitration and once the Paris Arbitral Award of 3 October 1899 was rendered. These include the following:

1. It was the United Kingdom that resorted to the falsification of maps and documents in order to dispossess Venezuelans of part of their territory with a view to the appropriation of their natural resources and to normalise a completely unacceptable situation.
2. It was the United Kingdom that relied on the system of law existing at the time, which did not consider the principles of sovereign equality and mutual respect between States.
3. It was the United Kingdom that signed the Treaty of Washington of 17 February 1897.
4. It was the United Kingdom that ensured that the tribunal had no Venezuelan arbitrator, even in the event of the death or incapacity of one of the previously appointed arbitrators.
5. It was the United Kingdom that participated in the arbitration that resulted in the Paris Arbitral Award of 3 October 1899.
6. It was the United Kingdom that fostered improper contacts with its national arbitrators during the Paris arbitration proceedings in 1899, resulting in an inappropriate relationship between arbitrators and party lawyers. This invalidates any arbitral proceedings.

d. Separate Statements

d.1. Statement of Judge Dalveer Bhandari[816]

Judge Bhandari explained in his statement that he agrees with the ICJ's award, but expressed his wish to add further conceptual clarifications. He began his statement by recalling that the rejection of the preliminary objection of Venezuela was based on the fact that the United Kingdom and Northern Ireland has no role in the resolution of the dispute and that the principle of monetary gold does not come into

[816] International Court of Justice, "Declaration of Judge Bhandari". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-01-EN.pdf.

play. The ICJ reached these conclusions based on its interpretation of the 1966 Geneva Agreement and the subsequent practice of the parties to that agreement.

According to the ICJ's interpretation, the Geneva Agreement reflects a common understanding by all parties to that instrument that the dispute existing between the United Kingdom and Northern Ireland and Venezuela on 17 February 1966 would be resolved by Guyana and Venezuela through one of the procedures referenced in the Geneva Agreement. Therefore, as a party to that instrument, the United Kingdom and Northern Ireland accepted that it would have no role in those procedures.

The judge shares the view that the United Kingdom and Northern Ireland was aware of the scope of the dispute regarding the validity of the 1899 Award and that it accepted the Article IV agreement allowing Guyana and Venezuela to submit the dispute to judicial settlement without the participation of the United Kingdom and Northern Ireland. Furthermore, he shares the ICJ's conclusion that subsequent practice confirms this understanding.

The judge also highlights that Venezuela accepted this circumstance by becoming a party to the Geneva Agreement, which means that it waived any right it might have to object to this dispute being resolved by a procedure that does not involve the United Kingdom and Northern Ireland.

Judge Bhandari's statement endorses the ICJ's ruling on the interpretation of the Geneva Agreement and the subsequent practice of the parties to that agreement. He also emphasises that it is the acceptance of these circumstances by all parties involved in the Geneva Agreement that makes this situation unique.

d.2. Separate Opinion of Judge Patrick Robinson[817]

Judge Patrick Robinson delivered a separate opinion in relation to the acquisition of independence of Guyana by the United Kingdom and Northern Ireland. Judge Robinson concurs with the ICJ's findings

[817] International Court of Justice, "Separate opinion of Judge Robinson". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-02-EN.pdf.

expressed in paragraph 108 of the judgment, but made a number of additional comments.

At the trial, Guyana argued that the United Kingdom and Northern Ireland has no present legal interest or claim to the disputed territory, as it relinquished all territorial claims in relation to this dispute when it granted independence to Guyana in 1966. However, Justice Patrick Robinson states that the United Kingdom and Northern Ireland did not in fact grant independence to Guyana.

At the time of the independence of Guyana in 1966, the right to self-determination had already become a rule of customary international law, by virtue of the adoption of United Nations General Assembly resolution 1514 (XV) on 14 December 1960. Thus, the acquisition of independence by the former colonies was not a gift, a concession or a donation by the colonial powers.

Rather, independence resulted from the fulfilment by the colonial powers of the obligation imposed by paragraph 5 of resolution 1514 to transfer all powers to the peoples of the colonised countries in accordance with their freely expressed will. In other words, independence became an inherent human right of the people and the colonial powers simply fulfilled their duty to transfer powers to the peoples of the colonised countries.

This transformation of the right to self-determination as a customary rule of international law was confirmed by the ICJ in its 2019 advisory opinion on the legal consequences of the separation of the Chagos archipelago from Mauritius in 1965.

Judge Robinson also referred to the title of resolution 1514, *"Declaration on the Granting of Independence to Colonial Countries and Peoples"*, and noted that, while the title may be relevant to interpreting the resolution, the term *"granting of independence"* is not used in the text of resolution 1514. Instead, the resolution states that the right to self-determination is a human right that resides in the people and all that is required for its enjoyment is that it reflects the freely expressed will of the people. In conclusion, Judge Robinson's statement emphasised that the acquisition of independence by the former colonies was not a gift or a concession of colonial power, but an inherent human right of the people to be exercised through their freely expressed will.

d.3. Judge Iwasawa Yuji's statement[818]

Judge Iwasawa Yuji's statement begins by recalling that the preliminary objection of Venezuela was based on the assertion that the United Kingdom and Northern Ireland is an indispensable third party in the case and, therefore, the claim of Guyana should not be admitted by the ICJ.

Judge Iwasawa explained that the preliminary objection of Venezuela is not an objection to the ICJ's jurisdiction, but to the admissibility of Guyana's claim. This distinction is important because ICJ jurisprudence establishes that arguments based on the Monetary Gold principle concern the admissibility of the claim, not the ICJ's jurisdiction.

In conclusion, Judge Iwasawa's statement is important because it clarifies the legal-procedural nature of the preliminary objection raised by Venezuela and its relationship with the ICJ's jurisprudence on the principle of Monetary Gold.

d.4. Statement of the ad hoc judge appointed by Guyana, Rüdiger Wolfrum[819]

Judge ad hoc Rüdiger Wolfrum, having voted in favour of the operative part of the judgment, considered it appropriate to present some considerations on the ICJ's reasoning. He discussed three aspects: the relationship between the Monetary Gold Principle and the Geneva Agreement; the subsequent practice of the parties to the Geneva Agreement; and the subject matter of the dispute before the ICJ.

Judge ad hoc Wolfrum noted that the present case was indeed similar to the Monetary Gold case and the East Timor case relied upon by Venezuela. However, the difference lay in the existence of the Geneva Agreement. In his view, the United Kingdom and Northern Ireland, by signing the Geneva Agreement, accepted that the resolution of the

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818 International Court of Justice, "Declaration of Judge Iwasawa". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-03-EN.pdf.

819 International Court of Justice, "Declaration of Judge ad hoc Wolfrum". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-04-EN.pdf.

dispute by Guyana and Venezuela without their participation could involve the discussion of past acts or omissions of the United Kingdom.

Judge ad hoc Wolfrum considered that, properly interpreted, the Geneva Agreement constituted a *lex specialis* for the protection of the interests of the United Kingdom and Northern Ireland, which were protected in parallel by the principle of Monetary Gold operating in the abstract. Judge ad hoc Wolfrum therefore agreed with the judgment that it was necessary first to interpret the Geneva Agreement to determine whether the United Kingdom and Northern Ireland had stated with sufficient clarity that it left the resolution of the dispute between Guyana and Venezuela to the two parties, with full knowledge of the implications this might have for the United Kingdom and Northern Ireland and whether there was a corresponding agreement of Guyana and Venezuela. Judge ad hoc Wolfrum endorsed the ICJ's interpretation of the Geneva Agreement.

Accordingly, Judge ad hoc Wolfrum concluded that it was not necessary to consider further the applicability of the Monetary Gold Principle. However, in his view, this did not mean that the ICJ could not consider all the information provided by the parties in relation to the alleged fraudulent behaviour of the arbitrators in 1899.

Judge ad hoc Wolfrum further added some clarification on the subject matter of the dispute, because he noted that Venezuela had stated in a variety of contexts that the interests of the United Kingdom and Northern Ireland also formed the very subject matter of any decision that the Court would have to render on the merits.

After recalling the Court's jurisprudence, reiterated by the arbitral tribunal in the South China Sea, Judge ad hoc Wolfrum held that the ICJ, when deciding on the subject matter of a dispute, had always emphasised that special attention should be paid to the formulation of the applicant. He noted that the 2020 judgment established that the subject matter of the dispute was the validity of the 1899 Award on the boundary between British Guiana and Venezuela and the related question of the final settlement of the land boundary between Guyana and Venezuela. According to Judge ad hoc Wolfrum, this object was to be distinguished from the arguments used by the parties to support their respective positions on the dispute.

d.5. Partially Individual and Partially Dissenting Opinion of the ad hoc Judge appointed by Venezuela Philippe Couvreur[820]

Judge ad hoc Philippe Couvreur, in a separate opinion, referred firstly to the admissibility of the preliminary objection presented by Venezuela in the case of the dispute it has with Guyana before the ICJ. He further held that there is a difference between the existence of ICJ jurisdiction between the parties and the exercise of such jurisdiction, in particular with respect to a third party.

Judge Couvreur explained that, in a meeting with the Agents of the parties, the Vice-President of Venezuela, Delcy Rodriguez, stated that her Government considered that the ICJ clearly lacked jurisdiction and that it had decided not to participate in the proceedings. She also handed the President of the ICJ a letter from the Head of State of Venezuela stating that there was insufficient basis for the assertion of the ICJ's jurisdiction.

Judge Couvreur recalled that, in response to this denial of jurisdiction, the ICJ decided in its Order of 19 June 2018 that it was necessary to resolve the question of its jurisdiction at first instance, prior to any proceedings on the merits. The deadlines set in the ICJ's order related exclusively to the submission of documents relating to the ICJ's jurisdiction.

Judge Couvreur further referred to the importance of understanding the meaning of the word *jurisdiction* in the specific context of a court and its practice. He explained that, in general, when a court uses the word *jurisdiction*, it is presumed that it is referring to its usual meaning in the legal instruments governing its activity and in its own practice. He also held that, in this specific case, the President of Venezuela raised from the outset the issue justifying the country's decision not to take part in the proceedings and that both the memorial of Guyana and the memorandum of Venezuela focused exclusively on the issue of jurisdiction.

Judge Couvreur stressed that the ICJ had at no point addressed the question of the exercise of jurisdiction, the very existence of which

820 International Court of Justice, "Partly separate and partly dissenting opinion of Judge ad hoc Couvreur". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-05-FR.pdf.

had to be discussed and established in the first place. He explained that ICJ jurisprudence makes a clear distinction between the existence of jurisdiction and the exercise of that jurisdiction. He further recalled that the ICJ has considered the rights of absent third parties to be an obstacle to the exercise of jurisdiction previously established between the parties. He pointed out that questions of admissibility may be of a formal or substantive nature and that, unlike questions of jurisdiction, they are not related to the proper exercise of the jurisdictional function in a particular case. In this context, Judge Couvreur explained why the ICJ has refrained from qualifying objections by absent third parties as objections to admissibility.

Judge Couvreur stated that, according to the Rules, the ICJ has the power to examine issues that are not strictly issues of jurisdiction or admissibility of the claim, but which require preliminary examination due to their nature. In this case, although the parties are the same and the *petitum* is the same, the *causa petendi* is not identical in the two phases of the case, so that the preliminary objection of Venezuela of 7 June 2022 is not *res judicata* and is perfectly admissible.

Judge Couvreur addressed the question of the legitimacy of Guyana as a party to the ICJ proceedings, arguing that the nation has a legitimate interest in defending the integrity of what it considers its territory, even if the title underpinning its territorial basis is disputed. In addition, the judge focused on the question of whether the United Kingdom and Northern Ireland is an indispensable third party in the case and to this end recalled that ICJ jurisprudence developed in previous cases cannot automatically apply to this case. For the precedent of the Monetary Gold case to be applicable, it was necessary to consider whether the legal interests of the United Kingdom and Northern Ireland are affected by any ICJ decision on the merits of the dispute.

Judge Couvreur considered whether the United Kingdom and Northern Ireland has sufficient legal interest in the case to oppose the resolution of the question of the validity of Guyana's title to the disputed territory. In this regard, Judge Couvreur argued that the legal interest of the United Kingdom and Northern Ireland is so tenuous that the ICJ should be able to resolve the question of the validity of the award in its absence without undermining the principle of monetary gold.

However, if the grounds for annulment of the award relate directly to the conduct of the United Kingdom and Northern Ireland, the situation would be different. In that case, the judge considered that the United Kingdom and Northern Ireland would have a sufficient legal interest in the case to oppose the resolution of the question of the award's validity. In support of his position, Judge Couvreur mentioned some arguments presented by Venezuela that criticise the validity of the award and that refer directly to the behaviour of the United Kingdom and Northern Ireland and the validity of the Washington Treaty.

Judge Couvreur referred to the Commission's draft Direction 9 on the question of *State succession in matters of State responsibility*, recalling that this instrument provides that an injured State may, in certain circumstances, even after the date of succession, invoke the responsibility of the predecessor State, such as in the case of a newly independent State whose territory was dependent on the international relations of the predecessor State immediately prior to succession.

Judge Couvreur explained that the acts of which the United Kingdom and Northern Ireland are accused during the negotiation of the 1897 Treaty and the preparation of the 1899 Paris Arbitral Award cannot be imputed to Guyana simply because it succeeded the United Kingdom and Northern Ireland in the disputed territory. The proper legal interests of the United Kingdom and Northern Ireland are distinct from those of Guyana at the heart of the dispute to be resolved by the ICJ.

Judge Couvreur insisted that the ICJ cannot rule on the subject matter of the claim without first having to rule on certain aspects of the behaviour of the United Kingdom and Northern Ireland. In his view, the argument of Guyana that the United Kingdom and Northern Ireland would have accepted the ICJ's jurisdiction to settle the dispute is problematic.

For Judge Couvreur, the consent of states to the jurisdiction of the Court depends on very high standards, the satisfaction of which is difficult to prove in the present case. He also pointed out that the ICJ cannot exercise its jurisdiction over a State if that State is not a party to the proceedings in question, as to do so would violate the principles of reciprocity and equality between States and the adversarial principle. The position taken by Guyana could undermine legal certainty and

complicate the procedure, which in turn would hinder the final settlement of the dispute.

As it appears from the separate opinion under consideration, establishing the unequivocal and unconditional consent of the United Kingdom and Northern Ireland to the ICJ ruling in its absence -and without any further agreement- on the commission of wrongdoing alleged against it in this case is too important to resort to mere assumptions or speculation. Furthermore, Judge Couvreur indicated that the sole purpose of the United Kingdom and Northern Ireland in becoming a party to the Geneva Agreement was to facilitate the settlement of the territorial dispute it had bequeathed to the newly independent Co-operative Republic of Guyana. Therefore, the consent of the United Kingdom and Northern Ireland cannot be inferred from assumptions or speculation and that any interpretation of the Geneva Agreement must be consistent with the principles enshrined in the ICJ Statute, which is an integral part of the UN Charter.

Judge Couvreur recalled that the ICJ has in the past been very demanding on the requirement of a state's express consent before pronouncing on its conduct. Therefore, the judge emphasised that the ICJ should have required the express and clear consent of the United Kingdom and Northern Ireland to submit to its jurisdiction.

In addition to the above, Judge Couvreur stated that, regardless of how the argument based on an alleged consent of the United Kingdom and Northern Ireland has been dealt with, the rejection of the preliminary objection submitted by Venezuela is in no way justified. To this effect, it recalled that the letter of the Secretary-General of the United Nations, dated 30 January 2018, by which he notified his decision to choose the ICJ as the means of dispute settlement under Article IV, paragraph 2, of the Geneva Agreement, was not addressed to the United Kingdom and Northern Ireland. However, the judgment of 18 December 2020 confirmed that this decision was the basis for the ICJ's jurisdiction in the case. This, in Judge Couvreur's view, means that jurisdiction does not extend to the United Kingdom and Northern Ireland and its own acts. This would confirm that the choice of the United Kingdom and Northern Ireland to remain a third party to the proceedings was duly considered when the ICJ established its jurisdiction to hear the case.

Judge Couvreur insisted on the importance of establishing a State's consent to the jurisdiction of the Court in order to strengthen legal certainty and the confidence of States. He also pointed out the potential procedural difficulties that could arise in a new instance involving the third State -in this case the United Kingdom and Northern Ireland- by virtue of a jurisdictional link allegedly created through an agreement.

In the last part of his opinion, Judge Couvreur expressed his concern about the way in which the ICJ has analysed the case, avoiding examining certain arguments put forward by the parties. In his view, the approach adopted by the ICJ does not avoid the difficulties raised by the theory on which the consent of the United Kingdom and Northern Ireland was based and poses problems for the proper administration of justice.

Finally, Judge Couvreur expressed his disagreement with the majority of the ICJ judges as to the application of the Monetary Gold principle in this case, and pointed out that, unlike previous cases in which this jurisprudence was applied, the facts of this case are not well established at this stage. He also indicated that to accept Venezuela's plea, based on the absence of the United Kingdom and Northern Ireland from the proceedings, would be to prejudge the merits of the case. As Judge Couvreur rightly pointed out, the preliminary objection raised by Venezuela is intrinsically linked to the merits of the case.

For the reasons referred to above, Judge Couvreur concluded that the objection raised by Venezuela was not exclusively preliminary and, consequently, should be examined on the merits of the case.

The ICJ, after ruling on the incidental preliminary objections procedure, issued an order by which it established 8 April 2024 as the time limit within which Venezuela must submit its counter-memorial on the merits of the dispute it has with Guyana concerning the nullity or validity of the Paris Arbitral Award of 3 October 1899.

2.2.2.3. Counterclaim (Article 80 of the Rules of Court)

The counterclaim or mutual petition is the defendant's right to bring claims against the plaintiff in the proceeding, on which the jurisdictional authority must rule in the final judgment. From the tactical standpoint

of litigation, the counterclaim is a means of attack available to the defendant against the plaintiff.

Counterclaims in ICJ proceedings are not regulated in the Statute, but the Rules. Instead, Section D, subsection 3 of the Regulation is implemented by a single provision, Article 80[821], which was amended on 1 February 2001.

Article 80 of the Rules provides that the ICJ can only consider the counterclaim if it is within its jurisdiction and directly related to the subject matter of the opposing party's claim. Furthermore, Article 80 of the Rules of Court provides that the counterclaim is submitted in the Counter-Memorial and is considered an integral part thereof. The other party has the right to submit its views in writing on the counterclaim made by the defendant, in an additional written statement, independently of any decision of the ICJ.

Such additional written pleading shall be submitted in accordance with the second paragraph of Article 45 of the Rules of Court which indicates that if the parties agree or if the Court considers it necessary, on its own initiative or at the request of one of the parties, a reply by the applicant and a rejoinder by the defendant may be submitted. The ICJ may authorise or direct the submission of these additional pleadings if it considers it necessary.

2.2.2.4. Intervention of Third Parties (Article 62 of the Statute; Articles 81 to 86 of the Rules of Court)

It is possible that third States with an interest in the dispute may participate in the proceedings before the ICJ, in addition of the party States. As established in Article 62 of the Statute, a State may request to intervene in a case if it believes that its legal interest may be affected by the ICJ's final decision.

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821 The wording of Article 80 imitated the regulation given to counterclaims in Article 63 of the Rules of the former Permanent Court of International Justice, which provided as follows: *"Where the proceedings have been instituted through a claim, a counterclaim may be submitted in the statement of defence, provided that the counterclaim is directly related to the subject-matter of the claim and falls within the jurisdiction of the Court. Any claim which is not directly related to the subject matter of the original claim shall be made in the form of a separate claim and may remain the subject of a separate proceeding or be joined by the Court to the original proceeding."*

It is worth noting that the Statute and the Rules of Court only allow for the participation of sovereign states in ICJ proceedings. Indeed, only States can be considered as parties to ICJ proceedings[822] and therefore, only States are able to intervene as third parties in those cases in which the final judgment may affect their legal interests. Therefore, individuals, interest groups, public or private institutions, as well as trade unions of any country participating in proceedings before the ICJ are not allowed to intervene as third parties. Likewise, no subject of national or international law other than states may intervene in ICJ proceedings. It is the ICJ's responsibility to decide whether to accept the request for intervention of these third states.

The Statute also provides that when the dispute concerns the interpretation of a convention to which States other than the disputing States are parties, the Registrar of the ICJ must immediately notify all the States concerned, which would be mainly those which have also signed the convention (Article 63, first paragraph of the Statute).

The notification in the first paragraph of Article 63 of the Statute gives rise to the right to intervene in the proceedings of all States that receive it. However, the last part of the second paragraph of article 63 *eiusdem* provides that the State exercising such a right shall be bound by the binding effect of the judgment of interpretation. It follows from the foregoing that the State concerned and notified who does not intervene in the proceedings will not be bound to adopt the interpretation of the convention contained in the ICJ's final judgment.

The Rules of Court regulate the incidental procedure for the intervention of third States in Section D, subsection 4, specifically from Article 81 to Article 86. In this way, the Rules of Court develop in greater detail Articles 62 and 63 of the Statute, establishing clearly

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822 With regard to the contentious function of the ICJ, according to information published on the official website of the United Nations and as can be deduced from the instruments governing the functioning of the ICJ: *"Recourse to the Court is open to all States party to its Statute, which includes all Members of the United Nations. Only States may be parties to cases before the Court.* ***Natural and legal persons and international organisations may not bring cases before the Court****"*. (Highlighting Added) See: United Nations, "Statute of the International Court of Justice", Available at: https://www.un.org/es/documents/icjstatute/#:~:text=Pueden%20recurrir%20a%20la%20Corte,pueden%20recurrir%20a%20la%20Corte.

what the procedure is for the intervention of third States in proceedings before the ICJ.

Article 81 of the Rules provides that if a state considers that it has a legal interest that may be affected by the decision in a case, it may submit an application to intervene. This application must be submitted as soon as possible and no later than the closure of the written procedure. The application must include the name of an agent, specify the case to which it relates, the precise object of the intervention and any basis of jurisdiction claimed between the State applying to intervene and the parties to the case. The application must also include a list of documents on which it relies.

Article 82 of the Rules of Court sets out the procedures for a state to make a declaration of intervention in a case before the ICJ. The state concerned must deposit a signed statement before the date of the opening of the oral proceedings, but in exceptional circumstances, the ICJ may admit a statement submitted later. The declaration must contain information on the case and the convention to which it relates, as well as particulars supporting the State's status as a party to the convention in question. It should also indicate the provisions of the convention that are at issue and provide a statement of the State's interpretation of those provisions. The declaration must also include a list of supporting documents and may be submitted by a State even if it has not received the notification provided for in Article 63 of the Statute.

Article 83 of the Rules provides that certified copies of the application to intervene or of the statement of intervention must be communicated immediately to the parties to the case, who must submit their written observations within the time limit fixed by the ICJ. The ICJ Registrar must also transmit copies to the Secretary-General of the United Nations, UN Member States and other States entitled to appear before the ICJ, including any other State which has been notified under Article 63 of the Statute.

Article 84 of the Rules of Court provides that the ICJ shall decide whether an application to intervene shall be granted and whether an intervention is admissible and this decision shall have priority, unless the ICJ otherwise decides. Furthermore, Article 84 of the Rules of Court provides that if an objection to the application for intervention or to the admissibility of a declaration of intervention is lodged within the time

limit laid down in Article 83, the ICJ shall hear the State applying to intervene and the parties before deciding.

Article 85 of the Rules of Court provides that if an application for intervention under Article 62 of the Statute is granted, the intervening State shall receive copies of the written statements and documents submitted in the case. In addition, the intervening State shall have the right to submit a written statement within the time limit fixed by the ICJ. In addition, a further time limit shall be fixed within which the parties may submit their written observations on that statement before the commencement of the oral hearings. If the ICJ is not in session, these time limits shall be fixed by the President of the ICJ.

Similarly, Article 86 of the Rules provides that if an intervention is admitted under Article 63 of the Statute, the intervening State shall receive copies of the written statements and documents submitted in the case and shall be entitled, within the time limit fixed by the ICJ or by its President if the ICJ is not in session, to submit its written observations on the subject matter of the intervention. These observations shall be communicated to the parties and to any other State admitted to intervene. In addition, the intervening State shall have the right to submit its observations about the intervention during the oral hearings.

2.2.3. Evidence (Articles 50, 51 and 52 of the Statute; Articles 57, 62, 63, 64, 66, 71, 72, 79, 79bis, 79ter, of the Rules of Court)

2.2.3.1. General Considerations

In the proceedings being conducted at the ICJ regarding the claim brought by the Cooperative Republic of Guyana against Venezuela, it is now up to Venezuela to present its counter-memorial and its defences and evidence before 8 April 2024.

We have already said several times that the Paris Arbitral Award of 3 October 1899, which handed over to the United Kingdom the territories over which Venezuela had legitimate rights, was invalidated by multiple flaws that render it null and void. Specifically, the Paris Award is null and void for having violated due process; for arbitrators having exceeded their powers and having decided beyond what was required of the Arbitral Tribunal and, consequently, for having ruled

ultra petita, for lacking the required reasoning and for arbitrators having duty failed to comply with their duty impartiality[823].

Venezuela has solid evidence that demonstrates the serious flaws in the Paris Award and has historical and legal titles that support its rights over the disputed territory. The ICJ cannot ignore the serious violations of due process; the erroneous interpretations of the Washington Treaty leading to the arbitrators exceeding their powers; failing to properly justify or reason such an important decision, thus breaching the principles recognised by the international law in force at the time; a decision that went beyond the dispute delimited in the Washington Treaty and that affected the rights of Brazil, a non-signatory State to the compromise, the award thus having the flaw of *ultra petita*; and violating the duty of impartiality of the arbitrators, as stated in multiple declarations and documents related to the dispute.

The evidentiary activity before the ICJ is regulated by several rules of the Statute of the International Court of Justice (Statute) and its Rules of Court. Indeed, Articles 50, 51 and 52 of the Statute and 57, 62, 63, 64, 66, 71, 72, 79, 79bis, 79ter of the Rules of Court regulate the matter, on which we are going to formulate some considerations.

The first is the provision contained in Article 50, according to which the ICJ may *"commission any individual, entity, negotiation, commission or other body of its choice to carry out an investigation or issue an expert opinion"*.

When the evidence is received within the time limit to be fixed by the ICJ, the ICJ has the possibility to refuse to accept additional evidence that the parties may wish to submit. However, if both parties agree to the submission of additional evidence, the ICJ may not refuse to accept it.

Once the written phase of the ICJ proceedings is over, the *thema decidendum* is fixed and the parties will not be able to produce new documents, unless they are public and generally accessible. To this effect, see the provisions of Article 56 of the Rules of Court which establishes:

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823 Rafael BADELL MADRID, "La nulidad del Laudo de París del 3 de octubre de 1899" ("Nullity of the Paris Arbitral Award of 3 October 1899.") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September, 2021. Pages 279-322.

> *"After the close of the written proceedings, no new document may be produced to the Court by either party except with the assent of the other party or in accordance with paragraph 2 of this Article".*

Pursuant to Article 58 of the Rules of Court, it is at the discretion of the ICJ to decide whether pleadings shall be heard first or whether, on the contrary, evidence shall be presented first. The rule states:

> *"The Court shall determine whether the parties shall deliver their pleadings before or after the presentation of the evidence; it shall, however, always reserve the right of the parties to comment on the evidence presented"*[824].

The evidentiary aspects of a dispute before international courts have particularities, one of which is the burden of proof. Indeed, "*The concept of burden of proof must be approached from a different angle in international law, since before the International Court of Justice, for example, the subjects, plaintiff and defendant, are not always fully delineated, particularly when they have submitted to the jurisdiction of the Court by agreement between them"*[825].

Thus, evidentiary issues, such as the burden of proof, are sometimes not perfectly clear. The ICJ's practice has been to consider that the burden of proof is on both the claimant and the respondent state.

It should be borne in mind what happened in the case Denmark v. Norway concerning the Legal Status of East Greenland which was decided by a judgment of 5 September 1933 by the Permanent Court of International Justice (PCIJ). That judgment of the PCIJ is binding

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824 Rules of the International Court of Justice. Available at: https://www.icjcij. org/public/files/rules-of-court//rules-of-court-es.pdf.

825 Alirio ABREU BURELLI, *"La prueba en los procesos ante la Corte Interamericana de Derechos Humanos"* ("The Evidence in proceedings before the Inter-American Court of Human Rights") in Antônio Augusto CANÇADO TRINDADE (Coordinator), *"El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI"* The Inter-American System for the Protection of Human Rights at the Threshold of the XXI Century") Volume I, 2nd edición, Inter-American Court of Human Rights, San José, 2001. Available at: http://ru.juridicas.unam.mx/xmlui/bitstream/handle/123456789/28023/la-prueba-en-los-procesos-ante-la-corte-interamericana-de-derechos-humanos.pdf?sequence=2&isAllowed=y

jurisprudence for the ICJ because of the continuity that existed between the two international jurisdictional bodies. In that case Norway argued:

> *"...that in the legislative and administrative acts of the 13th Century on which Denmark relies as evidence for the exercise of its sovereignty, the word "Greenland" is not used in the geographical sense, but only means the colonies or the colonised area on the west coast"*[826].

A change in the meaning given to the term "Greenland" constitutes an argument where, because of its exceptionality, the burden of proof lies with the party alleging it:

> *"This is a point on which the burden of proof rests on Norway. The geographical meaning of the word "Greenland", i.e., the name commonly used on maps to denote the entire island, must be taken as the ordinary meaning of the word. If one of the parties argues that an unusual or exceptional meaning should be attributed to it, it is for that party to prove its argument"*[827].

In the specific case of the Co-operative Republic of Guyana v. Venezuela before the ICJ, the burden of proof is an issue that must be carefully analysed. Let us recall that Venezuela has historically maintained the nullity of the Paris Arbitral Award, and in the 20th century it undertook a series of diplomatic demarches that led to the signing of the Geneva Agreement of 17 February 1966. Article 1 of that agreement recognises the existence of a contention by Venezuela regarding the nullity of the arbitral decision. Indeed:

> *"A Mixed Commission is hereby established with the task of seeking satisfactory solutions for the practical settlement of the dispute between Venezuela and the United Kingdom* ***arising as a consequence of the Venezuelan contention that the Arbitral Award of 1899 on the boundary between Venezuela and British Guiana is null and void****"*. (Emphasis added).

826 Permanent International Cort of Justice, "Judgement on the Legal Status of Eastern Greenland Denmark v. Norway" dated 5 September 1933. Available at: http://www.worldcourts.com/pcij/eng/decisions/1933.04.05_greenland.htm

827 *Ídem.*

Recognition of a dispute in the Geneva Agreement contradicts the argument of the validity of the Paris Arbitral Award and implies that such an act has not been accepted by the parties as a final settlement of the dispute.

Consequently, if a party claims the validity of an award that has been repudiated not only by Venezuela, but also by the international press and by those who participated in the proceedings from one day after it was rendered, it must prove its validity.

Thus, as is customary in ICJ practice, the burden of proof is shared between the two parties, both of which can argue and prove their arguments, both those relating to the validity of the award (Cooperative Republic of Guyana) and those relating to the nullity of the award (Venezuela).

We must note that according to Article 35 of the Statute the ICJ has the duty to verify that Guyana's claim is duly substantiated in fact and in law. Thus, the ICJ will have the duty to analyse all available documents and the studies that have been carried out on the dispute before rendering a judgment. We will return to this duty of the ICJ in a later section.

2.2.3.2. Evidence of Violation of Due Process

The Paris Arbitral Award is null and void for multiple violations of the Treaty of Washington of 1897 and international law in force at the time. First, it is necessary to emphasize that according to the terms of the Treaty of Washington and especially Articles III and IV, this was clearly an arbitration at law and, as such, the arbitrators had to respect the letter and spirit of such treaty, while studying, investigating, and ascertaining the legal titles of each of the parties and supporting them with the international law of the moment.

Notwithstanding the foregoing, the Paris Arbitral Tribunal neither investigated nor ascertained the legitimacy or legality of the titles held by Venezuela; on the contrary, it dismissed them in violation of Article III of the Arbitration Treaty which established that:

> *"**The Tribunal shall investigate and ascertain** the extension of the respective territories, or the territories that could **legally***

> ***be claimed*** *by the parties at the time Great Britain acquired the Colony of British Guiana, and shall determine the dividing line between the United States of Venezuela and the British Guiana Colony"*[828]. (Highlighting Added)

The expression *legally claimed* implied that in resolving the dispute, the arbitrators were required to consider only those titles that the parties could prove in law and decide in accordance with the principles of international law in force at the time. The arbitrators had the obligation of analysing the titles of the parties and considering the law applicable at the time of the dispute, while bearing in mind that the scope of the dispute was limited to the territories *that could be legally claimed* by the parties.

On the other hand, the obligation to *investigate and ascertain* implied that the arbitrators had to take into account the legal titles of each of the parties and corroborate that they could indeed be considered as evidence of their claims. This obligation also follows from Article V of the Treaty, which requires the *arbitrators to impartially and carefully consider the issues submitted to them*. Indeed, Article V of the Treaty of Washington stated:

> *"The Arbitrators shall meet in Paris within sixty days after the delivery of the printed arguments mentioned in Article VIII, and shall* ***proceed to impartially and carefully consider the issues submitted to them*** *by the Governments of the United States of Venezuela and of Her Britannic Majesty"*[829]. (Highlighting Added).

Two obligations for the arbitrators can be inferred from the above-mentioned articles. Firstly, to examine the issues submitted to them and, secondly, to decide them impartially and carefully. However, this was not the case. The arbitrators decided solely at their own discretion and without taking into account any of Venezuela's valid titles. The proof of this, which Venezuela could allege before the ICJ, is found in many

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828 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

829 *Ibidem,* Page 338.

documentary sources which make it clear that the tribunal did not act according to law, but on the basis of political inclinations.

The tribunal violated its obligations when it failed to take into account Venezuela's most important evidence, including the letter dated 4 March 1842, sent by Henry Light, Governor of the British Guiana Colony, to Lord Stanley, Minister of Colonies. This was a fundamental element of proof in favour of Venezuela's pretensions, since the governor expressed that the United Kingdom had no claim whatsoever to the Amacuro River, west of the Barima River. With the letter it became clear that even Governor Henry Light had serious doubts about the legitimacy of the second Schomburgk line when he wrote: *"I believe that Mr. Schomburgk assumes that the Amacuro is the frontier, only for reasons of convenience"*[830].

This document showed not only the lack of interest of the British in occupying the territories covered by the second Schomburgk line, but also the unfeasibility of such occupations, which, according to the governor, *"could only be occupied at a cost of lives and money that would not make it convenient"*[831].

This document was not taken into account by the arbitral tribunal. Venezuela knew of the existence of this letter but was unaware of its contents. At the time, Venezuela's representatives asked the tribunal to require the British to disclose it; however, based on allegedly *high political considerations*, they refused to do so.

The letter only came to light after the British confidential files were opened. At that time the contents of this letter and other documents of great probative value were discovered, which the arbitrators failed to take into account despite their duty under Article V of the Treaty of Washington to *"examine and decide impartially and carefully the questions submitted or to be submitted to them"*.

In the ongoing proceedings before the ICJ, Venezuela will have the opportunity to bring to bear that important Letter from Governor Henry Light proving that the United Kingdom had no interest in the

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830 *Ídem.* Pages 166-167. Letter of 4 March 1842, by Henry LIGHT, Governor of the British Guiana Colony, to Lord STANLEY, English Colonial Secretary, Foreign Office, 80/108. Wording translated by the quoted author.

831 *Ídem.*

Essequibo territory. If this is done, we would be asserting the rights we have historically had over the disputed territory. We would be bringing before the main judicial body of the UN an important document that was not evaluated by the Paris Arbitral Tribunal in 1899.

Another serious violation of the obligations that the Treaty imposed on the arbitrators is related to the so-called first Schomburgk line of 1835, which was not taken into account by the judges. This first Schomburgk line *"only departs from said river about 45 miles from the* coast*, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo, and from that point, forms a sort of pocket, west of the Essequibo River, to the point on the* coast *where the Moroco River flows into it"*[832]. The arbitral tribunal, on the contrary, took into account the expanded line of the 1842 Hebert map, a line on which there are important indications of falsification and alteration, namely:

> *"Venezuela has evidence that the British Foreign Office was not aware of this line until June 1886. Already this is more than a serious indication that the corruption of the original map that lay in the Colonial Office since 1842 is recent"*[833].

On the other hand, Rule "c" of Article IV also provides for the application of international law:

> *"The Arbitrators may recognize and give effect to rights and claims which are supported on any other valid basis under international law and on any principles of international law which the Arbitrators deem applicable to the case..."*[834].

As set out in the foregoing articles, arbitration should be conducted following the law and, as such, the arbitrators must adhere to the letter of the 1897 Treaty of Washington, and study, investigate, and ascertain the legal titles of each of the parties, and apply international law as it stood at the time.

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832 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 122.

833 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 13.

834 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 338.

Contrary to all of the above, the arbitrators decided with absolute discretion and without taking into account any of Venezuela's valid titles, in open violation of due process and the law in force at the time.

The international law in force at the time the dispute was resolved was determined by three extremely important events that established the modality and procedural rules of international arbitration.

The first, which we have already mentioned when discussing the background of the ICJ, was the Treaty of Washington of 1871 concerning the well-known Alabama case, which established the rules for the settlement of claims arising from the damage caused by the privateer Alabama in the Civil War, and the infringement of the United Kingdom's duty of neutrality. This arbitration treaty was decisive for the transition from discretionary arbitration to arbitration at law.

The second event that served to shape the international law to be applied by arbitrators was the Draft Rules of International Arbitral Procedure prepared by the Institute of International Law in 1875. In this regard, it is important to recall the words of García-Velutini when he states that: "*Natural law has always played a very important role in arbitration and has been the source of existence for the elaboration of a body of rules, which determine its general lines"*[835].

This body of rules, which is nourished by natural law, has been brought together to a large extent *"in the Draft Rules of the Institute of International Law and also in the Hague Convention of 1875 and 1899 respectively"*[836].

This draft contained rules for the promotion of international arbitration that reflected the principles of arbitration at the time. Let us take into account, for example, Article 18 of the draft which stated:

> *"The arbitral tribunal shall adjudicate according to the principles of international law, unless the agreement imposes different rules on it or leaves the decision to the discretion of the arbitrators"*[837].

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835 Oscar García-Velutini, Quoted Above, Pages 15-16.

836 *Ídem.*

837 Instituto de Derecho Internacional, *Projet de règlement pour la procédure arbitrale internationale*, Session de La Haye, 1875, Page 5. Available at: https://www.idi-iil.org/app/uploads/2017/06/1875_haye_01_fr.pdf. Original wording of Art. 18 of the project: "*Le*

In other words, unless otherwise agreed, the principles of international law that were in force and binding on the parties could not be disregarded. Nowhere in the Treaty of Washington did the arbitrators dispense with the observance of these principles. On the contrary, it was clear from the wording of the treaty that the law in force at the time was to be analysed and applied and, within that law, the general principles of international law.

Finally, the third and last important issue for the evolution of arbitration at the time was the Hague Conference organized by Tsar Nicholas II, held from 15 May to 3 July 1899. This was the first formal instance in which the rules of arbitration were discussed.

Important aspects of arbitration were discussed at this conference, which resulted in the Convention for the Pacific Settlement of International Disputes, the main outcome of that meeting[838].

The importance of the Convention lies in the fact that it embodied the general principles of international law, hitherto vague, and systematized the rules that all arbitration had to comply with. The purpose of the convention was made clear in Article I which provided:

> *"In order to prevent as far as possible the resort to force by States in their mutual relations, the signatory Powers agree to use their best endeavours to secure the peaceful settlement of international disputes"*[839].

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tribunal arbitral juge selon les principes du droit international, à moins que le compromis ne lui impose des règles différentes ou ne remette la décision à la libre appréciation des arbitres" ("The arbitral tribunal shall judge in accordance with the principles of international law, unless the special agreement imposes different rules on it or leaves the decision to the discretion of the arbitrators").

838 Aurelio BASCUÑÁN MONTES, *"Tratados aprobados en la Conferencia Internacional de La Haya"* ("Treaties adopted at the Hague International Conference") Garnier Hermanos, París, 1900, Pages 11 and 18.

839 James BROWN SCOTT (dir.), *The proceedings of the Hague Peace Conference*, prepared by Carnegie Endowment for International Peace en Washington, Oxford University Press, New York, 1920. Page 236. Available at: https://www.loc.gov/rr/frd/Military_Law/pdf/HaguePeace-Conference_1899.pdf. Original wording of the article: "*With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences*".

Arbitration is therefore addressed in this Convention, as it is considered an appropriate legal mechanism for the settlement of international disputes. This is made clear in Article 15, which states:

> *"The purpose of international arbitration is the settlement of disputes between States* ***by judges chosen by them and based on respect for the law"***[840]. (Highlighting Added).

Any settlement by arbitration, unless otherwise agreed, should be based on law and not on political considerations. This is what was later ratified in Article 20:

> *"In order to facilitate the immediate use of arbitration for international disputes which could not be settled by diplomatic means, the signatory Powers undertake to organize a permanent arbitral Tribunal, accessible at any time and which shall function, unless otherwise stipulated by the Parties,* ***in accordance with the Rules of Court contained in the present Convention"***[841]. (Highlighting Added).

This provision makes a clear distinction between the settlement of disputes through diplomatic channels and arbitration, which is a legal settlement, when it refers to the purpose of facilitating the immediate use of arbitration for international disputes that could not be settled through diplomatic channels, clearly distinguishing between the two options, one political and the other legal.

The ICJ is the most appropriate instance to revaluate the interpretation and scope of the Treaty of Washington of 2 February 1897, at the present time. Thus, Venezuela would have the opportunity to demonstrate, as several national authors have done in their valuable works, that the Arbitral Tribunal of Paris failed to determine the law

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840 *Ibidem,* Page 238. "International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law".

841 *Ibidem,* Page 239. "With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rulesrules of Courtprocedure inserted in the present Convention".

applicable to the merits of the dispute, leaving aside the principles that at that time guided the practice of international law and, in particular, arbitration.

2.2.3.3. Evidence Regarding the Flaw of Arbitrators Exceeding their Powers

The Paris Arbitral Award is null and void for having the flaw of arbitrators exceeding their powers, when it erroneously applied the prescription rule in favour of Great Britain, thereby violating Article IV of the arbitration treaty which provides:

> *"An adverse possession or prescription for the term of fifty years shall constitute good title. The arbitrators may deem that the exclusive political domination of a District, as well as the effective colonization of it, are sufficient to constitute adverse possession or to create titles of prescription"*[842].

This rule was negotiated by Richard Olney and Julian Pauncefote, British Ambassador in Washington, behind the back of Minister Jose Andrade, who was gradually excluded from the talks to negotiate the terms of the Treaty of Washington.

In fact, Venezuelan Minister José Andrade was led to believe by US Secretary of State Richard Olney that the aforementioned prescription rule applied only to actual occupations prior to 1814, and only to a very small area between the Pomarón, Moruco and Essequibo Rivers. If so, Britain would have no rights..

However, for the British, the prescription clause would be applicable to all occupations occurring fifty years before the date on which the Treaty of Washington was signed, that is, from 1897 onwards. It was not in any case a small territory as Venezuelan representative was led to believe.

This deviant interpretation of prescription rule was the one that was imposed, even though it was contrary to what the parties had agreed in the treaty of November 1850, the purpose of which was to prevent

842 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

both parties from continuing to extend their claims through the undue usurpation of disputed territories.

It is also curious -and it was also convenient for the United Kingdom- that a fifty-year prescription rule was adopted, which would have allowed the acquisition of much larger territories, instead of at least a hundred-year prescription rule, which would have been more in line with the principles of international law, but on the other hand less advantageous for the English, since it would have prevented them from acquiring such a vast territory.

It should be noted that in order to apply this rule, the United Kingdom had to prove that it occupied those territories peacefully and permanently. This never happened and the arbitral tribunal said nothing about it. Venezuela has the possibility of denouncing this before the ICJ in its counter-memorial, making it clear that the Paris Arbitral Award was rendered in violation of the provisions of the Treaty of Washington, when the arbitral tribunal simply decided to assume the peaceful and permanent occupation of the United Kingdom, without taking into account any kind of proof.

According to this erroneous interpretation, the principle of *uti possidetis facti* was imposed over *uti possidetis iuris*, the real core of the problem[843]. This was done under the argument that *uti possidetis iuris*, being a principle of American international law, was only applicable between the States of the region under conquest.

So, Great Britain, by not being part of the States under colonial rule, argued that this principle had no application in the case. The application of *uti possidetis iuris* would have benefited Venezuela, as it had acquired, according to this principle, all the territories belonging to the General Captaincy of Venezuela since 1777. The American principle of *uti possidetis iuris* has a close relationship with our constitutional tradition as a nation that was under Spanish influence. It is an act openly contrary to law to disregard this legal principle, exclusively benefiting the United Kingdom, which has no legal title to the disputed territory. The ICJ is the appropriate instance for Venezuela to express its view on

843 See: Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"),Quoted Above, Page 192.

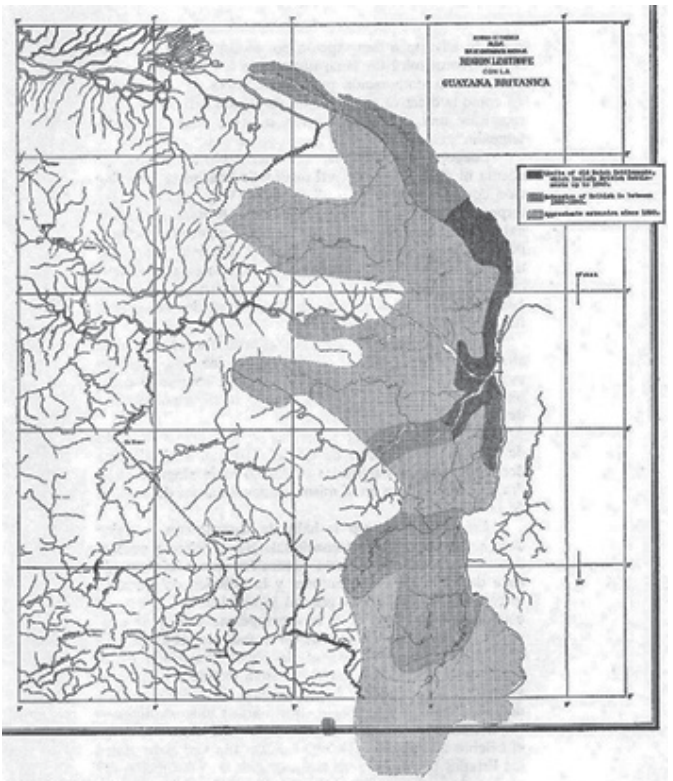
this matter and convince the judges that a decision in accordance with the law implies the valuation of this principle, which is present in all our constitutions.

But, even applying the prescription rule in this incorrect way does not imply the possibility of granting the enormous territory that was awarded to Great Britain. Indeed, the map included in the report of the Jesuits Hermann Gonzalez and Pablo Ojer shows that the territory that the United Kingdom could acquire through the prescription rule, if there were no legal title to it held by Venezuela -as indeed there is- was much smaller than that which the award finally granted it. The Award established that the boundary line between the United States of Venezuela and British Guiana is 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 Cuyuní, and thence along the northern bank of the River Cuyuní 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"*[844].

[844] Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 342-343

In the map -extracted from the report made by the Jesuits Hermann González and Pablo Ojer published in 1967- based on confidential British documents, one can clearly see which territories were occupied by the British in 1840 (black), between 1886 and 1890 (dark grey), and after 1890 (light grey)[845].



Caption:
Black: Territories occupied by Great Britain in 1840,
Dark Grey: Territories occupied by Great Britain between 1886 and 1890,
Light Grey: Territories occupied by Great Britain after 1890.
Note: This map was prepared based on confidential British maps and other documents.

It can be seen that the 50-year Prescription principle had only been applied to a small part of the Essequibo Guayana.

845 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 15.

Note that the territory shown on the map is considerably smaller than that granted to the United Kingdom by the award, since, even in the worst of interpretations, these were the territories to which prescription rule could have been applied, in absence of legal titles, which was not the case.

Therefore, the Paris Arbitral Award wrongly applied the prescription rule in favour of Great Britain, thus violating Article IV of the Arbitration Treaty and the Award was flawed because arbitrators exceeded their powers.

This map joins the rest of the evidence that proves that the Paris Award was not an arbitral decision, but it was certainly an arbitrary one. We have never been before such an important body dedicated exclusively to resolving the issue of the nullity of the award as the ICJ. Presenting all the evidence that Venezuela has regarding the Award's flaw for arbitrators exceeding their powers, which is, by the way, one of the most serious flaws, would help the distinguished judges to better understand the historical injustice of which we have been victims.

2.2.3.4. Evidence related to arbitrators committing the flow of ruling *ultra petita*

It is clear that, according to Article I of the Treaty of Washington, the arbitral tribunal had the sole mission of "*determining the dividing line between the United States of Venezuela and the Colony of British Guiana"*[846]. Likewise, according to Article III, which we have already quoted several times -since it was violated in several ways- the tribunal should investigate and ascertain the extent of the territories, or those that could be legally claimed, and was to determine the dividing line between the United States of Venezuela and the Colony of British Guiana.

It is pertinent to ratify the very basic and elementary consideration that in international arbitrations there are limits to be observed by the arbitrators. The first is the duty to abide by the object of the dispute established in the treaty, which limits the jurisdiction of the tribunal

[846] Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 336.

and, secondly, that the tribunal may not rule on aspects that may involve other States that are not signatories of the commitment.

The Paris Arbitral Award of 1899 is null and void for the arbitrators' failure to observe these limits and, consequently, for arbitrators having ruled *ultra petita*, as they decided on the navigation regime in the Barima and Amacuro rivers, which had nothing to do with the object of the controversy delimited in the treaty.

On the other hand, the decision involved and affected States that did not sign the Arbitration Treaty, ruling on boundary issues that were not being discussed at the time, such as the border between the British Guiana Colony and Brazil.

In effect, the tribunal ignored the objective limit when it ruled on the waterway regime and gave international character to the navigation activities on the Barima and Amacuro rivers, a matter that had no place in the treaty. Furthermore, the tribunal ignored the treaty when it ruled on the customs duties between the States in dispute, namely:

> *"In fixing the aforesaid boundary line the Arbitrators shall consider and decide that, in time of peace, the Amacuro and Barima rivers shall remain open to the navigation of the trading vessels of all nations, except for all just regulations and the payment of lighthouse or other analogous duties, provided that the duties exacted by Venezuela and by the Government of the Colony of British Guiana in respect of the transit of vessels on the parts of the said rivers belonging respectively to them, shall be fixed at the same rate for the vessels of Venezuela and those of Great Britain, which rate shall not exceed that exacted from any other nation. It is also understood that no customs duties may be demanded, either by Venezuela or by the colony of British Guiana, with respect to goods transported in ships, vessels or boats passing through said rivers, but customs duties may only be charged on goods landed in the territory of Venezuela or Great Britain"*[847].

Accordingly, the award also violated the subjective limit by affecting States that had not subscribed the arbitration treaty, since it defined

[847] *Ibidem,* Page 343.

the limits of the British Colony of Guyana with respect to Brazil and Suriname. The Paris Award affected Brazil when it awarded the United Kingdom the boundary of the Cotinga and Takutú rivers, territories that were the object of dispute between Great Britain and Brazil. Indeed, the award stated when it determined the boundary:

> *"... 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..."*[848].

In fact, when the Treaty of Washington was signed in 1897, Brazil anticipated the possible effects that could take place with the award. Before the Paris Arbitral Award of 1899 was rendered, the Brazilian government filed a protest against the wording of the Arbitration Treaty of 1897, specifically on the generality of Article III, after considering that its content could negatively compromise Brazil's rights in its territorial dispute with the British.

The Brazilian protest was sent to the President of the Arbitral Tribunal and also to the British and the Venezuelan Governments. Thus, the Paris Arbitral Award aggravated Brazil's situation by awarding Great Britain lands that these two nations were disputing, causing formal protests from the Brazilian Foreign Ministry.

The considerations made by Brazil were, in fact, correct. This is corroborated by the contents of the Circular of the Brazilian Ministry of Foreign Relations forwarded to the Brazilian Diplomatic Missions on 7 December 1899 in Rio de Janeiro. In that document, the impact and perplexity caused by the award to Brazil was clearly expressed.

It was a decision that set the boundary between the United States of Venezuela and Great Britain at the limit of the Cotinga and Takutú rivers, which were the object of litigation between the United Kingdom and Brazil[849]. This violation of the limits of the controversy meant that Venezuelan territory stretched to Brazilian territories, including the

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848 *Ibidem,* Page 342.

849 Elbano PROVENZALI HEREDIA, Quoted Above, Pages 76-77.

southern slopes of the Sierra Aracay, which was the object of litigation between Brazil and France[850].

The circular letter sustained that the award violated the international principle under which arbitral judgements can only be based on matters agreed in the Arbitration Treaty. It was impossible for both Venezuela and the United Kingdom to agree that their border should run along the Cotinga and Takutu rivers, let alone the Aracay mountain range.. In fact, *"Venezuela could not agree because its border with Brazil is stipulated in the Treaty of 5 May 1859, and excludes those regions; Great Britain could not agree because that border is under litigation to be submitted by Great Britain to arbitration with Brazil"*[851].

To conclude, the circular letter made it evident that the Paris Arbitral Tribunal's award went beyond the Tribunal's jurisdiction established in the Treaty of Washington and, therefore, was flawed for arbitrators having ruled *ultra petita* when it pronounced itself on matters *"not claimed by either Venezuela or Great Britain, assigning Venezuela the Amazon Region that was not disputed with Brazil and assigning British Guiana, even going against Venezuela, only the portion of the Schomburgk line claimed against Brazil"*[852].

In this regard, in 1938 -over 80 years ago- Academician Dr. Carlos Álamo Ybarra pointed out that the award impaired *"Brazil's situation by awarding Great Britain lands that were under discussion between the two nations, which gave rise to the objections brought in Paris and London by the Foreign Affairs Ministry of Rio de Janeiro"*[853].

Moreover, by the decision affecting States that had not signed the arbitration compromise, the Paris Arbitral Tribunal violated an essential principle of international arbitration law, the relativity of the awards. This principle, which derives from the contractual nature of arbitration, is a translation of the principle of contractual relativity, which originated in civil law, to international arbitration. According to this principle, in addition to the objective limits of the dispute -not to go beyond the matter in dispute- there are subjective limits -not to affect subjects who

850 *Ídem.*
851 *Ídem.*
852 *Ídem.*
853 Carlos ÁLAMO YBARRA, Quoted Above, Page 87.

are not involved in the dispute- and the Paris Award exceeded both of these limits.

The fact that the rules of the Washington Treaty were disregarded and that the tribunal decided matters over which it had no jurisdiction *"constitute in themselves new grounds for setting aside the award"*[854]. Thus, it is clear that, by arbitrators exceeding their powers and ruling *ultra petita,* the arbitral award is therefore a null and void act. Proving this flaw requires that the text of the Treaty of Washington of 2 February 1897 be submitted to the consideration of the judges of the ICJ as is also required in order to prove the other flaws. The justices shall establish the true scope of the treaty; that is to say, determine what powers the signatory parties to the compromise had granted to the arbitrators.

2.2.3.5. Evidence Regarding the Lack of Reasoning

The lack of explanation or statements of reasons is clear in the wording of the award itself. It contains no evidence other than the meagre terms of the award. Both the 1897 Treaty of Washington and the general principles of international law required that, for an award to be valid, it be issued in adherence to law. That meant that the decision would include a necessary and sufficient explanation for the parties to understand the arbitrators' valuation of each of the juridical titles presented to them and have a reasoned explanation of why they decided as they did.

The duty to state reasons stems, first, from Article III of the Treaty of Washington that established that the Tribunal *"shall investigate and ascertain the extension of the respective territories, or the territories that could legally be claimed by the parties"*[855]. If the Tribunal was under the obligation of ascertaining the legal grounding of the titles presented by the parties it would, then, also have to explain how it reached its findings.

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854 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 16.

855 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 337.

Further, at the time the decision was issued, it was already a principle in international law that, in arbitration at law, arbitrators would explain or reason their awards. It was thus set by precedent in the Alabama case where the arbitrators drew up an award explaining in great detail the reasoning behind their decision.

The duty to state reasons was also included in the 1875 Project for International Arbitration Procedural Rules drawn up by the International Law Institute, specifically under Article 23, according to which:

> *"The award shall be set in writing and* ***shall state the reasons on which it was based****, save as otherwise stipulated in the arbitral agreement. It shall be signed by each member of the arbitral tribunal. Should a minority refuse to sign, the signatures of the majority shall suffice, with a written declaration stating that the minority refused to sign"*[856]. (Highlighting Added).

This provision highlights the importance of the statement of reasons under the principles of international law at the time of the dispute, that it was dispensable only when the parties had so agreed. But in the Paris Arbitration the parties never released the arbitrators from their duty to reason their findings.

It was clear that, at the time of the dispute, reasoning was a requirement of custom -a source of international law- which is reflected in Article 52 of the Convention for the Pacific Settlement of International Disputes, the principal outcome of the Hague Convention of 1899, which states:

> *"The award, given by a majority of votes,* ***must state the reasons on which it is based****. And it shall be drawn up in writing and*

856 International Law Institute, Projet de règlement pour la procédure arbitrale internationale, Session de La Haye, 1875. Page 5. Texto original del artículo: "La sentence arbitrale doit être rédigée par écrit et contenir un exposé des motifs sauf dispense stipulée par le compromis. Elle doit être signée par chacun des membres du tribunal arbitral. Si une minorité refuse de signer, la signature de la majorité suffit, avec déclaration écrite que la minorité a refusé de signer" ("The arbitral award shall be in writing and contain a statement of reasons unless exempted by the special agreement. It must be signed by each member of the arbitral tribunal. If a minority refuses to sign, the signature of the majority shall suffice, together with a written declaration that the minority has refused to sign.").

signed by each member of the tribunal. Those members who are in the minority may record their dissent when signing"[857].

The obligation to state reasons was finally established in Article 52 of the Convention for the Pacific Settlement of International Disputes, which was derived from the same Convention. The arbitrators, all eminent jurists with extensive experience in international law and in particular in arbitration, were aware of the validity of these principles of international law.

Venezuela now has a good opportunity before the ICJ to establish all these facts, which are crucial to understanding that the President of the Arbitral Tribunal, the Russian jurist Federico de Martens, was well aware of the obligation to state the reasons for arbitral awards, and even if he was not, this fact would be irrelevant to the validity of the award, since stating reasons is a legal requirement that must be met by all arbitral awards, under penalty of nullity.

However, what is certain is that Venezuela's representatives before the ICJ can allege and prove all the facts from which the fraudulent omission of the duty to state reasons can be deduced. This includes invoking the precedent of the aforementioned Costa Rica Packet case, where the Russian jurist Federico de Martens fulfilled his duty to state the reasons for the award.

In any event, the absence of a statement of reasons is *per se* a ground for setting aside the award. The main consequence of alleging and proving these facts relating to the failure to state reasons before the ICJ would be to establish the nullity of the Paris Arbitral Award for failure to comply with applicable law derived from general principles of international law.

These principles bound the parties and gave rise to an obligation on the part of the arbitrators to resolve the dispute in accordance with the law and not in an arbitrary manner. Today, Guyana's representatives at the ICJ try to justify the lack of reasoning of the award by stating that:

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857 James BROWN SCOTT (dir.), Quoted Above, Page 244. Original wording of the article: "The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal. Those members who are in the minority may record their dissent when signing".

> *"In view of the publication of voluminous records of the parties' submissions and the abundance of evidence submitted to the Arbitral Tribunal, and in accordance with the practice of the time, the award itself was concise"*[858].

The fact that voluminous reports were published does not exempt judges from the obligation to state reasons for their decision or from the obligation derived from the aforementioned Article III of the Treaty of Washington, which entailed taking into account all the evidence on file. These *voluminous minutes* and the *abundance of evidence* are of little value if the most convincing documents in Venezuela's favour, including letters, diplomatic notes, treaties, and maps, were ignored or silenced by the Paris Court of Arbitration.

In fact, the award was neither concise nor reasoned. It is not clear what the basis of the decision was.

If the arbitral tribunal considered the cession of Holland to the United Kingdom by the 1814 Treaty of London to be a title, it should have indicated how it came to this conclusion and explained how it evaluated the evidence it presented.

As Faúndez Ledesma states, in accordance with Article IV of the Treaty: *"...there were three options to award all or part of the disputed territory to one of the parties in dispute, it was natural and obvious that it would have to indicate from which of those rules it had reached that decision, and why"*[859].

The first option was through the application of Rule "a" of Article IV, which establishes *adverse possession or prescription*, which we have already analysed; the second possibility was through the application of Rule "b" of Article IV, according to which the arbitrators could *"recognize and enforce rights and claims founded on any other valid*

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858 International Court of Justice, Memorial of Guyana, Volume I, in the case concerning to the Arbitral Award of 3 October 1899, 19 November 2018. "*In light of the publication of voluminous records of the arguments of the parties and the copious evidence presented to the Arbitral Tribunal, and in line with practice at the time, the Award itself was succinct*", Page 9.

859 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 115.

basis under international law"[860] or principles of international law, provided they did not contravene the prescription rule; the third and last could only occur in the case of occupation by subjects of one nation in the territory of the other party, giving to such occupations *"such effect as, in the opinion of the Tribunal, reason, justice, the principles of international law, and equity require in the case"*[861].

Venezuela's representatives at the ICJ must show that the application of the rules of the Treaty of Washington had to be explained in the award, for the parties to know the true reasons for the decision. Venezuela can bring to the ICJ the reactions of the international press following the announcement of the Paris Award. In this respect, we note the article published in *La Voce della Veritá* on 29 October1899, a little after the content of the award was revealed:

> *"The Commission did not, in fact, take the arguments of both parties into consideration. It did not judge on the basis of rights, but arbitrarily laid out what was to be a commitment, which, however, grants the greater portion to the strongest party. England was, in fact, awarded five sixths (5/6) while Venezuela was awarded but one sixth (1/6), but the Tribunal did not bother to explain what legal grounds the partition was based on"*[862].

Venezuela must expose and expand on the flaw of lack of reasoning that has been built into Venezuelan doctrine since the last century, proving that the arbitrators ignored their duty and issued an award that established the border between two States without any legal justification; a matter that invalidates the decision and renders it null and void.

2.2.3.6. Evidence Referring to Violation of the Duty of Impartiality

The Paris Arbitral Award is null and void because it also violated principles of international law when the arbitrators failed in their duty to be neutral and impartial, since at least the President of the Arbitral Tribunal, Federico de Martens, acted in an openly partial manner.

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860 *Ibidem,* Page 337.

861 *Ibidem,* Page 338.

862 See: Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 52.

There is a lot of evidence determining that Federico de Martens manipulated and coerced the other arbitrators in order to obtain a unanimous decision, turning an award at law into a political arrangement. It is a self-evident fact that the Russian exerted undue pressure on the other arbitrators.

The principles of International Law in the matter of arbitration, all being binding, required that an indispensable element be taken into account for the composition of the arbitral tribunal, that of the arbitrators' independence and impartiality.

In this respect, Article II of the Treaty of Washington of 1897 laid down how the arbitrators were to be appointed. The tribunal would have a total of five jurists, two of whom would be chosen *"by Venezuela"*, although in fact the treaty specified who would be appointed: *"...one by the President of the United States of Venezuela, namely the Honourable Melville Weston Fuller, Chief Justice of the United States of America, and one by the Justices of the Supreme Court of the United States of America, namely the Honourable David Josiah Brewer, Justice of the Supreme Court of the United States of America"*[863].

And another two chosen by the judicial commission of Queen Victoria's privy council who ended up being Lord Russell of Killowen and Sir Richard Henn Collins. Finally, the President of the Arbitral Tribunal would be a jurist chosen by the other four arbitrators[864].

Pursuant to this provision of the treaty, the President of the Arbitral Tribunal chosen by English and U.S. arbitrators, was the Russian Federico de Martens. He was a renowned jurist with extensive experience in the matter of arbitration, but unfortunately proceeded in a biased manner and without applying the law as befits an arbitrator.

Venezuela must ratify the provisions of Article V of the Treaty of Washington to the ICJ, which establishes the duty of impartiality, requiring the arbitrators to *"impartially and carefully consider and decide"* the questions submitted to them.

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863 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 336-337.

864 *Ídem.*

The principle of international law imposing a duty of impartiality and independence on arbitrators was also recognised in Article I of the Treaty of Washington of 1871 in relation to the Alabama case, which provided that the parties would each choose one arbitrator, while the other three would be arbitrators outside the dispute and would presumably offer a greater guarantee of impartiality. Further, Article II of the 1871 Treaty established the obligation that arbitrators *impartially and carefully* examine and decide the matter of the dispute.

However, contrary to what was established in the 1871 Treaty of Washington and the valid principles of international arbitration, the Russian Federico de Martens' impartiality was doubtful from the onset, because he was, in fact, an active public officer in his country, which was telling of a possibility that he was influenced more by the interests of his nation than by the idea of impartiality as Dr. Marcos Falcón Briceño pointed out: *"... while being elected President of the Arbitral Tribunal, he is attending the sessions of the First International Peace Conference as the Russian Delegate. This conference is of paramount importance because it is there that arbitration rules are established"*[865].

This quote evidences two things. On the one hand, that Federico de Martens was a Russian Representative who acted moved by political interests; and, on the other, it is clear that he had participated at The Hague Conference of 1899 and knew all that was discussed there. Dr. Marcos Falcón Briceño also points out that *"De Martens was essentially a practical man, as he himself said, a politician, so, naturally, by being a public officer of the Russian Empire, his political thinking was obviously linked to the thinking and political interests of Russia"*[866].

It is striking that, as such an important figure in international arbitration, not only were his political views well known, but also his views on controversial issues in arbitration, which may have led the English to elect him because of his political views on arbitration and also because, very conveniently for the United Kingdom, he held the view that arbitral awards did not need to be reasoned.

This view with respect to arbitral awards not having to be reasoned, was reflected in the 1899 Paris Award issued, which lacked such reasoning. Moreover, Federico de Martens also had a colonialist view

865 *Ídem.*

866 Marcos FALCÓN BRICEÑO, Quoted Above, Page 48.

of international relations. In his mind, World Powers were superior to savage or barbarian peoples, as he liked to call the less developed countries.

This view of his was what drove him to favour the United Kingdom in the Paris Arbitration. This supremacist position was clearly expressed in one of his works in which he expressed the following: *"Nonetheless, one should ask oneself which of these two opinions, so divergent at their points of departure and so coherent in their final conclusions, is the true one. Is it really true that a battle between Russia and England on the banks of the Indo is an absolute necessity and a relentless fatality? Are these two great civilised powers really and inevitably under the obligation by immutable law to give the savage peoples of Asia this sad spectacle of a bitter and merciless battle? Is it appropriate for Europe, represented solely by England and Russia in Central Asia, to evoke the perverted instinct of the Asian hordes and take advantage of the savage hatred these barbarians feel towards all Christian and civilised nations? Has this matter been seriously pondered?: Which of these two powers, victorious on the battlefields, will be in a position to keep under its dominion all the Asiatic nations and all the savage and plundering tribes to whose help it owes its success?"*[867].

It is also a known fact that Federico de Martens had certain affinities with Great Britain, other than his view of international relations. Among his credentials, he certainly had been a Professor Emeritus of Law at a Doctorate Level at the Universities of Cambridge and Edinburgh and practiced teaching for 30 years at the St. Petersburg University[868]. These credentials appear not only in the initial part of the Paris Arbitral Award, emphatically referred to herein, but also in the Preamble to the *Costa Rica Packet* case, mentioned above[869].

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867 See: Federico DE MARTENS, "La Russie et l'Angleterre dans l'Asie centrale" ("Russia and United Kingdom in Central Asia") *Revista de Derecho Internacional y Legislación Comparada*, International Law Institute, 1879.

868 Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 97.

869 *Ibidem,* Page 342. "His Excellency Frederic DE MARTENS. Private Counselor. Permanent Member of the Council of the Ministry of Foreign Affairs of Russia, LLD of the University of Cambridge and Edinburgh".

Venezuela has documents, letters and press releases that prove that this was a shady deal. Venezuela should present all these elements of conviction to the ICJ, especially this important report, which systematically gathers all the evidence showing that Venezuela has been the object of a grave injustice. Some excerpts from these documents are:

1. Mrs. Caroline Harrison, the wife of President Benjamin Harrison, affirmed in her diary on 3 October 1899, in reference to the United Kingdom:

> *"Some of what it took was admitted, but the pleadings showed that much of it was not legally owned by it. We are all rather angry. Russia was the fifth in the Tribunal, and it is their diplomacy to side with England: the balance of power, etc...."*[870].

2. In a letter by Lord Russell, the United Kingdom's principal arbitrator, to Lord Salisbury, dated 7 October 1899, in reference to Federico de Martens, the President of the Arbitral Tribunal:

> *"... He seemed to be looking for ways of arriving at lines of compromise, and felt it was his duty to bring about a unanimous decision at all costs, if possible. I am sorry to say, moreover, that in a private conversation he implied to Lord and Justice Collins, when urging him to reduce the British claim, that if we did not do so he might be compelled to agree to a line which might not be fair to Great Britain in order to obtain the compliance of the Venezuelan arbitrators. I have no doubt that he spoke to the Venezuelan arbitrators to the contrary, and I fear that it may have been a far worse means of inducing them to accept the award as it stood. Be that as it may, it goes without saying that Mr. de Martens revealed a very disturbed state of mind"*[871].

3. Memorandum of Severo Mallet-Prevost dated 26 October 1899, 13 days after the award was issued, sent to Professor George L. Burr:

> *"Our Arbitrators were forced to accept the decision and, in strict confidence, I have no hesitation in assuring you that the British Arbitrators were not governed by any consideration of Law or*

870 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 42.
871 *Ídem.*

Justice, and that the Russian Arbitrator was probably induced to adopt the position he took for reasons wholly foreign to the question. I know this is only going to whet your appetite, but at present I cannot do otherwise. The result, in my judgment, is a slap in the face of Arbitration"[872].

4. Richard Olney to President Grover Cleveland on 27 December 1899:

"I have not seen you since the judgement in Venezuelan border case. By reason of his return to New York, Mr. Mallet-Prevost, the youngest attorney for Venezuela, was anxious to tell me about how it was that things had occurred and why they did so. On one of my visits to New York, I invited him to dinner where the end result was that he spoke more and ate less, and the duration of the meal was, more than eating and drinking refreshments, a bout of intense ire and bitterness of the spirit regarding the procedure and decision of the Arbitral Tribunal. I shall abstain from going into details that I have no doubt you have heard from other sources. The worst of it all, apparently, is not so much Venezuela's loss of the territory, but the general discredit of the arbitration. According to my informer, both the President of the Court and Brewer appear to be against arbitration as a formula for the resolution of international disputes, in absence of a procedure that would guarantee the Parties' rights. Former Secretary John W. Foster, with whom I dined the other day, said that Fuller and Brewer returned to the country quite sick of arbitration"[873].

This letter demonstrates what happened in the arbitration treaty and reflected in the Paris Arbitral Award of 1899, which damaged one of the main virtues of the international arbitration mechanism: the security and confidence generated in the parties.

5. The diary of Lord Russell's private secretary, J. R. Block, dated 2 October 1899, one day before the award, contains a telling sentence: *"Venezuela. Martens' shady deal has given us victory. Private Archives"*[874].

872 *Ídem.*
873 *Ibidem,* Page 44.
874 *Ídem.*

So, today with this information and the information gathered in the research of the Jesuits Hermann Gonzalez Oropeza and Pablo Ojer:

> *"... it is clearer to see that the 1899 Award was not really based on a juridical analysis in presence of a unanimous opinion, but was, rather, the consequence of a deal between the constituents of the tribunal who were true to their interests"*[875].

Obviously, the analysis of the evidence, in light of the ongoing proceedings before the ICJ, requires gathering all the elements of conviction that tend to prove the nullity of the Paris Award. In this regard, the posthumous memorandum of Severo Mallet-Prevost, one of the lawyers who was a part of the team of lawyers who defended Venezuela in the Paris Arbitration, is a document of the utmost importance.

Severo Mallet-Prevost, who died in New York on 10 December 1948, appointed Otto Schoenrich, a partner with the law firm he was a member of (*Curtis, Mallet-Prevost, Colt & Mosle*), his executor and instructed him to have the document published after his death.

The posthumous memorandum was finally published in July 1949 in the *American Journal of International Law,* and again that same year in the Bulletin of the Political and Social Sciences Academy, specifically in Volume 14, under the title: *"A Matter of Exceptional Importance for Venezuela's Diplomatic History. The Dispute over the Border between Venezuela and British Guiana"*[876].

According to the memorandum, Lawyer Mallet-Prevost acknowledges that both he and President Benjamin Harrison knew of the conspiracy between the President of the Arbitral Tribunal, Federico de Martens, and the British arbitrators, Lord Russell and Lord Collins, appointed by the United Kingdom.

Lawyer Mallet-Prevost goes on to say that Lord Russell was always reticent in attitude and inclined towards benefiting the United Kingdom, he believed arbitrators have a political bond and considered it unnecessary for international arbitration to adhere solely to legal basis.

Lord Russell, Justice Josiah Brewer, and Severo Mallet-Prevost coincided in the city of London at an intimate dinner organized by Henry White, who held the office of Charge de Affairs of the United States of

875 William DÁVILA BARRIOS (ed.), Quoted Above, Page 14.
876 Otto SCHOENRICH, Quoted Above.

America. With reference to Lord Russell, Mallet-Prevost writes in his memorandum:

> *"I was seated next to him and, during the conversation, I ventured to express the opinion that international arbitrations should ground their decision on legal basis only. Lord Russell immediately replied: "I disagree with you completely. I believe international arbitration should be conducted in broader ways and take matters of international policy into consideration. From there on, I understood that we could not count on Lord Russell to decide the matter of the border strictly on the basis of law"*[877].

On the other hand, Lawyer Severo Mallet-Prevost had a completely different perception of Lord Collins, whom he met on 1 June 1899. Collins was much more excited, willing to investigate and, most of all, to understand and analyse the dispute and the titles on which the parties' pretences were based. With reference to Lord Collins, Mallet-Prevost wrote:

> *"In the conversations of the Attorney General, Sir Richard Webster, with me (that lasted 26 days) it was quite obvious that Lord Collins was sincerely interested in being fully aware of the facts of the matter and determining the applicable law to such facts. He, of course, gave no indication of how he would vote on the matter; but, his whole attitude and numerous questions he posed were critical of the British allegations and gave the impression that he was becoming more inclined towards Venezuela's side"*[878].

However, these impressions changed radically after a two-week recess that took place once the Pars arbitration conversations concluded. At that moment, the English arbitrators travelled to London together with the President of the Arbitral Tribunal, Federico de Martens.

The memorandum affirms that, when Lord Collins returned from the United Kingdom to Paris after the vacations, he was not the same as when he left. It was evident that a number of things occurred in

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877 See: the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH,, Quoted Above, Page 32.

878 *Ídem.*

the United Kingdom, which we do not know, but probably obeyed the political interests of the two powers: Russia and the United Kingdom. This, of course, is not merely a supposition of ours; Severo Mallet-Prevost himself was convinced that something had happened:

> *"Mr. Mallet-Prevost said that he was sure that the attitude of the British members and the Russian member of the Arbitral Tribunal was the result of a negotiation between Great Britain and Russia whereby they induced their representatives in the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in other parts of the globe"*[879].

Curiously, on 31 August 1907, a couple of years after the coerced execution of the Paris Award, something happened that increases the possibility of Mallet-Prevost's suspicions being true. The Anglo-Russian Entente of Mutual Cordiality was signed on that date alleviating tensions between Russia and the United Kingdom in Central Asia and enhancing the relationship between the two countries; with the convention came the independence of Afghanistan, Persia, and Tibet.

Going back to the contents of the memorandum, the shady deal that Mallet-Prevost suspected becomes evident when Federico de Martens met with the American arbitrators, Judge Josiah Brewer and Judge Weston Fuller, to propose that, if they agreed to come to a unanimous decision, Venezuela would keep the Orinoco Mouths, but that, if they did not, the Russian would align himself with the British arbitrators, a matter that would imply a worse situation for Venezuelan State.

Guyana has sustained before the International Court of Justice that Severo Mallet-Prevost- Prevost's memorandum was revealed many years after the award was issued and is, also, doubtful given the close relationship of the attorney with the Venezuelan State that even awarded him the *"Order of the Liberator"*[880]. All this, with the sole purpose of undermining the value and credibility of the document.

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879 *Ibidem,* Page 30.

880 International Court of Justice, "Memorial of Guyana", Volume I, Page 13. "In its pursuit of this goal, Venezuela attempted to impugn the validity of the Award that respected, affirmed, and sustained till then, for over six decades.For this purpose, Venezuela invoked a secret memorandum, supposedly written in 1944 by Severo MALLET-PREVOST, a not so

The memorandum, is not, however, the only document that denounces the flaws of the Paris Arbitral Award and the abuses that occurred during arbitration. On the contrary, most objections to the award -as we have seen- were brought before Severo Mallet-Prevost-Prevost's memorandum came to light.

In the *Revue d'Europe,* Volume III, Nº 3, published in March 1900, L. de la Chanonie did, in fact, mention the same events that Severo Mallet-Prevost later included in his memorandum. L. de la Chanonie did, indeed, point out that:

> *"... Mr. De Martens then proposed to the American arbitrators, to grant Venezuela, in compensation for the territories of the Schomburgk line, absolute possession of the Orinoco, withdrawing the English frontier some twenty leagues from the river; he added that if Venezuelan arbitrators did not accept this arrangement, he would vote with the English arbitrators for an immediate termination, which would secure for England the possession of one of the sides of the Orinoco delta. The perplexity of the American arbitrators was great, and their confusion profound; after some hours of reflection, they decided that it was necessary to, first of all, put the great river out of the clutches of England; they preferred to accept a vexatious settlement rather than to obtain nothing, and finally, constrained by an imperious necessity, they adhered to the arbitral sentence; such is the unanimity of the judges, so much vaunted by the English press which has interpreted it as irrefutable proof of the undoubted rights of Great Britain. This publication of the secret debates, puts things straight. A simple question: if the dispute, instead of having arisen between a small State and a great Power, had confronted England, Russia, France or Germany, would it have ended in three days and with so much abandon, a conflict which, in case of necessity, would find in force its legitimate recourse? But Venezuela does not have the maritime and military power to speak loudly; it has not been able to support with arms the*

prominent member of the Venezuelan legal team in the 1899 arbitral process, supposedly containing instructions that it should not be published until after his death (that took place in 1949). It is said that the memorandum was written 45 years after the events that it supposedly described, and in the same year in which Venezuela bestowed the Orden del Libertador on Mr. MALLET-PREVOST "in testimony of the high esteem the Venezuelan people have and always shall have for him."

rejection of a decision that was not so much arbitral as arbitrary, the injustice of which was notorious. International law opened the way to a platonic appeal, wounded in advance of sterility (...) But that was hushed"[881].

This commentary in the French press, forty-nine years before the publication of Severo Mallet-Prevost-Prevost's memorandum, stated that the President of the Arbitral Tribunal had failed in his duty of impartiality by being involved in a shady deal that harmed the weakest party, which was obviously Venezuela.

The lack of impartiality was so evident that the nature of the political arrangement of the Arbitral Award was denounced by the press in the United Kingdom. On 11 October 1899, a mere eight days after the award was known, the British magazine *Punch, or the London Charivari,* published an illustration of Lord Salisbury. The caricature depicts Lord Salisbury, whose aversion to arbitration was well known, escaping with several documents, including the Schomburgk line and some other maps of mines and forests that had been obtained thanks to the award.

The caption under the illustration reads:
"Lord Salisbury (chuckling) *"I like arbitration- in the Proper Place!"*[882]

881 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Pages 50-51.

882 Anonymous Author of "Peace and Plenty", published in Punch, or The London Charivari on 11 October 1899. Illustratiohn taken from Andrés Eloy BURGOS GUTIÉRREZ (ed.),

Thereafter, in the *Idaho Daily Statesman,* a U.S. journal strongly criticized the arbitration on 18 October 1899, affirming that it had been a plan:

> *"The plan consisted of ensuring the support of Mr. de Martens, President of the Tribunal. This was done with the intervention of the Russians who wanted him to align himself with the side of Great Britain in order to obtain English support for the Russian plans in China. All of this was done in utter secrecy; the American members of the Tribunal were told only when the Arbitrators met for the award. They came to know that the majority had agreed on what was to be done: grant Great Britain all its claims"*[883].

This was followed by the letter written by César Zumeta, published in a Caracas journal, *El Tiempo,* on 17 October 1899, making it quite clear that the negative impact of the award on the international arbitration forum created a kind of aversion to the mechanism:

> *"The Paris Tribunal's decision, of which you sadly had to inform your readers, appears to have surprised Venezuelan friends abroad as if it were an unexpected novelty. The former President of the United States of America, Mr. Harrison, Justice Brewer, one of the arbitrators appointed by Venezuela, attorney Mr. Mallet-Prevost, the diplomatic world, and even the English press, declare that, from here on, nations would take great care to not entrust the defence of their rights to courts such as this one that just condemned us"*[884].

From all these documents, statements, and press publications, we can conclude that it is not only the Severo Mallet-Prevost memorandum that is at issue, but that there are many elements of conviction that show that the arbitrators did not fulfil their duty of impartiality and independence. We, therefore, ratify that the representatives of the

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"Memorias de Venezuela" ("Memorial of Venezuela"), Nº 34, January-February 2016, Ministry of the People's Power for Culture-National History Center, Caracas, 2016. Page 22.

883 *Ídem.*

884 *Ídem.*

Venezuelan Government appointed to defend the interests of the country before the ICJ must promote each and every one of these pieces of evidence that show with absolute clarity that the arbitrators did not comply with the duty of impartiality and independence.

2.3. Termination of the Proceedings

2.3.1. Judgment (Articles 56, 57, 58, 59, 60 and 61 of the Statute)

Before pronouncing the sentence that definitively resolves the dispute through a court order, the judges of the ICJ must comply with the deliberations established in the Resolution on Internal Judicial Practice. Following these deliberations, a preliminary draft of the judgment is circulated to each of the judges for their written comments in the form of amendments.

After the amendments are formulated, the drafting committee submits a draft for discussion at a first reading. At that time, judges who do not share the majority opinion may issue their individual opinions, within a period of time to be set by the ICJ.

Once the amendments have been examined, the draft judgment is given a second reading with modifications included and, once again, the President of the ICJ will ask if any of the judges wish to suggest any new modifications. Likewise, the judges who wish to modify their individual opinions may do so to the same extent that the change has been inserted in the draft judgment. In this regard, the content of Article 7 of the Resolution on Internal Judicial Practice is important:

> *"(i) A preliminary draft decision is circulated to the judges, who may submit amendments in writing. The drafting committee, having considered these amendments, submits a revised draft for discussion by the Court in first reading.*
> *(ii) Judges who wish to deliver separate or dissenting opinions make the text thereof available to the Court after the first reading and within a time limit fixed by the Court.*
> *(iii) The drafting committee circulates an amended draft of the decision for the second reading, at which the President asks if any judge wishes to propose further amendments.*

(iv) Judges who are delivering separate or dissenting opinions may make changes in, or additions to, their opinions only to the extent that changes have been made to the draft decision. During the second reading, they inform the International Court of Justice of any changes in, or additions to, their opinions which they propose to make for that reason. A time limit is fixed by the International Court of Justice for the filing of the revised texts of separate or dissenting opinions, copies of which are distributed to the International Court of Justice"[885].

After the second reading, the President of the ICJ will urge the judges to announce their final vote on the decision. On the manner of casting the vote and decisions on separable issues, Article 8 of the Resolution on Internal Judicial Practice states:

(i) At or after a suitable interval following upon the termination of the second reading, the President calls upon the judges to give their final vote on the decision or conclusion concerned in inverse order of seniority, and in the manner provided by paragraph (v) of this Article.
(ii) Where the decision deals with issues that are separable, the Court shall in principle, and unless the exigencies of the particular case require a different course, proceed on the following basis, namely that:
(a) any judge may request a separate vote on any such issue;
(b) wherever the question before the Court is whether the Court is competent or the claim admissible, any separate vote on particular issues of jurisdiction or admissibility shall (unless such vote has shown some preliminary objection to be well-founded under the Statute and the Rules of Court) be followed by a vote on the question of whether the Court may proceed to entertain the merits of the case or, if that stage has already been reached, on the global question of whether, finally, the Court is competent or the claim admissible.
(iii) In any case coming under paragraph (ii) of this Article, or in any other case in which a judge so requests, the final vote

885 See: Resolution on the Internal Judicial Practice of the Court (Court Rules of CourtProcedure, Article 19) adopted on 12 April 1976. Available at: https://www.icj-cij.org/en/other-texts/resolution-concerning-judicial-practice.

> *shall take place only after a discussion on the need for separate voting, and whenever possible after a suitable interval following upon such discussion.*
> *(iv) Any question whether separate votes as envisaged in paragraph (ii) of this Article should be recorded in the decision, shall be decided by the Court.*
> *(v) Every judge, when called upon by the President to record his final vote in any phase of the proceedings, or to vote upon any question relative to the putting to the vote of the decision or conclusion concerned, shall do so only by an affirmative or negative answer"*[886].

After completion of the various stages of the proceedings, which include the formulation and discussion of the preliminary draft judgment, the ICJ shall render its decision on the merits of the dispute, which shall, of course, take into account the applicable law indicated in Article 38, i.e.:

> *"a. international conventions, whether general or particular, which establish rules expressly recognized by the disputing States;*
> *b. international custom as evidence of a practice generally accepted as law;*
> *c. general principles of law recognized by civilized nations;*
> *d. judicial decisions and the doctrines of the most competent publicists of the various nations, as an auxiliary means for the determination of the rules of law, without prejudice to the provisions of Article 59".*

This will be so unless, in accordance with the rule in the second paragraph of the aforesaid Article 38 of the Statute, the parties have empowered the ICJ to decide the matter *ex aequo et bono*, which does not imply the loss of the characteristic judicial nature of the ICJ procedure[887].

It is appropriate to ask ourselves what law the ICJ will decide to apply in the proceedings in this case. We bear the principle of inter-

886 *Ídem.*
887 See: Daniel GUERRA IÑÍGUEZ, Quoted Above, Page 461.

temporality of the law in mind, which consists of applying the law in force at the time the facts that, as a whole, make up the legal situation, occurred. The inter-temporal rule imposes a comprehensive analysis *"of the international law contemporaneously in force"* which forms a part of the context of the treaty[888].

In this case, the ICJ will rule on the validity of the Paris Arbitral Award, and this determination can be made in accordance with the law in force at the time, i.e., between 1897-the date the Washington Arbitration Treaty- was signed- and 3 October 1899, the date on which the Paris Arbitral Tribunal rendered its decision. However, the judges could also decide to give precedence to the provisions of the Geneva Agreement or even to the general principles and rules of international law.

Apart from the discussion of the applicable law on which the ICJ's decision will be based in the final judgment, it is necessary to ratify the binding nature of the rulings issued by this high jurisdictional body. In this regard, the UNC in the first paragraph of Article 94 provides that Member States must comply with the decisions of the ICJ. This provision specifically, states that *"Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any dispute to which it is a party"*[889].

Thus, the judgments rendered by the ICJ are final and are in no way subject to appeal. Nor is a claim for annulment of an ICJ judgment admissible in law. All of the above leads us to the conclusion that ICJ judgments have the effect of *res judicata*. Even in cases where an issue already decided has been raised as the subject of new litigation, the ICJ has been adamant in not reconsidering the same matter. This was the case in the Chorzow Factory case (Germany v. Poland) decided by the ICJ and in the Corfu Channel case (the United Kingdom v. Albania) decided by judgment of 15 December 1949, and the Haya de la Torre case (Colombia v. Peru) decided by judgment of 13 June 1950[890].

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888 Max SORENSEN, Quoted Above, Page 231.

889 See: UN Charter. Available at: https://www.oas.org/36ag/espanol/doc_referencia/carta_nu.pdf.

890 See: Max SORENSEN, Quoted Above, Page 658.

Although the ICJ does not have a second instance to appeal a judgment issued by its judges, it may hear an appeal of a decision of another international body or even an award issued by an arbitral tribunal if the States have agreed that this may be submitted to the ICJ *"if one of them alleges that the award is not in accordance with international law, since such disagreement constitutes one of the cases of legal conflicts referred to in Article 36"*[891].

In general, and this also applies to the final award, ICJ decisions are reached by a majority vote of the judges who are present at the time the decision is made. If there is no majority due to a tie vote during the process, the President or the judge acting in his or her absence (Article 55 of the Statute) shall cast the deciding vote.

ICJ judges must comply with the duty to state the reasons for the judgment and, obviously, include the names of each of the judges who participated in the decision (Article 56 of the Statute).

It is also important to note that the judges will have the right to express their dissenting opinion and this will be added to the judgment in accordance with Article 57 of the Statute. The judgment shall be signed by both the President and the Registrar, and shall then be read in a public session which must be preceded by due notification thereof to the agents of each of the parties (Article 58 of the Statute).

The judgment shall have a binding effect that is restricted to the parties in litigation and only regarding the aspect that has been decided. It shall not cover other aspects beyond the dispute before the ICJ nor can it bind States that have not been parties to the proceedings (Article 59 of the Statute).

Thus, there is no doubt about the finality of ICJ judgments. However, when voluntary compliance with the judgment does not occur, how does one proceed with a forcible execution of the judgments issued by the ICJ?

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891 See: Alfred VERDROSS, Quoted Above, Page 565. The author indicates as an example that, in the case concerning the Jurisdiction of the Council of the International Civil Aviation Organization of India against Pakistan, the ICJ *"stated, in its judgment of 18 August 1972, that, if an international agreement confers on it competence to decide on appeal regarding the decision of an international body in a dispute between States, the ICJ is also competent to hear an appeal against that body's decision as to its own jurisdiction."*

In this regard, doctrine has established that the same treatment given to arbitral awards can be applied to the enforcement of ICJ judgments. In fact:

> *"The contemporary legal order, which lacks a centralized organization of instruments of force that can be used to assist judicial and quasi-judicial bodies, presents the same problem with regard to the enforcement of judgments and arbitral awards"*[892].

Hence the importance of mechanisms such as self-help, which could lead, for example, to the seizure of assets available within the State that was victorious in the proceedings. It may also have recourse to international cooperation, recourse to domestic courts and, of course, to the support of international institutions[893]. In the event of non-compliance, the second paragraph of Article 94 provides that *"If one of the parties to a dispute fails to comply with the obligations imposed on it by a judgment of the Court, the other party may refer the matter to the Security Council, which may, if it deems it necessary, make recommendations or take measures to secure the enforcement of the judgment"*.

Unless otherwise provided by the ICJ, each party shall bear its own costs. Thus, it is different from domestic law, since the costs shall not be borne by the losing party (Article 64 of the Statute).

2.3.1.1. Non-Appealable Nature of Judgments

The judgment issued by the ICJ shall be final and cannot be appealed. If problems arise between the parties regarding the interpretation to be given to the judgment, the ICJ has the power to evaluate and interpret it in order to clarify any aspect that may cause confusion (Article 60 of the Statute).

The first paragraph of Article 61 of the Statute allows review of the judgments issued by the ICJ, but only under an exceptional circumstance and that is when the request for review of the judgment:

892 *Ídem.*
893 *Ídem.*

> *"... is based on the discovery of a fact of such a nature as to be a decisive factor and which, when the judgment was rendered, was unknown to the Court and to the party requesting the review, provided that such ignorance was not due to negligence".*

In the event that the ICJ considers it must proceed to review a judgment for the above-mentioned reason, it will initiate the review procedure by a resolution, in which three requirements must expressly concur: the existence of the new fact, the acknowledgement that the characteristics and implications of the new fact justify the review and, finally, the declaration that the application for review of the judgment has been granted (second paragraph of Article 61 of the Statute).

However, even if a party should request a review of the judgment, the ICJ may, as a prerequisite therefor, require compliance with the judgment under review (third paragraph of Article 61 of the Statute).

The review of a judgment rendered by the ICJ may be requested six months after learning of the new fact (Paragraph four of Article 61 of the Statute). The review of ICJ judgments will not be admissible when requested by a party ten years after the judgment was issued (Paragraph five of Article 61 of the Statute).

Taking into account the above provisions and the final and unappealable nature of the judgments, it is evident that the ICJ is now the only place and the only instance to settle the dispute. In accordance with Article 60 of the Statute, to which Venezuela is a party, its judgments are final and unappealable and are binding on the parties. Indeed, *"The judgment shall be final and without appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of either party"*[894].

The ICJ shall render the judgment settling the dispute in a final and definitive manner and must comply with the requirements set forth in Article 95 of the Rules, namely:

> *"1. The judgment, the text of which shall indicate whether it has been delivered by the Court or by a Court Division, shall contain:*

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894 Statute of the International Court of Justice. Available at: https://www.icj-cij.org/public/files/statute-of-the-court/statute-of-the-court-es.pdf.

the date of its reading; the names of the Judges who took part in it; the names of the parties; the names of the agents, lawyers and advocates of the parties; a summary of the proceedings; the conclusions of the parties; the factual circumstances; the legal grounds; the operative part of the judgment; the decision as to costs, if any; an indication of the number and names of the Judges constituting the majority; an indication of the text of the judgment to which reference is made. Any Judge may, if he/she so desires, append to the judgment his separate opinion or his/her dissenting opinion; a judge who wishes to record his/her concurrence or dissent without giving reasons, may do so in the form of a declaration. The same rule shall apply to orders made by the Court. 3. A copy of the judgment, duly signed and bearing the seal of the Court, shall be deposited in the archives of the Court and a copy shall be served on each of the parties. The Registrar shall transmit copies: (a) to the Secretary-General of the United Nations; (b) to the Members of the United Nations; (e) to other States entitled to appear before the Court"[895].

2.3.1.2. The International Court of Justice and the judgment on the merits whereby the dispute between Guyana and Venezuela will be resolved

Should the ICJ declare the preliminary objections on the admissibility of the claim inadmissible, the proceedings will continue and the ICJ will have to, by an order, set the deadline for the presentation of Venezuela's counter-memorial. Once the proceeding is at the stage of deciding the

[895] *Ídem*. Also see: International Court of Justice, *The International Court of Justice. Questions and Answers regarding the main judicial organ of the United Nations,* 10th edición, United Nations, New York, 2000. "The seal of the Court, which serves to give authenticity to the official versions of the Court's decisions and appears on its publications, represents a rising sun whose rays illuminate in the foreground a figure of Justice holding a pair of scales in one hand and a palm blade in the other. This figure is seated on a pedestal located on a globe unfolded into two spheres. The lower part is framed by two laurel branches, reminiscent of the emblem of the United Nations, whose principal judicial organ is the Court. The seal originates from the Permanent Court of International Justice, the predecessor of the International Court of Justice, and was designed in 1922 by Danish sculptor J. C. WIENECKE.

merits of the dispute, and at the time of rendering its final judgment, the ICJ could decide:

1. to declare the Paris Arbitral Award valid, with which the boundary established in that award would become firm without having to resolve the related issue of the definitive settlement of the boundary dispute between Venezuela Guyana.
2. to declare the Paris Arbitral Award null and void, in which case it would be necessary to determine how the boundary line between Venezuela and Guyana would be established.

   In this case there would be several possibilities:

   2.1. The ICJ could decide to resolve the delimitation of the land boundary directly through the judgment resolving the merits of the case or, failing this, through an incidental proceeding dedicated exclusively to establishing the boundary, involving also the delimitation of the marine and submarine areas. This is a matter to which special attention should be paid given the importance of the projection of the territorial rights and sovereignty that Venezuela has, as a coastal State, over the territorial sea, the exclusive economic zone and the continental shelf, which are all very important sources of wealth.

   2.2 The ICJ could refer the delimitation of the border to the UN Secretary-General, arguing that the delimitation of the border has no legal nature and therefore it is not for the ICJ to resolve this matter by judicial settlement. In this case, the UN Secretary-General should choose a different means of settlement provided for in Article IV.2 of the Geneva Agreement.

   2.3. The ICJ could order the parties to revert to the application of the Geneva Agreement in order to resolve the delimitation of the land boundary through means admitted by international law, in particular by Article IV.2 of the Geneva Agreement and Article 33 of the United Nations Charter. This option is not very viable given that the history of the dispute shows how difficult it is to negotiate such a delicate matter as is sovereignty and territorial integrity.

2.4. The ICJ could refer the delimitation of the boundary to a new arbitral tribunal, a decision that would be allowed under Article IV.2 of the Geneva Agreement. In this case, the parties would have to enter into an arbitration treaty setting out the procedure to be followed, the law applicable to the merits of the dispute, and the method for the selection of the arbitrators.

2.3.1.3. Law applicable to the dispute between Guyana and Venezuela

The ICJ has declared its jurisdiction to hear the dispute, which generates several doubts as to which law the ICJ will decide to apply. The answer derives from the principles of public international law. The principle of intertemporality of law consists of applying the current law at the time when the facts making up the legal situation occurred. The inter-temporal rule imposes joint analysis *"of the international law contemporaneously in force"* which is a part of the context of the treaty[896].

If the ICJ were to declare the nullity of the Paris Arbitral Award and decide to resolve the delimitation of the boundary between Venezuela and Guyana, then it would have to determine the applicable law to do so.

In addition to the above, there are three sources of applicable law that would serve as a solution to the problem:

1. The Arbitration Treaty of Washington dated 2 February 1897. The rules of the Treaty of Washington should be the first source of applicable law to be considered by the ICJ in resolving the related question of boundary delimitation. In that case, the ICJ should resort primarily to the rules of Articles III and IV of that instrument.

   Article III of the Treaty of Washington established the following: "The Tribunal shall inquire into and ascertain the extent of the territories, or which may be legitimately claimed by the former or the latter, at the time of the acquisition of the British Guiana

[896] Max SORENSEN, Quoted Above, Page 231.

Colony by Great Britain, and shall determine the boundary line between the United States of Venezuela and the British Guiana Colony".

On the other hand, Article IV of the Treaty of Washington established that: *"In deciding the matters submitted to the Arbitrators, they shall ascertain all the facts which they deem necessary for the decision of the dispute, and shall be governed by the following rules agreed upon by the High Contracting Parties as rules to be considered applicable to the case, and by such principles of international law not inconsistent therewith, as the Arbitrators may deem applicable thereto.*

RULES

a) Adverse possession or prescription for a term of fifty years shall constitute good title. The Arbitrators may deem that the exclusive political domination of a District, as well as the effective colonization of it, are sufficient to constitute adverse possession or to create titles of prescription.

b) The Arbitrators may recognize and enforce rights and claims which are based on any other valid basis under international law and on any principles of international law which the Arbitrators deem applicable to the case and which do not contravene the foregoing rule.

(c) In determining the dividing line, if the Tribunal finds that the territory of one party has been, at the date of this Treaty, occupied by the nationals or subjects of the other party, such occupation shall be given such effect as, in the opinion of the Tribunal, is required by reason, justice, the principles of international law and the equity of the case.

The ICJ should consider the American uti possidetis iuris principle, which serves as the foundation of our territorial sovereignty since the creation of the General Captaincy of Venezuela by Royal Decree issued by Charles III on 8 September 1777. The uti possidetis iuris principle has been valued by the ICJ in several cases, as stated in the jurisprudence of this high international jurisdictional organ.

A first case in which the *uti possidetis iuris* principle was taken into account was the case of Libya v. Chad (1994), establishing the value of the stability of boundary limits between States by stating that *"Once agreed, the boundary is maintained, for any other approach would invalidate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasized by this Court"*[897].

In another boundary dispute, specifically Benin v. Niger (2013), the ICJ *"emphasizes that the 'uti ossidetis iuris' principle requires not only that reliance be placed on existing legal titles, but also that account be taken of the manner in which those titles were interpreted and applied by the competent public authorities in Power, in particular in the exercise of their legislative power"*.

In Burkina Faso v. Republic of Mali (ICJ Reports, 1986) the ICJ established that *"the principle of uti possidetis has retained its place among the most important legal principles, particularly with regard to territorial titles and the delimitation of frontiers at the time of decolonization"*. The same decision also ruled on the relationship between the principle of uti possidetis iuris and the principle of intangibility of frontiers by establishing *"that it could not disregard the principle of uti possidetis iuris, the application of which, in this respect, gives rise to the intangibility of frontiers"*.

2. The Geneva Agreement dated 17 February 1966: If the ICJ decides that this is the applicable law to resolve the related question regarding the boundary delimitation between Venezuela and Guyana, it would be selecting the most recent instrument in which the parties expressed their will to solve the boundary dispute. In this case, the ICJ will have to take into account the spirit and purpose of the Geneva Agreement, which consists in the search for a satisfactory solution that allows the practical settlement of the dispute. If the ICJ decides to resolve the related

897 Abraham GÓMEZ, "Guayana esequiba: ¿cómo ha sentenciado la corte en litigios similares?" ("Guianna-Essequibo: how has the court ruled in similar litigation?") published in *El Nacional* on 14 July 2022. Available at: https://www.elnacional.com/opinion/guayana-esequiba-como-ha-sentenciado-la-corte-en-litigios-similares/.

question of boundary delimitation according to the Geneva Agreement, the applicable law will be that which it deduces from the will of Venezuela and Guyana expressed in a solution acceptable to both parties.

3. The principles and rules of general international law: In the event of selecting the principles and rules of general international law, the ICJ departs from a specific instrument of applicable law and shall proceed to determine which principles and rules of general international law are applicable to the specific case.

2.3.1.4. The Delimitation of Marine and Submarine Areas

A possible territorial delimitation between Guyana and Venezuela would have an important impact on the delimitation of marine and submarine areas.

The possible delimitation of marine and submarine areas by the ICJ allows us to appreciate the complexity of the dispute. The projection of Venezuela's rights has serious economic implications. These are areas of abundant oil activity. Indeed, Guyana carries out exploitation activities in spaces that, even with the delimitation made by the Paris Arbitral Tribunal in 1899, belong only to Venezuela.

Since 2013, Guyana has violated Venezuela's territorial rights by *de facto* delimiting marine and submarine areas. This resulted in the interception of the vessel Teknik Perdana by the Venezuelan Armed Force Ocean Patrol Vessel "Yekuana" on 22 October 2013.

Since territorial sovereignty is one of the guiding principles of the political system provided in the Constitution, the guarantee of compliance with that principle is a duty of the State whose omission implies, not only a constitutional violation, but also leaving the legitimate rights of the Republic over the disputed territory adrift.

2.3.2. Withdrawal (Articles 88 and 89 of the Rules of Court)

The natural form of termination of the contentious proceedings before the ICJ is a final judgment resolving the subject matter of the

dispute. However, it is also possible for a contentious proceeding initiated before the ICJ to be terminated by a judgment declaring that the ICJ has no jurisdiction to hear the matter whose resolution was sought.

Another form of termination of a contentious proceeding before the ICJ is withdrawal, which is regulated in Articles 88 and 89 of the Rules of Court. Article 88 establishes the possibility that the framework of a contentious proceeding before the ICJ include a conventional withdrawal by notification by the parties either jointly or severally. The rule states:

> *"1. If at any time before the final judgment on the merits is rendered, the parties, jointly or separately, notify the Court in writing that they agree to withdraw from the proceedings, the Court shall issue an order taking note of the withdrawal and ordering the cancellation of the case in question from the General Register".*

The second paragraph of Article 88 of the Rules of Court provides that, in the case of discontinuing proceedings through an amicable settlement, the parties may give the ICJ the power to record this fact in the order to remove the case from the General Register, including the terms of the settlement. In the event of reaching such an agreement, it would technically be a settlement and not a withdrawal. The rule provides:

> *"2. If the parties have agreed to discontinue the proceedings because an amicable settlement has been reached, the Court, if the parties so desire, may record this fact in the order to remove the case from the General Register or may indicate the terms of the settlement in the order or any annex thereto".*

Should the ICJ not be in session, the order of discontinuance may be issued by the President of the ICJ. This is provided for in Article 88, Paragraph 3 of the Rules of Court:

> *"3. If the Court is not in session, the powers conferred under this Article may be exercised by the President".*

Article 89 of the Rules of Court establishes the possibility of discontinuance at the initial stage of the proceedings initiated by an application. The requirements for the application to be declared admissible immediately are: (i) to file a written statement with the ICJ in which the plaintiff desists from continuing with the proceedings; and (ii) that, at the time the statement is filed, the defendant has not carried out any act in the proceedings. To this effect, the aforementioned Article 89 of the Rules of Court provides:

> *"1. If, in the course of a proceeding instituted by an application, the applicant informs the Court in writing that he/she waives further proceedings and if, on the date of receipt at the Registry of the Court of this waiver, the respondent has not yet performed any procedural act, the Court shall issue an order taking note of the waiver and ordering the cancellation of the case in question from the General Register. The Registrar shall send a copy of such order to the respondent".*

Where the respondent has already performed procedural acts prior to the filing of the application to withdraw, the ICJ shall set a time limit for the respondent to oppose the withdrawal. The legal consequence of the defendant's failure to oppose indicates acceptance of the withdrawal; but, if the defendant opposes the withdrawal, the contentious proceeding will continue its course. The second paragraph of Article 89 of the Rules of Court provides:

> *"2. If, on the date of receipt of the withdrawal, the respondent has already performed any procedural act, the Court shall fix a time limit within which the respondent may declare whether he/she objects to the withdrawal. If the defendant has not objected to the withdrawal within the time limit set, the withdrawal shall be deemed to have been accepted and the Court shall issue an order taking note of the withdrawal and ordering the cancellation of the case in question from the General Register. If an objection has been raised, the proceedings shall continue".*

As with conventional withdrawal, the third paragraph of Article 89 of the Rules of Court provides:

"3. If the Court is not in session, the powers conferred by this Article may be exercised by the President".

In the case brought by Guyana against Venezuela, conventional withdrawal could be an option if, in the course of the proceedings, the parties decide to negotiate and reach a settlement in accordance with the Geneva Agreement. Needless to say, Guyana is not ready to negotiate at this stage. However, the possibility should not be ruled out that Venezuela will use all possible strategies to reach a practical and negotiated solution. To this end, it would be necessary to evaluate the possible points of pressure that could be used to bring the Guyanese representative to the negotiating table and identify the common interests that could exist between the parties.

X. PERSONALITIES IN THE CONTROVERSY

1. **Agustín Codazzi (**1793-1859): Italy. Military officer, geographer and cartographer. In 1840, he published the *Physical and Political Atlas of Venezuela.* In this map he included the *"Chart of the Republic of Colombia, divided into 12 Departments in 1824",* showing that the borders of the Republic of Colombia included the territories of the province of Guayana and that in some parts of the territory there were English occupations at the time that were considered usurpations.

Chart of the Republic of Colombia divided into 12 Departments in 1824. Taken from the Physical and Political Atlas of the Republic of Venezuela drawn up by Agustín Codazzi[898]

The Physical and Political Atlas of Venezuela drawn by Agustín Codazzi also included the political map of Venezuela of 1840, which

[898] Allan Randolph BREWER-CARÍAS, *"La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de Diciembre de 1819"* ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"). Quoted Above.

established its eastern border at the Essequibo River. However, like the aforementioned map of the Republic of Colombia, which was divided into 12 departments in 1824, it did not include the territory on the west bank of the headwaters of the Essequibo River, nor the territory where the mouth of the Moruco and Essequibo Rivers is located. These same territories appear in the Map of 1824 as "territory considered usurped by the English", although *the Political Map of Venezuela of 1840* no longer includes this reference.

Political Map of the Republic of Venezuela in 1840.
Taken from the Physical and Political Atlas of the Republic of Venezuela drawn up by Agustín Codazzi[899]

The accuracy of the maps drawn by Agustín Codazzi was recognized by the British officials themselves. In fact, one of the documents in Venezuela's favour that was not considered as evidence by the Paris Arbitral Tribunal, although the reasons for this arbitrary exclusion were not explained, was the letter dated 4 March 1842 from Henry Light, Governor of the British colony of Guiana, to Lord Stanley, Secretary

899 *Ibidem*. Page 143.

of State for the Colonies. This was a key piece of evidence in favour of Venezuela's claims, as the Governor stated that they had no claim to the Amacuro River west of the Barima River. With this letter it became clear that even Governor Henry Light knew of the illegitimacy of the second Schomburgk line when he wrote the following:

> *"... We have no claim to the Amacuro River, west of the Barima, although on Major L. von Bouchenroeder's old map, published in 1798, the former river is marked east of the latter, and both flowing into the Orinoco.* ***Both Mr. Schomburgk's map and Mr. Codazzi's map place these rivers in the proper position, with the Amacuro entering the Orinoco from the south west of the Barima. [...] I believe that Mr. Schomburgk assumes that the Amacuro is the boundary, solely for reasons of convenience.*** *[...] Neither the Barima nor the Amacuro can now be of any importance to Great Britain, and could only be occupied at a cost of lives and money, which would not make it expedient; but we must be mindful that a more important power than Venezuela does not take possession of them. The existence of the Spanish-American republics seems to depend so much on political parties always ready to contend for power, that one might ask what is to prevent one of the contending provinces, wishing to obtain foreign aid, from offering a settlement to the United States, or France, or any other power, merely for the madness of partisan sentiment, ready to plunge into the folly of gaining some temporary advantage over the opposing faction [...] [...] British Guiana must never submit to have the flags of France or of the United States, or of any other power, flying on its borders. [...]"*[900]. (Highlighting Added).

[900] Quoted in Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 166-167. Letter of 4 March 1842, by Henry LIGHT, Governor of the British Guiana Colony, to Lord STANLEY, English Colonial Secretary, Foreign Office, 80/108. Wording translated by the quoted author.

2. **Alexander VI** (1431-1503): Spain. Alexander VI was the 214th pope of the Catholic Church. His name was Rodrigo Lanzol y de Borja. On 4 May 1493 he issued the Inter Caetera Papal Bull whereby the territories of South America were divided between Spain and Portugal based on the discoveries of both nations.

The Bulls of Alexanders are a series of documents issued in 1493 after the first voyage of Christopher Columbus. After this important event, a series of disputes arose between Spain and Portugal. The papal bulls of Alexander VI were intended to settle these territorial issues. There were three of these documents. *"The first, dated 3 May 1493, granted Spain "by the authority of Almighty God" exclusive and perpetual dominion over the new territories. The second, issued on 4 May of the same year, established a north-south dividing line some 560 kilometres west of the Cape Verde Islands. The Pope affirmed that all lands discovered or to be discovered west of this line belonged to Spain; those discovered to the east belonged to Portugal. The third decree seemed to increase Spain's influence in the East, as far as India. This did not please King John II of Portugal, who appealed to Spain and negotiated directly with the Catholic Monarchs"*[901].

Dissatisfaction with the Third Bull of Alexandria led Portugal to appeal the decision and this led to direct negotiations between Portugal and the Catholic Kings. The result was the Treaty of Tordesillas, signed on 7 June 1494, a supplementary agreement to the Inter-Catholic Bull that specified the division and extended Portuguese territory to 350 leagues from Cape Verde. The treaty thus established the sovereignty of Spain and Portugal on the American continent by dividing the zones of navigation and conquest between the two nations.

The territories in dispute belonged to Spain as of 4 May, 1493, the date on which the Bull was issued, and were the same ones with which the General Captaincy of Venezuela was constituted, by Royal Decree dated 8 September 1777, and, in turn, the same ones that Venezuela acquired when it became independent on 5 July 1811.

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[901] See: The *"Alexandrine Bulls"* in the *Library of the Universidad Pontificia Bolivariana*. Available at: https://bibliotecas.upb.edu.co/index.php/sin-categoria/1388-bulas-alejandrinas. *"The original documents of the Alexandrine Bulls are kept in the General Archives of Simancas; the Archives of the Indies and the National of the Torre do Tombo of Lisbon"*.

The Constitution of 1811 established in article 128 that *"once free from the oppression suffered by the provinces of Coro, Maracaibo and Guayana, if they can and wish to join the Confederation, they will be admitted to it without the violent separation in which, to their regret and ours, they have remained, altering the principles of equality, justice and fraternity which they will henceforth enjoy as all the other provinces of the Union"*[902]. The aforementioned Bull shows that from that moment the disputed territory belonged to Spain, which is the same that Venezuela acquired after independence by virtue of the principle of *uti possidetis iuris*.

3. **Alejo Fortique** (1797-1845): Venezuela. Diplomat. In September 1841 Alejo Fortique was sent by the Venezuelan Government, with the support of historian Rafael María Baralt, to negotiate with the United Kingdom an arrangement for the demarcation of the border, given that in 1840 Robert Schomburgk had carried out a second demarcation, known as the *"Second Schomburgk Line"*. That line covered an area of 142,000 square kilometres, starting at the mouth of the Amacuro River, following a north-south direction up to the Roraima. With this new line, not only was an arbitrary drawing of the limits between the two States carried out, but *motu proprio* Schomburgk erected posts with the initials of Queen Victoria, marked trees and made acts of possession in the territories covered by the line, reaching Punta Barima at the mouth of the Orinoco River.

Alejo Fortique communicated with Lord Aberdeen, Secretary of Foreign Affairs of the United Kingdom, requesting the removal of the posts erected by Robert Schomburgk, the removal of the military post erected in Venezuelan territory where the British flag had been hoisted, and an agreement to negotiate a treaty to establish the border between the two territories.

Alejo Fortique's insistence made the United Kingdom order Henry Light, Governor of the British Guiana Colony, on 31 January 1842, to proceed with the removal of those posts.

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902 Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), *Academy of Political and Social Sciences*, Caracas, 1997. Pages 555 & ff.

This is what the Governor said in his letter:

"Mr. Henry Light to Mr. F. O'Leary.

Dear Sir:

I have the honour to inform you, to the satisfaction of the Venezuelan Government, that I have received instructions from the honourable Secretary of State for the Colonies to remove the posts placed by Mr. Schomburgk on the Barima and elsewhere, in the survey of the alleged boundaries of British Guiana. These instructions being given, I trust they will be received as a pledge of the friendly intentions of His Majesty's Government, and will be obeyed as soon as possible. If, in the meantime, there should be any delay in carrying out the instructions I have received, I trust you will use your good offices to inform the Venezuelan Government that they may consider all grounds of counterclaim removed by the concession made to them by the British Ministers. I have the honour, Sir, to be your most obedient and humble servant.

HENRY LIGHT,

Governor of British Guiana. Mr Daniel F. O'Leary"[903].

However, the removal of these posts did not put an end to the usurpation, and due to the growing tensions between Venezuela and the United Kingdom, on 18 November 1850, the British Consul General in Caracas, Belford Hinton Wilson, sent a communication to the Venezuelan Secretary of State and Foreign Affairs, Vicente Lecuna, in which the British authorities undertook not to usurp or occupy the disputed territories.

4. **Allan Brewer-Carías**[904]: Venezuela. Renowned jurist, professor and Member of the Academy of Political and Social Sciences.

[903] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted Above Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

[904] Allan Randolph BREWER-CARÍAS, *"La Formación de la República y su Territorio en las Constituciones del Siglo XIX, legado del proceso constitucional que comenzó con la Ley Fundamental de Colombia promulgada por Simón Bolívar en Angostura el 17 de*

His extraordinary knowledge in public law and history of law, evidenced in his numerous publications, constitute valuable contributions to the territorial claim on the eastern border of Venezuela, such as: *"Territorio de Venezuela. Período Republicano",*("The Venezuelan Territory") published in *Diccionario de Historia de Venezuela* (Dictionary of Venezuelan History"), Volume II, editted byFundación Polar, Caracas, 1989.; *"Guyana-Venezuela Border Dispute",* published in the Max Planck Encyclopaedia of Public International Law in September 2006; "Guyana-Venezuela Border Dispute", published in the Max Planck Encyclopedia of Public International Law, in September 2006; "*The Formation of the Republic and its Territory in the Constitutions of the Nineteenth Century. A legacy of the constitutional process that began with the Fundamental Law of the Republic of Colombia, promulgated by Simón Bolívar, in Angostura, on 17 December 1819"*, published by the Academy of Political and Social Sciences, in Bulletin Nº 164, April-June 2021, and his conclusions that were presented at the Cycle of Conferences held by the Academy of Political and Social Sciences on the Essequibo Territory Claim, also published in the Bulletin of the Academy of Political and Social Sciences, Nº 168, April-June 2022.

5. **Alonso de Ojeda** (1468-1515): Spain. Navigator and conqueror whose relationship with the controversy began after the arrival of Christopher Columbus to the Gulf of Paria and the Orinoco Delta on 6 August 1498. A year later, in 1499, Alonso de Ojeda made incursions into the coast of Guayana, covering the areas of the Orinoco River and the Amazon River[905], being one of the Spanish precursors

Diciembre de 1819" ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), in *Bulletin of the Academy of Political and Social Sciences*, Nº 164, April June, Caracas, 2021; Also see: Allan BREWER-CARÍAS, "Conclusiones Coloquios de la Academia de Ciencias Políticas y Sociales sobre la reclamación del territorio Esequibo" ("Conclusions-Discussions of The Academy of Political and Social Sciences on the Claim to the Essequibo Territory"). Quoted Above.

905 See, in general, the detailed account of historical titles on Venezuela regarding the claimed territory in the works of Academician Dr. Carlos ÁLAMO YBARRA, Quoted Above. Also see: Rafael SUREDA DELGADO, "*Venezuela y Gran Bretaña. Historia de una usurpación"* ("Venezuela and Great Britain. The History of an Usurpation"), Volume I, A Paper presented to the illustrious Central University of Venezuela for promotion, on the teaching staff list, to the category of Assistant Profesor, Caracas, 1974. Page 26.

who discovered and colonized the territories of northern America. In 1502, another expedition led by Captain Alonso de Ojeda took place along the coast between the Orinoco River and the Essequibo River[906].

6. **Andrés Avelino Domínguez**: Venezuela. Captain and second man in command of General Domingo Sifontes. Captain Andrés Avelino Domínguez was ordered to recover the military post occupied by Englishman Douglas Barnes during the Yuruán Incident, which occurred on 2 January 1895. His intervention was successful and he managed to apprehend the occupants, who were transferred to Ciudad Bolivar and later released.

7. **Antonio Guterres** (30 April 1949): Portugal. Secretary-General of the United Nations from 1 January 2017 to the present. On 23 February 2017, he appointed Dag Nylander to act as good officer between Venezuela and Guyana, taking into account the formula indicated by former UN Secretary-General Ban Ki-moon, which entailed the incorporation of a mediation element to the good offices process.

Antonio Guterres established 30 November 2017 as the deadline to evaluate the progress which, if not significant, would result in the dispute being referred to judicial settlement before the ICJ. On 30 January 2018, he chose the ICJ as the means of settlement of the territorial dispute, in accordance with his interpretation of the second paragraph of Article IV of the Geneva Agreement.

8. **Antonio Guzmán Blanco** (1829-1899): Venezuela. President of Venezuela in four terms, 1870-1873; 1873-1877; 1879-1882 and 1886-1887. During his second government, the United Kingdom began its illegitimate expansion in the national territory. During his third government, in 1880, British pretensions over the territory increased, especially when the existence of gold deposits was discovered. At that time the *"claim reached such extremes that it almost passed the border through the town of Upata, starting, of course, from the mouths of the Orinoco"*[907]. Then, in 1887, during his fourth government, the British

906 Rafael SUREDA DELGADO, Quoted Above, Page 27.

907 Marcos FALCÓN BRICEÑO, "Orígenes de la actual reclamación de la Guayana Esequiba" ("The Origins of the Current Claim to Guyana-Essequiba"), en *Bulletin of the Academy of Political and Social Sciences*, Nº 91, Caracas, 1983. Page 43.

unilaterally considered that the border with Venezuela consisted of a line from the coast to Upata, thus usurping 203,310 square kilometres of Venezuelan territory.

9. **Antonio Remiro Brotóns** (17 September 1945):

Spain. He is a prominent lawyer, academic and expert in international law with extensive experience in teaching, research and practice. He is currently Professor of Public International Law and International Relations at the Universidad Autónoma de Madrid and Director of the PhD Programme in International Law and International Relations at the Instituto Universitario de Investigación Ortega y Gasset in Madrid. He has lectured at various institutions and has been a lawyer and counsel in international litigation. He is the author of several books on international law, including International Law and the General Course on International Law. He has also participated in courses and seminars on various topics related to international law.

Dr. Remiro Brotóns coordinates the group of expert lawyers that make up Venezuela's defence team before the International Court of Justice, acting as counsel and advisor. He has also participated in the initiatives of the Academy of Political and Social Sciences in the framework of the Cycle of *Colloquia on the Essequibo Dispute*, held from 6 May 2021 to 31 March 2022, specifically in the sixth meeting on the Geneva Agreement and the Essequibo dispute. Additionally, Dr. Remiro Brotóns contributed with a paper entitled *"The Geneva Agreement and the Essequibo Dispute"*[908] in the book *La controversia*

[908] Antonio REMIRO-BROTÓNS, *"El Acuerdo de Ginebra y la controversia del Esequibo"* ("The Geneva greement and the Essequibo Dispute"), *Academy of Political and Social Sciences* Caracas, 2022. Pages 347 ff

del Esequibo (The Esequibo controversy) published by the Academy of Political and Social Sciences in 2022.

10. **Arístides Calvani** (1918-1986): Venezuela. Minister of Foreign Relations of Venezuela, during the first government of President Rafael Caldera. On 17 June 1970, he signed the Port of Spain Protocol, suspending the legal effects of the Geneva Agreement for twelve years. Roland Charles Colin Hunt, High Commissioner of the United Kingdom and Northern Ireland in Trinidad and Tobago, signed for the United Kingdom, and Minister of State Shridath S. Ramphal signed for Guyana.

11. **Ban Ki-moon** (13 June 1944): South Korea. Secretary-General of the United Nations from January 2007 to December 2016. Ban Ki-moon appointed Norman Girvan as the third Good Officer in the territorial dispute between Venezuela and Guyana to find a practical and mutually acceptable solution for the parties.

Following the death of Good Officer Norman Girvan, both Venezuela and Guyana considered that good offices were not the appropriate means to resolve the dispute. In response, UN Secretary-General Ban Ki-moon informed through a communiqué dated 31 October 2016 that it would not be possible to appoint another good officer and decided to incorporate an element of mediation into the good offices process. Ban Ki-moon set a deadline of the end of 2017 to determine whether there was significant progress in the good offices process. If not, he would resort to judicial settlement before the ICJ, unless the parties unanimously requested him not to do so.

12. **Belford Hinton Wilson** (1804-1858): United Kingdom. British Consul General in Caracas. On 18 November 1850, he sent a communication to the Secretary of Foreign Affairs of Venezuela, Vicente Lecuna, whereby the British authorities committed themselves not to usurp or occupy the territories in dispute. In said communication, the propaganda of falsehood and slander against the policies of the British government was denounced. In addition, it was intended to neutralize the rumour circulating in Venezuela that the United Kingdom was trying to claim the Province of Venezuelan Guyana. That communication was one of the constituent notes of the *Statu quo* Treaty of 1850, together with the answer given by Venezuelan Secretary of Foreign Affairs Vicente Lecuna.

Vicente Lecuna replied on 20 December 1850 and stated the following: *"the Government has no difficulty in declaring, as it does, that Venezuela has no intention of occupying or usurping any part of the territory whose dominion is disputed, nor will it view with indifference that Great Britain should proceed otherwise"*[909].

Both notes established the *Statu quo* Treaty between Venezuela and the United Kingdom, which meant paralyzing the advance of British claims and maintaining the existing situation for the time being.

What was expressed in the communications of the British Foreign Secretary, Belford Hinton Wilson, and Venezuelan Minister of Foreign Relations, Vicente Lecuna, was A *Statu quo* Treaty in which Venezuela and the United Kingdom undertook not to usurp or occupy the disputed territory, although the United Kingdom never respected it. This treaty benefited Venezuela and supported its claims, but there is no reference to it in the Washington Treaty of 1897 or in the Paris Arbitral Award of 3 October 1899. It was one of the pieces of evidence silenced in the Paris Arbitration that contributed to the injustice suffered by Venezuela.

13. **Benjamin F. Tracy** (1830-1915). United States of America. Secretary of the Navy of the United States of America from 1889 to 1893, during the presidency of Benjamin Harrison. He was one of the lawyers who formed Venezuelan defence team during the Paris Arbitration in 1899.

14. **Benjamin Harrison** (1833-1901).

909 See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

United States of America. Twenty-Third president of the United States of America between 1889 and 1893. He was the lawyer who led the team formed to defend Venezuela's interests during the Paris Arbitration in 1899.

Benjamin Harrison's performance during the hearings is also crucial. In particular, when he argued before the Tribunal the scope of the prescription clause of the Treaty of Washington of 1897 and its effect on the determination of the critical date of the dispute.

It should be recalled that Venezuela, through its representatives, had been led to believe that the Tribunal would apply the prescription clause to a period prior to 13 August 1814 and, moreover, that it would apply only to a small part of the territory. However, this rule applied to the future and not to the past, to the advantage of the British. This was also the contention of former US President Benjamin Harrison, acting on behalf of Venezuela, when he made the following statement to the Tribunal, referring to the secret correspondence between Secretary of State Richard Olney and the British Ambassador in Washington, Julian Pauncefote.

Pauncefote stated:

> *"It would be candour on my part if I did not say that they seem clearly to indicate that Mr Olney and Mr Julian Pauncefote understood the prescription period to apply to the years after 1814"*[910].

Benjamin Harrison was one of the main critics of the Paris Arbitration Award. In January 1900, three months after the award was rendered, he stated that the decision: *"gave Venezuela the strategic points, but deprived it of an immense part of territory that an impartial tribunal would have awarded it, and of this there can be no doubt. The modern European idea is that there is nothing illegal or even immoral in the appropriation of territories from weaker states"*[911].

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[910] See: Véase Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 374.

[911] René DE SOLA, "Valuación actualizada del Acuerdo de Ginebra", en *Bulletin of the Academy of Political and Social Sciences*, Nº 91, Caracas, 1983. Page 65.

In fact, in his posthumous memorandum, Severo Mallet-Prevost wrote that he and former President Benjamin Harrison were aware of the collusion that existed between Arbitral Tribunal President Federico de Martens and the English arbitrators Lord Russell and Lord Collins appointed by the United Kingdom. The Times, a London newspaper, even published a statement by Reuters news agency containing statements by Chairman Benjamin Harrison and Severo Mallet-Prevost that *"there was nothing in the history of the dispute that adequately explained the boundary line drawn in the Award"*[912].

15. **Caroline Harrison**: United States of America. Wife of the President of the United States of America Benjamin Harrison. In a note in her diary dated 3 October 1899, she criticized the Paris Arbitral Award and wrote that it was evident that the United Kingdom had no title to the territory it had been granted and, for that reason, she reported that everyone was furious.

16. **Carlos Alamo Ybarra** (Deceased on 24 February 1958):

Venezuela. Member of the Academy of Social Political Sciences. His relevance in the controversy obeys to the great academic contribution of his speech of incorporation to the Academy of Political and Social Sciences entitled *Fronteras de Venezuela con la Guayana Inglesa* (The Borders of Venezuela with English Guiana). In his valuable work he detailed the historical titles that assist Venezuela in the claim. It was the first time that the Academy of Political and Social Sciences published a work in which the matter was scientifically analysed.

912 Presentation by Doctor Carlos SOSA RODRÍGUEZ, the Venezuelan Ambassador to the UN, on 22 February 1962. Available at http://esequibonuestro.blogspot.com/2012/03/exposicion-del-embajador-de-venezuela.html.

17. **Carlos Ayala Corao** (1 March 1957): Venezuela. Member of the Academy of Political and Social Sciences. On 1 November 1995, Carlos Ayala Corao was appointed Venezuelan facilitator in the Good Offices process. Between 1996 and 1999, he was Venezuela's facilitator before the Good Officer Meredith Alister McIntyre[913], appointed by the Secretary-General of the United Nations, Javier Pérez de Cuéllar, to reach a solution acceptable to the parties.

18. **Carlos de Sucre y Pardo** (1688-1745): Belgium. Governor of Cumaná, the province to which Guayana belonged, who in 1734 agreed with the prelates of the religious communities to divide the region into three missionary zones. The zone assigned to Capuchin friars included the territory from Boca Grande de Orinoco to the colony of Essequibo.

19. **Carlos Sosa Rodríguez** (1912-1997): Venezuela. Member of the Academy of Political and Social Sciences. Permanent Representative of Venezuela to the United Nations, with the rank of Ambassador Extraordinary and Plenipotentiary.

On 22 February 1962, during the 130th meeting of the XVI Annual Session of the United Nations General Assembly, being the Permanent Representative of Venezuela to the United Nations, Carlos Sosa Rodríguez ratified the position of the Ministry of Foreign Relations of Venezuela, according to which a change of status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice. His closeness to the claim allowed him to make academic contributions such as his work *El acta de Washington y el Laudo de París* (The Washington Act and the Paris Award), published in the Bulletin of the Academy of Political and Social Sciences, Nº 91, in 1983.

20. **Charles Russell of Killowen** (1832-1900): United Kingdom. Member of the Privy Council of Queen Victoria. He acted as arbitrator on behalf of the United Kingdom after the death of Baron Herschell on 1 March 1899. Lord Russell and Lord Collins- the other arbitrator appointed by the United Kingdom-, agreed with the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, to influence the final

913 Héctor FAÚNDEZ LEDESMA, "Presentation", in Héctor FAÚNDEZ LEDESMA and Rafael BADELL MADRID (Coordinators), Quoted Above, Pages 25-26.

decision that took from Venezuela more than 159,500 square kilometres of its territory.

From the beginning, Lord Russell had a favourable attitude towards the United Kingdom. He thought that arbitrators had a political link with their States and considered that it was not necessary for international arbitrations to be restricted exclusively to legal grounds. This explains why he accepted the proposal of Fyodor Fyodorovich Martens.

Lawyer Severo Mallet-Prevost wrote in his posthumous memorandum that during an intimate lunch organized by Henry White, Chargé d'Affaires of the United States of America, Lord Russell, Judge Josiah Brewer and he met in London. Mallet-Prevost wrote in his memorandum on Lord Russell the following:

> *"It fell to me to sit next to him, and in the course of the conversation I ventured to suggest that international arbitration should base its decisions solely on legal grounds. Lord Russell immediately replied: I completely disagree with you. I think that international arbitration should be conducted on a broader basis and should take into account questions of international policy. From that moment I realized that we could not rely on Lord Russell to decide the boundary question on the basis of strict law"*[914].

21. **Cipriano Castro** (1858-1924): Venezuela. He led the Liberal Restoration Revolution that triumphed on 23 October 1899 and overthrew President Ignacio Andrade, just twenty days after the Paris Arbitration Award was issued. This revolution was one of the elements that provoked an enormous internal crisis in Venezuela, generating, together with other factors, the situation of instability that prevented Venezuela from opposing the execution of the Paris Arbitral Award and having to accept it against its will.

With regard to the finality of arbitral awards, it should be recalled that in Venezuela, in 1904, during the government of Cipriano Castro,

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914 See: the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH, "Materia de excepcional importancia para la historia diplomática de Venezuela. La disputa de límites entre Venezuela y La Guayana Británica" ("A Matter of Exceptional Importance for Venezuelan Diplomatic History. The dispute over the borders between Venezuela and British Guiana"), *Bulletin of the Academy of Political and Social Sciences*, Vol. 14, No. 1-2-3-4, Caracas, 1949, Page 32.

Venezuelan Ministry of Foreign Relations adopted a position on the reviewability of arbitral awards, allowing it in certain cases. The doctrine upheld by Venezuelan Ministry of Foreign Relations was that, in some cases, the presumption that the arbitrators had acted correctly could be dispelled; in such cases, *"the awards should not deserve the respect nor have the authority that the compromise gives them"*[915].

22. **Dag Nylander** (24 March 1969): Norway. Good Officer appointed by Antonio Guterres, Secretary-General of the United Nations on 23 February 2017 to find a solution to the territorial dispute between Venezuela and Guyana. He participated in the good offices process with an element of mediation incorporated according to the procedure established by former UN Secretary-General Ban Ki-moon.

He was a Good Officer until 30 November 2017, the deadline set to assess progress in resolving the dispute. Having failed to demonstrate results, Antonio Guterres decided to opt for judicial settlement by the ICJ, based on his interpretation of Article IV, Paragraph 2 of the Geneva Agreement.

23. **David Josiah Brewer** (1837-1910): United States of America. Judge of the Supreme Court of the United States of America and arbitrator appointed by Venezuela pursuant to the Treaty of Washington of 2 February 1897. Together with Arbitrator Melville Weston Fuller, he was pressured by the President of the Arbitral Tribunal of Paris, Fyodor Fyodorovich Martens, to rule in the same way as British arbitrators, Lord Collins and Lord Russell of Killowen, in an effort to have the Arbitral Tribunal of Paris reach a unanimous decision; he was warned that if he rejected such a proposal, Venezuela would lose even the Bocas del Orinoco.

24. **Diego Bautista Urbaneja** (1817-1892): Venezuela. Minister of Foreign Relations of Venezuela during the third government of Antonio Guzmán Blanco. On 26 January 1887 he sent a note to the Resident Minister of Her Britannic Majesty, F. R. Saint John, in which he protested against the illegitimate acts of territorial usurpation by the United Kingdom. He also indicated that if there was no positive response to this situation before the next annual message to Venezuelan

915 Daniel Guerra IÑÍGUEZ, Quoted Above, Page 450.

Congress, diplomatic relations between the two countries would be severed. In the aforementioned note he indicated that Venezuela: *"Protests to the Government of Her Britannic Majesty, to all civilized nations, to the world in general, against the acts of dispossession which the Government of Great Britain has carried out to its detriment, and that it will not recognize, at any time or for any reason, as capable of altering in the least the rights which it has inherited from Spain"*[916].

On 20 February 1887, Diego Bautista Urbaneja sent a new note in which, after exposing the titles of Venezuela and the constant abuses of the United Kingdom in Venezuelan territory, diplomatic relations between Venezuela and the United Kingdom were broken. Venezuelan Minister stated: *"Consequently, Venezuela, which has no need to maintain friendly relations with a State that injures it in this way, suspends them as of today and protests before the Government of Her Britannic Majesty, all civilized nations, and the world in general, against the acts of dispossession that the Government of Great Britain has carried out to the detriment of Venezuela"*[917].

25. **Diego Cordovez** (1935-2014): Ecuador. After the intervention of the Secretary-General of the United Nations, in accordance with the provisions of the second paragraph of article IV of the Geneva Agreement, on 31 August 1983, he was appointed special envoy of the Secretary-General of the United Nations, Javier Pérez de Cuéllar.

Diego Cordovez was entrusted with an exploratory mission that included visits to Caracas and Georgetown, with the intention of learning the position of the parties regarding the choice of means for a peaceful solution. After several meetings, he proposed a solution to the parties which consisted of establishing a conciliation commission or contact group. Venezuela rejected the proposal and opted to use the good offices process.

26. **Diego de Ordaz** (1480-1532): Spain. Military officer who between 1531 and 1532 explored from the Orinoco River to the Meta, as well as the basins of the Cuyuní and Mazaruní rivers. Later, King Charles V of the Holy Roman Empire and I of Spain granted him the government of the territory.

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916 Carlos SOSA RODRÍGUEZ, Quoted Above, Pages 123-124.

917 *Ibidem,* Page 175.

27. **Diógenes Escalante** (1877-1964): Venezuela. As Venezuelan Ambassador to Washington, he accompanied President Isaías Medina Angarita during his visit to the United States of America in January 1944. Together with President Isaías Medina Angarita, he met with Severo Mallet-Prevost, one of the lawyers who was part of Venezuela's defence team during the Paris Arbitration. On that occasion, Severo Mallet-Prevost was awarded the Order of the Liberator for his commitment to the defence of Venezuela's territorial rights. Diógenes Escalante spoke at that time and said: *"Venezuela accepted the award, but Venezuela expects the injustice to be repaired"*[918].

28. **Domingo Sifontes** (1834-1912): Venezuela. General- nicknamed the intellectual plainsman- who led Venezuelan military authorities that reacted immediately to the events of the Yuruán Incident, as he himself called the occupation of a Venezuelan military post by English troops that occurred in the early morning of 2 January 1895, ten months after the founding of the town of El Dorado[919].

The Yuruán Incident consisted of the occupation of an unoccupied Venezuelan military post by several British commissioners, led by Inspector Douglas Barnes, while the guards were practicing normal exercises[920]. The British troops lowered Venezuelan flag and raised the British flag with the intention of controlling the post and then "*taking the lands of El Callao, passing through Upata, Tumeremo and El Dorado, as well as other areas rumoured to be full of gold"*[921].

The order to retake Venezuelan military post was given to Captain Andrés Avelino Domínguez, second in command to General Domingo Sifontes, who successfully carried it out and arrested the eight

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[918] Marcos FALCÓN BRICEÑO, Quoted Above, Page 51.

[919] Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 24. Also see: Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 14.

[920] See: Juan MATORANO, *"El incidente del Yuruán, evidencia del expansionismo inglés"* ("The Yuruán Incident; Evidence of English Expansionism"), ob cit. See also: Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident")", Quoted Above.

[921] See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/

Englishmen who were sent to Ciudad Bolivar, including Inspector Douglas Barnes[922].

General Domingo Sifontes sent a letter to Carlos Pumar, director of the Caracas newspaper El Tiempo, where he gave a detailed account of the events of the Yuruán Incident. On 22 April 1895, the letter was published in issue 629 of the newspaper El Tiempo, today out of circulation[923].

According to the aforementioned letter, which we include in its entirety in the annexes of this study, the background of the Yuruán Incident dates back to March 1894, when General Domingo Sifontes was appointed National Commissioner of the Cuyuní river and its tributaries.

During his functions as National Commissioner of the Cuyuní river and its tributaries, General Domingo Sifontes was entrusted with the responsibilities of colonization, population, civilization of the natives of the area, the care of the troops and the creation of sub-commissariats. He fulfilled all of them efficiently[924].

His work to promote colonization and population in the area led him to *"ascertain considerable vegetation clearing on the banks of the Yuruán and Cuyuní Rivers"*[925]. At that time, *"there were only nine houses between the two banks: 6 on the left and 3 on the right. The last two of which, with their respective farms, were founded in 1870, by José Francisco and Loreto Lira, Miguel Angel González and Lorenzo Rivas; and the other was built in 1890 by a British subject named Mc Turk, in front of the mouth of the Yuruán River, where six people of the same nationality lived, working on a small plantation and, from April or May, under the orders of the so-called Inspector Barnes"*[926].

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922 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above. Also see: William Dávila Barrios (ed.), Quoted Above, Page 49.

923 Juan Matorano, *"El incidente del Yuruán, evidencia del expansionismo inglés"* ("The Yuruán Incident; Evidence of English Expansionism"), Quoted Above.

924 Véase el artículo "Domingo Sifontes, el venezolano que hizo correr a los ingleses" publicado en La Razón durante el año 2015. Available at https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/.

925 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

926 *Ídem.*

The information supplied by General Domingo Sifontes is graphically represented in the Topographical Plan of Venezuelan Station *"El Dorado" in the Cuyuní-Guayana*, included in Chapter III of this book.

Between General Domingo Sifontes and Inspector Douglas Barnes, there was always a respectful relationship, which was maintained even in delicate moments. A first example of this was the support given by General Domingo Sifontes to a young German named Guillermo Faull, whom Inspector Douglas Barnes was trying to evict from the right bank of the Cuyuní River. In spite of everything, General Domingo Sifontes stated in his letter the following: *"This incident, however, did not alter my good relations with Barnes, who by his fine treatment, captured my personal appreciation"*[927].

Despite the cordial relationship that existed between the two main authorities in the area, General Domingo Sifontes wrote in the letter that is the subject of these comments that *"the conflict that occurred on January 2nd was a premeditated action by the usurping settlers of Demerara, as proven by the editorial of the Argosy of 24 November of last year, in which a probable collision between Venezuelans and the English of the Yuruán was predicted, and in which the loss of precious lives, naturally of the English, was lamented beforehand, while at the same time the most hurtful epithets and the most horrible invectives were hurled at Venezuelans"*[928].

Inspector Douglas Barnes and his men infringed upon the sovereignty of Venezuela. However; during their detention they were treated with dignity and their rights were respected. In fact, General Domingo Sifontes in his letter upon his arrival at El Dorado on 8 January 1895 stated the following: *"I proceeded to initiate the legal proceedings, and after taking the depositions, among these, that of Barnes himself, written in English in his own handwriting, the detention was decreed"*[929].

Once the usurpers were released by order of Joaquin Crespo, President of Venezuela, Inspector Douglas Barnes sent a letter from

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927 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

928 *Ídem.*

929 *Ídem.*

Upata dated 21 January 1895 to General Domingo Sifontes in which he stated the following: *"However, I cannot leave Venezuela without telling you that since our departure from Cuyuní, Mr. Luis Manuel Salazar has given us the greatest care and attention in everything we have needed, so we have nothing to complain about. I must say the same about his companions. I thank you personally for all the trouble you have taken…"*[930].

Although, when Inspector Douglas Barnes left for London, he presented a totally different version of events. For this reason, General Domingo Sifontes wrote in the referred letter the following: *"How does this procedure fit in with what Barnes later stated in his Report, in which he appears to exaggerate the facts pettily, while hiding others that could exalt him if he were truthful and just?"*[931].

General Domingo Sifontes was not only betrayed by Inspector Douglas Barnes, but also by César Urdaneta who, in front of the members of the group escorting Inspector Douglas Barnes, said:

> *- "...I know that you have been mistreated a lot."*
> *- "No sir," answered the Englishman, "we have been treated well and General Sifontes paid us for a little damage done to us by his people."*
> *- "No; I know you have been treated very badly. General Sifontes is to blame for everything that has happened. The Government has disapproved of his actions and is calling him to Caracas. I have come to replace him. So, I hope that you will return with me to your post, because with me you will have all kinds of guarantees..."*[932].

The forceful response of Venezuelan troops in the Yuruán Incident made General Domingo Sifontes go down in history as a defender of the national territory. In the State of Bolivar, a municipality bears his name[933], and rightly so, because *"having the English there in Cuyuní*

930 *Ídem.*
931 *Ídem.*
932 *Ídem.*
933 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/.

in front of El Dorado with a sign on the façade of the Bungalow clearly stating in the English language "Department of Police of Cuyuní and Yuruán *Rivers" was not to remain calm while waiting for the approval of President Crespo, who absurdly asked Sifontes to more or less play the fool, but to proceed as he did, although with ungrateful results, because after arresting the English commissioner Douglas D. Barnes together with the officers and the troops of the Bungalow, and sending all of them to Ciudad Bolivar, they were released almost immediately by the governor or president of the State, General Manuel Gomez Gil"*[934].

29. **Douglas Barnes**: United Kingdom. British inspector who on 2 January 1895 led the occupation of Venezuelan military post located near the Yuruán River, known as the Yuruán Incident or Cuyuní Incident.

The Yuruán incident consisted of the occupation of an unoccupied Venezuelan military post by several British commissioners, led by Inspector Douglas Barnes, while the guards were practicing normal exercises[935]. The British troops lowered Venezuelan flag and raised the British flag with the intention of controlling the post and then "*taking the lands of El Callao, passing through Upata, Tumeremo and El Dorado, as well as other areas rumoured to be full of gold"*[936].

The order to recover Venezuelan military post was given to Captain Andrés Avelino Domínguez, second in command of General Domingo Sifontes, who successfully carried it out and arrested the eight Englishmen who were sent to Ciudad Bolívar, including Inspector Douglas Barnes[937].

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934 *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

935 Véase Juan MATORANO, *"El incidente del Yuruán, evidencia del expansionismo inglés"* ("The Yuruán Incident; Evidence of English Expansionism"), Quoted Above. Véase también 920. Juan MATORANO, "La carta de Domingo Sifontes sobre el incidente del Cuyuní" ("Domingo Sifontes' Letter on the Cuyuní Incident")", Quoted Above.

936 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/.

937 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above. See also: William DÁVILA BARRIOS (ed.), Quoted Above, Page 49.

General Domingo Sifontes sent a letter to Carlos Pumar, director of the Caracas newspaper El Tiempo, where he gave a detailed account of the events of the Yuruán Incident. On 22 April 1895, the letter was published in Nº 629 of the newspaper El Tiempo, today out of circulation[938].

According to the letter, there was always a respectful relationship between General Domingo Sifontes and Inspector Douglas Barnes, which was maintained even in delicate moments. A first example of this was the support given by General Domingo Sifontes to a young German named Guillermo Faull, whom Inspector Douglas Barnes was trying to evict from the right bank of the Cuyuní River. In spite of everything, General Domingo Sifontes stated in his letter the following: *"This incident, however, did not alter my good relations with Barnes, who by his fine treatment, captured my personal appreciation"*[939].

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938 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

939 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

940 *Ídem.*

that of Barnes himself, written in English in his own handwriting, the detention was decreed"[941].

Once the usurpers were released by order of Joaquin Crespo, President of Venezuela, Inspector Douglas Barnes sent a letter from Upata dated 21 January 1895 to General Domingo Sifontes in which he stated the following: *"However, I cannot leave Venezuela without telling you that since our departure from Cuyuní, Mr. Luis Manuel Salazar has given us the greatest care and attention in everything we have needed, so we have nothing to complain about. I must say the same about his companions. I thank you personally for all the trouble you have taken"*[942].

Although, when Inspector Douglas Barnes left for London, he presented a totally different version of events. For this reason, General Domingo Sifontes wrote in the referred letter the following: "*How does this procedure fit in with what Barnes later stated in his Report, in which he appears to exaggerate the facts pettily, while hiding others that could exalt him if he were truthful and just?"*[943].

30. **Edward George Geoffrey Smith Stanley** (1799-1869): United Kingdom. Secretary of State for the Colonies from 3 September 1841 to 23 December 1845. During the exercise of his functions, he instructed the governor of British Guiana, Henry Light, to proceed with the removal of the posts erected by Robert Schomburgk in virtue of the second demarcation that he carried out in 1840 with which 141,930 square kilometres of Venezuelan territory were usurped.

31. **Efraín Schacht Aristeguieta** (1921-2007). Venezuela. Minister of Foreign Relations of Venezuela and member of the Academy of Political and Social Sciences. His relevance in the controversy is due to the great academic contribution of his works which, together with the positions he held, allowed him to study the details of the controversy. In particular, his study entitled *Aspectos jurídicos y políticos del Tratado de Ginebra* (Legal and Political Aspects of the Geneva Treaty) included in the book *La reclamación venezolana sobre la Guyana Esequiba* (Venezuelan Claim on Essequibo Guyana), published by the Academy

941 *Ídem.*
942 *Ídem.*
943 *Ídem.*

of Political and Social Sciences in 2008, stands out. He resigned as Director General of the Ministry of Foreign Affairs for being against the adoption of the Geneva Agreement.

32. **Elsie Rosales García** (10 June 1962): Venezuela. Lawyer and professor at the Universidad Central de Venezuela. She was appointed Co-Agent by Venezuela in the ICJ proceedings by a letter sent on 6 June 2022 to the ICJ by Delcy Eloína Rodríguez, Vice-President of Venezuela. Additionally, Samuel Reinaldo Moncada Acosta, Permanent Representative of Venezuela to the UN, was appointed Agent, and Félix Plasencia González, former Minister of Foreign Relations of Venezuela, was appointed Co-Agent.

33. **Eugenio Hernández-Bretón** (April 25, 1958): Venezuela. Full Member of the Academy of Political and Social Sciences. He presided over the corporation between 2015 and 2016, at that time the Academy issued three important pronouncements:

- "On the boundary dispute between Venezuela and Guyana", concerning illegal concessions made by Guyana to transnational companies on the territory claimed, as a result of the policy of cooperation and economic aid maintained by the Venezuelan Government., dated 21 April 2015.
- "The Academy of Political and Social Sciences in the face of the current situation of the controversy with Guyana related to the delimitation of marine and submarine areas by this country, without authorization from Venezuela, dated 29 July 2015".
- "Pronouncement of the Academy of Political and Social Sciences on the current situation of the dispute with Guyana", dated 7 February 2017.

On 20 March 2017, the Academy sent a letter to Dr. Delcy Rodríguez, Minister of People's Power for Foreign Affairs of Venezuela stating the reasons to reject the election of the International Court of Justice by the Secretary-General of the United Nations, Ban Ki-moon. The letter did, in fact, sttethe following:

> *"...To pretend that the UN Secretary-General, with the sole consent of the Government of Guyana, could decide to refer the matter to the International Court of Justice, is a violation of the*

object and purpose of the Geneva Agreement, which states that the parties to the Agreement "must seek satisfactory solutions for the practical settlement of the dispute" so that it "may be settled amicably in a manner acceptable to both parties"[944].

Dr. Eugenio Hernández-Bretón is currently counsel appointed by Venezuela before the ICJ in the case concerning the nullity or validity of the Paris Arbitral Award of 3 October 1899.

34. **Farrer Herschell**, First Baron Herschell (1837-1899): United Kingdom. Lawyer appointed by the United Kingdom in the Treaty of Washington of 2 February 1897 to participate in the Paris Arbitration. After his death on 1 March 1899 in Washington D.C., he was replaced as arbitrator by Charles Baron Russell of Killowen.

35. **Felipe de Aguerrevere** (1846-1934): Venezuela. Commissioned by Venezuela to participate in the demarcation of the border between Venezuela and the Colony of British Guyana, in accordance with the Paris Arbitral Award of 3 October 1899.

On 22 October 1899, the Venezuelan Ministry of Foreign Relations sent instructions to Felipe de Aguerrevere, stating that the line established by the arbitrators was a de facto line that lacked any political, geographical or historical basis. Accordingly, Venezuelan commissioners were ordered to submit all aspects to be considered to the most rigorous procedure.

36. **Félix Plasencia González**: Venezuela. The, then, Minister of Foreign Relations of Venezuela. He was appointed Co-Agent for Venezuela in the ICJ proceedings by a letter sent on 6 June 2022 to the ICJ by the Vice-President of Venezuela, Delcy Eloína Rodríguez. Additionally, Samuel Reinaldo Moncada Acosta, Permanent Representative of Venezuela to the UN, was appointed Agent, and Elsie Rosales García, a lawyer and professor at the Universidad Central de Venezuela, was appointed Co-Agent.

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944 See: Letter addressed to Delcy RODRÍGUEZ, Minister of the People's Power for Foreign Relations of the Bolivarian Republic of Venezuela in: *Doctrina Académica Institucional. Pronunciamientos años 2012-2019"* ("Institutional Academic Doctrine. Pronouncements, Years 2012-2019"), Volume II, *Academy of Political and Social Sciences*-Editorial Jurídica Venezolana, Caracas, 2019. Pages 300 & ff. Available at http://acienpol.msinfo.info/bases/biblo/texto/L-4182/L-4182.pdf.

37. **Fyodor Fyodorovich Martens** (1845-1909):

Russia. President of the Court of Arbitration of Paris, Professor of International Law at the Faculty of Law of St. Petersburg University, and advisor on foreign affairs of the Russian Empire during the government of Tsar Nicholas II. His role in the dispute between Venezuela and the United Kingdom is of paramount importance, as he sided with the British to harm Venezuela with the decision of the Arbitral Tribunal.

During the two-week recess agreed by the Arbitral Tribunal in Paris, after the conclusion of the oral arguments of Severo Mallet-Prevost and Sir Richard Webster, Fyodor Fyodorovich Martens travelled to London together with the British arbitrators Richard Henn Collins and Charles Russell of Killowen.

Then, according to Severo Mallet-Prevost's memorandum, Fyodor Fyodorovich Martens visited the American arbitrators- David Josiah Brewer and Melville Weston Fuller- who represented Venezuela in the Paris Arbitration, in order to impose a unanimous decision, under the threat that Venezuela would lose the Bocas del Orinoco. With his actions he openly violated the duties of impartiality and independence of the arbitrators.

Fyodor Fyodorovich Martens was Russia's representative to the First Hague Conference while the Paris Arbitration was taking place. This led to the suspension of the hearings of the Paris Arbitral Tribunal on three occasions, one at the end of June and the other two in July 1899.

As Marcos Falcón Briceño pointed out, referring to Fyodor Fyodorovich Martens, *"at the same time that he is elected President of the Arbitral Tribunal, he is attending as Russian delegate to the sessions of the First International Peace Conference. An important conference because it is there that rules on arbitration are established"*[945]. So, he knew first hand everything that was discussed at the conference and the importance of the ideas discussed there.

Fyodor Fyodorovich Martens was well aware that the obligation to state reasons for awards was an obligation arising from the principles of international law. Although at the First Hague Conference he spoke out against the obligation to justify awards- a position rejected by most of the other representatives- he knew very well how to give reasons for a decision and demonstrated this when he participated as sole arbitrator in a dispute between the United Kingdom and the Netherlands, arising from the arbitrary detention of the captain of the whaler Costa Rica Packet. In that case, the award was perfectly reasoned.

One muest no ignore that Fyodor Fyodorovich Martens thought that world powers were superior to savage or barbarian peoples, as he liked to call less developed countries such as Venezuela. This position was expressed in one of his works:

> *"One can, however, ask which of these two opinions, so different in their starting points and so consistent in their final conclusions, is the true one? Is it really true that a struggle between Russia and England on the banks of the Indus is an absolute necessity and an inexorable o Are these two great civilized powers really and inevitably compelled by some immutable law to give the savage peoples of Asia the sad spectacle of a bitter and merciless struggle? Is it worthy of European civilization, of which the United Kingdom and Russia are the only representatives in Central Asia, to arouse the perverted instincts of the Asiatic hordes and to take advantage of the savage hatred which these barbarians feel toward all Christian and civilized nations? Has any serious thought been given to the question: who will ultimately benefit from this struggle between the United Kingdom and Russia; which of these two powers, victorious on the battlefields, will be able to*

945 Marcos FALCÓN BRICEÑO, Quoted Above, Page 48.

keep under its sway all the Asiatic nations and all the savage and plundering tribes to whose aid it owes its success?"[946].

In the opinion of the President of the Arbitral Tribunal, the civilized nations must assume the role which *"divine providence"*[947] has assigned to them *"for the good of the savage nations"*[948]. This determinism about the role of nations in the international concert is key to understanding the aptitude of Fyodor Fyodorovich Martens in the Paris Arbitration. He clearly only sought to favour the interests of the civilized nation in order to *"exemplify the necessary Anglo-Russian solidarity and cooperation"*[949] of which he was a supporter.

As stated by Hector Gros Espiell in his comments on the work of Fyodor Fyodorovich Martens, there is no doubt that *"Martens' ideas on Anglo-Russian relations and on the "civilized" and the "semi-barbaric" or "semi-savage" peoples, could, indeed, have had a decisive influence on the solution adopted in the arbitration award of 1899, in view of the fact that in many studies on the subject it has been argued, with good reason, that the award was, in reality, a political-diplomatic act, an Anglo-Russian agreement, probably linked to a contract or agreement between the two countries"*[950].

Fyodor Fyodorovich Martens held that international law was applicable only to civilized nations. In his work *"Russia and England in Central Asia"* he defined international law as *"the compendium of principles regulating the relations of nations in pursuit of their common ends"*[951].

For Fyodor Fyodorovich Martens, international law -so defined- was the product of European moral and legal ideas and, consequently, not applicable to the other category of nations which he called semi-barbaric. The President of the Paris Arbitral Tribunal considered

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946 See: Héctor GROS ESPIELL (Translator), *"Rusia e Inglaterra en Asia Central"* ("Russia and England in Central Asia"), translation and commentary by Héctor GROS ESPIELL, Editions of the Presidency of the Republic, Caracas, 1981. Page 50-51.

947 *Ídem.*

948 *Ídem.*

949 *Ibidem,* Page 52.

950 *Ibidem,* Page 16.

951 *Ibidem,* Page 57.

that international law did not apply to these nations, but that their relations with civilized nations should be governed by natural law. The justification for this idea is expressed in the following terms:

> *"...It would be puerile to demand from nations which are in this state of nature, actions which derive from no other source than conscience and which are not explained by any other reason than solidarity of interests and reciprocity of efforts directed to the same social end..."*[952].

Gros Espiell in his comments to the work of Fyodor Fyodorovich Martens, points out that this supposed *"application"* of natural law in relations between civilized and *"semi-civilized"* nations is nothing more than a façade to allow European powers to impose their will on that of weaker countries[953]. This was the case of Venezuela in the Paris Arbitration of 1899.

A fact that ratifies the vision of Fyodor Fyodorovich Martens is that he *"defended the regime of capitulations- characterized by the investiture of consular authority with judicial powers- existing since the 16th Century in Eastern countries, whereby the nationals of European powers were exempt from the territorial jurisdiction (particularly criminal jurisdiction) of the States in which they were located, being subject only to the consular jurisdiction of the State of which they were nationals, which, by this means, extended the application of its laws outside its territorial limits"*[954].

According to Fyodor Fyodorovich Martens' view of capitulations, *"this institution was based on the considerable difference in the degree of cultural development between European and non-European countries; this notion would be further developed in his book on The International Law of Civilized Nations (1881-1882), in which he elaborates on the distinction between civilized nations (the only ones to which International Law applied) and non-civilized nations (to which*

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952 *Ibidem,* Page 59.

953 *Ídem.*

954 Héctor FAÚNDEZ LEDESMA, "La controversia del Esequibo y el fantasma de Federico de Martens" ("The Essequibo Controversy and the Ghost of Federico de Martens"), Quoted Above, Page 12.

International Law did not apply), which was a thesis more or less shared by theorists of International Law in the 19th Century"[955].

The vision of Fyodor Fyodorovich Martens is a product of his colonial past. In this regard, Héctor Faúndez indicates that Fyodor Fyodorovich Martens had a close relationship with Leopold II of Belgium *"and his pro-colonialist activities, particularly in the Congo Free State, led him to defend Leopold II's project in that, his personal colony, and to justify an unprecedented system of intensive exploitation of rubber and ivory, at the cost of forced labour, the mutilation of the hands of those who did not perform sufficiently, or even the death of the most rebellious Congolese. In Martens' opinion, thanks to the generosity and political genius of King Leopold, the Congo Free State would have a regime in full conformity with the requirements of European culture"*[956].

Marcos Falcón Briceño also observes that *"De Martens was in essence more than anything a practical man, as he himself said, a politician, so that, and it is natural, being an official of the Russian empire, that his political thinking was of course linked to the thinking and political interests of Russia"*[957].

Fyodor Fyodorovich Martens, although a jurist, was not guided by law but by diplomacy and political relations. As Héctor Faúndez observes, *"Martens did not think of International Law as something different from diplomacy and superior to it, but rather, as a scholar of International Law, he considered it his professional duty to support his government's policies at any price; his motivation was overwhelmingly- if not exclusively- political and patriotic"*[958].

It is striking that, being such a relevant figure in the international arbitration forum, not only dud his political views were known, but also his opinions on controversial issues related to arbitration, which may have inclined the English to choose him because he had a political view of arbitration and, in addition, he held thesis that awards did not need to be reasoned.

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955 *Ídem.*

956 *Ibidem,* Page 14.

957 Marcos Falcón Briceño, Quoted Above, Page 48.

958 Héctor FAÚNDEZ LEDESMA, "La controversia del Esequibo y el fantasma de Federico de Martens" ("The Essequibo Controversy and the Ghost of Federico de Martens"), Revista de Derecho Público, Nº 169-170, January-June, Editorial Jurídica Venezolana, Caracas, 2022. Page 11.

The lack of the duty of impartiality and, especially, the rejection of arbitration as a means for the peaceful settlement of disputes by Fedor Fedorovich Martens were confirmed by Richard Olney's communication to President Grover Cleveland on 27 December 1899, in which he stated the following: *"I have not seen you again after the judgment in the matter of Venezuelan boundary. Following your return to New York, Mr. Mallet-Prevost, the youngest lawyer in Venezuela was anxious to tell me how things had happened and why they did. On one of my visits to New York I invited him to lunch with the result that he talked more and ate less, and that the time the meal lasted was, rather than of taking food and refreshments, of intense anger and bitterness of spirit at the proceedings and decision of the Arbitral Tribunal. I refrain from going into details, as I have no doubt that you will have learned of them from other sources. The worst of it all, apparently, is not so much the loss of territory by Venezuela, but the general discrediting of the arbitration. According to my informant, both the President of the Court and Brewer are opposed to arbitration as a formula for resolving international disputes, as long as there is no procedure that guarantees the rights of the Parties. Former Secretary John W. Foster, with whom I had lunch the other day, said that Fuller and Brewer came back to the country quite sick of arbitration"*[959].

A person like Fyodor Fyodorovich de Martens, who served as Counsellor to Tsar Nicholas II and was an active official of the Russian Ministry of Foreign Affairs, could not be considered impartial and independent. When the Treaty of Washington of 2 February 1897 was signed, the duty of impartiality and the duty of independence were already unwritten rules of law. According to these rules, Fyodor Fyodorovich Martens should have not been be president of the Paris Arbitral Tribunal, *"in a matter in which he clearly, both personally and as an official of the nation he served, had a conflict of interest which prevented him from acting with equanimity"*[960].

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959 *Ibidem,* Page 44.

960 Héctor FAÚNDEZ LEDESMA, "La controversia del Esequibo y el fantasma de Federico de Martens" ("The Essequibo Controversy and the Ghost of Federico de Martens"), Quoted Above, Page 18.

The suspicions that the president of the Arbitral Tribunal, Fyodor Fyodorovich Martens, had seriously violated the duty of impartiality were fully proven when the memorandum left by Severo Mallet-Prevost, one of the lawyers representing Venezuela, who died on 10 December 1948, in New York, was published. Severo Mallet-Prevost had appointed attorney Otto Schoenrich, a partner of the law firm to which he belonged (Curtis, Mallet-Prevost, Colt & Mosle) as executor and had commissioned him to publish the document after his death.

The memorandum was published in July 1949 in the *American Journal of International Law* and also, that same year, in the Bulletin of the Academy of Political and Social Sciences of Venezuela, specifically in volume 14, under the title *"Matter of exceptional importance for the diplomatic history of Venezuela. The Boundary Dispute between Venezuela and British Guiana"*[961].

In his memorandum, Severo Mallet-Prevost acknowledged that he and President Benjamin Harrison were aware of the collusion that existed between the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, and English arbitrators Lord Russell and Lord Collins. *The Times*, a London newspaper, even published a statement by Reuter's news agency containing the statements of President Benjamin Harrison and Severo Mallet-Prevost where they expressed that *"there was nothing in the history of the dispute that adequately explained the boundary line established in the Award"*[962].

Lawyer Severo Mallet-Prevost relates that Russell always had a reticent and biased attitude in favour of the United Kingdom, was of the opinion that arbitrators have a political link and considered that it was not necessary for international arbitrations to stick exclusively to legal grounds.

Severo Mallet-Prevost recounts that Lord Russell, Judge Josiah Brewer and he met at an intimate dinner organized by Henry White, who held the position of Chargé d'Affaires of the United States in the City of London. Severo Mallet-Prevost expressed in hid memorandum

961 Otto SCHOENRICH, Quoted Above.

962 Presentation by Doctor Carlos SOSA RODRÍGUEZ, the Venezuelan Ambassador to the UN, on 22 February 1962. Available at http://esequibonuestro.blogspot.com/2012/03/exposicion-del-embajador-de-venezuela.html.

referring to Lord Russell the following: *"I happened to be sitting next to him, and in the course of the conversation I ventured to express the opinion that international arbitration should base its decisions solely on legal grounds. Lord Russell immediately replied: I completely disagree with you. I think that international arbitration should be conducted on a broader basis and should take into account questions of international policy. From that moment on, I understood that we could not rely on Lord Russell to decide the boundary question on the basis of strict law"*[963].

Severo Mallet-Prevost had a completely different perception of Lord Collins, whom he met on 1 June 1899, after the Attorney General of the United Kingdom, Sir Richard Webster, and the author of this memorandum gave their speeches, which lasted 26 days[964]. Lord Collins was much more animated, willing to investigate and, above all, to understand and analyse the controversy and the titles that supported the claims of the parties. Severo Mallet-Prevost said of him: *"It was quite obvious that Lord Collins was sincerely interested in fully understanding the facts of the case and in determining the law applicable to those facts. He did not, of course, give any indication as to how he would vote on the issue; but his whole demeanour and the numerous questions he asked were critical of the British pleadings and gave the impression that he was leaning towards the side of Venezuela"*[965].

However, these impressions changed radically after the two-week recess, which took place after the conclusion of the above-mentioned speeches. At that time the English arbitrators travelled to London, together with the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens.

According to the Mallet-Prevost memorandum, when Lord Collins returned from the United Kingdom to Paris after that vacation, he was not the same as when he had left. Evidently, several events took place in England which we do not know about, but which were probably due to the political interests of the powers involved in the controversy:

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963 See: the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH, Quoted Above, Page 32.

964 *Cf.* Otto SCHOENRICH, Quoted Above, Page 32.

965 *Ídem.*

Russia, the United Kingdom and the United States of America. Severo Mallet-Prevost was convinced that something had happened. Indeed, *"Mr. Mallet Prevost stated that he was certain that the attitude of the British members and the Russian member of the Arbitral Tribunal was the result of a bargain between Great Britain and Russia, whereby the two Powers persuaded their representatives on the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in another part of the globe"*[966].

The shady deal that Mallet-Prevost suspected became evident when Fyodor Fyodorovich Martens met with American arbitrators, David Josiah Brewer and Melville Weston Fuller, to propose to them that, if they agreed to make a unanimous decision, Venezuela would keep the Bocas del Orinoco, but, if they did not, the Russian would align with English arbitrators, a matter that, would mean a worse situation for Venezuela.

On 31 August 1907, several years after the coercive execution of the Paris Arbitral Award, an event took place that supports the veracity of Mallet-Prevost's suspicions. On that date, the Anglo-Russian Treaty of Mutual Cordiality was signed, which eased tensions between Russia and the United Kingdom in Central Asia and improved relations between the two countries; with the convention came the independence of Afghanistan, Persia and Tibet. This is confirmed by Dr. Gros Espiell when he observes that: *"The Anglo-Russian rapprochement, initiated in 1895, according to the ideas that Martens had already put forward in 1879, would finally and definitively materialize in the Convention Relative to Persia, Afghanistan and Tibet, signed in St. Petersburg by Isvlasky, Minister of Foreign Affairs of the Russian Empire and Nicolson, English Ambassador, on 31 August 1907"*[967].

Let us bear in mind that, on 18 October 1899, in a publication in the Idaho Daily Statesman, a U.S. newspaper, the Paris Arbitration was strongly criticized in the following terms: *"The plan was to secure the support of Mr. de Martens, President of the tribunal. This was accomplished by the intervention of the Russians who wished him to side with Great Britain in order to obtain English support for Russian*

966 *Ibidem.* Page 30.
967 *Ibidem,* Page 72.

plans in China. All this was accomplished with the utmost secrecy, it was only when the Arbitrators met for the award that the situation was made clear to the American members of the Tribunal. They came to know that the majority had agreed on what was to be done: to award to Great Britain all that it claimed"[968].

There is even an earlier communication from Severo Mallet-Prevost himself, dated 26 October 1899, 13 days after the award sent to Professor George L. Burr, in which he stated the following: *"Our Arbitrators were forced to accept the decision and, in strict confidence, I have no hesitation in assuring you that the British Arbitrators were not governed by any consideration of Law or Justice, and that the Russian Arbitrator was probably induced to adopt the position he took for reasons wholly foreign to the question. I know this is only going to whet your appetite, but at present I cannot do otherwise. The result, in my judgment, is a slap in the face of Arbitration"*[969].

In the same vein, the French writer L. de la Chanonie formulated a critique of the Paris Arbitration in the 3rd issue of volume III of the Revue d'Europe published in March 1900. In that publication L. de la Chanonie denounced -many years earlier- the same irregularities that were later exposed in the posthumous memorandum of Severo Mallet-Prevost and noted that:

> *"... Mr. De Martens then proposed to the American arbitrators to grant Venezuela, in compensation for the territories of the Schomburgk line, absolute possession of the Orinoco, by withdrawing the English frontier to about twenty leagues from the river. He added that, if Venezuelan arbitrators did not accept this arrangement, he would vote with the English arbitrators for an immediate termination, which would secure for England the possession of one of the sides of the Orinoco delta. The perplexity of the American arbitrators was great, and their confusion profound; after some hours of reflection, they decided that it was necessary to, first of all, put the great river out of the clutches of England; they preferred to accept a vexatious settlement rather*

968 *Ídem.*
969 *Ídem.*

than to obtain nothing, and finally, constrained by an imperious necessity, they adhered to the arbitral sentence; such is the unanimity of the judges, so much vaunted by the English press which has interpreted it as irrefutable proof of the undoubted rights of Great Britain. This publication of the secret debates, puts things straight. A simple question: if the dispute, instead of having arisen between a small State and a great Power, had confronted England, Russia, France or Germany, would it have ended in three days and with so much abandon, a conflict which, in case of necessity, would find in force its legitimate recourse? But Venezuela does not have the maritime and military power to speak loudly; it has not been able to support with arms the rejection of a decision that was not so much arbitral as arbitrary, the injustice of which was notorious. International law opened the way to a platonic appeal, wounded beforehand of sterility (...) But that was hushed"[970].

Forty-nine years before the publication of the Severo Mallet-Prevost memorandum, L. de la Chanonie stated that the President of the Arbitral Tribunal failed in his duty of impartiality and was the main architect of a shady deal that harmed Venezuela, the weaker country in the dispute.

38. **Francisco Antonio Zea** (1766-1822): Venezuela. After having been Vice-President of the Republic of Colombia from 17 December 1819 to 19 March of 1820 and Ambassador of the Republic of Colombia in the United Kingdom from 16 June 1820 to 28 November 1820, the diplomat Francisco Antonio Zea sent a communication to the Minister of Foreign Affairs of the United Kingdom, Robert Stewart- Viscount of Castlereagh- on 20 February 1821 during the government of the President of the Republic of Colombia Simón Bolívar. The purpose of said communication was to clarify the border situation and to specify that the eastern border of the Republic of Colombia was the left bank of the Essequibo River.

39. **Francisco de Miranda** (1750-1816): Venezuela. Military, politician, diplomat and writer. Precursor of the independence of Venezuela. On 1 January 1799, he published the Geographic Map of

970 *Ibidem,* Pages 50-51.

South America drawn by Juan de la Cruz Cano y Olmedilla. There it was made clear that the border of the Captaincy and Guyana was the Essequibo River. The map was also published in London by King George III's royal geographer, William Faden. This map is the South American equivalent of Mitchell's Map of the British Colonies of 1755.

Geographical Map of South America
drawn by Juan de la Cruz Cano y Olmedilla[971]

971 See: Geographical Map of South America. Available at https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~3373~330002:Mapa-Geografico-de-America-Meridion.

40. **Gabriel Ruan Santos** (27 June 1946): Venezuela. Full member of the Academy of Political and Social Sciences. He presided over the Academy between 2017 and 2019. During his tenure, the Academy sent a communication to the Minister of Foreign Affairs with the title *"Letter sent to Jorge Arreaza, Minister of People's Power for Foreign Affairs of Venezuela"* dated 25 October 2017. That document alludes to the necessary rejection of the decision of the Secretary-General of the United Nations, Antonio Guterres, which was to choose the judicial solution of the dispute if the good offices process did not demonstrate significant progress. The need to enforce the Geneva Agreement both before Guyana and in its dealings with the UN Secretary-General Antonio Guterres was reaffirmed.

Given the lack of effectiveness of the good offices process, the United Nations Secretary-General, Antonio Guterres, referred the settlement of the dispute to the ICJ on 30 January 2018. In view of this situation, Gabriel Ruan Santos, in his capacity as President of the Academy, endorsed the "Communiqué of the National Academies to the public opinion on the official announcement of the Secretary-General of the United Nations Organization (UN) to send the dispute with Guyana to the International Court of Justice, dated 14 February 2018.

On 25 October 2017, during the presidency of Academician Gabriel Ruan Santos, a letter was sent to Jorge Arreaza, Minister of People's Power for Foreign Affairs of Venezuela. That communication ratified the position previously held by the Academy in the letter of 20 March 2017 during the presidency of Dr. Eugenio Hernández-Bretón, according to which:

> *"... to pretend that with the sole consent of the Government of Guyana, the UN Secretary-General could choose to refer the matter to the International Court of Justice, constitutes an infringement of the object and purpose of the 310 Geneva Agreement, which establishes that the parties must "seek satisfactory solutions for the practical settlement of the dispute", so that it is "amicably settled in a manner acceptable to both parties".*
> *Consequently, the Academies consider that Venezuela, as a country, should publicly and as soon as possible enforce the*

terms of the Geneva Agreement, both before the Government of Guyana and in its dealings with the Secretary-General of the UN, so that the matter is always kept within the scope of diplomatic negotiations in search of a practical settlement of the dispute acceptable to both parties"[972].

In addition to the above, Academician Gabriel Ruan Santos has contributed to the Venezuelan Claim over the Essequibo territory with valuable studies, among which stand out "*La Academia de Ciencias Políticas y Sociales y la reclamación de Venezuela por la Guayana Esequiba"* (The Academy of Political and Social Sciences and Venezuela's claim over the Essequibo Guayana), "*Algunos antecedentes"* (Some background information), published in the Bulletin of the Academy of Political and Social Sciences, Nº 164, April-June 2021; "*Los títulos de la reclamación por la Guayana Esequiba*, con e*special referencia a la cláusula de prescripción"* (The titles of the Guayana Essequibo claim with special reference to the prescription clause), published in the Bulletin of the Academy of Political and Social Sciences, Nº 165, July-September in 2021 and "*La supuesta acquiescencia de Venezuela en la disputa por la Guayana Esequiba, con especial referencia al Acuerdo de Ginebra"* (Venezuela's alleged acquiescence in the dispute over Essequibo Guyana, with special reference to the Geneva Agreement), included in the book in tribute to Cecilia Sosa Gómez, Volume I, published by the Academy of Political and Social Sciences in 2021.

41. **Giorgio Gaja** (7 December 1939): Italy. Judge of the ICJ since 2012. Vice-President of the ICJ since 2021. He was one of the ICJ judges who, together with Kirill Gevorgian, Mohamed Bennouna and Ronny Abraham, withheld his vote in the declaratory judgment of 18 December 2020, regarding the dispute between Venezuela and Guyana as to the validity or nullity of the Paris Arbitral Award.

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[972] See: Letter sentaddressed to Jorge ARREAZA, Minister of the People's Power for Foreign Relations of the Bolivarian Republic of Venezuela in: *Doctrina Académica Institucional. Pronunciamientos años 2012-2019"* ("Institutional Academic Doctrine. Pronouncements, Years 2012-2019"), Volume II, *Academy of Political and Social Sciences*-Editorial Jurídica Venezolana, Caracas, 2019. Pages 307 & ff. Available at http://acienpol.msinfo.info/bases/biblo/texto/L-4182/L-4182.pdf.

Judge Giorgio Gaja based his withheld vote on the absence of consent by the parties. He agreed that the parties may resort to the ICJ to resolve the dispute in accordance with Article IV, paragraph 2 of the Geneva Agreement. However, he did not agree with the idea that the decision of the Secretary-General of the United Nations can be a substitute of the consent of the parties.

In his view, the existence of the obligation of the parties to comply with the Secretary-General's decision does not necessarily imply that the means selected by the Secretary-General can be implemented without the consent of both parties. The implementation of any of the means of Article 33 of the United Nations Charter requires an agreement[973].

Judge Giorgio Gaja held in his dissenting opinion that the Geneva Agreement provides for the possibility that, even after the exhaustion of the mechanisms provided therein, the dispute may not be finally settled. The interpretation given by the ICJ to the second paragraph of article IV violated the purpose of the convention by establishing that a judicial body has jurisdiction to settle the dispute definitively. The judicial settlement implies ruling out the possibility that the dispute will not be finally settled, as provided in the Geneva Agreement.

42 **G.R. Askwith**: United Kingdom. Lawyer member of the defence team of the United Kingdom during the Paris Arbitration proceedings concerning the territorial dispute over the boundary of Venezuela and the Colony of British Guiana.

43. **Grover Cleveland** (1837-1908): United States of America. Twenty-second President of the United States of America. He became interested in the controversy between Venezuela and the United Kingdom through William L. Scruggs and assumed the commitment to intercede in it.

On 17 December 1895, in a message before the Congress of the United States of America, he referred to the territorial dispute and

973 "For instance, resort to mediation implies, at the very minimum, an agreement of the parties on who is going to act as mediator. Similarly, recourse to arbitration requires an agreement of the parties on the appointment of the arbitrators and on conferring jurisdiction to the arbitral tribunal. With regard to judicial settlement, there is the possibility that jurisdiction be conferred on the Court without an agreement providing for additional specifications, for instance if the parties have made declarations under the optional clause covering the dispute".

invoked the Monroe Doctrine in view of the abuses committed against Venezuela. On that occasion he ordered that the matter be investigated and expressed:

> *"The dispute has reached such a point, that it is now incumbent upon the U.S. to take steps to determine, with sufficient certainty to justify it, what is the true dividing line between Venezuela and British Guiana. When that report is completed and accepted, it will, in my opinion, be the duty of the United States, to resist by every means in its power, as a premeditated aggression upon its rights and interests, the appropriation by Great Britain of any land, as well as the exercise of its governmental jurisdiction in any territory which, upon investigation, we have determined that it rightfully belongs to Venezuela"*[974].

President Grover Cleveland's message motivated the subscription of an act of the United States Congress, approved in 21 December 1895, in which the House of Representatives and the Senate agreed:

> *"...an appropriation for the expenses of a commission to ascertain the true dividing line between Venezuela and British Guiana, and report thereon. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: The sum of one hundred thousand dollars, or such part thereof as may be necessary, is hereby appropriated for the expenses of a commission, to be appointed by the President, to ascertain the true dividing line between Venezuela and British Guiana, and report the result thereof"*[975].

The results of the investigation carried out by the presidential commission for the inquiry of the true boundary between Venezuela

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974 Tomás Enrique CARRILLO BATALLA (Coordinator), *"La reclamación venezolana sobre la Guayana Esequiba"* ("The Venezuelan Claim to Guyana-Essequibo"), Politicas and Social Sciences Academy Series: Events 2, Caracas, 2008. Page 433-434.

975 See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Page 336. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

and British Guiana indicated that there was no conclusive evidence of Dutch occupation by the year 1648 to the north or west of the Essequibo River, nor of the island called Kikoveral. Nor were any elements found that indicated occupation in Punta Barima before the year 1648[976]. This investigation was essential to get the United Kingdom to agree to resolve the conflict with Venezuela through arbitration.

44. **Héctor Faúndez Ledesma** (18 June 1947): Chile-Venezuela. Member of the Academy of Political and Social Sciences. Professor of International Public Law at the Universidad Central de Venezuela. Among his valuable contributions to the claim stands out his book "*La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* (The contentious jurisdiction of the International Court of Justice and the Guayana vs. Venezuela case), belonging to the Serie Estudios (126) of the Academy of Political and Social Sciences, jointly edited with Editorial Jurídica Venezolana and published in 2020.

Dr. Héctor Faúndez Ledesma has published other very important papers on particular aspects of the dispute such as *"La competencia de la CIJ respecto de la cuestión relacionada con el arreglo definitivo de la controversia sobre la frontera entre Guyana y Venezuela"* (The jurisdiction of the ICJ with respect to the issue related to the definitive settlement of the border dispute between Guyana and Venezuela), published in the Bulletin of the Academy of Political and Social Sciences, Nº 167, January-March 2022; *"La nulidad del Laudo de París, del 3 de octubre de 1899"* (The Nullity of the Paris Award of 3 October 1899), published in the Bulletin of the Academy of Political and Social Sciences, Nº 167, January-March 2022; *"La necesidad de medidas provisionales en el caso Guyana c. Venezuela"* (The Need for Provisional Measures in Guyana v. Venezuela), published in the Bulletin of the Academy of Political and Social Sciences, Nº 166, October-December 2021 and *La controversia del Esequibo y las condiciones de validez del Laudo de París del 3 de octubre de 1899* (The Essequibo Dispute and the conditions for the validity of the Paris Award of 3 October 1899), published in the book in Tribute to Cecilia Soa Gómez,

976 Cf. Tomás Enrique CARRILLO BATALLA (Coordinator), Quoted Above, Page 434.

Volume I, published by the Academy of Political and Social Sciences in 2021.

He has also published comments on Venezuela's claim in newspapers, including the article published in El Nacional entitled *Medidas cautelares en el caso Guyana c. Venezuela"* (Precautionary Measures in the Case of: Guyana v. Venezuela) dated 19 November 2021.

He has also contributed to the dissemination and study of the subject through the series of conferences held by the Academy of Political and Social Sciences from 6 May 2021 to 31 March 2022.

45. **Henry Light**: United Kingdom. The Governor of the Colony of British Guyana, Henry Light, expressed through a letter dated 4 March 1842 sent to Lord Stanley, Minister of Colonies of the United Kingdom, that the United Kingdom had no interest in taking away Venezuela's legitimate territory. Specifically, he wrote:

> *"... We have no claim to the Amacuro River, west of the Barima, although on Major L. von Bouchenroeder's old map, published in 1798, the former river is marked to the east of the latter, and both flowing into the Orinoco.*
> *Both Mr. Schomburgk's map and Mr. Codazzi's map place these rivers in the proper position, with the Amacuro entering the Orinoco from the south west of the Barima. [...]*
> *I believe that Mr. Schomburgk assumes that the Amacuro is the boundary, solely for reasons of convenience. [...]*
> *Neither the Barima nor the Amacuro can now be of any importance to Great Britain, and could only be occupied at a cost of lives and money, which would not make it expedient; but we must be careful that a more important power than Venezuela does not take possession of them.*
> *The existence of the Spanish-American republics seems to depend so much upon political parties always ready to contend for power, that one might ask what is to prevent one of the contending provinces, wishing to obtain foreign aid, from offering the United States or France, or any other power, a settlement, merely for the madness of partisan sentiments, ready to plunge into the folly of gaining some temporary advantage over the opposing faction. [...]*

[...] British Guiana must never submit to have the flags of France or the United States, or any other power, flying on its frontiers. [...]"[977].

46. **Humberto Romero-Muci** (4 November 1961): Venezuela. Member of the Academy of Political and Social Sciences and president between 2019 and 2021. The Academy issued two pronouncements related to the controversy that Dr. Humberto Romero-Muci subscribed during his tenure as President of the academy namely, the *"Pronouncement of the Academy of Political and Social Sciences on the rejection of the lawsuit of Guyana against Venezuela"* dated 11 April 2019 and the *"Pronouncement on the necessary defence of the interests of Venezuela before the decision of the International Court of Justice that declared itself competent to partially hear the lawsuit brought by Guyana"* dated January 13, 2021.

47. **Ignacio Andrade** (1839-1925): Venezuela. President of Venezuela at the time the Paris Arbitral Award was rendered on 3 October 1899. Shortly thereafter, on 23 October 1899, he was overthrown after the triumph of the Liberal Restoration Revolution, which aggravated the internal crisis of the country and prevented, together with other factors, Venezuela from consistently denouncing the Paris Arbitral Award that took more than 159,500 square kilometres of territory away from Venezuelans.

48. **Isidro Morales Paúl** (1932-2005): Venezuela. Member of the Academy of Political and Social Sciences. Minister of Foreign Affairs in 1984 during the first year of Jaime Lusinchi's government. His knowledge of the controversy allowed him to make academic contributions and formulate his *Critical analysis of the border issue. Venezuela-Great Britain*, published in the Bulletin of the Academy of Political and Social Sciences¸ Nº 91 in 1983.

49. **James Monroe** (1758-1831): United States of America. Fifth President of the United States of America. On 2 December 1823, in his

977 Quoted in Héctor FAÚNDEZ LEDESMA, Quoted Above, Pages 166-167. Letter of 4 March 1842, by Henry LIGHT, Governor of the British Guiana Colony, to Lord STANLEY, English Colonial Secretary, Foreign Office, 80/108. Wording translated by the quoted author.

annual message to Congress, He declared that the American continent was not susceptible to colonization, and that the European powers could not extend their dominions there, lest such acts be viewed as a direct affront to the rights and interests of the United States. In particular, he considered it *"a principle affecting the rights and interests of the United States, that the American continents, by the free and independent condition which they have acquired and maintain, must not hereafter be considered as objects of future colonization by any European power...."*[978].

The Monroe Doctrine, as the principle formulated by President James Monroe is called, was invoked by President Grover Cleveland on 17 December 1895 in his annual message to the Congress of the United States of America referring to the territorial dispute between Venezuela and the United Kingdom.

50. **James Russell Soley** (1850-1911): United States of America. Professor, distinguished writer on naval affairs and lawyer specializing in international law who was part of Venezuela's defence team during the Paris Arbitration.

51. **Javier Pérez de Cuéllar** (1920-2020): Peru. Secretary-General of the United Nations (1982-1991). He appointed Diego Cordovez as special envoy to resolve the controversy between Venezuela and Guyana, although the solution proposed by Diego de Cordovez was not accepted by the parties. After initiating the good offices process, he selected two good officers: Grenadian Meredith Alister McIntyre on 11 November 1989 and Barbadian Oliver Jackman on 1 November 1999. Neither of the good officers was able to reach a mutually acceptable solution.

52. **Joaquín Crespo** (1841-1898): Venezuela. President of Venezuela came to power on 6 October 1892 by virtue of the triumph of the Legalist Revolution. He appointed Dr. Pedro Ezequiel Rojas as Minister of Foreign Affairs, who was the one who established contact with William L. Scruggs, a diplomat from the United States of America

978 See: A Fragment of the Seventh Annual Message delivered by President Santiago MONROE to Congress on 2 December 1823" Available at: https://www.oas.org/sap/peacefund/VirtualLibrary/MonroeDoctrine/Treaty/MonroeDoctrineSpanish.pdf.

who made President Grover Cleveland take an interest in the controversy between Venezuela and the United Kingdom.

53. **José Andrade**: Venezuela. Brother of General Ignacio Andrade. He was an important Venezuelan diplomat who defended Venezuela against British claims while he was Minister of Venezuelan Delegation in Washington from 1893 to 1899. He was key to the negotiation of the Washington Arbitration Treaty of 1897.

54. **José Antonio Páez** (1790-1873): Venezuela. He was the President of Venezuela in 1840, when the geographer and naturalist Robert Schomburgk drew the second line with which more than 142,000 square kilometres were usurped by erecting posts and marking trees with the initials of Queen Victoria.

Venezuela immediately protested these facts and sent to London the diplomat Alejo Fortique who, with the help of the historian Rafael María Baralt, had the objective of clarifying the situation and reaching a solution.

Alejo Fortique requested Lord Aberdeen, Secretary of Foreign Affairs of the United Kingdom, to remove the posts erected by Robert Schomburgk; eliminate the military post erected in Venezuelan territory where the British flag had been raised and agree the negotiation of a treaty in order to set the border between both territories. On 31 January 1842, the United Kingdom ordered Henry Light, Governor of the British Guiana Colony, to proceed with the removal of those posts.

55. **José de Avalos**: Spain. He held several positions at the service of the Spanish Crown, including: he was General Intendant of Venezuela between 1777 and 1783. In carrying out his functions, he authorized Officer José Felipe de Inciarte to do the work of surveying and populating the eastern part of low Orinoco.

56. **José Felipe Inciarte**: Spain. Captain of infantry authorized by the General Intendant of Venezuela, José de Avalos, to survey and populate the eastern part of low Orinoco. His tour and study of the area led him to be named governor of the province of Guayana from 1797 to 1810.

57. **José Manuel Hurtado** (1821-1887): Venezuela. Envoy Extraordinary and Minister Plenipotentiary of Colombia in 1824, he substituted Dr. Rafael Revenga in that position. Minister José Manuel

Hurtado had as one of his main objectives to obtain the recognition of the Republic of Colombia by the United Kingdom. In this regard, on 16 July 1824, he requested the United Kingdom, through a descriptive report, to recognize the Republic of Colombia as an independent State, insisting that the boundary between the Republic of Colombia and the British Colony of Guayana, which belonged to the United Kingdom, was the Essequibo River. In the descriptive memorial he expressed: *"This beautiful and rich country extends along the northern sea, from the Essequibo River or the confines of the province of Guayana to the Culebras River, which separates it from Guatemala"*[979].

Regarding the quoted sentence of the descriptive memorial, historian Manuel Donís Ríos indicates that the expression "from the Essequibo River or the confines of the province of Guyana" should be interpreted in accordance with the existing limits at the time, that is to say:

> *"To the east, the former General Captaincy of Venezuela, now an integral part of the Republic of Colombia under the name of Department of Venezuela, had the Essequibo River as its boundary with British Guiana. South of the Essequibo River, the General Captaincy of Venezuela extended to the mouth of the Amazon River, by virtue of the capitulation of Guayana obtained by Antonio de Berrío in 1582"*[980].

In December 1824, the United Kingdom recognized the Republic of Colombia as an independent State; the decision was sent to Spain and the news was received with jubilation in America[981].

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979 Manuel DONÍS RÍOS, "*El Esequibo. Una reclamación histórica"* ("The Esequibo. A Historic Claim"), Abediciones-Konrad Adenauer Stifung, Caracas, 2016; Page 58. The autor sustains that there are strong signs allowing us to conclude that the Memorial was written by Don Andrés Bello who, at the time was in public service holding the position of Secretary of the Colombian Republic in London: "*There are reasons to believe that Andrés Bello at least took part in writing this document. But Bello himself allows us to consider such authorship*".

980 *Ídem.*

981 Julio Alberto PEÑA ACEVEDO, "Cronología de Guyana, cuarta entrega, Gran Colombia" ("The Guiana Chronology, fourth issue, The Greater Colombia"). Published on 19 March 2015. Available at: https://elespacioacuaticovenezolano.com/2015/03/19/1552jualpeac/

This recognition granted by the United Kingdom to the Republic of Colombia was ratified by the signing of the Treaty of Cooperation and Friendship between Colombia and Great Britain on 18 April 1825. It recognized that the Essequibo River was the border of the Republic of Colombia with British Guiana. This treaty was a condition imposed by the United Kingdom to recognize the Republic of Colombia[982].

58. **José Manuel Restrepo** (1781-1863): Colombia. Politician and historian. He held the position of Secretary of the Interior of Colombia (1821-1830) during the government of Simón Bolívar. In his work *Historia de la revolución de la República de Colombia* (History of the revolution of the Colombian Republic), he included a geographical chart of the Department of Orinoco and Maturín, where it is perfectly clear that the eastern limit of this entity was the Essequibo River. This limit constitutes the eastern border of Venezuela. According to historian José Manuel Restrepo, the Essequibo River: *"...continues dividing the English Guayana from that of Colombia up to the mouth of the Cuyuní River, being the western territory of Colombia and the eastern territory of the United Kingdom. The Cuyuní river is the dividing line from its mouth in the Essequibo up to the confluence of the Maceroni: thence it continues northward to the Pumarón River and then its course flows to the sea at Cape Nassau. This is the end point of the border between Colombia and English Guyana, which begin at 2 degrees 10 minutes north latitude to the S. E. of the Macusis"*[983].

59. **José María Rojas** (1828-1907): Venezuela. He held in several opportunities the position of Minister Plenipotentiary of Venezuela

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982 *Ídem.* The author follows BIERCK Harold's work, "Vida Pública de Don Pedro GUAL" ("The Public Life of Don Pedro GUAL"), Page 268. PEÑA ACEVEDO explains that this treaty was ratified by the Senate on 23 May 1825, and ratifications were exchanged on 7 November 1825. He adds that *"In the treaty with Great Britain, British imperial pressure was even stronger, because, as a condition for the recognition of Colombia's independence, they demanded the Treaty of Friendship, Commerce and Navigation be signed. Venezuela informs Britain that the border with British Guiana was located on the Essequibo River. Maps similar to that of Hamilton Adams, from Wilkinson's Atlas (1827), circulated in Great Britain in the second half of the 1820s. Despite the diplomatic and commercial recognition given to the Republic of Colombia by Great Britain, British maps repeatedly presented the border between Colombia and Brazil according to British interests in the region and not according to the aspirations of the Greater Colombian authorities."*

983 José Manuel RESTREPO, Quoted Above, Pages 17-18.

in Spain, Paris, The Hague and London. He was the only Venezuelan lawyer who was part of the country's defence team during the Paris Arbitration. On 4 October 1899, once the Paris Arbitration Award was issued, he severely criticized the decision, stating that it was a derisory decision and a manifest injustice[984].

60. **Julian Pauncefote** (1828-1902): United Kingdom. Lawyer, judge and diplomat. He held the position of Permanent Under-Secretary of State for Foreign Affairs of the United Kingdom between 1882 and 1889, when he was appointed Envoy Extraordinary and Minister Plenipotentiary of the United Kingdom to the United States of America. In that capacity, he actively participated with U.S. Secretary of State Richard Olney in the negotiation of the Treaty of Washington signed on 2 February 1897.

The rules established in Article IV of the Treaty of Washington clearly violated the principles of international law in force at the time. Specifically, rule a of Article IV, known as the prescription clause, which established a different mode of acquisitive prescription to benefit the United Kingdom, and was contrary to the principles of international law.

It is probable *"that United Kingdom sought to impose its own positive law in the drafting of Article IV of the Arbitration Treaty, with the consent of another Anglo-Saxon country such as the USA, which privileged the so-called "immemorial possession" as the title to be given preference in the comparison of titles, for which a centennial possession should have been required and not the lesser and accommodating fifty-year possession"*[985].

As we have pointed out on another occasion *"It is curious- and also opportune for the United Kingdom- that a fifty-year prescription was*

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984 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, "*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional"*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967, Page 21.

985 Gabriel RUAN SANTOS, "Los títulos de la reclamación por la Guayana esequiba. Especial referencia a la 'cláusula de prescripción'" ("The titles of the Claim by Guiana-Essequibo. Special reference to the "limitation clause", *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September 2021, Caracas, 2021.

established which would allow the acquisition of many more territories instead of establishing, at least, a hundred-year prescription which was more in accordance with the principles of international law, but which, on the other hand, was less beneficial to the English in that it would prevent them from obtaining such a vast territory"[986].

The negotiators of the arbitration treaty, the Ambassador of the United Kingdom in the United States, Mr. Julian Pauncefote, and the Secretary of State of the United States, Mr. Richard Olney, knew that establishing only that condition to the applicable law would bring problems and they, therefore, imposed a second condition to the applicable law, this is that they would only apply *"the principles of international law not incompatible with them"*.

It is necessary to bear in mind that on 5 June 1896 Lord Salisbury sent a telegram to Mr. Julian Pauncefote, British Ambassador in Washington, containing a fragment in which he stated: *"Her Majesty's Government would accept the 4th clause of the proposed Treaty in the form suggested by you.... Its application to Venezuela would also be accepted if the United States would for this purpose stand in the place of Venezuela, but such proposed clause would require a subsidiary Convention, and the United States shall select the Arbitrator. According to the accepted version of clause 4, the reviewing tribunal on Venezuelan side should not be the Supreme Court of Caracas, but the Supreme Court of Washington, and Venezuela shall accept any decision accepted by the United States, which is not overruled by the Supreme Court of Washington"*[987].

On 12 November 1896 Julian Pauncefote and Richard Olney reached a secret agreement, in which Venezuelan representative Jose Andrade did not participate, whereby they agreed on the manner in which the prescription rule, provided for in Article IV of the Treaty of Washington, would be interpreted.

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986 Rafael BADELL MADRID, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899.") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September, 2021.

987 Annex 4 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

Regarding the interpretation of Rule "a", Richard Olney told Minister José Andrade that it applied only to occupations prior to 1814, the date on which the United Kingdom had acquired the Berbice, Demerara and Essequibo settlements from Holland. If that had been the case, then the United Kingdom would only have had rights to the territories ceded to it by Holland through the London Treaty of 1814.

Richard Olney explained that Rule "a" referring to prescription referred only to a very small territory between the Pomarón, Moruco and Essequibo rivers; but he actually knew what the true purpose of the prescription rule was, which he had agreed upon in a secret agreement with the United Kingdom's Ambassador to the United States, Julian Pauncefote on 12 November 1896[988].

For their part, the English interpretation was that Rule "a" applied to any occupation of more than fifty years' duration, after 1814, the date on which the United Kingdom and Holland signed the Treaty of London, to which we have referred on several occasions during this study.

In the first place, this interpretation ignores the 1850 *Statu quo* Treaty signed by an exchange of diplomatic notes between the British Consul General in Caracas, Belford Hinton Wilson, and Venezuelan Secretary of Foreign Affairs, Vicente Lecuna, on 18 November and 20 December 1850. According to this international treaty, both parties agreed to maintain the state of affairs as it was at the end of 1850. Thus, both Venezuela and the United Kingdom had an obligation not to advance their occupations in the disputed territory.

Despite its enormous importance, there was no reference in the Treaty of Washington of 1897 to the *Statu quo* Treaty of 1850. On the contrary, the interpretation given to the prescription clause was contrary to the *modus vivendi* whereby both parties had committed themselves to maintain the border situation as it was at that time.

Let us recall that the parties had committed themselves not to occupy the territory under discussion between the pseudo Schomburgk line, the maximum aspiration of the United Kingdom, and the Essequibo. Thus, the interpretation of possession could never refer to that period. On the

988 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 126.

contrary, the *modus vivendi* of 1850 was not reflected in the Treaty of Washington.

The United Kingdom never respected the *Statu quo* Treaty of 1850. On the contrary, and as can be inferred from its subsequent actions, the United Kingdom insisted on advancing its claim over Venezuelan territory in an increasingly vulgar and brazen manner. Rule "a" of Article IV of the Treaty of Washington disregards the *Statu quo* Treaty and thereby chooses to ignore its violation in an attempt to conceal its great legal value.

The fact that the 1850 *Statu quo* Treaty was rendered worthless was no accident. Indeed, Mr. Richard Olney, Secretary of State of the United States of America, sent a letter to Mr. Julian Pauncefote, Ambassador of the United Kingdom in Washington, dated 29 October 1896, in which he stated the following: *"I think it is most desirable not to give the Agreement of 1850 any status in the Convention, even by reference, much less by an attempt to define its scope and meaning. An attempt to interpret it would involve us in a protracted debate and indefinitely postpone the attainment of the objective we now have in mind"*[989].

Rule "a" of Article IV of the Treaty of Washington also contradicts the principle of *uti possidetis iuris*, which since the emancipation has been a principle of supreme importance for the American countries and has even been used by countries of other continents because of its usefulness in the delimitation of borders. Contrary to this, during the negotiations between Richard Olney, Secretary of State of the United States of America, and Julian Pauncefote, Ambassador of the United Kingdom to the United States of America, the prescription rule was established and the principle of *uti possidetis facti* was given pre-eminence.

The prescription rule was intended to undermine the argument of unconstitutionality defended by Minister José Andrade, according to which the Constitution of 1893 -in force at the time the treaty was concluded- did not allow the alienation of any part of the territory of the republic.

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[989] Annex 6 to the Lettter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

Thus, the explanation given to Venezuela on the meaning and scope of the rules of Article IV was different from the interpretation given by the British, which was the one finally applied in the Arbitral Award of 3 October 1899[990].

This Rule "a" *"contains the constituent elements of the defencelessness in which Venezuela's interests were placed"*[991]. This aspect is decisive for the establishment of the nullity of the arbitration agreement. As stated by Isidro Morales Paúl *"precisely in the prescription clause lies the backbone of the problem"*[992].

Rule "a" openly favoured the United Kingdom, which through prescription obtained title over the disputed territory, which otherwise it would not have been able to justify and, despite the serious prejudice it represented, Venezuela had to accept it. Indeed, *"Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure from the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government, which was given explanations that misled it"*[993].

61. **José Rafael Revenga** (1786-1852): Venezuela. Minister Plenipotentiary of Colombia in London. After noticing in 1822 the presence of British colonist occupations in Colombian territory, he was sent by the Secretary of Foreign Relations of the Republic of Colombia to agree with the English on the establishment of the dividing line between British Guiana and Colombia. The instructions given to Minister José Rafael Revenga were the following:

"Be it allowed for me, however, to call your attention particularly to article 2. of the draft treaty on the point of limits. The English now possess Dutch Guiana, on whose side they are our neighbours. You are to agree as exactly as possible to set the dividing line of one and the other territory, according to the last treaties between Spain and Holland. The settlers of Demerara and Berbice have usurped a large

990 On this matter, see: Carlos SOSA RODRÍGUEZ, Quoted Above.

991 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 179.

992 *Ibidem,* Page 187.

993 Herman GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 26.

portion of land which, according to them, belongs to us on the side of the Essequibo River. It is absolutely indispensable that said settlers either place themselves under the protection and obedience of our laws, or that they withdraw to their former possessions. To that end, they will be given the necessary time as established in the project"[994].

However, Minister Plenipotentiary José Rafael Revenga could not comply with the instructions he had received "because he had not been given the opportunity to discuss the boundary question during his mission in the United Kingdom"[995].

The aforementioned instructions, in spite of not having been carried out, demonstrate the immediate rejection of British occupations in the territory of Venezuela, which at that time was united to Colombia. The incursion of settlers from Demerara and Berbice to the west of the Essequibo River was always firmly rejected. The defence of the Essequibo territory has been present in the history of Venezuela even when it was part of the Republic of Colombia.

62. **José Leandro Palacios**: Venezuela. Colonel who received Simón Bolívar's letter of 7 August 1817, sent from Lower Guayana, where the Liberator expressed: *"At last I have the pleasure of seeing Guayana free! The capital surrendered to us on the 18th of last month, and these fortresses, on the 3rd of this month. The country has not been left in the best of shapes, because of the population, which has almost been annihilated in the seven months of siege, and because a great part of the people emigrated with the Spaniards"*[996].

63. **José Loreto Arismendi** (1898-1979): Venezuela. Minister of Foreign Relations of Venezuela in 1956 during the government of General Marcos Pérez Jiménez. In 1956, he ratified the position of Venezuelan Minister of Foreign Relations, Luis Gómez Ruiz, and the legal consultant of Venezuelan Ministry of Foreign Relations, Ramón

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994 See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Page 6. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

995 *Ídem.*

996 Fuente: https://www.aporrea.org/actualidad/a212082.html

Carmona, that no change in the status of the British Guiana Colony would affect the legitimate territorial rights that belong to Venezuela.

64. **Kirill Gevorgian** (8 April 1953): Russia. Judge of the ICJ since 2015. Since 2021 he is Vice-President of the ICJ and was one of the ICJ judges who, together with Giorgio Gaja, Ronny Abraham and Mohamed Bennouna, withheld their vote in the declaratory judgment on jurisdiction of 18 December 2020, regarding the dispute between Venezuela and Guyana as to the validity or nullity of the Paris Arbitral Award.

In his withheld vote, Judge Kirill Gevorgian indicated that the judgment violated one of the fundamental principles of the ICJ stipulated in the Statute and ratified in its decisions: the consent of the parties to submit to its jurisdiction, which according to ICJ decisions must be *"certain, unequivocal and indisputable"*[997].

For Judge Kirill Gevorgian, the provision of Article IV.2 of the Geneva Agreement does not amount to recognition by the parties of the power of the Secretary of the United Nations to consent on their behalf. As the other judges held in their dissenting opinions, the United Nations Secretary selects the means, but it is the parties who consent to its application.

Judge Kirill Gevorgian considered that the documents provided by Venezuela were not sufficiently examined. Indeed, he pointed out that the memorandum from Venezuela, which by that time had decided not to participate in the proceedings, was of great value and yet it was not considered as it should have been, despite the fact that this is an important territorial dispute.

It also ruled on the interpretation of the Geneva Agreement and expressed that, in accordance with the Geneva Agreement, two things could happen (i) the dispute between the parties was resolved through one of the mechanisms provided, or (ii) the means of settlement were exhausted. The ICJ's interpretation eliminated the second possibility and violated the purpose of the agreement by deciding to settle the dispute definitively.

997 "…certain, unequivocal and indisputable".

Judge Kirill Gevorgian acknowledged Venezuela's traditional position regarding the manifestations of consent in these cases. In this regard, he argued that Venezuela, historically, has on several occasions expressed its willingness not to allow third parties -such as the Secretary-General of the United Nations- to decide without its express consent on issues as relevant to the nation as territorial integrity. This was not taken into account by the court[998].

65. **Lord Aberdeen** (1784-1860): United Kingdom. Foreign Secretary of the United Kingdom. Between November 1841 and January 1842, he exchanged at least seven letters with the diplomat Dr. Alejo Fortique, who had requested the removal of the posts erected by Robert Schomburgk, after having drawn his second line; the elimination of a military post erected in Venezuelan territory where the British flag was raised and that a treaty be negotiated in order to fix the border between both territories.

66. **Robert Stewart** (1769-1822): United Kingdom. Viscount Castlereagh. Foreign Secretary of the United Kingdom. Robert Stewart was the addressee of the communication sent on 20 February 1821 by Venezuelan diplomat Francisco Antonio Zea, who sought to clarify the border situation and indicated that the eastern border of the Republic of Colombia was the left bank of the Essequibo River. In his communication he expressed:

"The Republic of Colombia occupies in South America the northernmost part, extending in latitude from 12º N, to 69 S, and in longitude from 589 to 81Q of the Greenwich meridian.

Its limits are to the East the Atlantic Ocean that bathes its coasts from the mouths of the Orinoco to Cape Nassau; from this cape starts a line N.S. that starting from this cape ends in the Essequibo River, being the left bank of this river the border with the Dutch Guiana"[999].

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998 Judge Kirill GEVORGIAN points out: "… that, in 1939, Venezuela had entered into a bilateral treaty with Colombia that, in general, provided submission of disputes to conciliation or judicial solution. Article II of the treaty, however, expressly excluded that disputes relative to the territorial integrity of the Parties could be submitted to resolution by third parties. A similar bilateral treaty of 1940 between Venezuela and Brazil required, in Article IV, that the Parties attempt to reach a special agreement before any dispute could be submitted for solution ..."

999 Herman GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 33.

67. **Lord Salisbury** (1830-1903): United Kingdom. Robert Arthur Talbot Gascoyne-Cecil. He was the third Marquis of Salisbury; Secretary for India between 1866 and 1867; and then between 1874 and 1878; Foreign Secretary from 1878 to 1880, and three-times Prime Minister of the United Kingdom from 1886 to 1902, with an interruption between 1892 and 1895. His tenure coincided with the usurpation of the territory adjacent to the eastern border of Venezuela.

The null participation of Venezuelan arbitrators in the composition of the arbitral tribunal is a product of the colonialist view of the United Kingdom, which only accepted to resolve the dispute through arbitration if the counterpart was represented by the United States of America, because, according to them, there were no Venezuelan jurists apt to assume the functions of arbitrator. This is inferred from the whole course of the arbitration proceedings, but also from a letter sent by Mr. Julian Pauncefote, Ambassador of the United Kingdom, to Lord Salisbury, Prime Minister of the United Kingdom, dated 18 December 1896, in which he stated the following: *"There is no danger that Mr. Olney will listen for a moment to Venezuelan howl asking for a modification of our terms of arbitration. But I am a little uneasy about the possibility that he will not urge the U.S. judges to appoint a Venezuelan as an arbitrator.... It may seem unfair that there should be two Englishmen on our side and no Venezuelan on the other, but Venezuelan agreed to be represented by the U.S. and I certainly undertook that the matter would be arbitrated precisely as if the dispute were between G. Britain and the U.S. for the reason, among others, that We do not know of any Venezuelan jurist worthy of the name to whom we could agree to entrust the functions of arbitrator in such a case"*[1000].

During his tenure of office, the Paris Arbitral Award was rendered and the enforcement of the decision began. He was portrayed in an illustration entitled *"Peace and Plenty"* published on 11 October 1899 in London Charivari's Punch Magazine following the conclusion of the Paris Arbitration. The cartoon shows him laughing and below is the *phrase "I like arbitration- In the right place!"*

[1000] Annex 5 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

In fact, Lord Salisbury's participation in the arbitration proceedings even goes back to the negotiation process of the Treaty of Washington, the arbitration compromise according to which the United Kingdom agreed to settle the territorial dispute with Venezuela. By the time the provisions of the aforesaid arbitration treaty were being negotiated, specifically, on 15 June 1896, Lord Salisbury sent a telegram to Mr. Julian Pauncefote, British Ambassador in Washington, containing a fragment in which he indicated that: "*Her Majesty's Government would accept the 4th clause of the proposed Treaty in the form suggested by you .... Its application to Venezuela would also be accepted if the United States would for this purpose stand in the place of Venezuela, but such proposed clause would require a subsidiary Convention, and the United States shall select the Arbitrator. Under the accepted version of clause 4, the reviewing court on Venezuelan side should not be the Supreme Court of Caracas, but the Supreme Court of Washington, and Venezuela shall accept any decision accepted by the United States, which is not overruled by the Supreme Court of Washington"*[1001].

However, Lord Salisbury made no secret of his aversion to arbitration. On multiple occasions, in his capacity as Prime Minister of the United Kingdom and Foreign Secretary, he refused to resolve

[1001] Annex 4 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

the boundary dispute with Venezuela through arbitration. Indeed, Lord Salisbury *"Allowed correspondence with Secretary Olney on Venezuela boundary dispute to proceed in a perfunctory manner, with the Foreign Office taking it for granted that our mediation on behalf of the South American republic was merely academic, and persisting, therefore, in its arrogant refusal to submit the dispute to arbitration"*[1002].

As to the duty of impartiality of the arbitrators, it is appropriate to take into account the letter that Sir Richard Webster, the attorney for the United Kingdom, sent to Lord Salisbury, Prime Minister of the United Kingdom, dated 19 July 1899 in which he expressed the following: "*I do not propose to make any concessions. If I have any reason to believe that the Court is against me in this part of the case, I will do my best to let the British arbitrators know our view of the position"*[1003]. Attorney Richard Webster again communicated with Lord Salisbury and Joseph Chamberlain on 3 October 1899, the same day he issued the Paris Arbitral Award. To the former he said *"There are one or two important matters in connection with the arbitration which I cannot express very well in writing"*[1004] and to the latter he wrote as follows: *"When you can spare me a few minutes, there are one or two matters in connection with the arbitration which I should like to discuss with you. I cannot express them very well in writing"*[1005].

68. **Luis Cova Arria** (23 December 1937): Venezuela. Full Member of the Academy of Political and Social Sciences. He presided

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[1002] Mayo W. HAZELTINE, "The United States and the Late Lord Salisbury1", *The North American Review*, Nº 564, University of Northern Iowa, 1903. Page 722. Available at: https://www.jstor.org/stable/pdf/25119479.pdf?refreqid=excelsior%3A2beedb316f54eb3b39334e139239a6b5&ab_segments=&origin=&acceptTC=1.

[1003] Letter of Sir Richard E. WEBSTER to the Marquis of Salisbury, 19 July 1899, Christ Church College, Oxford, Cecil Papers, Special Correspondence. Annex 8 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

[1004] Letter of Sir Richard E. WEBSTER to the Marquis of Salisbury, 3 October 1899, Christ Church College, Oxford, Cecil Papers, Special Correspondence. Annex 11 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

[1005] Letter of Sir Richard E. Webster to Mr. Chamberlain, 3 October 1899, Chamberlain Papers, Birmingham University Library, J.C. 7/5. Anex 9 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

the Academy between 2013 and 2015, During his tenure as President of the academy he issued on 1 October 2013 the *"Declaration of the Academy of Political and Social Sciences on the new abuse to national sovereignty by the government of Guyana",* related to the violation of maritime spaces and territorial sovereignty in the continental maritime territory by the government of Guyana; and the *"Pronouncement of the Academy before the aggressions by the Cooperative Republic of Guyana, the abandonment of the territorial claim against Guyana and Venezuela's failure to comply with the Geneva Agreement",* regarding the scientific research work carried out on 22 October 2013 by the Teknik Perdana vessel, hired by the Government of the Cooperative Republic of Guyana, without authorization from Venezuela".

Dr. Luis Cova Arria has contributed to the Venezuelan Claim to the Essequibo territory with valuable studies, including: Main aspects of the legal situation of the Venezuelan Claim over Esequiba Guyana, included in the book *¿Qué hacer con la justicia? El caso venezolano* (What to do with justice? Venezuelan case), published by the Academy of Political and Social Sciences and the Centre for Integration and Public Law in 2020 and "*La Academia de Ciencias Políticas y Sociales y la defensa del territorio Essequibo"* (The Academy of Political and Social Sciences and the defence of the Essequibo Territory), published in the Bulletin of the Academy of Political and Social Sciences, Nº 164, in April-June 2021.

69. **Luis Gómez Ruíz** (1911-1966): Venezuela. Minister of Foreign Relations of Venezuela during the government of Acting President Germán Suárez Flamerich. He participated in the IV Meeting of Consultation of the Ministers of Foreign Affairs of the American Countries, held in Washington D.C. from 26 March to 7 April of 1951. There he expressed his support for a true settlement of the eastern border of Venezuela.

70. **Marcos Falcón Briceño** (1907-1998): Venezuela. Minister of Foreign Relations of Venezuela during the second government of Rómulo Betancourt. On 12 November 1962, he presented a statement before the 348th Session of the Special Political Committee of the XVII United Nations Assembly on 12 November 1962. On that occasion, he ratified the position of Ambassador Carlos Sosa Rodriguez and invoked

the historic Venezuelan position that the Paris Arbitral Award is null and void. His closeness to the claim allowed him to make academic contributions such as his work Origins of the current claim of Essequibo Guyana, published in the Bulletin of the Academy of Political and Social Sciences, Nº 91 in 1983.

71. **Melville Weston Fuller** (1833-1910): United States of America. Chief Justice of the Supreme Court of the United States of America. He was appointed arbitrator on behalf of Venezuela by the Treaty of Washington of 2 February 1897. Although, like the other arbitrators, he was not selected by Venezuela.

72. **Meredith Alister McIntyre** (1930-2019): Grenada. On 11 November 1989, he was appointed Good Officer by United Nations Secretary-General Javier Pérez de Cuéllar. His role as Good Officer was to be flexible and leave aside the formalities of diplomacy in order to obtain a solution to the territorial dispute between Venezuela and Guyana. He resigned as Good Officer on 20 September 1999.

73. **Mohamed Bennouna** (29 April 1943): Morocco. Judge of the ICJ since 2006 and re-elected in 2015. He was one of the ICJ judges who, together with Giorgio Gaja, Kirill Gevorgian and Ronny Abraham, withheld his vote in the declaratory judgment of 18 December 2020 regarding the dispute between Venezuela and Guyana as to the validity or nullity of the Paris Arbitral Award.

In his withheld vote he ruled on the consent of the parties and expressed that the fact that one of the parties did not appear before the ICJ was an indication of the importance that should have been given to the issue of consent. Indeed, consent is one of the essential requirements for going to the ICJ. In this regard, he made criticisms along the same lines as Judge Ronny Abraham when, noting the court's interpretation of Article IV of the Geneva Agreement - explained above- and he asked, *"But is this sufficient to infer, as the Tribunal blithely does, that the Parties have consented to its jurisdiction?"*[1006].

Judge Mohamed Bennouna pointed out that, although Article IV.2 of the Geneva Agreement provides for the possibility for the UN

[1006] "…But is this sufficient to infer, as the Court blithely does, that the Parties have consented to its jurisdiction?"

Secretary-General to choose one of the means of Article 33 of the UN Charter, it does not mean that the parties delegated to him the power to give consent on behalf of them as to the jurisdiction of the court[1007].

In its view, the Geneva Agreement contemplates the possibility that all means of settlement under Article 33 of the UN Charter be exhausted. However, the tribunal eliminated this possibility with the interpretation it gave to Article IV.2 of the Geneva Agreement, according to which the ICJ must definitively settle the dispute. In this way, one of the maxims of treaty hermeneutics, i.e., effectiveness[1008], was violated.

Judge Mohamed Bennouna held that the ICJ could not declare itself competent to decide on the delimitation of the boundary between the disputing States. It should be noted that the dispute refers to the validity or nullity of the Paris Arbitral Award. If the award is declared invalid, the parties would then have to reach an agreement on their border situation through the mechanism they consider most convenient for such purposes.

Finally, he criticized the decision which, in his opinion, constitutes a reputational risk for the ICJ. Indeed, he indicated that, in a case as sensitive as this one, only a careful and rigorous decision could guarantee the credibility of the court among the signatory countries of its Statute.

74. **Norman Girvan** (1941-2014): Jamaica. On 9 October 2009, he was appointed Good Officer by the Secretary-General of the United Nations. He was entrusted with achieving an acceptable solution for Venezuela and Guyana. He died on 9 April 2014 without having achieved any success in finding a solution.

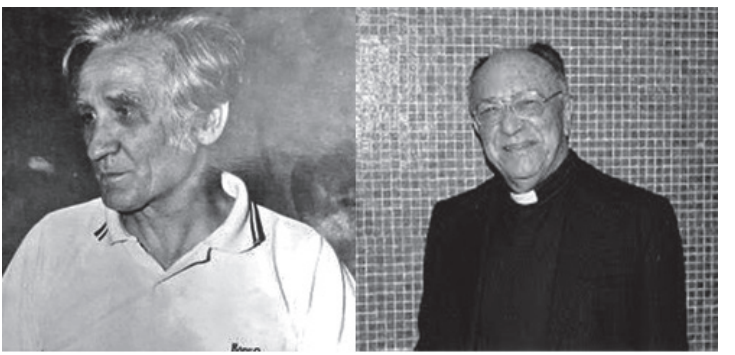
1007 "…in international practice, there is no precedent in which States can be said to have delegated to a third party, such as the Secretary-General, their power to consent to the Court's jurisdiction".

1008 "Unfortunately, the Court itself, in interpreting Article IV, paragraph 2, has not allowed the terms of this second alternative to produce fully their effects, thereby departing from "one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely that of effectiveness" (Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, Page 25, para. 51; Also see Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978, Page 22, para. 52; application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), Pages 125-126, para. 133)".

75. **Oliver Jackman**: (Fall. 24 January 2007): Barbados. On 1 November 1999, he was appointed Good Officer by the Secretary-General of the United Nations, Javier Pérez de Cuéllar, due to the resignation of the previous Good Officer Sir. Meredith Alister McIntyre. His work as Good Officer was to find a solution to the territorial dispute between Venezuela and Guyana. He died on 24 January 2007 without reaching a solution.

76. **Otto Schoenrich** (1876-1977): United States of America. Lawyer. Executor and partner of Severo Mallet-Prevost in the firm Curtis, Mallet-Prevost, Colt & Mosle. He was the person to whom attorney Severo Mallet-Prevost delivered his well-known posthumous memorandum with the instruction that he submit it only after his death and at his own discretion. After Severo Mallet-Prevost's death on 10 December 1948, attorney Otto Schoenrich decided to publish the memorandum in the *American Journal of International Law* in July 1949. This posthumous memorandum was later published in the Bulletin of the Academy of Political and Social Sciences of Venezuela, volume 14, Nos. 1-2-3-4, of 1949.

77. **Pablo Ojer Celigueta** (1923-1996) and Hermann González Oropeza (1922-1998):



Pablo Ojer Celigueta (left) and Hermann González Oropeza (right).

Venezuela. Jesuit Fathers Pablo Ojer Celigueta and Hermann González Oropeza made fundamental contributions to Venezuela's claim to the Essequibo territory. Their investigations and the documents gathered during their stay in London, which resulted in the *"Report presented to the national government by Venezuelan experts on the*

question of limits with British Guyana"[1009], are decisive to demonstrate the nullity of the Paris Arbitral Award of 3 October 1899.

In December 1962, Father Pablo Ojer was called to meet with the Minister of Foreign Affairs Marcos Falcón Briceño; there Ojer informed that together with Father Hermann González Oropeza, they were doing a historical investigation of the claim on the Essequibo territory[1010]. Ojer and Gonzalez had conducted research in the British Archives between 1951 and 1956, and then, in February 1963, they travelled to London to continue their research in the British Archives.

In 1963, a few days after arriving in London, Ojer and Gonzalez were appointed Venezuelan representatives as experts *"for the discussions to be held with the representatives of Great Britain and then colony of British Guiana, on the documentation proving the nullity of the 1899 award"*[1011]. That same year they were appointed advisors to the Ministry of Foreign Affairs on the matter of the borders with Guyana[1012]. Ojer and Gonzalez were reluctant to accept these positions. According to Ojer, they would have preferred *"that other persons formally represent our country in those tripartite talks"*[1013], so that they could dedicate themselves *"with greater commitment and freedom to historical research in the archives"*[1014]. There was no time to consult about their appointments, so the Jesuit fathers finally accepted their positions at the request of Ambassador Ignacio Iribarren Borges[1015].

In 1964, Pablo Ojer attended only the meetings and presented Venezuela's arguments, alternating continuously between Venezuelan Embassy and the British Foreign Office, which were the places where the

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1009 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, "*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional"*, ("The Venezuelan Experts' Report to the National Government onin the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967.

1010 Pablo OJER CELIGUETA, "*Los documentos de la casa amarilla"* ("The Yellow-House Documents"), Editorial Arte, Caracas, 1982. Page 43.

1011 *Ídem.*

1012 See: Manuel DONÍS RÍOS, "*El Esequibo. Una reclamación histórica"* ("The Esequibo. A Historic Claim"), Abediciones, Caracas, 2016. Page 111.

1013 Pablo OJER CELIGUETA, Quoted Above, Page 43.

1014 *Ibidem,* Page 44.

1015 *Ibidem,* Page 44.

tripartite discussions were held. Hermann González Oropeza, who had remained in Caracas due to a spinal ailment, joined the discussions[1016] a few months later.

On 18 March 1965, *the Report presented to the national government by Venezuelan experts on the boundary issue with British Guyana*[1017] was published. Ojer and González's report refers to Venezuela's titles over the Essequibo territory, the details of the controversy between Venezuela and the United Kingdom during the 19th Century, Venezuela's lack of participation in the formulation of the Treaty of Washington of 1897, and the reasons why the Paris Arbitration Award is null and void. In addition, the report includes statements by personalities who participated in the Paris Arbitration, the reactions of the international press and several maps showing that the procedure was openly in violation of Venezuela's legitimate rights.

Regarding Venezuela's titles over the Essequibo territory, the report points out how Spain was the State that discovered and colonized the territory of Guyana, an achievement that was recognized by the other powers between the 15th and 16th centuries. When the Treaty of Münster was signed, there was no Dutch post located west of the Essequibo River.

The Jesuit experts, Ojer and Gonzalez, report that the Dutch had only insignificant posts that lasted for a very short time and were in violation of the Treaty of Münster. They argue that when the Treaty of London was signed in 1814, the United Kingdom received the territory of British Guiana. However, the border with Venezuela has always been at the Essequibo River. This is shown in Cruz Cano's map published by Francisco de Miranda in 1799 with the approval of the British government.

Ojer and González state in their report that even when Venezuela was part of the Republic of Colombia, it was always made known to the United Kingdom that the border with the British Guiana colony was the line of the Essequibo River. These statements are supported by the diplomatic declarations of Francisco Antonio Zea in 1821, José Rafael Revenga in 1823, José Manuel Hurtado in 1824 and Pedro Gual

[1016] Pablo OJER CELIGUETA, Quoted Above, Page 44.
[1017] Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above.

in 1825. In addition, as the Jesuit Fathers state in their report, *"When Spain signed in Madrid, on 30 March 1845, the treaty recognizing the sovereignty of our country over the territory known by the old name of the General Captaincy of Venezuela, it included the province of Guayana, bordered on the east by the Essequibo River"*[1018].

The report includes a study of the Anglo-Venezuelan controversy, revealing the progressive increase in British pretensions after the publication of the first Schomburgk line in 1835 and the formal beginning of the controversy in 1840 with the so-called pseudo-Schomburgk line.

According to information gathered by experts from the British confidential archives, *"both the Foreign Office and the Colonial Office rejected Schomburgk's arguments in favour of his 1840 pseudo-line. Those two Ministries concluded that the Prussian naturalist had misinterpreted historical documents and had used them with partiality and sectarianism"*[1019].

Furthermore, the report states that when Schomburgk was again commissioned to carry out exploration work on the border between Venezuela and British Guiana -based on the 1840 line- he exceeded the instructions given to him by the government and *"erected posts, marked trees and made acts of possession that gave rise to formal protests on the part of Venezuela"*[1020].

Moreover, as Ojer and Gonzalez point out, *"Lord Aberdeen's minutes in 1841 qualify Schomburgk's actions as premature and state that his commission was to conduct a survey, and that he had no reason to take possession"*[1021].

In any case, from the review of the British Archives by the Jesuit experts, it follows that *"the internal documentation of the Foreign Office, the Colonial Office and the Government of Demerara reveals that the publication of the maps that carried that pseudo-Schomburgk line of 1840 had an official nature and represented the maximum British claim against Venezuela. Thus, we know today that it was under the direction of the British Government and the Demerara Government*

[1018] *Ibidem,* Page 8.
[1019] *Ídem.*
[1020] *Ibidem,* Page 10.
[1021] *Ídem.*

that the following maps were prepared: (a) The Foreign Office Memorandum Map of 1857 on the Guiana controversy; (b) The map of the Memorandum of C. Chalmers, Crown Surveyor of the Colony (1867); (c) The Schomburgk-Walker's map of 1872; (d) The Brown's map of 1875; (e) The Stanford's map of 1875"[1022]. All these maps clearly show that the United Kingdom recognized from 1840 to 1886 *"as Venezuelan territories without dispute all the upper Barima and all the Cuyuní rivers from its headwaters to the mouth of the Otomong"*[1023].

Pressure from mining industry interests of the United Kingdom caused British aspirations to grow rapidly. The United Kingdom *"further advanced its colonialist ambitions to near Upata, a few kilometres from the Orinoco, with the so-called line of the British maximum claim"*[1024].

Ojer and Gonzalez's research confirmed that *"Great Britain rejected the constant Venezuelan proposals to submit the issue to arbitration because its government considered that it lacked arguments and that a fully judicial decision would be unfavourable"*[1025] and, therefore, always refused to resolve the territorial dispute with Venezuela through arbitration.

Researchers Ojer and González explain the reasons why the United Kingdom constantly changed its position regarding the border of the British Guiana Colony with Venezuela. They state that these changes were due to the fact that the United Kingdom never trusted its title to the disputed territory[1026]. That is why "*the Aberdeen (1844), Granville (1881), Rosebery (1886) lines, etc., respond to the interests of British Guiana settlers in each period"*[1027].

When the United Kingdom finally agreed to settle the controversy with Venezuela through arbitration after the intervention of the United States of America, the negotiations of the Washington Arbitration Treaty began. Regarding this treaty, Ojer and Gonzalez state that *"the present investigation proves that during the course of the negotiations Venezuela was kept marginalized, particularly in the final and most*

1022 *Ídem.*
1023 *Ídem.*
1024 *Ibidem,* Page 11.
1025 *Ídem.*
1026 *Ídem.*
1027 *Ídem.*

important phase. Consulted on the prescription clause, negotiations continued despite and against the objections of Venezuelan Ministry of Foreign Relations. Moreover, Richard Olney agreed with Great Britain to exclude Venezuela from the Arbitral Tribunal"[1028].

With regard to the prescription rule contained in Article IV of the Washington Treaty, the aforementioned report allows us to conclude that even if the British misinterpretation of the prescription rule is accepted, the possibility of granting such a vast territory to the United Kingdom does not follow from it.

Indeed, the map included in the report shows that the territory that the United Kingdom could acquire through the prescription rule was much smaller than the one finally granted by the award to the United Kingdom. The map clearly shows which territories were occupied by the British in 1840, then between 1886 and 1890, and then after 1890. So, the prescription clause was not applicable to a territory as vast as the one finally awarded to the United Kingdom; on the contrary, the prescription rule could only be applied to a considerably smaller territorial portion[1029].

The territory shown in that map is significantly smaller than the one awarded to the United Kingdom in the Paris Award, as even accepting the worst interpretations, these were the territories to which the prescription rule could apply. Therefore, the Paris Arbitral Award wrongly applied the prescription rule in favour of the United Kingdom, thereby violating Article IV of the arbitration treaty and it was flawed because the arbitrators exceeded their powers.

Another serious violation of the treaty's obligations imposed on the arbitrators is related to the so-called first Schomburgk line of 1835, which was not taken into account by the judges. This first Schomburgk line *"only diverges from said river about 45 miles from the* coast*, at the confluence of the Mazaruni and Cuyuní rivers with the Essequibo and thence forming a sort of pocket, west of the Essequibo River, to the point on the coast where the Moroco River flows into it"*[1030]. Previously, and

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[1028] *Ídem.*

[1029] *Ibidem,* Page 15.

[1030] Véase Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above. Also see Carlos SOSA RODRÍGUEZ, *"El acta de Washington y el laudo de París"* ("*The*

on the contrary, the arbitral tribunal took into account the extended line of Hebert's map of 1842, a line on which there are important indications of falsification and alteration, namely:

> *"Venezuela has evidence that the British Foreign Office was not aware of that line until June 1886. This is a serious indication that the original map, which had been in the possession of the Colonial Office since 1842, had been corrupted"*[1031].

As for the flaws in the Paris Arbitral Award, the report states that *"the first flaw in the 1899 Award is that it purported to attribute legal value to a line adulterated by Great Britain: the so-called expanded line of the 1842 Hebert map"*[1032].

The lack of reasoning was also denounced in the report as one of the flaws of the Paris Arbitral Award. In this regard, they stated the following: *"We can affirm that the Arbitral Tribunal that rendered the judgement in the British-Venezuelan border dispute did not fulfil its obligation and, therefore, by submitting a decision without the corresponding reasoning, did not proceed in accordance with the rules of international law. As a result, the decision of the Arbitral Tribunal lacks validity in international law, at least as of the date on which such invalidity is invoked"*[1033].

Ojer and Gonzalez pointed out in their report that the Paris Arbitral Award was also invalidated because the arbitrators exceeded their powers. First of all, it must be borne in mind, as pointed out by the experts that *"the arbitral compromise, as established in 1897, had provided that the decision should be based on the principles of law and in particular on the principle of uti possidetis juris of 1810"*[1034].

Despite the terms set forth in the Treaty of Washington and as confirmed by the report: *"the decision of the Arbitral Tribunal did not took into account either the principle of uti possidetis juris*

Washington Act and the Paris Award"), *Bulletin of the Academy of Political and Social Sciences,* Nº 91, Caracas, 1983. Page 122.

1031 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 13.

1032 *Ídem.*

1033 *Ibidem,* Page 14.

1034 *Ídem.*

or the stipulation contained in Rule "a" of Art. IV, and, even in the interpretation most favourable to Great Britain, the Tribunal exceeded its powers, since it did not state the reasons for which it attributed to that country dominion over that territory during the fifty years prior to the award, the only certainty being that those territories, prior to 1810, to the General Captaincy of Venezuela, a future independent State"[1035].

Furthermore, the Paris Arbitral Award was flawed for arbitrators ruling ultra petita, since *"the Arbitral Tribunal exceeded its powers by deciding and regulating an issue whose examination had not been contemplated in the arbitral compromise; that is, it ruled on the free navigation of the Barima and Amacuro Rivers and regulated their use"*[1036].

Ojer and Gonzalez ratified in their investigation that the Paris Arbitral Award had another flaw that *"consists in not having been a decision of law, according to what was agreed, but a compromise"*[1037]. This was recognized by the American and European press, the members of the Paris Arbitral Tribunal and the lawyers of the parties[1038].

The documents reviewed by Ojer and Gonzalez in the British Archives indicated that *"the award was a compromise obtained by extortion"*[1039] in the nature of a political deal. Several statements concur in this conclusion, among them, those of Severo Mallet-Prevost; George Buchanan; Perry Allen; Sir Richard Webster; Lord Russell; José María Rojas; José Andrade; L. de la Chanonie; Georges A. Pariset; Caroline Harrison; Charles Alexander Harris; A. L. Mason and R.J. Block[1040].

Ojer and Gonzalez concurred with the opinion of several experts in international arbitration between States that: *"the authors and practice of international law generally admit the nullity of awards in two cases: in the case of incompetence of the judge (absence of a valid arbitration agreement or treaty), or in the case of arbitrators exceeding their powers (extension of the decision on matters that were not included in the arbitration or judicial agreement, or application of rules such*

1035 *Ibidem,* Page 16.
1036 *Ídem.*
1037 *Ibidem,* Page 17.
1038 *Ídem.*
1039 *Ídem.*
1040 *Ídem.*

as those of equity, for example, which had been explicitly or implicitly excluded by the parties)"[1041].

Regarding the enforcement of the Paris Arbitral Award, Ojer and Gonzalez insisted that *"if Venezuela concurred with Great Britain in the demarcation of the so-called boundary of the award, it was because of the tremendous pressure of circumstances, to avoid greater evils"*[1042]. *They also pointed out that the participation of Venezuelan commission in the demarcation was of a strictly technical nature and "did not imply assenting to the Arbitral Tribunal's purported decision"*[1043].

Venezuela protested the Paris Arbitral Award ever since it was issued. The experts stated in their report that the first official claim before the Paris Arbitral Award was formulated by José María Rojas, who was the only Venezuelan lawyer who was part of the country's defence team during the Paris Arbitration. On 4 October 1899, once the Paris Arbitration Award was rendered, he severely criticized the decision, stating that it was a derisory decision and a manifest injustice[1044]. President Ignacio Andrade also criticized the Paris Arbitral Award and indicated that the decision *"had only restored to Venezuela a part of its usurped territory"*[1045].

Venezuelan press immediately reacted by criticizing the Paris Arbitral Award. In fact, experts Ojer and González reported in their report that on 17 October 1899, the newspaper El Tiempo denounced the arbitral decision[1046].

In a note dated 4 December 1899, the British Minister in Caracas at that time, "*stated his opinion about the justice of the so-called award"*[1047]. Faced with this situation, Venezuelan Minister of Foreign Relations stated a few days later that he could refute the arguments of the British Minister in Caracas[1048]. In light of this, the Ministry of Foreign Affairs "concluded that the arbitration decision was so flawed

1041 *Ibidem,* Page 16.
1042 *Ibidem,* Page 22.
1043 *Ídem.*
1044 *Ibidem,* Page 21.
1045 *Ídem.*
1046 *Ídem.*
1047 *Ídem.*
1048 *Ídem.*

that it was entitled to invoke its invalidity. *It decided not to denounce it because it could not face the formidable power of its adversary, since it no longer had the support of the United States, which had entered into an entente with the United Kingdom"*[1049].

The rapprochement between the United States of America and the United Kingdom during the Paris Arbitration became more evident with the words of the English press a day after the Paris Arbitral Award was rendered, which read as follows: *"We have no doubt that the United States will force Venezuela to accept the verdict and that they will act appropriately in the event that problems arise with respect to the enforcement of the decision"*[1050].

The Venezuelan claim to the Essequibo territory could not be raised with all the force it deserved at certain moments in our history, but there were reasons for this. Indeed, as the report states, *"the internal and international situation of Venezuela in the first half of the 20th century forced it to postpone the denunciation of the award. But the press, Venezuelan writers, Venezuelan teachers, never ceased to teach successive generations that the limits of the prize did not correspond to Venezuela's legitimate rights"*[1051].

On 5 December 1899, the British Minister in Caracas sent a note to the government of the United Kingdom indicating that Venezuela intended to postpone the demarcation of the border established in the Paris Arbitral Award[1052].

According to Ojer Celigueta y González *"in July 1900 the British Minister notified the Government of Venezuela that if the Commission was not sent before 3 October Great Britain alone would proceed to initiate the demarcation. On 8 October the same Minister notified Venezuelan Chancellery that the Governor of British Guiana had been instructed to begin the demarcation work. On 19 October the British Commissioners had already erected the Punta Playa milestone. Venezuela, faced with this manifest pressure, had no alternative but to send the demarcation Commission"*[1053].

1049 *Ídem.*
1050 *Ídem.*
1051 *Ibidem,* Page 22.
1052 *Ibidem,* Page 21
1053 *Ídem.*

According to the report, from 1915 to 1917 Venezuela *"asked Great Britain in vain to redraw the demarcation of some sectors of the frontier, the British Government resisted on the grounds of the painful circumstances of war which their country was going through"*[1054]. Venezuela had to wait for better conditions to claim with all the force that an injustice of this magnitude demanded, but the position of rejecting the Paris Award had been taken since 4 October 1899.

Throughout the twentieth century, the need to redress the grave injustice suffered by Venezuela as a result of the Paris Arbitration Award was stressed on many occasions. Among them, Ojer and González point out the following:

i. In 1944, Venezuelan Ambassador in Washington, Diógenes Escalante, *"invoking the new spirit of equity among nations, demanded in 1944 the amicable reparation of the injustice committed by the award"*[1055].

ii. On 30 June 1944, during the session of the Chamber of Deputies of Venezuelan Congress, Congressman José A. Marturet *"ratified the traditional position of Venezuela regarding the award,* ***demanding the revision of its borders with English Guyana***"[1056]. (Highlighting Added)

iii. On 17 July 1944, the president of Venezuelan Congress, Manuel Egaña during the closing session of that legislative body pronounced himself in support of the position of the executive and said: *"And here I want to take up and confirm the yearning for revision, raised before the world and in the presence of the citizen President of the Republic by Ambassador Escalante and before this Congress, categorically, by Deputy Marturet; I want to take up and confirm, I repeat, the yearning for revision of the sentence* whereby *British imperialism dispossessed us of a large part of our Guyana"*[1057].

iv. On 18 July 1944, press statements by members of the Standing Committees on Foreign Relations of the Legislative Chambers,

1054 *Ibidem,* Page 22.
1055 *Ibidem,* Page 23.
1056 *Ídem.*
1057 *Ídem.*

"who represented different political parties, also expressed the need to review the 1899 award"[1058].

v. On 30 March 1948, Rómulo Betancourt, who headed Venezuelan delegation that attended the IX International American Conference, stated that "*In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that in justice may belong to them, nor do we renounce what Venezuelans, in the event of a serene and cordial revaluation of the history and geography of the Americas, could assert in favour of their territorial aspirations over areas now under colonial tutelage and which were formerly within our own sphere"*[1059].

vi. In 1949, the memorandum of Severo Mallet-Prevost was published *"which revealed the intimacies of the Paris farce"*[1060]. This led Venezuelan historians, under the instructions of Venezuelan Ministry of Foreign Relations, *"to search in the British Archives for new documents that would further clarify the details of that farce. Fifty years had passed and for the first time it was possible to study those documents in the public archives of Great Britain"*[1061].

vii. In 1951, during the government of Acting President Germán Suárez Flamerich, Venezuelan Minister of Foreign Relations, Luís Gómez Ruíz, during the IV Meeting of Consultation of the Ministers of Foreign Affairs of the American Countries, demanded *"the equitable rectification of the injustice committed by the Court of Arbitration"*[1062]. On the other hand, and at the same time, the Acting Minister of Foreign Affairs, Rafael Gallegos Medina, declared to the press in Caracas that: *"The Ministry of Foreign Affairs has never renounced to this just aspiration of Venezuelans"*[1063].

[1058] *Ídem.*
[1059] *Ibidem,* Pages 23-24.
[1060] *Ibidem,* Page 24.
[1061] *Ídem.*
[1062] *Ídem.*
[1063] *Ídem.*

viii. In March 1954, during the X Inter-American Conference held in Caracas, the legal consultant of the Ministry of Foreign Affairs, Ramón Carmona, expressed the following: *"In accordance with the foregoing, no decision regarding the colonies adopted at the present Conference shall be construed as diminishing Venezuela's rights in this respect, nor shall it be interpreted, in any case, as a waiver thereof"*[1064].

ix. In February 1956, Venezuelan Minister of Foreign Relations, José Loreto Arismendi, *"ratified the traditional Venezuelan position regarding the boundaries with that colony, that it would not be affected by any change of status that might take place in that border territory"*[1065].

x. In March 1960, the diplomat and deputy Rigoberto Henríquez Vera, in the Chamber of Deputies of Venezuelan Congress and in front of a parliamentary delegation from the United Kingdom, pointed out that: *"A change of status in English Guiana will not be able to invalidate the just aspirations of our people for equitable reparations, and through a cordial understanding, for the great damages suffered by the nation by virtue of the unjust ruling of 1899, in which peculiar circumstances prevailed, causing our country the loss of over sixty thousand square miles of its territory"*[1066].

xi. In February 1962, Venezuelan Ambassador to the UN, Dr. Carlos Sosa Rodríguez, ratified before the UN Commission on Trusteeship and Non-Self-Governing Territories the position held by Venezuelan Ministry of Foreign Relations, according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[1067].

xii. During the sessions of 28 March and 4 April of 1962 of the Chamber of Deputies of Venezuelan Congress *"after hearing the addresses of the representatives of all political parties in support of the position of Venezuelan Ministry of*

1064 *Ídem.*
1065 *Ibidem,* Page 25.
1066 *Ídem.*
1067 *Ídem.*

Foreign Relations on the award, the following agreement was approved: To support Venezuela's policy on the border dispute between the British possession and our country, as regards the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of English Guiana and its incorporation into the democratic system of life"[1068].

xiii. On 12 November 1962, Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, ratified before the 348th Session of the Special Political Committee of the XVII United Nations Assembly the position of Ambassador Carlos Sosa Rodríguez regarding the claim and invoked the historical Venezuelan position that the Paris Arbitral Award is null and void[1069].

According to the report after the conversations between the representatives of the United Kingdom and Venezuela *"an agreement was reached between those two countries, with the concurrence of the Government of British Guiana, to the effect that the three Governments would examine the documents relating to this question, and that they would inform the United Nations of the results of the discussions. So declared, Mr. Leopoldo Benitez, Ecuador's representative and Chairman of the Special Political Committee, so declared on 16 November 1962 with the authorization of the parties concerned"*[1070].

xiv. In November 1963, after some agreements had been reached through diplomatic channels, *"the Foreign Ministers of Venezuela and the United Kingdom, Dr. Marcos Falcón Briceño and the Honourable R. A. Butler met in London"*[1071].

xv. On 5 November 1963, Venezuelan Minister of Foreign Relations, Marcos Falcón Briceño, *"presented to Her Britannic Majesty's Foreign Secretary an Aide-Memoire on Venezuela's views of the dispute"*[1072]. The conclusion of that aide-memoire

[1068] *Ibidem,* Page 25.
[1069] *Ídem.*
[1070] *Ibidem,* Page 26.
[1071] *Ídem.*
[1072] *Ídem.*

was that: *"Historical truth and justice demand that Venezuela claim the full return of the territory of which it has been dispossessed"*[1073]. In that same meeting, Ojer participated as an exponent of the historical side of the Venezuelan Claim over the Essequibo territory, should it be necessary to expand on the explanations of the Minister of Foreign Affairs Marcos Falcón Briceño[1074].

The report has an additional value and that is that, as the first page indicates: *"Each one of the statements contained in this Report are supported by their respective documents, which were presented to Great Britain in the talks between experts held during the 15 sessions that took place in London between the months of February and May 1964"*[1075].

The Ojer & Gonzalez report is one of the most convincing elements that Venezuela has to prove the nullity of the Paris Arbitral Award. Referring to this report, Dr. Óscar García-Velutini recalls that *"the* first *conclusion formulated therein is that Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure and deceit on the part of the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government in the last and decisive phase of the negotiation; and Venezuela, the Report continues, was so neglected. that the United States and Great Britain agreed from the beginning of the negotiation that no Venezuelan jurist would be part of the Arbitral Tribunal"*[1076].

In 1966, Ojer and Gonzalez participated in the Geneva Conference where the Geneva Agreement was approved. When they returned to Venezuela from the Geneva Conference, Ojer and González assisted Venezuelan Minister of Foreign Relations, Ignacio Iribarren Borges, *"in the defence of the Geneva Agreement"*[1077]. Both were, as Ojer himself recognized, *"the Chancellor's men"*[1078].

1073 *Ídem.*

1074 Pablo OJER CELIGUETA, Quoted Above, Page 44.

1075 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 1.

1076 Oscar GARCÍA-VELUTINI, "*Facultad, acción y efecto de arbitrar"* ("The Power, Action and Effect of Arbitrating"), Editorial Arte, Caracas, 1960. Page 17.

1077 *Ídem.*

1078 *Ídem.*

The very important work of experts Ojer and González was recognized by the Venezuelan Government. They were awarded the Order of the Liberator in the rank of Commander by the Minister of Foreign Affairs Ignacio Iribarren Borges, after delivering an emotional speech "*in a very solemn act, with the presence of high officials of the Ministry, Dr. Héctor Santaella, then Minister of Communications, the Representatives of Venezuela in the Mixed Commission on Limits, Drs. Luis Loreto and Gonzalo García Bustillos, which took place in the Ambassadors' Hall of the Casa Amarilla"*[1079].

During the debate sessions held in the Chamber of Deputies, the representatives of all political parties expressly and unreservedly acknowledged the valuable contributions of Pablo Ojer and Hermann González.

78. **Pedro Ezequiel Rojas** (1837-1914): Venezuela. Minister of Foreign Relations of Venezuela during the government of President Joaquín Crespo. He had a fundamental role in the controversy with Guyana, since he was the one who established contact with the lawyer, diplomat and writer William L. Scruggs and managed to interest the President of the United States of America, Grover Cleveland, in the territorial dispute between Venezuela and the United Kingdom.

In fact, William L. Scruggs used his solid public relations skills and not only spoke with the President, but also with house representatives and senators of the United States Congress. That is why *"it could be said that Scruggs is one of the fathers of public relations before the term was coined"*[1080].

The book written by lawyer and diplomat William L. Scruggs, entitled *British Aggressions against Venezuela. The Monroe Doctrine on Trial*[1081] was a determining factor for Venezuela securing the cooperation of the United States of America in the resolution of the controversy with the United Kingdom. In fact, this book was a means of divulging what was happening. According to Marcos Falcón Briceño:

[1079] *Ibidem,* Page 47

[1080] Marcos FALCÓN BRICEÑO, Quoted Above, Pages 44.

[1081] *Ídem.*

> *"One night at the White House, Scruggs had a long conversation with President Cleveland. Cleveland was interested in the matter and asked him for more than one copy of "British Aggressions against Venezuela". Cleveland said that he himself will take an interest in the matter and now there is a new Secretary of State, Richard Olney, a man with an aggressive temperament, unlike his predecessor, Gresham, who was of a calm character; Richard Olney took things in a resolute manner and sent a note to the Ambassador in London, Mr. Bayard, to inform the British Prime Minister, Lord Salisbury, of the situation that had arisen. This note was called by Cleveland, The 20-Round Cannon Shot. Salisbury took his time to reply, but since it took so long, Cleveland reacted intelligently and effectively and sent a message to Congress asking for the appointment of a commission to study the problem of Guyana and to determine its boundaries with Venezuela. These boundaries would be the final ones"*[1082].

William L. Scruggs' book, the economic situation of the United States at the time and the Monroe Doctrine were elements that oriented the foreign policy of the United States of America towards the intervention in the dispute between Venezuela and the United Kingdom. In short, the controversy between Venezuela and the United Kingdom became a matter of national dignity for the United States of America[1083].

79. **Philippe Couvreur** (1951): Belgium. Specialist in international law and Registrar of the ICJ at The Hague (2000-2019), a position from which he retired on 1 July 2019. He worked in the Legal Department of the European Commission and was appointed judge *ad hoc* by Venezuela in the dispute with Guyana pursuant to Article 31 of the ICJ Statute and Article 35 of the Rules.

80. **Rafael Caldera** (1916-2009): Venezuela. President of Venezuela from 1969 to 1973 and from 1994 to 1999. On 18 June 1970, during his first administration, the Port of Spain Protocol was signed between Venezuela, the United Kingdom and Guyana. The Minister of Foreign Affairs, Aristides Calvani, signed on behalf of Venezuela; the High Commissioner of the United Kingdom of Great Britain and

[1082] *Ibidem,* Page 45.
[1083] *Ídem.*

Northern Ireland in Trinidad and Tobago, Roland Charles Colin Hunt, signed on behalf of the United Kingdom; and the Minister of State, Shridath Surendranath Ramphal, signed on behalf of Guyana.

At the time the Port of Spain Protocol was signed, Venezuela was negotiating the delimitation of marine and submarine areas north of the Gulf of Venezuela with the Republic of Colombia[1084]. For this reason, Venezuela decided to suspend the effects of the Geneva Agreement and take care of the border problems it had with the Republic of Colombia.[1085]. In effect, *"Venezuela was threatened by both the Republic of Colombia and Guyana, so it decided to freeze negotiations with Guyana for twelve years, in order to stabilize the border policy"*[1086].

The Port of Spain Protocol was signed four years after the adoption of the Geneva Agreement, during which time the Mixed Commission failed to resolve the dispute. The purpose of the Port of Spain Protocol was to suspend for a period of 12 years the application of the Geneva Agreement, paralyzing the dispute and delaying the application of the means of settlement provided for in Article 33 of the UNC.

81. **Rafael María Baralt** (1810-1860): Venezuela. Historian, journalist and man of letters, who assisted the diplomat Dr. Alejo Fortique in carrying out the instructions given by the Venezuelan Government in September 1841 to obtain the removal of the posts erected by Robert Schomburgk.; the elimination of the military post on Venezuelan territory, where the British flag had been raised, and the agreement to negotiate a treaty to establish the border between the two territories.

82. **Ramón Carmona** (1902-1973): Venezuela. Legal Advisor to the Ministry of Foreign Affairs during the government of General Marcos Pérez Jiménez. On 28 March 1954, during the X Inter-American Conference held in the city of Caracas, he ratified the position assumed

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1084 On this matter, see: in general, Leandro AREA PEREIRA *"A vuelo de pájaro: La delimitación de las áreas marinas y submarinas al norte del Golfo de Venezuela"*, ("A Quick Look at the Delimitation of Marine an Submarine Areas North of the Gulf of Venezuela") in *La diplomacia venezolana en democracia (1958-1998)"* ("Venezuelan Diplomacy in Democracy.") Fernando GERBASI (compilation), Kalathos Ediciones, Madrid, 2018.

1085 Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 49.

1086 *Ídem.*

in 1951 by the Minister of Foreign Affairs, Luis Gómez Ruiz, that no change in the status of the British Guiana Colony could affect the legitimate territorial rights of Venezuela.

83. **Richard Henn Collins** (1842-1911): United Kingdom. Judge of the Supreme Judicial Court of Her Majesty Queen Victoria. He acted as arbitrator for the United Kingdom. Together with Lord Russell, the other arbitrator appointed by the United Kingdom, he agreed with the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, to reach a unanimous decision. The Paris arbitration award, which was ultimately unanimous, deprived Venezuela of more than 159,500 square kilometres of its territory.

Severo Mallet-Prevost wrote in his posthumous memorandum that he met Lord Collins on 1 June 1899, after the speeches of the Attorney General of the United Kingdom, Sir Richard Webster, and his own, which lasted 26 days[1087]. From the beginning of the arbitration proceedings, Lord Collins was much more animated, willing to understand and examine the dispute and the claims of the parties. Severo Mallet-Prevost related in his posthumous memorandum that:

> *"...it was entirely obvious that Lord Collins was sincerely interested in fully realizing the facts of the matter and in determining the law applicable to such facts. He, of course, gave no indication as to how he would vote on the question; but his whole attitude and the numerous questions he asked were critical of the British allegations and gave the impression that he was leaning towards the side of Venezuela"*[1088].

However, Lord Collins' attitude changed when he returned from the United Kingdom to France after the vacation of the Paris Arbitral Tribunal, which he attended together with the President of the Paris Arbitral Tribunal Fyodor Fyodorovich Martens. In the United Kingdom, evidently, several events took place which we do not know but which, probably, obeyed the political interests of Russia and the United Kingdom. Severo Mallet-Prevost was convinced that something had happened. In his posthumous memorandum he expressed that:

1087 Cf. Otto SCHOENRICH, Quoted Above, Page 32.
1088 *Ídem.*

> *"Mr. Mallet Prevost stated that he was sure that the attitude of the British members and the Russian member of the Arbitral Tribunal was the result of a negotiation between Great Britain and Russia whereby the two Powers induced their representatives in the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in another part of the globe"*[1089].

84. **Richard Olney** (1835-1917): United States of America. Secretary of State of the United States. On 20 July 1888, he sent a letter to the United Kingdom defending Venezuela's position on the territorial claim. On 20 July 1895 he sent to Mr. Thomas Bayard, Ambassador of the United States of America in the United Kingdom, a telegram known as The *20-Round Cannon Shot*where, among other things, he denounced that the contradictory British pretensions had never been founded in law. The telegram recognized the disparity of forces between the two States, which obligated Venezuela to seek a solution to the dispute only through peaceful means.

Richard Olney also participated in the negotiation of the Treaty of Washington of 2 February 1897. The rules established in Article IV of the Treaty of Washington were clearly in violation of the principles of international law in force at the time. Specifically, Rule "a" of Article IV, known as the prescription clause, which established a different mode of acquisitive prescription to benefit the United Kingdom, was contrary to the principles of international law.

It is likely *"that the United Kingdom sought to impose its own positive law in the drafting of Article IV of the Arbitration Treaty, with the consent of another Anglo-Saxon country such as the USA, which privileged the so-called "immemorial possession" as the title to be given preference in the confrontation of titles, for which a centennial possession should have been required and not the lesser and accommodating fifty-year possession"*[1090].

As we have pointed out on another occasion *"It is curious -and also opportune for the United Kingdom- that a fifty-year prescription was*

[1089] *Ibidem.* Page 30.

[1090] "Los títulos de la reclamación por la Guayana Esequiba. Especial referencia a la cláusula de prescripción" ("The Deeds for the Claim to the Guiana-Esequibo. Special Reference

established which would allow many more territories to be acquired instead of establishing, at least, a hundred-year prescription which was more in accordance with the principles of international law but which, on the other hand, was less beneficial to the English in that it would prevent them from obtaining such a vast territory"[1091].

The negotiators of the arbitration treaty, the United Kingdom's Ambassador to the United States, Mr. Julian Pauncefote and the United States Secretary of State, Mr. Richard Olney, knew that establishing only this condition to the applicable law would cause problems and, therefore, they established a second condition for the applicable law, namely that they would only apply *"principles of international law not inconsistent therewith"*.

It is necessary to bear in mind that on 5 June 1896 Lord Salisbury sent a telegram to Mr. Julian Pauncefote, British Ambassador in Washington, containing a fragment in which he indicated that: *"His Majesty's Government would accept the 4th clause of the proposed Treaty in the form suggested by you.... Its application to Venezuela would also be accepted if the United States would for this purpose stand in the place of Venezuela, but such proposed clause would require a subsidiary Convention, and the United States shall select the Arbitrator. According to the accepted version of clause 4, the reviewing tribunal on Venezuelan side should not be the Supreme Court of Caracas, but the Supreme Court of Washington, and Venezuela shall accept any decision accepted by the United States, which is not overruled by the Supreme Court of Washington"*[1092].

On 12 November 1896 Julian Pauncefote and Richard Olney reached a secret agreement, in which Venezuelan representative Jose Andrade did not participate, whereby they agreed on the manner in which prescription rule, provided for in Article IV of the Treaty of Washington, would be interpreted.

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to the Statute-of-Limitations Clause") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September, Caracas, 2001.

1091 Rafael BADELL MADRID, *"La nulidad del Laudo de París del 3 de octubre de 1899"* ("Nullity of the Paris Arbitral Award of 3 October 1899.") *Bulletin of the Academy of Political and Social Sciences,* Nº 165, July-September, 2021.

1092 Annex 4 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

Regarding the interpretation of Rule "a", Richard Olney told Minister José Andrade that it applied only to occupations prior to 1814, the date on which the United Kingdom had acquired the Berbice, Demerara and Essequibo settlements from Holland. If that had been the case, then the United Kingdom would only have had rights to the territories ceded to it by Holland through the London Treaty of 1814.

Richard Olney explained that Rule "a" referring to prescription referred only to a very small territory between the Pomarón, Moruco and Essequibo rivers; but he actually knew what the true purpose of the prescription rule was, which he had agreed to in a secret agreement with the United Kingdom's Ambassador to the United States, Julian Pauncefote on 12 November 1896[1093].

For their part, the English interpretation was that the Rule "a" applied to any occupation of more than fifty years' duration, after 1814, the date on which the United Kingdom and Holland signed the Treaty of London, to which we have referred on several occasions during this study.

In the first place, this interpretation ignores the 1850 Treaty of *Statu quo*, signed by an exchange of diplomatic notes between the British Consul General in Caracas, Belford Hinton Wilson, and Venezuelan Secretary of Foreign Relations, Vicente Lecuna, on 18 November and 20 December 1850. According to this international treaty, both parties agreed to maintain the *statu quo* as it existed at the end of 1850. Thus, both Venezuela and the United Kingdom had the obligation not to advance their occupations in the disputed territory.

Despite its enormous importance, there was no reference in the 1897 Treaty of Washington to the 1850 *Statu quo* Treaty. On the contrary, the interpretation given to the prescription clause was contrary to that *modus vivendi* whereby both parties had committed themselves to maintain the frontier situation as it was at that time.

Let us recall that the parties had committed themselves not to occupy the territory under discussion between the pseudo Schomburgk line, the maximum aspiration of the United Kingdom, and the Essequibo River. Thus, the interpretation of possession could never refer to that period.

[1093] Carlos SOSA RODRÍGUEZ, Quoted Above, Page 126.

On the contrary, the *modus vivendi* of 1850 was not reflected in the Treaty of Washington.

The United Kingdom never respected the *Statu quo* Treaty of 1850. On the contrary, and as can be deduced from its subsequent actions, the United Kingdom insisted on advancing its claim over Venezuelan territory in an increasingly vulgar and brazen manner. Rule "a" of Article IV of the Treaty of Washington disregards the *Statu quo* Treaty and thereby chooses to ignore its violation in an attempt to conceal its great legal value.

The fact that the 1850 *Statu quo* Treaty was rendered worthless was no accident. Indeed, Mr. Richard Olney, Secretary of States of the United States of America, sent a letter to Mr. Julian Pauncefote, Ambassador of the United Kingdom in Washington, dated 29 October 1896, in which he stated the following: "*I think it most desirable not to give the Agreement of 1850 any status in the Convention, even by reference, much less by an attempt to define its scope and meaning. An attempt to interpret it would involve us in a protracted debate and postpone indefinitely the attainment of the objective we now have in mind"*[1094].

Rule "a" of Article IV of the Treaty of Washington also contradicts the principle of *uti possidetis iuris*, which since the emancipation has been a principle of supreme importance for the American countries and has even been used by countries of other continents due to its usefulness in the delimitation of borders. Contrary to this, during the negotiations between Richard Olney, Secretary of State of the United States of America, and Julian Pauncefote, Ambassador of the United Kingdom to the United States of America, the prescription rule was established and the principle of *uti possidetis facti* was given pre-eminence.

The prescription rule was intended to undermine the argument of unconstitutionality defended by Minister José Andrade, according to which the Constitution of 1893 -in force at the time of the conclusion of the treaty- did not allow the alienation of any part of the territory of the republic.

[1094] Annex 6 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

Thus, the explanation given to Venezuela on the meaning and scope of the rules of Article IV was different from the interpretation given by the British, which was the one finally applied in the Arbitral Award of 3 October 1899[1095].

This Rule *"a" "contains the constituent elements of the defencelessness in which Venezuela's interests were placed"*[1096]. This aspect is decisive for determining the nullity of the arbitration agreement. As stated by Isidro Morales Paúl *"precisely in the prescription clause lies the backbone of the problem"*[1097].

Rule *"a"* openly favoured the United Kingdom, which through prescription obtained title over the disputed territory, which otherwise it would not have been able to justify and, despite the serious prejudice it represented, Venezuela had to accept it. Indeed, *"Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure from the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government, that was given misleading explanations"*[1098].

85. **Rigoberto Henríquez Vera** (1920-2016): Venezuela. Diplomat and congressman. In 1960, during the second administration of President Rómulo Betancourt, he ratified before the Chamber of Deputies of Venezuelan Congress and in front of a parliamentary delegation from the United Kingdom the opinion previously stated by the Minister of Foreign Relations of Venezuela, Luis Gómez Ruíz; by Ramón Carmona, legal consultant to Venezuelan Ministry of Foreign Relations, and by Venezuelan Minister of Foreign Relations, José Loreto Arismendi, that no change in the status of the British Guiana Colony would affect the legitimate territorial rights of Venezuela. On that occasion he demanded reparation for the injustice suffered by Venezuela as a result of the Paris Arbitral Award.

1095 On this matter, see: Carlos SOSA RODRÍGUEZ, Quoted Above.

1096 Isidro MORALES PAÚL, "Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»", ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 179.

1097 *Ibidem,* Page 187.

1098 Herman GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 26.

86. Robert Hermann Schomburgk (1804-1865):

Germany. Geographer and naturalist. He was sent first by the *Royal Geographical Society* and later by the government of the United Kingdom and drew three lines of demarcation between Venezuela and the British Guiana Colony, unilaterally and without obeying any legal or geographical criteria.

Schomburgk drew the first line in 1835, establishing as the boundary an area of 4,920 square kilometres beyond the Essequibo River. In 1840, Schomburgk, now sent by the British government, drew a second line that usurped more than 142,000 square kilometres. Starting at the mouth of the Amacuro River and following a north-south direction up to the Roraima. On that occasion, he erected posts with the initials of Queen Victoria, marked trees and made acts of possession in the territories covered by the line, reaching Punta Barima at the mouth of the Orinoco River. This is the well-known Schomburgk pseudo line reflected in the *Sketch Map* of the *Parliamentary Papers of 1840*. This line was rejected by the Foreign Office and the Colonial Office, considering it biased and partial, although in truth this route obeyed orders from the British government with a clear interest in the mining potential of the area[1099].

[1099] See: Hermann GONZÁLEZ OROPEZA and PABLO OJER, Quoted Above, Page 11. Also see Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" (The Arbitral Proceedings on the Guiana-Esequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"). Quoted Above, Pages 309 & ff. Dr. MORALES PAÚL stated in his work that: "The Arbitral Award, the prototype of what an award should not be, followed the false Schomburgk, line that was only a British ambition traced apparently by someone who copied other cartographers on a mission to please his client and boss."

On 7 September 1841, the Minister for the Colonies, Lord Stanley, signed minutes stating *"The maps in my possession [Schomburgk's maps] do not allow us to see the course followed by Mr. Schomburgk, and they do not provide facilities for tracing the same. Extracts from this report should be communicated to the Royal Geographical Society, but care should be taken not to insert vague accusations against the Government of Venezuela, which, though possibly well founded, lack sufficient authority, and even if they had, would perhaps afford no advantage if published. Mr. Schomburgk provides no data on which to base his claimed boundary, which he repeatedly defines as based on the "undoubted" rights of the British Crown"*[1100].

In 1887, Schomburgk drew a third line based on Hebert's 1842 map that reached 167,830 square kilometres of territory. The United Kingdom maintained that this had always been its claim, even though the previous demarcations had usurped less territory.

87. **Robert Reid** (1846-1926): United Kingdom. Former Attorney General of the United Kingdom at the time of the Paris Arbitration. He was part of the United Kingdom's defence team during the Paris Arbitration proceedings concerning the territorial dispute over the boundary of Venezuela and the Colony of British Guiana.

88. **Roland Charles Colin Hunt** (1916-1999): United Kingdom. High Commissioner of the United Kingdom of Great Britain and Northern Ireland in Trinidad and Tobago. He signed the Port of Spain Protocol on behalf of the United Kingdom on 18 June 1970.

89. **Rómulo Betancourt** (1908-1981):

[1100] William DÁVILA BARRIOS (ed.), *"Libro blanco: La reclamación venezolana del territorio Esequibo"* ("White Book: The Venezuelan Claim to the Essequibo Territory"), National Assembly, Caracas, 2020, Page 135.

Venezuela. President of Venezuela from 1945 to 1948 and from 1959 to 1964. Rómulo Betancourt had a very important role in the claim of Venezuela's rights over the Essequibo territory. On two occasions, Rómulo Betancourt intervened in this matter with very positive results. First, in 1948, during the government of President Rómulo Gallegos, when he headed Venezuelan delegation that attended the IX International American Conference. Then, when Rómulo Betancourt was President of the Republic, between 1959 and 1964, he led a brilliant and successful foreign policy in which the defence of Venezuela's territorial rights in the Essequibo was established as a priority.

It can be rightly said that Rómulo Betancourt built the political and legal foundations of Venezuela's justified territorial claim over the Essequibo Guiana, after the Paris Award of 1899 was issued.

First: Rómulo Betancourt presided over Venezuelan delegation that attended the IX International American Conference, held in the city of Bogotá, during the period between 30 March and 2 May, 1948, where the Charter of the Organization of American States was signed. This delegation, presided by Rómulo Betancourt, was formed by Dr. Marcos Falcón Briceño and Messrs. Carlos Morales, Manuel Pérez Guerrero, Simón Gómez Malaret, Mariano Picón Salas, José Rafael Pocaterra and Luis Lander[1101].

Representatives from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the United States of America, Uruguay and Venezuela were present at this important forum.

As Dr. Simón Alberto Consalvi has pointed out, Rómulo Betancourt defended the American principles that are part of our historical tradition and at the same time made an express reservation of the rights that Venezuela has by virtue of its historical and legal titles over the Essequibo, which were -unjustly- ignored by the Arbitral Tribunal of Paris through the Arbitral Award of 3 October 1899[1102].

[1101] Ninth International Conference, *"Actas y documentos"* ("Minutes and Documents"), Volume VI, Ministry of Foreign Relations, Bogotá, 1953.

[1102] See: Simón Alberto CONSALVI, "*Rómulo Betancourt en la Conferencia de Bogotá 1948"*, ("Rómulo Betancourt at the Bogotá Conference, 1948"), Fundación Rómulo Betancourt, Serie Political Idea Notebooks, Nº 8, Caracas, 2008.

In that international conference, when the subject of colonialism was being discussed, Rómulo Betancourt pronounced himself in favour of anti-colonialism and the principle of self-determination of the peoples, expressing:

> *"First: we believe that the colonial system in America must be condemned;*
> *Second: we advocate that it be put on record that independently of the bilateral juridical discussions that exist between American States and extra continental powers, the principle of self-determination of the peoples, for the American colonies, must be ratified..."*[1103].

These declarations referred to the situation of the colonies of the Antilles and the Guianas, countries in which, according to the words of Romulo Betancourt, by that time there existed "*an incipient national consciousness but similar to that which existed in the peoples of North America and Latin America before the revolutions of independence" and in which there was "a more or less permanent state of struggle between colonial authorities and the peoples who were already aspiring to self-government"*[1104].

In keeping with the traditional Venezuelan position of anti-colonialism, but defending our legitimate territorial rights to the west of the eastern margin of the Essequibo River, he made a statement that was key to subsequent Venezuelan diplomatic efforts.

In the most forceful part of his words Betancourt expressed: *"In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny, in any way, the right of certain nations of America to obtain certain portions of hemispheric territory, which in justice may belong to them;* ***nor do we renounce what Venezuelans, in the event of a serene and cordial historical and geographical revaluation of the American, could assert in favour of their territorial aspirations over areas today under colonial tutelage, which were previously within our own sphere"***[1105]. (Highlighting Added).

[1103] *Ibidem,* Page 71

[1104] *Ibidem,* Pages 79-80.

[1105] Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), in coordination with

In the opinion of Dr. Efraín Schacht Aristigueta, this declaration *"for the first time after fifty years, when the Paris Award of 1899 was issued, provided the political and legal basis for our justified territorial claim over Essequibo Guyana"*[1106].

Also at the International American Conference, the President of Venezuelan Delegation, Rómulo Betancourt, highlighted the problem of freedom in America and the subsistence of colonialism in the continent *"rejecting that the domination of colonizing powers over vast portions of the hemisphere has been allowed to persist» without having modified «the colonial status in America», when at that time it had been overcome in other regions of the world"*[1107].

Second: Between 1959 and 1964, during the presidential term of Rómulo Betancourt, special importance was given to the territorial claim over the Essequibo. In his message to Congress on 12 March 1962, President Romulo Betancourt stated: *"The dispute between the weak Venezuela and the arrogant Albion of the days of Queen Victoria was resolved in an iniquitous and unacceptable, and always rejected by Venezuela, award pronounced by a political court and not a court of law, in a sentence of 3 October 1898. Venezuela has never admitted nor will it ever admit that such an extensive portion of territory that is legitimately its own ceases to be framed within its geography"*[1108].

This clear message led the National Congress to agree on 4 April 1962: *"To support Venezuela's policy on the boundary dispute between the British possession and our country as regards the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of British Guiana and its incorporation into the democratic system of life"*[1109].

Tomás Enrique CARRILLO BATALLA (Coordinator.), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guiana-Essequibo"). *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Pages 29-30.

1106 *Ídem.*

1107 América Nuestra ("Our America"), "Betancourt y el Esequibo" ("Betancourt and the Essequibo") published on 12 July 2015. Available at: https://americanuestra.com/betancourt-el-esequibo/

1108 Naudy SUÁREZ FIGUEROA (comp.), *"Rómulo Betancourt. Selección de escritos políticos (1929-1981)"* ("Rómulo Betancourt. A Selection of Political Papers (1929-1981)"), The Rómulo Betancourt Foundation, Caracas, 2006. Page 387.

1109 Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The

During the government of Rómulo Betancourt, the claim of Venezuela's rights over the Essequibo territories was extraordinarily strengthened, mainly due to the actions of the Permanent Representative of Venezuela to the United Nations, Carlos Sosa Rodríguez, and the Minister of Foreign Affairs, Dr. Marcos Falcón Briceño.

On 22 February 1962, at the 130th meeting of the XVI Annual Session of the United Nations General Assembly, the Permanent Representative of Venezuela to the United Nations, Carlos Sosa Rodríguez, ratified the position held by the Ministry of Foreign Affairs according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[1110].

It did so in the following terms: *"...of particular importance for Venezuela is the process of political evolution, through which, peacefully, the people of British Guiana, which shares borders with ours and whose destiny as a sovereign nation, incorporated in the plan of equality to the concert of the other States of the continent, we favour with genuine American sentiment, will acquire its independence. On this occasion, when we fully support the knowledge of the rights that pertain to the people of British Guiana, we could not, however, without betraying our own Venezuelan people, forget their rights, their border claims, and silence in this world forum their legitimate claim for the rectification of a historical injustice"*[1111].

At the 348th Session of the Special Political Committee of the XVII United Nations Assembly, on 12 November 1962, the Minister of Foreign Affairs, Dr. Marcos Falcón Briceño, ratified the position of the Permanent Representative of Venezuela to the United Nations, Carlos Sosa Rodríguez, regarding the claim and invoked the historic Venezuelan position on the nullity of the Paris Arbitral Award[1112].

Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967, Page 25.

1110 Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 25.

1111 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), in coordination with Tomás Enrique CARRILLO BATALLA (Coordinator.), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guiana-Essequibo"). *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Page 32.

1112 Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The

Minister Falcón Briceño pointed out that: *"Venezuela also wishes to ratify its frank support to the independence of British Guiana, and for this reason hopes that in the conversations it wishes to have with the United Kingdom to seek the best way for a peaceful solution of this controversy, the representatives of the government of British Guiana will also have full participation"*[1113].

The claim made by the representatives of Venezuela before these two emblematic international forums resulted in a great triumph. As a result, the United Nations Organization, a few days after the words of the Minister of Foreign Affairs, Marcos Falcón Briceño, approved an agreement whereby Venezuela, the United Kingdom and the authorities of British Guiana agreed to examine the archives related to the controversy[1114].

At the end of 1962, during the inspections being carried out on the works of the Bridge over Lake Maracaibo, Rómulo Betancourt held conversations with his entourage on the subject of the claim of the Essequibo territory and the name of Pablo Ojer Celigueta[1115] came up. In the conversation, Dr. Rafael de Leon, Minister of Public Works, informed President Romulo Betancourt that Jesuit Father Pablo Ojer Celigueta had carried out important research on the claim of the Essequibo territory. Likewise, Minister Rafael de León told President Rómulo Betancourt that in Universidad Católica Andrés Bello there was important *"documentation gathered in microfilms"*[1116] related to the claim.

Upon hearing the name of Pablo Ojer Celigueta, Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, told President

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Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967, Page 25.

1113 Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), in coordination with Tomás Enrique CARRILLO BATALLA (Coordinator.), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guiana-Essequibo"). *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Page 33.

1114 *Ídem.*

1115 Pablo OJER CELIGUETA, Pablo OJER CELIGUETA, "*Los documentos de la casa amarilla (historia de una calumnia)"* ("The Yellow-House Documents- (-(a story of slander)"), Universidad Católica Andrés Bello, Caracas, 1982. Page 42.

1116 *Ibidem,* Page 43.

Rómulo Betancourt that he had met him at the National Academy of History. Pablo Ojer Celigueta himself attests to the veracity of Minister Marcos Falcón Briceño's statement and explains that he was indeed invited to *"give a talk at one of the sessions of that body, about the Province of New Catalonia in the 17th Century, a subject of special interest to Dr. Falcón Briceño because he was from Aragua de Barcelona"*[1117].

President Romulo Betancourt, in view of the explanation of the Minister of Foreign Affairs, Marcos Falcón Briceño, gave a clear instruction to his interlocutor: *"When you arrive in Caracas, call Ojer"*[1118].

Minister Marcos Falcón Briceño carried out this order in December 1962, when he had an interview with Pablo Ojer Celigueta, in which the latter explained that he and Hermann González Oropeza, both professors at the Andrés Bello Catholic University, had *"jointly investigated the history of Guyana in various European archives"*[1119].

By the time the conversation between President Rómulo Betancourt and his entourage took place, diplomats Carlos Sosa Rodríguez and Marcos Falcón Briceño had already raised the claim of the Essequibo territory before the United Nations Organization and had managed to get the United Kingdom to agree to the opening of its archives, which would be examined by experts.

In February 1963, the Jesuit fathers, Pablo Ojer Celigueta and Hermann González Oropeza, returned to London to continue their investigation of the British Archives related to the Essequibo claim. A few days later, Venezuelan representatives were appointed as experts *"for the discussions to be held with the representatives of Great Britain and then colony of British Guiana, on the documentation proving the nullity of the 1899 award"*[1120].

Also, in 1963, under the government of Rómulo Betancourt, the Jesuit Fathers Pablo Ojer Celigueta and Hermann González Oropeza, were appointed advisors to Venezuelan Ministry of Foreign Relations

1117 *Ídem.*
1118 *Ídem.*
1119 *Ídem.*
1120 *Ídem.*

in the matter of the boundaries Guyana[1121], a position they later held during the governments of Raúl Leoni, Rafael Caldera and Carlos Andrés Pérez[1122].

On 5 November 1963, on the occasion of the First Meeting of Foreign Ministers of Venezuela and the United Kingdom, the Minister of Foreign Affairs, Marcos Falcón Briceño, insisted and sent an aid memoire in which he summarized Venezuela's arguments and demanded the return of the territory of which we were dispossessed[1123]. In that same meeting, Jesuit Father Pablo Ojer Celigueta participated as an exponent of the historical side of the Venezuelan Claim on the Essequibo territory in case it was necessary to expand on the explanations of Foreign Minister Marcos Falcón Briceño[1124].

Two years later, on 7 March 1964, in his message to the National Congress, President Rómulo Betancourt gave an account of the steps that Venezuelan Ministry of Foreign Relations had taken before the United Kingdom and stated that *"Negotiations have continued and, for the good of the Republic and to repair an injustice done to Venezuela, they must be continued. The culmination of these negotiations must be the incorporation to the national territory of an area that, from a legal-historical point of view, never ceased to belong to Venezuela"*[1125].

All these efforts, which were led, designed and supported by Rómulo Betancourt, constituted the most important antecedent of the Geneva Agreement, signed on 17 February 1966 by the Minister of Foreign Relations of Venezuela, Ignacio Iribarren Borges, the Secretary of State for Foreign Affairs of the United Kingdom, Michael Stewart, and the Prime Minister of British Guyana, Forbes Burnham.

The enormous importance of this Geneva Agreement is that it recognized the existence of Venezuelan contention on the nullity of the

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1121 See: Manuel DONÍS RÍOS, "*El Esequibo. Una reclamación histórica"* ("The Esequibo. A Historic Claim"), Abediciones, Caracas, 2016. Page 111.

1122 Pablo OJER CELIGUETA, Quoted Above, Page 44.

1123 Cf. *Ídem.*

1124 Pablo OJER CELIGUETA, Quoted Above, Page 44.

1125 Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967, Page 25.

Paris Arbitral Award and that it follows that the Paris Arbitral Award is not protected by the principle of intangibility of res judicata and is not final.

Indeed, the preamble of the Geneva Agreement provided that the dispute should be "amicably settled in a manner acceptable to both parties". This phrase of the preamble indicating that a solution was to be found denotes precisely that Venezuela's boundary dispute with Guyana was not resolved, due to the serious flaws in the Paris Arbitral Award.

The Geneva Agreement recognized the existence of Venezuelan contention on the validity of the Paris Arbitral Award in Article 1, which states: *"A Mixed Commission is hereby established with the task of seeking satisfactory solutions for the practical settlement of the dispute between Venezuela and the United Kingdom arising as a consequence of Venezuelan contention that the Arbitral Award of 1899 on the boundary between Venezuela and British Guyana is null and void"*.

From this provision, referring to Venezuelan contention on the validity of the Paris Arbitral Award, it follows that Venezuela never accepted the Paris Arbitral Award of 3 October 1899, and that it has always claimed reparation for the grave injustice suffered by the country on the occasion of that decision.

Finally, in 1967, when President Rómulo Betancourt's term of office had already ended, Hermann González Oropeza and Pablo Ojer Celigueta *published the Report that Venezuelan experts on the boundary question with British Guyana presented to the national government*[1126]. This valuable document is the result of the meticulous, consistent and conscientious work of these two key figures on Venezuelan territorial claim during the 20th Century.

The report of the Jesuits Hermann González Oropeza and Pablo Ojer Celigueta contains the information that both experts gathered from the British Archives during their stay in London in 1964. The report systematically explains Venezuelan titles over the Essequibo territory;

[1126] Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations Caracas, 1967.

the details of the controversy between Venezuela and the United Kingdom during the 19th Century; Venezuela's lack of participation in the formulation of the Treaty of Washington of 1897, and the reasons why the Paris Arbitral Award is null and void. In addition, the report includes statements by personalities who participated in the Paris Arbitration, the reactions of the international press and several maps showing that the procedure was openly in violation of Venezuela's legitimate rights.

The report presented by Hermann Gonzalez Oropeza and Pablo Ojer Celigueta has an additional value, as the first page indicates: *"Each of the statements contained in this Report are supported by their respective documents, which were presented to Great Britain in the conversations between experts, during the 15 sessions that took place in London between the months of February and May 1964"*[1127].

It is an investigative effort supported and promoted by the administration of President Rómulo Betancourt and which today is one of the most convincing elements we have to prove the nullity of the Paris Arbitral Award. Writing about the report presented by Venezuelan experts, Dr. Óscar García-Velutini insists in recalling that *"the first conclusion formulated therein is that Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure and deceit on the part of the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government in the last and decisive phase of the negotiation; and Venezuela, the Report continues, was so neglected that the United States and Great Britain agreed from the beginning of the negotiation that no Venezuelan jurist would be part of the Arbitral Tribunal"*[1128].

90. Ronny Abraham (5 September 1951): France. ICJ judge since 2005, re-elected in 2019. President of the ICJ between 2015 and 2018. He was one of the ICJ judges who, together with Giorgio Gaja, Kirill Gevorgian and Mohamed Bennouna, withheld his vote in the declaratory judgment on jurisdiction of 18 December 2020 regarding the dispute

[1127] *Ibidem,* Page 1.

[1128] Oscar GARCÍA-VELUTINI, *Facultad, acción y efecto de arbitrar* (The Power, Action, and Effect of Arbitration"), Editorial Arte, Caracas, 1960. Page 17.

between Venezuela and Guyana as to the validity or nullity of the Paris Arbitral Award.

In his withheld vote he referred to the consent of the parties to select the ICJ as a means of judicial settlement. In this regard, he held that it is one thing to validate the selection of a means of settlement by the Secretary of the United Nations, which creates obligations for the parties, and quite another to base the parties' consent to refer the matter to the ICJ on Article IV.2 of the Geneva Agreement[1129].

Judge Ronny Abraham, in his withheld vote, referred to the need for the parties to sign a special agreement conferring jurisdiction on the Court by a declaration of will. In effect, he pointed out that resorting to any other mechanism of Article 33 of the United Nations Charter, such as arbitration, would have required a special and subsequent agreement in which the parties expressed, in good faith and after a series of negotiations, their willingness to submit the dispute to a third party. This did not occur, and the validity of the Secretary's action is being confused with the commitment between the parties, which never existed and which is the one that could really establish the jurisdiction of the court.

Regarding the object of the Geneva Agreement, he affirmed that, for the ICJ, the subscription of a special agreement subsequent to the selection made by the Secretary-General of the United Nations is contrary to the spirit of the Geneva Agreement, because it would allow the controversy to extend in time if the parties do not reach an agreement. For Judge Ronny Abraham, such an interpretation of the Geneva Agreement is contrary to its true object and purpose. Certainly, the Geneva Agreement does not state that the mechanism selected must definitively resolve the dispute. On the contrary, it states that if one means fails, a practical solution may be sought through another of the mechanisms provided in the Geneva Agreement and the United Nations Charter.

1129 "It is one thing to say that the choice of a means, in this instance, judicial settlement by the Secretary-General, creates obligations for the parties; it is quite another to see in Article IV, paragraph 2, of the Agreement, combined with the Secretary-General's decision, the expression of both parties' consent to the settlement of their dispute by the Court".

Furthermore, Judge Ronny Abraham criticized the lack of clarity of the decision. In his view, the Tribunal's reasoning, particularly in paragraph 86 of the decision, is written with ideas expressed in a complex manner that does not seem to have been aimed at clarity of exposition[1130]. For all these reasons, Judge Ronny Abraham considered that the ICJ should have declined jurisdiction in this case.

91. **Rüdiger Wolfrum** (1941): Germany. Jurist and Doctor in International Law since 1973. He is currently serving as ad hoc judge appointed by Guyana before the ICJ in its dispute with Venezuela.

92. **Samuel Reinaldo Moncada Acosta** (1959):

Venezuela. Historian and Diplomat. Permanent Representative of Venezuela to the United Nations. By a letter sent to the ICJ on 6 June 2022 by the Vice-President of Venezuela, Delcy Eloína Rodríguez, he was appointed Agent for Venezuela in the ICJ proceedings. In addition, Félix Plasencia, former Minister of Foreign Affairs, and Elsie Rosales

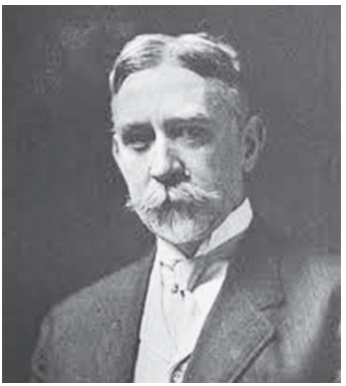
[1130] Paragraph 86: "The Court points out that its conclusión that the Parties consented to the judicial solution in virtue of Article IV of the Geneva Agreement is not to be questioned by the phrase "*or until all the means of peaceful settlement there contemplated have been exhausted*" in Paragraph 2 of the article, which could suggest that the Parties had contemplated the possibility that the General Secretary's choice out of the means provided for in Article 33 of the Charter, that include a judicial solution, would not lead to the resolution of the controversy. There are several reasons for a judicial decisión, that has the strength of a matter adjudged and clarifies the rights and obligations of the Parties, may in fact not lead to producing a final solution to the controversy. The Court of Justice has only to consider that, in this case, a judicial decision declaring the nullity of the 1899 Award without delimiting the border between the Parties would not lead to a final resolution of the controversy, which would be contrary to the object and purpose of the Geneva Agreement.

García, lawyer and professor at the Central University of Venezuela, were appointed as co-agents.

93. **Shridath Surendranath Ramphal** (3 October 1928): Guyana. Minister of State of Guyana. Representative who signed the Port of Spain Protocol on behalf of Guyana.

94. **Sidney Arthur Taylor Rowlatt** (1862-1945): Egypt. Lawyer member of the defence team of the United Kingdom during the Paris Arbitration proceedings concerning the territorial dispute over the boundary of Venezuela and the Colony of British Guiana.

95. **Severo Mallet-Prevost** (1860-1948):



United States of America. Lawyer. He was a member of Venezuelan defence team during the Paris Arbitration proceedings concerning the territorial dispute over the boundary of Venezuela and the British Guiana Colony.

In January 1944, President Isaías Medina Angarita during his visit to the United States of America and had a luncheon meeting in a New York hotel. Severo Mallet-Prevost attended that meeting and was decorated with the Order of the Liberator. The main reason for President Isaías Medina Angarita's trip was to visit the President of the United States of America, Franklin D. Roosevelt, in Washington to discuss the sovereignty of Aruba and Curacao.

He drafted a memorandum and instructed his executor and associate Otto Schoenrich to publish it at his discretion after his death. The memorandum was published in July 1949 in the American Journal of International Law and also in the Bulletin of the Academy of Political and Social Sciences of Venezuela.

In his memorandum, Severo Mallet-Prevost acknowledged that he and President Benjamin Harrison were aware of the collusion that existed between the President of the Arbitral Tribunal Fyodor Fyodorovich Martens and the English arbitrators Lord Russell and Lord Collins. The Times, a London newspaper, even published a statement by Reuter's news agency containing the statements of President Benjamin Harrison and Severo Mallet-Prevost where they expressed that *"there was nothing in the history of the dispute that adequately explained the boundary line established in the Award"*[1131].

Lawyer Severo Mallet-Prevost said that Russell always had a reticent and biased attitude in favour of the United Kingdom, believed that arbitrators should have a political connection and that it was not necessary for international arbitrations to be based solely on legal grounds.

Severo Mallet-Prevost recounted that Lord Russell, Judge Josiah Brewer and he met at an intimate lunch organized by Henry White, who held the position of Chargé d'Affaires of the United States, in the city of London. Severo Mallet-Prevost expressed in the memorandum referring to Lord Russell the following: *"I happened to sit next to him, and in the course of the conversation I ventured to express the opinion that international arbitrations should base their decisions solely on legal grounds. Lord Russell immediately replied: I entirely disagree with you. I think that international arbitrations should be conducted on a broader basis and that they should take into consideration questions of international policy. From that moment I understood that we could not count on Lord Russell to decide the boundary question on the basis of strict law"*[1132].

Severo Mallet-Prevost had a completely different perception of Lord Collins, whom he met on 1 June 1899, after the speeches of the Attorney General of the United Kingdom Sir Richard Webster and the author of this memorandum, which lasted 26 days[1133]. Lord Collins was much more animated, willing to investigate and, above all, to understand

[1131] Exposition of the Venezuelan Ambassador, Dr. Carlos SOSA RODRÍGUEZ to the UN on 22 February 1962. Available athttp://esequibonuestro.blogspot.com/2012/03/exposicion-del-embajador-de-venezuela.html.

[1132] See the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH, Quoted Above, Page 32.

[1133] *Cf.* Otto SCHOENRICH, Quoted Above, Page 32.

and analyse the controversy and the titles that supported the claims of the parties. Severo Mallet-Prevost said of him that *"it was quite obvious that Lord Collins was sincerely interested in fully understanding the facts of the matter and in determining the law applicable to those facts. He, of course, gave no indication as to how he would vote on the question; but his whole attitude and the numerous questions he asked were critical of the British allegations and gave the impression that he was leaning towards the side of Venezuela"*[1134].

However, those impressions changed radically after the two-week recess, which took place after the aforementioned speeches were concluded. At that time the English arbitrators travelled to London, together with the President of the Arbitral Tribunal, Fedor Fedorovich Martens.

According to the Mallet-Prevost memorandum, when Lord Collins returned from the United Kingdom to Paris after that vacation, he was not the same as when he had left. Evidently, several events took place in the United Kingdom that we do not know about but that, probably, obeyed to political interests of the powers involved in the controversy: Russia, the United Kingdom and the United States of America. Severo Mallet-Prevost was convinced that something had happened. Indeed: *"Mr. Mallet Prevost stated that he was certain that the attitude of the British members and the Russian member of the Arbitral Tribunal was the result of a negotiation between Great Britain and Russia whereby the two Powers induced their representatives in the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in another part of the globe"*[1135].

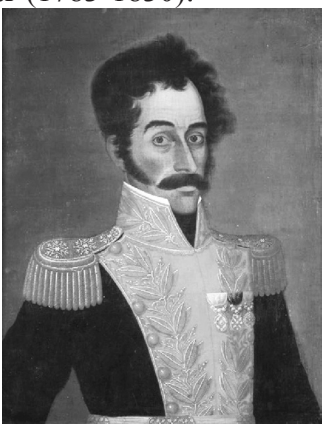
As can be deduced from the above lines, the Severo Mallet-Prevost memorandum narrated the irregularities that occurred during the arbitration; especially those referring to the lack of impartiality of the President of the Arbitral Tribunal, Fyodor Fyodorovich Martens, who pressured the American arbitrators, David Josiah Brewer and Melville Weston Fuller, to decide unanimously, under the threat that, in case of not doing so, Venezuela would lose even the Bocas del Orinoco. Indeed, attorney Severo Mallet-Prevost wrote:

1134 *Ídem.*

1135 *Ibidem.* Page 30.

"If the American judges did not accept this line, he, Martens, would vote with the British judges in favour of the line claimed by Great Britain, which would then become the boundary by a majority vote of the tribunal. Judge Brewer said that he and Judge Fuller, the other American arbitrator, were greatly disturbed by such a suggestion, for they believed that the facts clearly showed that Venezuela was entitled to considerable territory east of the Orinoco. He and Judge Brewer were prepared to reject the Russian proposal and to cast a strong minority vote in favour of the line they believed to be just. The result, however, would be a majority decision granting Great Britain valuable territory taken from Venezuela"[1136].

96. **Simón Bolívar** (1783-1830):



Venezuela. Liberator of Venezuela, Bolivia, Colombia, Ecuador and Peru. President of Venezuela and of the Republic of Colombia. On 7 August 1817, he sent a letter to Colonel Leandro Palacios from Lower Guayana, where he expressed: *"At last I have the pleasure of seeing Guayana free! The capital surrendered to us on the 18th of last month, and these fortresses, on the 3rd of this month. The country has not been left in the best of shapes, because of the population, which has almost been annihilated in the seven months of siege, and because a great part of the people emigrated with the Spaniards"*[1137].

[1136] Otto SCHOENRICH, Quoted Above, Page 30.

[1137] See the Article by Rafael CASTRO, *"Las revoluciones son esencialmente transformaciones culturales"* ("Revolutions are In Essence Cultural Transformations") published on 10 August 2015. Available at: https://www.aporrea.org/actualidad/a212082.html.

On 15 October 1817, from the General Headquarters of Angostura, Simón Bolívar issued a decree whereby he incorporated the province of Guayana to Venezuela. Article 1 of the aforementioned decree established: *"The Province of Guayana in all its extension is reunited to the territory of Venezuela, and will form from today an integral part of the Republic"*.

In 1822, while he governed the Republic of Colombia, it became known that English settlers from Demerara and Berbice were occupying Venezuelan domains near the Essequibo River. The response to this was the rejection of the occupations by the Colombian government which, through the Ministry of Foreign Affairs, instructed Mr. José Rafael Revenga, Minister Plenipotentiary in London, to agree with the English to set the dividing line between British Guiana and Colombia.

On 16 July 1824, while Simón Bolívar presided over the Republic of Colombia, the country applied to the United Kingdom for recognition as an independent nation. That same year José Manuel Hurtado was appointed Envoy Extraordinary and Minister Plenipotentiary of Colombia, as a substitute for Doctor Rafael Revenga, with the primary mission of obtaining such recognition[1138]. The United Kingdom gave its unreserved recognition to the Republic of Colombia.

This *"... recognition of Colombia came through the influence of Canning on Lord Liverpool who submitted a memorandum to the cabinet favouring the recognition of new states"*[1139]. In December 1824, the decision of the United Kingdom to recognize Colombia as an independent state was notified to Spain and, that same year, it was known with joy in America[1140].

The recognition of the United Kingdom to the Republic of Colombia was expressed in the Treaty of Cooperation and Friendship between Colombia and Great Britain, signed on 1 April 1825, approved by decree of the Congress of Colombia on 23 May 1825 and ratified by the government of Colombia on the same date. The ratifications were

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1138 Julio Alberto PEÑA ACEVEDO, "Cronología de Guyana, cuarta entrega, Gran Colombia" ("The Guiana Chronology, fourth issue, The Greater Colombia"). Published on 19 March 2015. Available at: https://elespacioacuaticovenezolano.com/2015/03/19/1552jualpeac/

1139 *Ídem.*

1140 *Ídem.*

exchanged on 7 November 1825. This treaty was imposed by the United Kingdom as a condition to recognize Colombia. Article 1 of the referred treaty established:

> *"There shall be perpetual, firm and sincere friendship between the Republic and people of Colombia, and the subject dominions of His Majesty the King of the Kingdom of Great Britain and Ireland, his heirs and successors"*[1141].

97. **Thomas Bayard** (1828-1898): United States of America. Ambassador of the United States of America to the United Kingdom. He received from Richard Olney, Secretary of State of the United States of America a telegram known as The 20-Round Cannon Shot dated 20 July 1895, which mainly denounced that the contradictory British claims were never legally founded. The telegram recognized the disparity of forces between the two States, which obligated Venezuela to seek a solution to the dispute only through peaceful means.

98. **Tomás Enrique Carrillo Batalla** (1921-2015): Venezuela. Member of the Academy of Political and Social Sciences. He contributed to the Venezuelan Claim of the Essequibo territory by promoting very important initiatives in several academies. Dr. Tomás Enrique Carrillo Batalla was the coordinator of an important book of the Academy of Political and Social Sciences, entitled *La reclamación venezolana sobre la Guayana Esequiba* (Venezuelan Claim on the Essequibo Guayana) whose last edition is from the year 2008, in which the valuable contributions of several academicians and important personalities related to the controversy were compiled, regarding the cycle of events organized by the Academy in 1983.

99. **Vicente Lecuna** (1870-1854): Venezuela. Secretary of Foreign Relations of Venezuela. On 18 November 1850, he received a communication sent by Belford Hinton Wilson, British Consul General in Caracas, whereby the British authorities agreed not to usurp or occupy the territories in dispute.

[1141] Ministry of Foreign Relations of Colombia, Tratado de Cooperación y Amistad entre Colombia y Gran Bretaña (Treaty of Cooperation and Friendship between Colombia and Great Britain) adopted on 1 April 1825, Available at: http://apw.cancilleria.gov.co/Tratados/adjuntosTratados/UK-01-04-1825.PDF.

Vicente Lecuna replied on 20 December 1850, stating that *"the Government has no difficulty in declaring, as it does, that Venezuela has no intention whatsoever of occupying or usurping any part of the territory whose dominion is disputed, nor will it be indifferent to any other course of action by Great Britain"*[1142].

Both notes established the statu quo treaty between Venezuela and the United Kingdom, which meant paralyzing the advance of British claims and maintaining the existing situation for the moment. Thus, what was stated in the communication between the Secretary of State and Foreign Affairs of the United Kingdom, Belford Hinton Wilson, and the Secretary of Foreign Relations of Venezuela, Vicente Lecuna, constituted an instrument whereby Venezuela and the United Kingdom agreed not to usurp or occupy the disputed territory. This Statu quo Treaty of 1850 has never been respected by the United Kingdom. There is no reference to this document that benefited Venezuela in the Treaty of Washington of 1897, nor in the Paris Arbitral Award 3 October 1899.

100. **William Lindsay Scruggs** (1836-1912): United States of America. Lawyer and diplomat. He was the key person for Venezuela obtaining the cooperation of the United States of America in the resolution of the controversy with the United Kingdom.

Venezuelan Minister of Foreign Relations, Pedro Ezequiel Rojas, entrusted William Lindsay Scruggs to initiate a campaign in the United States of America to support Venezuela in the controversy with the United Kingdom.

William L. Scruggs wrote a book entitled "British Aggressions Against Venezuela" and gave several copies of the book to President Grover Cleveland. He succeeded in his mission by arousing the interest of the President of the United States, Grover Cleveland, in Venezuela's boundary dispute with the British colony of Guiana.

This led President Grover Cleveland to pronounce himself on this matter in his message to Congress on 17 December 1895. During his

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[1142] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

speech he invoked the Monroe Doctrine in view of the abuses committed against Venezuela and expressed:

> *"The dispute has reached such a point, that it is now incumbent upon the U.S. to take steps to determine, with sufficient certainty to justify it, what is the true dividing line between Venezuela and English Guiana. When that report is completed and accepted, it will, in my opinion, be the duty of the United States, to resist by every means in its power, as a premeditated aggression upon its rights and interests, the appropriation by Great Britain of any land, as well as the exercise of its governmental jurisdiction in any territory which, upon investigation, we have determined that rightfully belongs to Venezuela"*[1143].

President Grover Cleveland's message motivated the subscription of an act of the United States Congress, approved on 21 December 1895, in which the House of Representatives and the Senate agreed:

> *"...an appropriation for the expenses of a commission to ascertain the true dividing line between Venezuela and British Guiana, and report thereon. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: The sum of one hundred thousand dollars, or such part thereof as may be necessary, is hereby appropriated for the expenses of a commission to be appointed by the President to ascertain the true dividing line between Venezuela and British Guiana, and report the results thereof"*[1144].

The results of the investigation carried out by the presidential commission for the investigation of the true boundary between

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[1143] Tomás Enrique CARRILLO BATALLA (Coordinator), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guyana-Essequibo"), *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Pages 433-434. Pages 433-434.

[1144] *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("The Official History of the Discussion between Venezuela and Great Britain on the Borders in Guiana"), L. Weiss & Company impresores, New York, 1896. Page 336. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

Venezuela and British Guiana, showed that there was no conclusive evidence of Dutch occupation for the year 1648, neither to the north nor to the west of the Essequibo River, nor of the island called Kikoveral. Nor were any elements found to indicate occupation in Punta Barima before the year 1648[1145].

[1145] Cf. Tomás Enrique CARRILLO BATALLA (Coordinator), Quoted Above, Page 434.

XI. DATES IN THE CONTROVERSY

1. **4 May 1493**: Pope Alexander VI issued the Bull Inter Caetera whereby the territories of South America were divided between Spain and Portugal based on the discoveries of both nations. As of that date, 4 May, 1493, it is clear that the territories in dispute belonged to Spain and were the same ones with which the General Captaincy of Venezuela was constituted by Royal Decree dated 8 September 1777 and, in turn, the same ones that Venezuela acquired when it became independent on 5 July 1811. The Constitution of 1811 established in article 128 that "*Once free from the oppression suffered by the Provinces of Coro, Maracaibo and Guayana, if they can and wish to join the Confederation, they will be admitted to it, without the violent separation in which to their regret and ours they have remained altering the principles of equality, justice and fraternity, which* they will henceforth enjoy as all the other Provinces of the union"[1146]. The aforementioned Bull shows that from that moment the disputed territory belonged to Spain, which is the same territory that Venezuela acquired after independence by virtue of the *uti possidetis iuris* principle.

2. **7 June 1494**: The Treaty of Tordesillas was signed, which consecrated the sovereignty of Spain and Portugal in the American continent through the division of navigation and conquest zones. This is a complementary agreement to the Bull Inter Caetera that served to specify the division of the territories; it extended the Portuguese territory up to 350 leagues from Cape Verde.

3. **1498**: Spanish explorers discovered and colonized the territories of North America. On 6 August 1498, Christopher Columbus reached the Gulf of Paria and the Orinoco Delta. Later, in 1499, Alonso de Ojeda made incursions into the coast of Guayana, covering the areas of the Orinoco River and the Amazon River.

[1146] Allan Randolph BREWER-CARÍAS, *"Las Constituciones de Venezuela"* ("The Constitutions of Venezuela"), *Academy of Political and Social Sciences*, Caracas, 1997. Pages 555 & ff.

4. **1531-1532**: The military and explorer Diego de Ordaz explored from the Orinoco River to the Meta, as well as the basins of the Cuyuní and Mazaruní Rivers. Charles V granted him the government of these territories.

5. **1533**: The Spaniards raided the Maraven River, as the locals called the Essequibo. The discovery and inspection of the Essequibo River was the work of Captain Juan de Esquivel, one of the main Spanish explorer and lieutenant of Diego Colón y Perestrelo.

6. **1562-1569**: More than twenty expeditions took place in the Orinoco and the interior of Guayana led by duly authorized subjects of the Spanish crown.

7. **18 November 1568**: The Province of Guayana was established by Royal Decree that *"ordered the Audience of Santa Fe to grant a Capitulation to Gonzalo Jiménez de Quesada to discover and populate the plains, provinces and lands to the east of the New Kingdom of Granada from the Orinoco to the Amazon"*[1147].

8. **5 May 1648**: The Treaty of Münster was signed whereby Spain ceded to Holland the settlements of Demerara, Berbice and Essequibo, located to the east of the Essequibo River. All Dutch occupations outside these settlements constituted violations of the Treaty of Münster.

9. **1734**: Don Carlos de Sucre y Pardo, Governor of Cumaná -a province of which Guayana was a part-, agreed with the prelates of the religious communities to divide the region into three missionary zones. The missionary zone assigned to the Capuchin Friars included the territory extending from the Boca Grande de Orinoco to the colony of Essequibo.

10. **13 January 1750**: Ferdinand VI of Spain and John V of Portugal signed the Treaty of Madrid that demarcated the borders between the South American colonies of Spain and Portugal. Just that year the following map entitled *"Nueve Granade, Caracas et Guyanes"*

[1147] Allan BREWER-CARÍAS, *"La Formación de la República y su Territorio en las Constituciones del Siglo XIX"* ("Formation of the Republic and its Territory in the Constitutions of the 19th Century, a legacy of the constitutional process that began with the Fundamental Law of Colombia enacted by Simón Bolívar in Angostura on 17 December 1819"), in *Bulletin of the Academy of Political and Social Sciences,* Nº 164, 164, April-June, Caracas, 2021.

was published. This map is relevant since it indicates that the territory located west of the Essequibo River was at that time called Spanish Guiana (Guyane Spagnole). From it can be deduced that Venezuela's titles over the disputed territory have always been sufficient and definitive, a fact that is reflected in the maps drawn in different periods of our history.

11. **1758**: The Dutch established a post on the Cuyuní River that was destroyed by the Spanish.

12. **1768**: It was established by Royal Decree of 5 May 1768 that the southern limit of Guayana would be the Amazon River, which separated it from Nueva Andalucía.

13. **4 June 1762**: Don Carlos, by the grace of God, King of Castile, issued in Aranjuez a Royal Title converting all of Guayana into a separate Command Jurisdiction with immediate subordination to the Viceroyalty of Nueva Granada.

14. **8 September 1777**: The General Captaincy of Venezuela was created by Royal Decree dated 8 September 1777. That year the provinces of Cumaná, Guayana and Maracaibo and the islands of Trinidad and Margarita were separated from the Viceroyalty and General Captaincy of the New Kingdom of Granada to incorporate them into the General Captaincy of Venezuela[1148].

15. **1779**: The Intendant General of Venezuela, Don José de Avalos, authorized officer José Felipe de Inciarte to recognize and populate the eastern part of the lower Orinoco.

16. **1 January 1799**: Francisco de Miranda published the map drawn by Juan de la Cruz Cano y Olmedilla, also known as Geographic Map of South America, in which the border of the Captaincy and Guyana was established in the Essequibo River. This was sponsored by the United Kingdom and published in London by William Faden, royal geographer to King George III. Smith, who, in an article, calls the Cano's map the South American equivalent of the Mitchell's map of the British colonies of 1755.

[1148] *Cf.* Irene LORETO GONZÁLEZ, "*Génesis del constitucionalismo en Venezuela"* ("The Genesis of Constitutionalism in Venezuela"), *Juridical Research Center*, Caracas, 2005. Page 74.

Geographical Map of South America
drawn by Juan de la Cruz Cano y Olmedilla[1149]

17. **28 May 1811**: The Treaty of Alliance and Confederation between Cundinamarca and Venezuela (Lozano-Cortés Treaty) was signed, laying the foundations of the *uti possidetis iuris* principle.

18. **21 December 1811**: The first Venezuelan congress approved the Federal Constitution of 1811 which established in article 128: *"As soon as the Provinces of Coro, Maracaibo and* ***Guayana****, free from the oppression they suffer, if they can and wish to join the Confederation,*

[1149] See: Geographical Map of South America. Available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~3373~330002:Mapa-Geografico-de-AmericaMeridion.

they will be admitted to it without the violent separation in which, to their regret and ours, they have remained altering the principles of equality, justice and fraternity, which they will henceforth enjoy as all the other provinces of the union". (Highlighting Added)

19. **13 August 1814**: The Treaty of London of 1814 was adopted whereby the United Kingdom acquired the Dutch settlements of Berbice, Demerara and Essequibo located east of the Essequibo River. In turn, Holland had acquired them from Spain through the Treaty of Münster dated 24 October 1648. All these camps were located east of the Essequibo River. It follows that all the domains located west of the Essequibo River have always belonged to Venezuela by virtue of the *uti possidetis iuris* principle.

20. **7 August 1817**: In the midst of the wars to consolidate the independence, the Liberator Simón Bolívar sent a letter to Colonel Leandro Palacios from Lower Guayana where he expressed: *"At last I have the pleasure of seeing Guayana free! The capital surrendered to us on the* 18th of last month*, and these fortresses, on the 3rd of this month. The country has not been left in the best of shapes, because of the population, which has almost been annihilated in the seven months of siege, and because a great part of the people emigrated with the Spaniards"*[1150].

21. **15 October 1817**: From the General Headquarters of Angostura, Simón Bolívar issued a decree whereby the province of Guayana was incorporated to Venezuela and its departments were established. Article 1 of the aforementioned decree established: *"The Province of Guayana in all its extension is united to the territory of Venezuela, and from today will form an integral part of the Republic"*.

22. **15 August 1819**: The Constitution of Angostura was approved with the participation of the deputies for Guayana, Eusebio Afanador, Juan Vicente Cardozo and Juan Tomás Machado. At that time, Guayana was one of the provinces of Venezuela. In effect, that constitutional text, in Title 2º, Section 1º, Article 2 established: *"The Territory of Venezuela is divided into ten Provinces, which are: BARCELONA,*

[1150] Source: https://www.aporrea.org/actualidad/a212082.html

BARINAS, CARACAS, CORO, CUMANA, ***GUAYANA****, MARACAIBO, MARGARITA, MERIDA, and TRUJILLO. Their limits and demarcations shall be set by the Congress"*. (Highlighting Added)

23. **17 December 1819**: The Congress of Angostura approved the Fundamental Law of Colombia, whose article 2 recognizes the American principle *uti possidetis iuris* in the following terms: *"Its territory will be that which encompassed the former* General Captaincy *of Venezuela, and the Viceroyalty of the new Kingdom of Granada, embracing an extension of 115 thousand square leagues, whose precise terms will be set at a better time"*. With the aforementioned Fundamental Law of Colombia and, especially, with the aforementioned provision of Article 2, the decree of Simón Bolívar of 15 October 1817, was complemented by expressly regulating the *uti possidetis iuris* principle, according to which Venezuela had the same boundaries that the General Captaincy of Venezuela had at the time[1151].

24. **15 August 1821**: The Congress of the Villa del Rosario de Cúcuta approved the Fundamental Law of the Union of the Peoples of Colombia. Article 5 ratified the American principle of *uti possidetis iuris* in the following terms: *"The territory of the Republic of Colombia will be that included within the limits of the former general captaincy 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"*.

25. **30 August 1821**: The Constitution of the Republic of Colombia was approved, and President Simón Bolívar President ordered it into effect on 6 October 1821[1152]. This Constitution took into account the *uti possidetis iuris* principle and integrated Guayana within its territory. In effect, Article 6 established: *"The territory of Colombia is the same as that of the former Viceroyalty of Nueva Granada and the* General Captaincy *of Venezuela"*[1153].

[1151] *Ídem.*

[1152] In this respect, see: Rafael BADELL MADRID, *"Consideraciones sobre la Constitución de Colombia de 1821"* ("Considerations on the 1821 Constitution of Colombia"), *Bulletin of the Academy of Political and Social Sciences,* Nº 165, Caracas, 2021. Pagea 541 & ff

[1153] *Ibidem,* Pages 647 & ff.

26. **20 February 1821**: Diplomat Francisco Antonio Zea addressed Robert Stewart, Foreign Minister of the United Kingdom, to clarify Colombia's eastern border. In that communication he expressed:

> *"The Republic of Colombia occupies the northernmost part of South America, extending in latitude from 12º N, to 69 S, and in longitude from 589 to 81 Q of the Greenwich meridian.*
> *Its limits are, to the east, the Atlantic Ocean, which bathes its coasts from the mouths of the Orinoco to Cape Nassau; A north-south line runs from this cape to the Essequibo River, the left bank of which river shall be the boundary with Dutch Guiana"*[1154].

27. **6 October 1821**: President Simón Bolívar ordered into effect the Constitution of the Republic of Colombia, approved by the Congress of the Villa del Rosario de Cúcuta on 30 August 1821.

28. **1822**: It was detected in the dominions of Venezuela, which at that time was part of the Republic of Colombia, the presence of occupations of English settlers coming from Demerara and Berbice near the Essequibo River, beyond the territories that belonged to the United Kingdom in accordance with the Treaty of London of 13 August 1814.

In response, the Colombian government, through the Ministry of Foreign Affairs, instructed its Minister Plenipotentiary in London, José Rafael Revenga, to agree with the British to set the dividing line between British Guiana and Colombia. The instructions were as follows:

> *"May I, however, draw your attention in particular to Article 2 of the draft treaty on the question of boundaries. The English possess at present Dutch Guiana, on which side they are our neighbours. You agree to set as precisely as possible the line of demarcation between the two territories, according to the last treaties between Spain and Holland. The settlers of Demerara and Berbice have*

[1154] Hermann GONZÁLEZ OROPEZA and Pablo OJER, *Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), Ministry of Foreign Relations, Caracas, 1967. Page 33.

> *usurped a large part of the land which they claim belongs to us on the side of the Essequibo River. It is absolutely necessary that said settlers either place themselves under the protection and obedience of our laws, or that they withdraw to their former possessions. To that end, they shall be given the necessary time, as established in the project"*[1155].

However, Minister Plenipotentiary José Rafael Revenga could not comply with the instructions he had received *"because he had not been given the opportunity to discuss the boundary question during his mission in the United Kingdom"*[1156].

The aforementioned instructions, in spite of not having been carried out, show that the incursion of settlers from Demerara and Berbice to the west of the Essequibo River was always firmly rejected. In fact, the defence of the Essequibo territory has been present in the history of Venezuela even when it was part of the territory of the Republic of Colombia.

29. **2 December 1823**: James Monroe, fifth President of the United States of America, established on 2 December 1823, in his annual message to Congress, that the American continent was not susceptible of colonization and that the European powers would not be able to extend their dominions in it. Such acts would constitute a direct affront to the rights and interests of the United States. In particular, he considered *"as a principle affecting the rights and interests of the United States, that the American continents, by the free and independent condition which they have acquired and maintain, should not henceforth be considered as objects of future colonization by any European power..."*[1157]. The Monroe Doctrine was summarized in the phrase *"America for the*

[1155] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Page 6. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

[1156] *Ídem.*

[1157] See: the fragment of the Seventh Annual Message delivered by President Santiago MONROE to Congress on 2 December 1823. Available at: https://www.oas.org/sap/peacefund/VirtualLibrary/MonroeDoctrine/Treaty/MonroeDoctrineSpanish.pdf.

Americans"[1158] and was later invoked by U.S. President Grover Cleveland when he intervened in the controversy between the British Colony of Guiana and Venezuela.

30. **25 June 1824**: On 25 June 1824, while the Constitution of the Republic of Colombia was in force, the Law of Territorial Division of the Republic of Colombia was sanctioned, which divided the territory of the republic into twelve departments. This included the Department of Orinoco which, according to Article 2 *eiusdem*, had among its provinces those of Cumaná, Barcelona, Guayana and Margarita. Article 2 also established that the province of Guayana consisted of the cantons of Santo Tomás de Angostura, Río Negro, Alto Orinoco, Caura, Guayana Vieja, Caroní, Upata, La Pastora and La Barceloneta.

Let us bear in mind that the Territorial Division Law of 25 June 1824 remained in force for Venezuela after the disintegration of Colombia, specifically until the government of José Tadeo Monagas. At that time, the Law of 28 April 1856 was passed, which established the Territorial Division of Venezuela. Thus, after the separation of Venezuela from the Republic of Colombia, the same territorial limits established in the Territorial Division Law of 1824 were maintained. Venezuela exercised sovereignty over the same territory that in the past had been the General Captaincy of Venezuela.

31. **16 July 1824**: José Manuel Hurtado, Envoy Extraordinary and Minister Plenipotentiary of Colombia in 1824, asked the United Kingdom through a descriptive memorial to recognize the Republic of Colombia as an independent State, insisting that the boundary between the Republic of Colombia and the British Colony of Guayana was the Essequibo River. In fact, it the descriptive memorial stated: "*This beautiful and rich country extends along the northern sea, from the Essequibo River or confines of the province of Guayana to the Culebras River, which separates it from Guatemala"*[1159].

[1158] See: "The MONROE Doctrine (1823) fragment of the Seventh Annual Message delivered by President Santiago MONROE to Congress on 2 December 1823" in the Virtual Library of Inter-American Peace Iniciatives. Available at: https://www.oas.org/sap/peacefund/VirtualLibrary/MonroeDoctrine/Treaty/MonroeDoctrineSpanish.pdf

[1159] Manuel DONÍS RÍOS, "*El Esequibo. Una reclamación histórica"* ("The Esequibo. A Historic Claim"), Abediciones-Konrad Adenauer Stifung, Caracas, 2016; Page 58. The autor sustains that there are strong signs allowing us to conclude that the Memorial was

Regarding the quoted sentence of the descriptive memorial, historian Manuel Donís Ríos indicates that the expression *"from the Essequibo River or the borders of the province of Guyana"* must be interpreted in accordance with the existing limits at the time, that is to say: *"To the east, the former* General Captaincy *of Venezuela, now an integral part of the Republic of Colombia under the denomination of Department of Venezuela, had the Essequibo River as its limit with British Guiana To the south of the Essequibo River, the* General Captaincy *of Venezuela reached the mouth of the Amazon River, by virtue of the capitulation of Guayana obtained by Antonio de Berrío in 1582"*[1160].

32. **December 1824**: The United Kingdom recognized the Republic of Colombia as an independent State. The decision of the United Kingdom to recognize the Republic of Colombia as an independent State was sent to Spain that same year of 1824 and the news was received with jubilation in America[1161].

The United Kingdom established as a condition to recognize the Republic of Colombia entering into a Treaty of Cooperation and Friendship between Colombia and Great Britain, which was effectively signed on 18 April 1825[1162]. The importance of the matter lies in the

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written by Don Andrés Bello who, at the time, was in public service holding the position of Secretary of the Colombian Republic in London: "*There are reasons to believe that Andrés Bello at least took part in writing this document. But Bello himself allows us to consider such authorship*".

[1160] *Ídem.*

[1161] Julio Alberto PEÑA ACEVEDO, "Cronología de Guyana, cuarta entrega, Gran Colombia" ("The Guiana Chronology, fourth issue, The Greater Colombia"). Published on 19 March 2015. Available at: https://elespacioacuaticovenezolano.com/2015/03/19/1552jualpeac/

[1162] *Ídem.* The author follows BIERCK Harold's work, "Vida Pública de Don Pedro GUAL" ("The Public Life of Don Pedro GUAL"), Page 268. PEÑA ACEVEDO explains that this treaty was ratified by the Senate on 23 May 1825, and ratifications were exchanged on 7 November 1825. He adds that *"In the treaty with Great Britain, British imperial pressure was even stronger, because, as a condition for the recognition of Colombia's independence, they demanded the Treaty of Friendship, Commerce and Navigation be signed. Venezuela informs Britain that the border with British Guiana was located on the Essequibo River. Maps similar to that of Hamilton Adams, from Wilkinson's Atlas (1827), circulated in Great Britain in the second half of the 1820s. Despite the diplomatic and commercial recognition given to the Republic of Colombia by Great Britain, British maps repeatedly presented the border between Colombia and Brazil according to British interests in the region and not according to the aspirations of the Greater Colombian authorities."*

fact that this Treaty of Cooperation and Friendship between Colombia and Great Britain recognized that the Essequibo River was the border of the Republic of Colombia with the British Guiana Colony.

Despite this express recognition, in 1835 the United Kingdom began to expand into the territory of the Essequibo with the intention of dominating the Orinoco River. Such dominion would allow river control of the northern part of South America and the exploitation of mineral resources, particularly gold in this territory.

33. **18 April 1825**: The Treaty of Cooperation and Friendship between Colombia and Great Britain, which had been imposed as a condition for the recognition of the new State, was signed[1163]. With this treaty it was recognized *"that the border with British Guiana was located in the Essequibo River"*.

34. **1827**: José Manuel Restrepo, politician, historian and Secretary of the Interior of Colombia (1821-1830) during the government of Simón Bolívar, included in his work *Historia de la revolución de la República de Colombia* (History of the Republic of Colombia's revolution) a geographical chart of the Department of Orinoco and Maturín. In the aforementioned chart, it is perfectly clear that the eastern limit of this entity was the Essequibo River. This limit constitutes the eastern border of Venezuela.

35. **22 September 1830**: The Constitution of the State of Venezuela was approved, whose article 5 expressly adopted the *uti possidetis iuris* principle in the following terms: *"The territory of Venezuela comprises all that before the political transformation of 1810 was called the General Captaincy of Venezuela. To achieve a better administration ,it will be divided into Provinces, Cantons and Parishes, whose limits will be set by law"*.

36. **1835**: The geographer and naturalist Robert Hermann Schomburgk, acting on behalf of the Royal Geographical Society of London and with the support of the Colonial Office[1164], drew the first

[1163] Source: https://elespacioacuaticovenezolano.com/2015/03/19/1552jualpeac/

[1164] Robert Hermann SCHOMBURGK (5 junio de 1804-11 de marzo de 1865). Born in the City of Freyburg, Germany. He was a naturalist and an explorer who, on several occasions, was entrusted the demarcation of the border between Venezuela and the British Guiana Colony. Died in the City of Berlín, in Germany.

border demarcation line between Venezuela and British Guiana With this line, the border was set at the Essequibo River, although the line: *"...departs from said river approximately 45 miles from the* coast*, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and from that point forms a sort of pocket, west of the Essequibo River, to the point on the* coast *where the Moroco River flows into it"*[1165].

This first Schomburgk line established as a border an area of 4,920 square kilometres beyond the Essequibo River, specifically *"in the area from the* coast *between the mouths of the Essequibo and Moroco Rivers; the curved line running the course of the Moroco River to the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo, and finally the Essequibo River downstream to its mouth into the sea"*[1166].

37. **1840:** During the second government of General José Antonio Páez, Robert Schomburgk, now sent by the English government, drew a second demarcation line that added an area of 141,930 square kilometres, starting from the mouth of the Amacuro River, following a north-south direction up to the Roraima. This is the well-known Schomburgk pseudo line reflected in the Sketch Map of the Parliamentary Papers of 1840. This line was rejected by the Foreign Office and the Colonial Office as biased and partial, although in truth this route obeyed the orders of the British government with a clear interest in the mining potential of the area[1167].

In addition to this new line whereby he arbitrarily drew the limits between both States, Robert Schomburgk erected posts with the initials of Queen Victoria, marked trees and carried out acts of possession in the territories covered by the line, reaching as far as Punta Barima at the

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[1165] Carlos SOSA RODRÍGUEZ, Quoted Above, Page 122.

[1166] *Ídem.*

[1167] Véase Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 11. Véase también Isidro MORALES PAÚL, "El juicio arbitral sobre la Guayana Esequiba de 1899 y la violación de los principios del debido proceso en perjuicio de Venezuela" (The Arbitral Proceedings on the Guiana-Esequibo and the Violation of the Principles of Due Process to the Prejudice of Venezuela"). Quoted Above, Pages 309 & ff. El Dr. MORALES PAÚL ". indicated in his work that: "The Arbitral Award, a prototype of what an Award should not be, followed the false Schomburgk line, which was but an English aspiration apparently drawn by those who copied other cartographers on a mission to please their client and patron."

mouth of the Orinoco River. According to the United Kingdom, these actions were not intended to exercise sovereignty over the usurped territories.

38. **7 September 1841**: Lord Stanley, Minister of Colonies of the United Kingdom, signed minutes that indicated *"The maps in my possession [Schomburgk's Maps] do not allow us to see the course followed by Mr. Schomburgk and no facilities are provided to trace such course. Extracts from this report should be communicated to the Royal Geographical Society, but care should be taken not to insert vague accusations against the Government of Venezuela, which, though possibly well founded, lack sufficient authority, and even if they had it, would perhaps afford no advantage if published. Mr. Schomburgk does not provide any data on which to base the frontier claimed by him, which he repeatedly defines as being based on the 'undoubted' rights of the British Crown"*[1168].

On the same date, the Venezuelan Government sent diplomat Alejo Fortique to the United Kingdom, with the support of historian Rafael María Baralt, to negotiate a settlement with the United Kingdom in view of the arbitrary removal of posts with Queen Victoria's initials by Robert Schomburgk.

Alejo Fortique initiated communications with Lord Aberdeen, Secretary of Foreign Affairs of the United Kingdom, through which he requested the removal of the posts erected by Robert Schomburgk; the elimination of the military post erected in Venezuelan territory where the British flag had been raised and to agree to the negotiation of a treaty intended to set the border between both territories.

39. **31 January 1842**: At the insistence of Alejo Fortique, who vehemently defended the position of the Venezuelan Government, on 31 January 1842 the British government, through the Secretary of State for the Colonies, Edward George Geoffrey Smith Stanley, instructed the governor of British Guiana, Henry Light, to remove the posts erected by Robert Schomburgk[1169]. This is what the governor said in his letter:

[1168] William DÁVILA BARRIOS (ed.), *Libro blanco: La reclamación venezolana del territorio Esequibo*, Asamblea Nacional, Caracas, 2020. Page 135.

[1169] Carlos SOSA RODRÍGUEZ, Quoted Above, Page 122.

"Mr. Henry Light to Mr. F. O'Leary.

Dear Sir:

I have the honour to inform you, to the satisfaction of the Venezuelan Government, that I have received instructions from the honourable Secretary of State for the Colonies to remove the posts placed by Mr. Schomburgk on the Barima and elsewhere, in the survey of the alleged boundaries of British Guiana. These instructions being given, I trust they will be received as a pledge of the friendly intentions of His Majesty's Government, and will be obeyed as soon as possible. If, in the meantime, there should be any delay in carrying out the instructions I have received, I trust you will use your good offices to inform the Venezuelan Government that they may consider all grounds of counterclaim removed by the concession made to them by the British Ministers. I have the honour, Sir, to be your most obedient and humble servant.

HENRY LIGHT, Governor of British Guiana.

Mr. Daniel F. O'Leary, Caracas"[1170].

However, the elimination of those posts did not end the usurpation due to the growing tensions between Venezuela and the United Kingdom.

40. **4 March 1842**: Henry Light, Governor of the Colony of British Guyana, expressed in a letter sent to Lord Stanley, Minister of Colonies of the United Kingdom, that the United Kingdom had no interest in taking Venezuela's legitimate territory. This was a fundamental proof in favour of Venezuela's pretensions since the governor expressed that they had no claim on the Amacuro River, west of the Barima River. With this letter it became clear that even Governor Henry Light knew of the illegitimacy of the second Schomburgk line when he wrote the following:

"... We have no claim to the Amacuro River, west of the Barima, although on Major L. von Bouchenroeder's old map, published

[1170] Véase en el libro *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana,* Quoted Above, Page 19. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1.

in 1798, the former river is marked east of the latter, and both flowing into the Orinoco.
Both Mr. Schomburgk's map and Mr. Codazzi's map place these rivers in the proper position, with the Amacuro entering the Orinoco from the south west of the Barima. [...]
I believe that Mr. Schomburgk assumes that the Amacuro is the boundary, solely for reasons of convenience. [...]
Neither the Barima nor the Amacuro can now be of any importance to Great Britain, and could only be occupied at a cost of lives and money which would not make it expedient; but we must be careful that a more important power than Venezuela does not take possession of them.
The existence of the Spanish-American republics seems to depend so much upon political parties always ready to contend for power, that one might ask what is to prevent one of the contending provinces, wishing to obtain foreign aid, from offering the United States or France, or any other power, a settlement, merely for the madness of partisan sentiments, ready to plunge into the folly of gaining some temporary advantage over the opposing faction. [...]
[...] British Guiana must never accept to have the flags of France or of the United States, or of any other power, flying on its borders. [...]"[1171]. (Highlighting Added).

41. **30 March 1845**: The Treaty of Peace and Recognition was adopted whereby Spain, after Venezuela's independence, renounced all rights it had over Venezuelan territory. By this treaty, Spain recognized that the province of Guayana was part of the territory of Venezuela. In fact, as indicated by Jesuit Fathers Hermann González Oropeza and Pablo Ojer Celigueta in their expert report: "*Upon Spain signing in Madrid on 30 March 1845 the* Treaty of Recognition *of the sovereignty of our country over the territory known under the former name of the* General Captaincy *of Venezuela, included in such territory the Province of Guayana, which was bordered to the east by the Essequibo River"*[1172].

[1171] Quoted in Héctor FAÚNDEZ LEDESMA, Quoted Above, Pages 166-167. Letter of 4 March 1842, by Henry LIGHT, Governor of the British Guiana Colony, to Lord STANLEY, English Colonial Secretary, Foreign Office, 80/108. Wording translated by the quoted author.

[1172] Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 8.

42. **18 November 1850**: Belford Hinton Wilson, British Consul General in Caracas, sent a communication to Vicente Lecuna, Secretary of State and Foreign Relations of Venezuela, whereby British authorities agreed not to usurp or occupy the territories in dispute.

This communication denounced the *"propaganda of falsehood and slander"* against the policies of the British government and sought to neutralize the rumour circulating in Venezuela according to which the United Kingdom was trying to claim the Province of Venezuelan Guyana[1173]. The British Consul stated in the same communication that he had been instructed "*to declare that while on the one hand Her Majesty's Government has no intention of occupying or usurping the disputed territory, on the other hand, it will not look with indifference upon the aggressions of Venezuela upon that territory"*[1174]. He further expressed the following:

> *"Venezuelan Government cannot, without doing an injustice to Great Britain, distrust for a moment the sincerity of the formal declaration, now made in the name and on the express order of Her Majesty's Government, that Great Britain has no intention of occupying or usurping the disputed territory; consequently, the Venezuelan Government cannot, in the same spirit of good faith and friendship, refuse to make a similar declaration to Her Majesty's Government, namely, that Venezuela itself has no intention of occupying or usurping the disputed territory"*[1175]. (Highlighting Added).

That communication, together with the reply of Vicente Lecuna, Secretary of Foreign Relations of Venezuela sent on 20 December 1850, were the diplomatic notes constituting the *Statu quo* Treaty of 1850.

43. **20 December 1850**: Vicente Lecuna, Secretary of State and Foreign Relations of Venezuela, responded to the communication

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[1173] José Rafael GAMERO LANZ, "Convenio de *Statu quo* del 18 de noviembre de 1850" ("*Statu quo* Convention of 18 November 1850") asn article published on 19 November 2018. Available at https://www.linkedin.com/pulse/convenio-de-status-quo-del-18-noviembre-1850-jos%C3%A9-rafael-gamero-lanz/?originalSubdomain=es.

[1174] *Ídem.*

[1175] *Ídem.*

sent on 18 November 1850 by the British Consul General in Caracas, Belford Hinton Wilson, stating that: *"the Government has no difficulty in declaring, as it does, that Venezuela has no intention of occupying or usurping any part of the territory whose dominion is disputed, nor will it view with indifference that Great Britain should proceed otherwise"*[1176].

In this way, a *Statu quo* Treaty of *modus vivendi*[1177] between the United Kingdom and Venezuela was established by the aforementioned exchange of notes. The exchange of these notes between the two countries sought to prevent the worsening of diplomatic relations, which were going through a delicate moment due to British occupations. Through this treaty, Venezuela and the United Kingdom agreed to maintain the border situation as it was at that time and to avoid occupying the disputed territory between the second Schomburgk line and the Essequibo.

The expression *modus vivendi* is one of the multiple names given to international treaties. As Guerra Iñiguez points out, treaties *"are called by various names according to certain very relative views, for example, convention or agreement, declaration, act, protocol, accord, modus vivendi, concordat, exchange of notes, but without this designation having any legal significance"*[1178]. These denominations have obtained in practice some characteristics of their own. The term *modus vivendi* refers to temporary or provisional commitments between States on very specific matters[1179].

It should be noted that the exchange of diplomatic notes makes it possible to conclude an international treaty. According to Verdross, an international treaty can be subscribed *"directly through an agreement between absolute monarchs, or through an exchange of notes between the government and a foreign diplomatic representative, or through*

[1176] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

[1177] Temístocles Lastenio BRAVO SUÁREZ, "*Derecho Internacional Público Contemporáneo"* ("Contemporary Public International Law"), Editorial Área de Innovación y Desarrollo, Alicante, 2018. Page 26. It defines *modus vivendi* as "temporary agreements in which there is a purpose to reach a definitive or more permanent one."

[1178] Daniel GUERRA IÑIGUEZ, Quoted Above, Page 129.

[1179] *Ibidem,* Page 130.

an exchange of notes between the two governments"[1180], as Venezuela and the United Kingdom did when their diplomatic representatives, Venezuelan Secretary of Foreign Relations, Vicente Lecuna, and the British Consul General in Caracas, Belford Hinton Wilson, exchanged notes.

On the other hand, the denomination *Statu quo* Treaty has its origin in the Latin term *statu quo ante bellum* which has a war-related meaning, and refers to the return of the state of things as they were before the war[1181]. In particular, the term *statu quo* refers, according to the Royal Spanish Academy, to a *"state of affairs at a given time"*[1182].

Public international law adopted the term *status quo* to refer to the restitution of the state of things as they were before the war (*statu quo ante bellum*). The expression is also generally valid to refer to the state of affairs at a particular historical moment. Consequently, the effect of a *Statu quo* Treaty as it relates to boundary limits between nations is to maintain over time the boundary situation existing at the time the convention is signed. In the case of the controversy between Venezuela and the United Kingdom, this meant maintaining the border situation existing at the end of 1850 and stopping the advance of the illegitimate British expansion.

What was expressed in the diplomatic notes sent by Belford Hinton Wilson, Secretary of State and Foreign Affairs of the United Kingdom, and Vicente Lecuna, Secretary of Foreign Relations of Venezuela, mutually obligated Venezuela and the United Kingdom to maintain the boundary controversy in the same state it was in at that time.

44. **28 April 1856**: Under the government of José Tadeo Monagas, the Law of 28 April 1856 was sanctioned, which established the Territorial Division of Venezuela and repealed the Territorial Division

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[1180] Alfred VERDROSS, Quoted Above, Page 149.

[1181] Sobre ello véase Santiago MENDIZABAL, "Jus Post Bellum: ¿Qué tan útil es para Relaciones Internacionales?" ("Jus Post Bellum: Just How Useful Can It Be for International Relations?") , *El Outsider*, Nº 5, Universidad San Francisco de Quito, Quito, 2020. When the autor referes to *Jus Post Bellum* in the Just War Theory proposed by Walzer, he mentions the *statu quo ante bellum* and defines it as "*the same stability that existed before the conflict"*.

[1182] Real Academia Española, *Spanish Language Dictionary*, 23rd Edition, On-Line Version 23.4 at https://dle.rae.es. Visited on: 27 October 2021.

Law of 25 June 1824, issued during the existence of the Republic of Colombia, which remained in force for the State of Venezuela even after the disintegration of Colombia.

The Law of 28 April 1856 established in Article 1º: *"The city of Santiago de León de Caracas, birthplace of the Liberator Simón Bolívar, is the Capital of Venezuela; and its territory is divided into twenty-one Provinces to be named as follows: Cumaná, Maturín, Margarita, Barcelona, Guayana, Amazonas, Apure, Caracas, Guárico, Aragua, Carabobo, Cojedes, Portuguesa, Barinas, Barquisimeto, Yaracuy, Coro, Trujillo, Maracaibo, Mérida and Táchira"*[1183].

The Law of 28 April 1856 further detailed the territory of the Republic and specified the cantons that made up the Province of Guayana which, according to the provisions of Article 7 *eiusdem*, was formed by *"the cantons of Héres, Upata and Alto Orinoco; its capital, Ciudad Bolívar"*[1184]. This same provision of Article 7 was subdivided into three paragraphs indicating the division of each canton:

> *"Paragraph First: The Héres canton consists of the parishes Ciudad Bolívar, Panapana, Barcelonesa, Barcelonesa, Aripao, Borbón, Moitaco, La Piedra, Puruey, Antigua Guayana, Piacoa and Curiapo; its capital Ciudad Bolívar.*
> *Paragraph Second: The Upata canton consists of the following parishes: Upata, Puerto de Tablas, Cupapui, Pastora, San Antonio, Tumeremo, Gurí, Palmar, Miamo, Caruachi, Tupuquen, Guasipati and Carapo; its seat is Upata.*
> *Paragraph Third: The Alto Orinoco canton is made up of the parishes of Caicara, Cuchibero, Altagracia and Urbana; its capital is Caicara"*[1185].

On the other hand, Article 8 of the Law of 28 April 1856 ratified that *"the islands that form the Orinoco, including all those of the upper*

[1183] The Law of 28 April 1856, that establishes the Territorial Division of the Republic approved and sanctioned by Congress of the Republic of Venezuela Available at: https://docs.venezuela.justia.com/federales/leyes/ley-del-28-de-abril-de-1856-que-establece-la-division-territorial-de-la-republica-de-venezuela.pdf

[1184] *Ídem.*

[1185] *Ídem.*

and lower Delta, and the beaches known as "La Manteca", including Pararuma, belonged to the Province of Guayana"[1186].

45. **8 May 1871**: The Treaty of Washington was signed, which established the rules to resolve the Alabama case. This marked a turning point in arbitration, which went from being a diplomatic means of settlement to a legal means of resolving disputes.

The case of the Alabama claims was very important in the development of arbitration and had a great general impact on the international law of the time. During the American Civil War (1861-1865), the United Kingdom declared its neutrality through the Neutrality Act signed by Queen Victoria on 13 May 1861. However, the duty of neutrality was violated as the United Kingdom provided the Confederates with ships.

The Alabama privateer, along with another privateer called the Florida, laid siege to the American merchant marine, wiping out almost half of its ships by the end of the American Civil War. This caused various damages in raw materials. In addition, there were related issues between State parties such as illegal fishing activity in Canadian waters and the death of civilian subjects of the British crown in the Civil War.

As a consequence of the above, the United States made a series of claims against the United Kingdom, for which the parties signed the aforementioned Treaty of Washington in May 1871 to resolve the controversy between the two countries. The Treaty of Washington established the rules of neutrality with which the states had to comply in the context of a war such as the one at that time. These rules were:

> *"A neutral government must:*
> *1. Use all due diligence to prevent any vessel within its jurisdiction from being placed in a condition to sail, equip or arm any vessel which it has reasonable suspicion of being destined to make war against a Power with which it is at peace, and likewise use the same diligence to prevent from leaving its jurisdiction any vessel destined for war as aforesaid, which has been transformed in whole or in part for use in the war.*
> *2. Not permit or tolerate that one of the belligerents should make its ports or its waters the base of naval operations against*

1186 *Ídem.*

the other, or use them to renew or increase its military supplies or arms, or to recruit men.
*3. Exercise all diligence in their ports and waters, and with respect to all persons within their jurisdiction, to prevent any violation of the above obligations and d*uties"[1187].
The arbitration award was rendered on 14 September 1872 and the United Kingdom was ordered to pay an indemnity of approximately 15.5 million dollars. From that moment on, the case became a reference for future arbitrations.
The case of the Alabama claims began an accelerated process of evolution of arbitration that made it a suitable avenue for reaching settlements as a matter of law, in contrast to the arbitrations of kings or personalities that provided political settlements, as had been customary up to that time.
The Alabama claims case contributed to the development of arbitration. In this new stage, arbitrators were required to be jurists, comply with the duties of impartiality and independence, give reasons for arbitral awards and value the principles and customs of international law in force at the time of issuing their decisions. Hence, at the First Hague Conference of 1899, whose proposal was sent by Count Mouravieff on behalf of the Russian Tsar Nicholas II, an attempt was made to establish guidelines for arbitral procedures and other peaceful means of dispute settlement, culminating in the Convention on the Pacific Settlement of International Disputes, which was the outcome of that important meeting[1188].

46. **1880**: During the second government of Antonio Guzmán Blanco, gold deposits were discovered in the territory disputed between Venezuela and the United Kingdom, which reactivated the British

[1187] Véase "Reglas del Tratado de Washington, entre Gran Bretaña y Estados Unidos, de 8 mayo 1871, referente a la reclamación sobre el "Alabama" (Reglas de Washington)", ("Rules of The Washington Treaty between Great Britain and the United States of America, dated 8 May 1871, refering to the Claim to the "ALABAMA" ("The Washington Rules")") Treaty Available at https://www.dipublico.org/109354/reglas-del-tratado-de-washington-entre-gran-bretana-y-estados-unidos-de-8-mayo-1871-referente-a-la-reclamacion-sobre-el-alabama-reglas-de-washington/

[1188] International Court of Justice, History of the Court. Available at https://www.icj-cij.org/en/history.

pretensions of expansion. In fact, the pretension of the United Kingdom *"reached such extremes that it almost passed the border through the town of Upata, starting, of course, from the mouths of the Orinoco"*[1189].

47. **1887**: The British published a new map with the third Schomburgk line, based on Hebert's map of 1842, which usurped 167,830 square kilometres of Venezuelan territory. Regarding this, the United Kingdom maintained that its claim had always been the same.

The immense power of the United Kingdom in the face of the enormous weakness of Venezuela at the end of the 19th Century allowed it to insist on expansion. The British were not satisfied with the third Schomburgk line. Therefore, in 1887, during the third government of Antonio Guzmán Blanco, the United Kingdom unilaterally considered that the border with Venezuela consisted of a line from the coast to Upata, thus usurping 203,310 square kilometres of territory belonging to Venezuela[1190].

The expansion of the line and the illegitimate occupation by British colonists on Venezuelan lands made Venezuela demand the immediate vacating of its territory since, as indicated in the note rejecting the British actions, the United Kingdom violated *"the rights of sovereignty and independence of Venezuela, depriving it of the most holy and inviolable of the properties of a nation, namely, that of its territory"*[1191].

48. **26 January 1887**: Diego Bautista Urbaneja, Minister of Foreign Relations of Venezuela, sent a note to Mr. F. R. Saint John, Resident Minister of Her Britannic Majesty, in which he protested against the illegitimate acts of territorial usurpation by the United Kingdom and indicated that, if he did not receive a positive answer regarding this situation for his next report to the Congress of Venezuela, diplomatic relations between both countries would be broken. In effect, Venezuelan Minister of Foreign Relations Diego Bautista Urbaneja stated that Venezuela: *"Protests before the Government of Her Britannic Majesty, before all civilized nations, before the world in general, against the acts of dispossession, which to Venezuela' detriment the Government of Great Britain has consummated and that at no time nor for any reason*

1189 Marcos FALCÓN BRICEÑO, Quoted Above, Page 43.
1190 Carlos SOSA RODRÍGUEZ, Quoted Above, Page 123.
1191 *Ídem.*

will it recognize as capable of altering in the least the rights it has inherited from Spain"[1192].

49. **20 February 1887**: Diego Bautista Urbaneja, Minister of Foreign Relations of Venezuela, sent a new note whereby, after making an exposition of the titles of Venezuela and the constant abuses of the United Kingdom in Venezuelan territory, diplomatic relations between both countries were broken off. Venezuelan Minister, after making an exposition of Venezuela's titles and the constant abuses of the United Kingdom in Venezuelan territory, expressed: *"Consequently, Venezuela, not having to maintain friendly relations with a State that thus insults it, suspends them as of this day. And protests before the Government of Her Britannic Majesty, before all civilized nations, before the world in general, against the acts of dispossession that the Government of Great Britain has consummated to its detriment"*[1193].

50. **20 July 1888**: During the government of Juan Pablo Rojas Paúl, Venezuela had Mr. Richard Olney, Secretary of State of the United States, send a note to United Kingdom defending Venezuela against the attacks it was suffering from the United Kingdom regarding its territorial integrity.

51. **3 December 1894**: The President of the United States of America, Grover Cleveland, expressed his interest in participating in the discussions to ensure peace by means of arbitration, in order to stop the aspirations of British supremacy in South America[1194]. This prompted the U.S. Congress to send resolutions to the British and the Venezuelan Governments on 22 February 1895, suggesting that they adhere to President Grover Cleveland's intention to submit the settlement of the matter to arbitration. On 1 January 1896, President Grover Cleveland appointed Guyana Boundary Investigation Commission[1195].

52. **2 January 1895**: In the early morning of 2 January 1895, ten months after the founding of the town of El Dorado, the Yuruán

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[1192] Carlos SOSA RODRÍGUEZ, Quoted Above, Pages 123-124.
[1193] *Ibidem,* Page 175.
[1194] Claudio A. BRICEÑO MONZÓN , José Alberto OLIVAR y Luis Alberto BUTTÓ (Coordinators), Quoted Above, Page 66.
[1195] *Ídem.*

Incident[1196], also known as the Cuyuní Incident, took place, which was a confrontation between Venezuelan and British troops. It is worth noting that the creation of El Dorado was ordered on the basis of *"the need of Venezuelans to face the calculated invasion of the United Kingdom, taking advantage of both the military weakness of Venezuela and the successive internal political conflicts that demoralized and bled it"*[1197].

The Yuruán Incident consisted in the occupation by several Englishmen led by Douglas Barnes of an unoccupied Venezuelan military post, while the guards were practicing ordinary exercises[1198]. The English troops lowered Venezuelan flag and raised the British flag with the intention of controlling the post and then *"take the lands of El Callao, passing through Upata, Tumeremo and El Dorado, as well as other areas that, it was rumoured, were full of gold"*[1199].

Venezuelan military authorities, headed by General Domingo Sifontes, the *intellectual plainsman*, reacted immediately to the occupation of Venezuelan military post and acted in its defence. The order to recover Venezuelan military post was given to Captain Andres Avelino Dominguez, second in command of General Domingo Sifontes, who successfully carried out such order and arrested the eight Englishmen, who were sent to Ciudad Bolivar, including Inspector Douglas Barnes[1200].

1196 Héctor FAÚNDEZ LEDESMA, *"La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela"* ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Page 24. Véase también Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 14.

1197 *Ídem.*

1198 See: *"El incidente del Yuruán, evidencia del expansionismo inglés"* ("The Yuruán Incident; Evidence of English Expansionism"), an asrticle written by Juan MATORANO in 2015. Available at: https://www.facebook.com/venezuelaesequiba/posts/1774219026194258/ Also see: Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), published in *Aporrea* on July 29th, 2015. Available at: https://www.aporrea.org/actualidad/a211477.html.

1199 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/.

1200 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above. Véase también William Dávila Barrios (ed.), Quoted Above, Page 49.

General Domingo Sifontes sent a letter to Carlos Pumar, director of the Caracas newspaper El Tiempo, which was published on 22 April 1895 in issue 629 of such newspaper[1201] and in which he related the facts. He pointed out that the antecedents of the Yuruán Incident dates back to March 1894 when he was appointed National Commissioner of the Cuyuní River and its tributaries, and was entrusted with the mission of colonisation, populating, and civilisation the natives of the area, caring for the troops and creating sub-commissariats. He fulfilled his mission efficiently[1202].

His work to promote colonization and population in the area led him to *"ascertain the existence considerable clearings on the banks of the Yuruán and the Cuyuní"*[1203]. At that time *"there were only nine houses between the two banks: 6 on the left and 3 on the right. The last two of which with their respective farms, were built in 1870 by José Francisco and Loreto Lira, Miguel Angel González and Lorenzo Rivas; and the other, built in 1890 by a British subject named Mc Turk in front of the mouth of the Yuruán, in which six individuals of the same nationality resided, and occupied themselves in working a small artisanal plantation, and, from April or May, the were under the orders of the aforesaid Inspector Barnes"*[1204].

The information supplied by General Domingo Sifontes is graphically represented in the *Topographical Plan of Venezuelan Station "El Dorado" in the Cuyuní-Guayana region*:

Between General Domingo Sifontes and Inspector Douglas Barnes there was always a respectful relationship that was maintained even in delicate situations. A first example of this was the support given by General Domingo Sifontes to a young German named Guillermo Faull, whom Inspector Douglas Barnes was trying to evict from the

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1201 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

1202 See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/

1203 Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

1204 *Ídem.*

right bank of the Cuyuní River. General Domingo Sifontes stated in his letter the following: "*This incident, however, did not alter my good relations with Barnes, who by his fine treatment, captured my personal appreciation"*[1205].

Despite the cordial relationship that existed between the two main authorities in the area, General Domingo Sifontes wrote in a letter *"the conflict that occurred on January 2nd was a premeditated action by the usurping settlers of Demerara, as evidenced by the editorial of the Argosy of 24 November of last year, which predicted a probable collision between Venezuelans and Englishmen of the Yuruán, and lamented beforehand the loss of precious lives, including those of the English, while at the same time hurling the most hurtful epithets and the most atrocious invectives at Venezuelans"*[1206].

Inspector Douglas Barnes and his men impinged on the sovereignty of Venezuela. However, during their detention they were treated with dignity and respect for their rights. In fact, General Domingo Sifontes stated the following in his letter written upon his arrival at El Dorado on 8 January 1895: "*I proceeded to instruct the summary of law, and after taking testimony from all witnesses, including that of Barnes himself, written in English in his own handwriting and verifying that they were all consistent, the arrest was ordered"*[1207].

Once the usurpers were released by order of President Joaquin Crespo, Inspector Douglas Barnes sent a letter from Upata, dated 21 January 1895, to General Domingo Sifontes in which he expressed the following: *"I cannot however leave Venezuela without expressing to you that since our departure from Cuyuní, Mr. Luis Manuel Salazar has provided us with the greatest care and attention in everything we have needed, and that we have nothing to complain about. I* must *say the same of his companions. I thank you personally for all the trouble you have taken..."*[1208].

[1205] Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), Quoted Above.

[1206] *Ídem.*

[1207] *Ídem.*

[1208] *Ídem.*

Notwithstanding the above, Inspector Douglas Barnes told in London a totally different version of events. For this reason, General Domingo Sifontes wrote in aforesaid letter the following: "*How does this procedure fit in with what Barnes later stated in his Report, in which he appears pettily exaggerating the facts, while concealing others that could exalt him if he were truthful and just?"*[1209].

General Domingo Sifontes was not only betrayed by Inspector Douglas Barnes, but also by César Urdaneta, who in front of the members of the group escorting Inspector Douglas Barnes, said:

> *- "...I know that you have been mistreated a lot.*
> *- "No sir," answered the Englishman, "we have been treated well and General Sifontes paid us for a little damage done to us by his people."*
> *- "No; I know you have been treated very badly. General Sifontes is to blame for everything that has happened. The Government has disapproved of his actions and is calling him to Caracas. I have come to replace him. So, I hope that you will return with me to your post, because with me you will have all kinds of guarantees..."*[1210].

As stated by General Domingo Sifontes *"A colonist from Demerara would not defend the cause of the Usurpation better than Urdaneta"*[1211]. In any event, the forceful response of Venezuelan troops in the Yuruán Incident made General Domingo Sifontes go down in history as a defender of the national territory. In the State of Bolivar, a municipality bears his name[1212] and rightly so, because *"having the English there in Cuyuní in front of El Dorado with a sign on the facade of the Bungalow clearly reading in the English language "Department of Police of Cuyuní and Yuruán Rivers", was not to remain calm while waiting for the approval of President Crespo, who absurdly asked Sifontes to more*

[1209] *Ídem.*
[1210] *Ídem.*
[1211] *Ídem.*
[1212] See the article entitledtitled "Domingo Sifontes, el venezolano que hizo correr a los ingleses" ("Domingo Sifontes, the Venezuelan who made the English run") published in *La Razón* in the Year 2015. Available at: https://larazon.net/2015/06/domingo-sifontes-el-venezolano-que-hizo-correr-a-los-ingleses/

or less play the fool, but to proceed as he did, although with ungrateful results, because after arresting the English commissioner Douglas D. Barnes together with the officers and the troops of the Bungalow, and sending all of them to Ciudad Bolivar, they were released almost immediately by the governor or president of the State, General Manuel Gomez Gil"[1213].

At the time of the Yuruán Incident, relations between the United States of America and the United Kingdom were not cordial and the delicate situation of the border between Venezuela and British Guiana generated greater tensions between both countries[1214]. Thus, the aforementioned *"Yuruán Incident"* led the United States to take a position on the matter.

53. **20 July 1895**: Richard Olney, Secretary of State of the United States, sent to Mr. Thomas Bayard, Ambassador of the United States of America in the United Kingdom, a document or telegram known called in Spanish *"El Cañonazo de 20 Puntas"* (*The "20-Round Cannon Shot")*. In this document it was denounced, mainly, that the conflicting British claims were never based on law. In the aforementioned telegram, the disparity of forces between the two States was also recognized, which obligated Venezuela to seek a solution to the dispute only through peaceful means.

In that document, in clear reference to the Monroe Doctrine, the following was expressed: *"The States of North and South America, by their geographical proximity, by natural sympathy, by the similarity of their governmental constitutions, are friends and allies, commercially and politically, of the United States. To allow any of them to be subjugated by a European power is to turn the tables entirely, and translates into the loss of all the advantages consequent upon their natural relations with us. But this is not all. The people of the United States have a vital interest in the cause of government by the people for themselves. They*

[1213] "El Incidente del Cuyuní" ("The Cuyuní Incident"), an article published on the Web Crónicas de Guayana ("The Guiana Chronicles") of 29 March 2014 and edited on 4 April 2021. Available at: https://xn-crnicasguayana-mob.info/el-incidente-del-Cuyuní/.

[1214] Héctor FAÚNDEZ LEDESMA, "La competencia contenciosa de la Corte Internacional de Justicia y el caso Guayana vs. Venezuela" ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela"), Quoted Above, Pages 83-84.

have secured this right for themselves and its posterity, at the cost of much blood and money. They have exercised it and demonstrated its beneficent action by a career unexampled as far as national greatness and individual happiness are concerned. They believe that they possess the virtue of healing nations and that civilization must advance or retreat as they extend or narrow their supremacy. Imbued with these sentiments, it would not perhaps be impossible that the people of the United States should be impelled to active propaganda in behalf of a cause so dear to themselves and to the human race. But the time of the Crusades has passed, and they are content to proclaim and defend the right of the government of the people for themselves, as their own safety and prosperity require. Under that aspect, above all, they believe that no European power should be tolerated to assume by force the political dominion of an American State"[1215].

The telegram indicated that the conflicting British claims were never based on law: *"... Under these circumstances, It seems impossible to regard the Schomburgk line claimed by Great Britain as being in accordance with the law; nor otherwise than as a line which had its origin in reasons of expediency and opportunity. Since 1840 Great Britain has indicated, from time to time, other boundary lines, but all of them as conventional lines, for which the consent of Venezuela has been solicited, but which, in no case, it is believed, have been claimed as a right..."*[1216].

The telegram recognized the disparity of forces between the two States which obligated Venezuela to seek the solution of the dispute only through peaceful means. It stated that "*The disparity of force between the claimants is such that Venezuela can only hope for the establishment of its rights by peaceful methods of settlement with its adversary, either on the issue itself, or on arbitration"*[1217].

[1215] See: the book entitledtitled *"Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"),, Quoted Above, Pages 293-318.

[1216] *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted Above, Page 293 & ff.

[1217] *Ibidem,* Page 304.

54. **17 December 1895**: In a message to Congress, President Grover Cleveland invoked the Monroe Doctrine arguing that the United States of America would not be willing to tolerate abuses by the United Kingdom on the American continent and ordered that the matter be investigated. During his speech he invoked the Monroe Doctrine in view of the abuses committed against Venezuela and expressed:

> *"The dispute has reached such a point that it is now incumbent upon the U.S. to take steps to determine, with sufficient certainty to justify it, what is the true dividing line between Venezuela and British Guiana. When that report is completed and accepted, it will, in my opinion, be the duty of the United States to resist by every means in its power, as a premeditated aggression upon its rights and interests, the appropriation by Great Britain of any land, as well as the exercise of its governmental jurisdiction in any territory which, upon investigation, we have determined that it rightfully belongs to Venezuela"*[1218].

The message of President Grover Cleveland prompted the subscription of an act of the Congress of the United States, approved on 21 December 1895, in which the House of Representatives and the Senate agreed:

> *"...an appropriation for the expenses of a commission to ascertain the true dividing line between Venezuela and British Guiana, and report thereon. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: The sum of one hundred thousand dollars, or such part thereof as may be necessary, is hereby appropriated for the expenses of a commission, to be appointed by the President, to ascertain the true dividing line between Venezuela and British Guiana, and report the result"*[1219].

[1218] Tomás Enrique CARRILLO BATALLA (Coordinator), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guyana-Essequibo"), *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Pages 433-434. Pages 433-434.

[1219] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain

The results of the investigation carried out by the presidential commission for the investigation of the true boundary between Venezuela and British Guiana indicated that there was no conclusive evidence of Dutch occupation in the year 1648 to the north and west of the Essequibo River, nor of the island called Kikoveral. Nor was there any evidence of occupation at Punta Barima before 1648[1220].

55. **January 1896**: Negotiations of the Treaty of Washington of 1897 began.

56. **6 May 1896**: The presidential commission of investigation addressed the Secretary of State, Richard Olney, in the following terms: *"Those general points of view on which the British Government based its right to Punta Barima, do not find support, as far as we have been able to establish it, in the works of historians of the colony, either English or Dutch. Whether the Dutch actually occupied Punta Barima or not, it appears that by 1680, at the latest, that occupation, if it ever existed, had ceased and that point was definitely abandoned"*[1221].

The results of the investigation of the presidential commission ratified the immense value of the *"Map of a part of Venezuela and British Guiana showing the advance of the English pretensions in Venezuelan territory"* drawn by T. Hayward Gignilliat and published in 1896. This map was part of the Yellow Book of the United States of Venezuela presented by the Minister of Foreign Relations of Venezuela, Pedro Ezequiel Rojas, before the Congress during the mandate of President Joaquín Crespo[1222].

The map depicts the multiple unilateral demarcations of the United Kingdom and reflected the desire of the United Kingdom to embrace greater territories in the world. The legend, included at the bottom of the document: *"In 1814 United Kingdom acquired from the Dutch some 20,000 square miles of land in Guiana. From 1839 to 1841 it commissioned Sir Robert Schomburgk, without Venezuela's knowledge*

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regarding the Borders with Guiana"), Page 336. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

1220 Cf. Tomás Enrique CARRILLO BATALLA (Coordinator), Quoted Above, Page 434.

1221 *Ibidem,* Page 435.

1222 Véase en Andrés Eloy BURGOS GUTIÉRREZ (ed.), Quoted Above, Page 37.

or consent, to draw a line covering about 60,000 square miles of territory. By 1885, this territory had been increased to 76,000 square miles by the force of changes in the above line. The following year it jumped to 109,000 square miles. Venezuela has never recognized any of these lines not even as a sign of disputed territory"[1223].

The antecedents of these events began on 20 February 1887, when diplomatic relations between Venezuela and the United Kingdom were broken by a new note sent by the Minister of Foreign Affairs Diego Bautista Urbaneja. Venezuelan minister, after making an exposition of Venezuela's titles and the constant abuses of the United Kingdom in Venezuelan territory, expressed: *"Consequently, Venezuela, not having to maintain friendly relations with a State that thus injures it, suspends them as of this day. And protests before the Government of Her Britannic Majesty, before all civilized nations and before the world in general, against the acts of dispossession that the Government of Great Britain has consummated to its detriment"*[1224].

Three months later, on 12 May 1887, Venezuelan Congress presented a complaint about the violation of the Monroe Doctrine by the United Kingdom, with the aim of persuading the United States to intervene in the border controversy[1225].

Venezuela had requested the support of the United States to mediate in the controversy with the United Kingdom and on 20 July 1888, during the government of Juan Pablo Rojas Paúl, the Secretary of State of the United States of America, Richard Olney, sent a note to the United Kingdom defending the position of Venezuela regarding the disputed territory.

57. **12 November 1896**: On 12 November 1896, Julian Pauncefote and Richard Olney reached a secret agreement, in which Venezuelan representative Jose Andrade did not participate, whereby they agreed on the manner in which the prescription rule, provided for in Article IV of the Treaty of Washington, would be interpreted.

1223 *Ídem.*

1224 *Ibidem,* Page 175.

1225 Claudio A. BRICEÑO MONZÓN, José Alberto OLIVAR y Luis Alberto BUTTÓ (coords.), *"La cuestión Esequibo. Memoria y soberanía."* ("The Essequibo Issue. Memorial and Sovereignty"), Universidad Metropolitana, Caracas, 2016. Page 66.

Regarding the interpretation of Rule "a", Richard Olney told Minister José Andrade that it applied only to occupations prior to 1814, the date on which the United Kingdom had acquired the Berbice, Demerara and Essequibo settlements from Holland. If that had been the case, then the United Kingdom would only have had rights to the territories ceded to it by Holland through the London Treaty of 1814.

Richard Olney explained that Rule "a" referring to prescription referred only to a very small territory between the Pomarón, Moruco and Essequibo rivers; but he actually knew what the true purpose of the prescription rule was, which he had agreed upon in a secret agreement with the United Kingdom's Ambassador to the United States, Julian Pauncefote on 12 November 1896[1226].

For their part, the English interpretation was that the Rule "a" applied to any occupation of more than fifty years' duration after 1814, the date on which the United Kingdom and Holland signed the Treaty of London, to which we have referred on several occasions during this study.

In the first place, this interpretation ignores the 1850 *Statu quo* Treaty signed by an exchange of diplomatic notes between the British Consul General in Caracas, Belford Hinton Wilson, and Venezuelan Secretary of Foreign Relations, Vicente Lecuna, on 18 November and 20 December 1850. According to this international treaty, both parties undertook to maintain the state of affairs as it was at the end of 1850. Thus, both Venezuela and the United Kingdom had the duty not to advance their occupations in the disputed territory.

Despite its enormous importance, there was no reference in the 1897 Treaty of Washington to the 1850 *Statu quo* treaty. On the contrary, the interpretation given to the prescription clause was contrary to that *modus vivendi* whereby both parties had committed themselves to maintain the frontier situation as it was at that time.

Let us recall that the parties had committed themselves not to occupy the territory under discussion between the pseudo Schomburgk line, the maximum aspiration of the United Kingdom, and the Essequibo. Thus, the interpretation of possession could never refer to that period. On the

[1226] Carlos SOSA RODRÍGUEZ, Quoted Above, Page 126.

contrary, the *modus vivendi* of 1850 was not reflected in the Treaty of Washington.

The United Kingdom never respected the *Statu quo* Treaty of 1850. On the contrary, and as can be deduced from its subsequent actions, the United Kingdom insisted on advancing its claim over Venezuelan territory in an increasingly vulgar and brazen manner. Rule "a" of Article IV of the Treaty of Washington disregards the *Statu quo* Treaty and thereby chooses to ignore its violation in an attempt to conceal its great legal value.

The fact that the 1850 *Statu quo* Treaty was rendered worthless was no accident. Indeed, Mr. Richard Olney, Secretary of States of the United States of America, sent a letter to Mr. Julian Pauncefote, Ambassador of the United Kingdom in Washington, dated 29 October 1896, in which he stated the following: *"I think it most desirable not to give the Agreement of 1850 any status in the Convention, even by reference, much less by an attempt to define its scope and meaning. An attempt to interpret it would involve us in a protracted debate and postpone indefinitely the attainment of the objective we now have in mind"*[1227].

Rule "a" of Article IV of the Treaty of Washington also contradicts the principle of *uti possidetis iuris*, which since the emancipation has been a principle of supreme importance for the American countries and has even been used by countries of other continents due to its usefulness in the delimitation of borders. Contrary to this, during the negotiations between Richard Olney, Secretary of State of the United States of America, and Julian Pauncefote, Ambassador of the United Kingdom to the United States of America, the prescription rule was established and the principle of *uti possidetis facti* was given pre-eminence.

The prescription rule was intended to undermine the argument of unconstitutionality defended by Minister José Andrade, according to which the Constitution of 1893 -in force at the time of the conclusion of the treaty- did not allow the alienation of any part of the territory of the republic.

[1227] Annex 6 to the Lettter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

Thus, the explanation given to Venezuela on the meaning and scope of the rules of Article IV was different from the interpretation given by the British, which was the one finally applied in the Arbitral Award of 3 October 1899[1228].

This Rule "a" *"contains the constituent elements of the defencelessness in which Venezuela's interests were placed"*[1229]. This aspect is decisive for the establishment of the nullity of the arbitration agreement. As stated by Isidro Morales Paúl, *"precisely in the prescription clause lies the backbone of the problem"*[1230].

Rule "a" openly favoured the United Kingdom, which through prescription obtained title over the disputed territory, which otherwise it would not have been able to justify and, despite the serious prejudice it represented, Venezuela had to accept it. Indeed, "*Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure from the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government, which was given explanations that misled it"*[1231].

58. **2 February 1897**: The Treaty of Washington was signed, which established the rules according to which the arbitration between Venezuela and the United Kingdom regarding the territorial dispute would be governed.

It should be noted, first of all, that this arbitration treaty was drafted only in English, the language of one of the parties, and there was no provision for a corresponding version in Spanish, which was the language of Venezuela, the other party.

The absence of the Spanish language in the Washington Arbitration Treaty is a reflection of Venezuela's weakness during the negotiation. Indeed, Venezuela's precariousness during the discussion of the clauses of the arbitration treaty was due to the fact that it was a small country, less than a Century after gaining independence and affected by severe

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1228 On this matter, see: Carlos SOSA RODRÍGUEZ, Quoted Above.

1229 Isidro MORALES PAÚL, *"Análisis crítico del problema fronterizo «Venezuela-Gran Bretaña»",* ("Critical Analysis of the <<Venezuela-Great Britain>> border issue"), Quoted Above, Page 179.

1230 *Ibidem,* Page 187.

1231 Herman GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 26.

internal crises of the most diverse nature. José Andrade, the only Venezuelan representative who participated in the negotiations, could do little, unlike the representatives of the United States of America, Richard Olney, and the United Kingdom, Julián Pauncefote, who, between them, negotiated practically the entire content of the Treaty of Washington.

The failure to take into account the Spanish language in the formulation of the Treaty of Washington -and also in the arbitration procedure- is probably a consequence of the belief of the United Kingdom that it was negotiating an arbitration treaty with the United States of America and not with Venezuela. Certainly, the colonialist vision of the United Kingdom, an important imperial power at the time, did not allow Venezuela to be appreciated as an equal, but as a semi-barbarian or semi-wild state. Without going very far, Fyodor Fyodorovich Martens, who as we shall see later on was the president of the Paris Arbitral Tribunal that would be set up as a consequence of the Treaty of Washington, shared this same opinion[1232]. For the United Kingdom to negotiate directly with Venezuela was tantamount to lowering itself and abandoning its dominant position, which is precisely why it only agreed to resolve the dispute through arbitration in the face of the intervention of the United States of America.

59. **March 1898**: Venezuela and the United Kingdom presented, before the Arbitral Tribunal in Paris, their pleadings together with the documentation supporting their claims.

60. **25 January 1899**: The arbitral tribunal of Paris was formally inaugurated, and was competent to resolve the territorial controversy between Venezuela and the United Kingdom, in accordance with the rules of the Treaty of Washington of 2 February 1897. Frederick de Martens proposed 24 Regulations applicable to the case.

61. **15 May 1899**: The First International Hague Conference was held, where all the drafts that later became conventions were discussed, including the 1899 Hague Convention for the Peaceful Settlement of International Disputes. The president of the Paris Arbitral Tribunal,

[1232] See: Héctor GROS ESPIELL (Translator), *"Rusia e Inglaterra en Asia Central"* ("Russia and England in Central Asia"), translation and commentary by Héctor GROS ESPIELL, Editions of the Presidency of the Republic, Caracas, 1981. Page 50-51.

Fedor Fedorovich Martens, participated in the First Hague Conference of 1899, which led to the suspension of the hearings on three occasions, one at the end of June and the other two in July 1899.

62. **15 June 1899**: The working sessions of the Arbitral Tribunal began at the Palace of Orsay, in Paris.

63. **31 July 1899**: The First International Conference of The Hague was concluded, which resulted in the creation of the Convention for the Pacific Settlement of International Disputes. This sealed the transition from political-diplomatic arbitration to arbitration in law.

64. **27 September 1899**: The oral phase of the Paris Arbitration, which was conducted in English, was completed.

65. **3 October 1899**: The Paris Arbitral Award was rendered in which, after 54 hearings and with 844 words contained in six paragraphs, 159,500 kilometres of territory were awarded in favour of the United Kingdom, without any legal reasoning to justify such injustice.

66. **4 October 1899**: José María Rojas, who on several occasions held the position of Minister Plenipotentiary of Venezuela in Spain, Paris, The Hague and London, and was also the only Venezuelan lawyer who was part of the country's defence team during the Paris Arbitration, severely criticized the Paris Arbitration Award the day after it was rendered. He stated that it was a derisory decision and a manifest injustice[1233].

67. **11 October 1899**: Robert Arthur Talbot Gascoyne-Cecil, three times Prime Minister of the United Kingdom from 1886 to 1902, with a single interruption between 1892 and 1895, was in office when the Paris Arbitral Award was rendered. Furthermore, the exercise of his functions as Prime Minister coincided with the expansionist policy of the United Kingdom and, consequently, with the usurpation of territory adjacent to the eastern border of Venezuela. For this reason, he was portrayed in an illustration entitled *"Peace and Plenty"* published on 11 October 1899 in London Charivari and Punch Magazine after the conclusion of the Paris Arbitration. The cartoon shows him laughing and below it is the phrase "*I like arbitration - In the right place!"*

[1233] Hermann GONZÁLEZ OROPEZA and Pablo OJER, Quoted Above, Page 21.

68. **22 October 1899**: The Ministry of Foreign Relations of Venezuela sent instructions to Mr. Felipe de Aguerrevere, Commissioner for Venezuela to participate in the demarcation of the border between Venezuela and the Colony of British Guyana, indicating that the line established by the arbitrators lacked political, geographical and historical foundation. In view of this, all Venezuelan commissioners were ordered to put the demarcation work through the most rigorous procedure.

69. **1900-1905**: The mixed commissions for the demarcation of the frontier functioned as established in the Paris Award, in which Venezuela participated under duress, mainly because the United Kingdom had stated that if Venezuela did not participate, they would execute the award unilaterally.

70. **January 1944**: During the visit of President Isaías Medina Angarita to the United States of America, a lunch was held in a famous New York hotel with Severo Mallet-Prevost where he was decorated with the Order of the Liberator. The main reason for the trip was to visit the President of the United States of America, Franklin D. Roosevelt in Washington to discuss the sovereignty of Aruba and Curacao.

71. **30 March 1948**: Rómulo Betancourt, President of Venezuela on two occasions, participated during his first administration as head of Venezuelan delegation in the IX Inter-American Conference held in the city of Bogotá. In that important forum, he pronounced himself in favour of Venezuela's legitimate rights over the territory under claim. There he expressed:

> *"In advocating the principle of self-determination of colonial peoples to decide about their own destiny we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that in justice may belong to them, nor do we renounce what Venezuelans, in the event of a serene and cordial historical and geographical revaluation of what is American, could assert in favour of their territorial aspirations over areas today under colonial tutelage and which were formerly within our own sphere"*[1234].

[1234] Efraín SCHACHT ARISTIGUETA, *"Aspectos Jurídicos y Políticos del Tratado de Ginebra"* ("Juridical and Political Aspects of the Geneva Treaty"), in coordination with

72. **10 December 1948**: Severo Mallet-Prevost, the youngest U.S.-born lawyer who was part of the legal team that represented Venezuela during the Paris Arbitration, passed away in New York City.

73. **10 July 1949**: The *American Journal of International Law*, in its July issue, published the posthumous memorandum of Severo Mallet-Prevost, by virtue of the decision of his executor Otto Schoenrich to disclose the contents of that document. This valuable document was also published that year in the Bulletin of the Academy of Political and Social Sciences.

In his memorandum, Severo Mallet-Prevost acknowledged that he and President Benjamin Harrison were aware of the collusion that existed between the President of the Arbitral Tribunal Fyodor Fyodorovich Martens and the English arbitrators Lord Russell and Lord Collins. *The Times,* a London newspaper, even published a statement by the Reuters news agency containing the statements of President Benjamin Harrison and Severo Mallet-Prevost where they expressed that *"there was nothing in the history of the dispute that adequately explained the boundary line established in the Award"*[1235].

The lawyer Severo Mallet-Prevost relates that Russell always had a reticent and inclined attitude in favour of the United Kingdom, was of the opinion that arbitrators should have a political connection and considered that it was not necessary for international arbitrations to stick exclusively to legal grounds.

Severo Mallet-Prevost narrates that Lord Russell, Judge Josiah Brewer and he met at an intimate lunch organized by Henry White, who held the position of Chargé d'Affaires of the United States, in the city of London. Severo Mallet-Prevost expressed in the memorandum referring to Lord Russell the following: *"I happened to sit next to him, and in the course of the conversation I ventured to express the opinion that international arbitrations should base their decisions solely on*

Tomás Enrique CARRILLO BATALLA (Coordinator), *La reclamación venezolana sobre la Guayana Esequiba* ("Venezuela's Claim to the Guyana-Essequiba"), *Academy of Political and Social Sciences* Series: Events 2, Caracas, 2008. Pages 29-30.

[1235] Presentation by Doctor Carlos SOSA RODRÍGUEZ, the Venezuelan Ambassador to the UN, on 22 February 1962. Available at http://esequibonuestro.blogspot.com/2012/03/exposicion-del-embajador-de-venezuela.html.

legal grounds. Lord Russell immediately replied: I entirely disagree with you. I think that international arbitrations should be conducted on a broader basis and that they should take into consideration questions of international policy. From that moment, I understood that we could not count on Lord Russell to decide the boundary question on the basis of strict law"[1236].

A completely different perception Severo Mallet-Prevost had of Lord Collins, whom he met on 1 June 1899 after the speeches of the Attorney General of the United Kingdom Sir Richard Webster and the author of this memorandum, which lasted 26 days[1237]. Lord Collins was much more animated, willing to investigate and, above all, to understand and analyse the controversy and the titles that supported the claims of the parties. Of him, Severo Mallet-Prevost says that *"it was quite obvious that Lord Collins was sincerely interested in fully realizing the facts of the matter and in determining the law applicable to those facts. He, of course, gave no indication as to how he would vote on the question; but his whole attitude and the numerous questions he asked were critical of the British allegations and gave the impression that he was leaning towards the side of Venezuela"*[1238].

However, those impressions changed radically after the two-week recess, which took place after the aforementioned speeches were concluded. At that time the English arbitrators travelled to London, together with the President of the Arbitral Tribunal, Fedor Fedorovich Martens.

According to the Mallet-Prevost memorandum, when Lord Collins returned from the United Kingdom to Paris after that vacation, he was not the same as when he had left. Evidently, several events took place in the United Kingdom that we do not know about but that, probably, obeyed to political interests of the powers involved in the controversy: Russia, the United Kingdom and the United States of America. Severo Mallet-Prevost was convinced that something had happened. Indeed,

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[1236] See: the Posthumous Memorándum of Severo MALLET-PREVOST in Otto SCHOENRICH, Quoted Above, Page 32.

[1237] *Cf.* Otto SCHOENRICH, Quoted Above, Page 32.

[1238] *Ídem.*

"Mr. Mallet Prevost stated that he was certain that the attitude of the British members and the Russian member of the Arbitral Tribunal was the result of a negotiation between Great Britain and Russia whereby the two Powers induced their representatives on the Tribunal to vote as they did, and Great Britain probably gave Russia advantages in another part of the globe"[1239].

In the memorandum, Severo Mallet-Prevost narrated the irregularities that occurred during the arbitration, especially, those referring to the lack of impartiality of the President of the Arbitral Tribunal Fyodor Fyodorovich Martens, who pressured the American arbitrators David Josiah Brewer and Melville Weston Fuller to decide unanimously, under the threat that, in case of not doing so, Venezuela would lose even the Bocas del Orinoco. Indeed, attorney Severo Mallet-Prevost wrote the following:

"If the American Judges did not accept that line, Martens would vote with the British Judges in favour of the line claimed by Great Britain, which would thus become the boundary by a majority vote of the Tribunal. Justice Brewer said that he and Justice Fuller, the other American Arbitrator, were greatly disturbed by such a proposition, for they thought that the facts clearly showed that Venezuela was entitled to considerable territory east of the Orinoco. He and Justice Brewer were prepared to reject the Russian proposal and submit a strong minority vote in favour of the line they believed to be just. However, the result would be a majority decision granting Great Britain a valuable territory that would thus be taken away from Venezuela"[1240].

In this regard, it is worth taking into account the letter that Sir Richard Webster, the lawyer of the United Kingdom, sent to Lord Salisbury, Prime Minister of the United Kingdom, dated 19 July 1899, in which he expressed the following: "*I do not propose to make any concession. If I have any reason to believe that the Court is against me*

1239 *Ibidem,* Page 30.

1240 Otto SCHOENRICH, "Materia de excepcional importancia para la historia diplomática de Venezuela. La disputa de límites entre Venezuela y La Guayana Británica" ("A Matter of Exceptional Importance for Venezuelan Diplomatic History. The dispute over the borders between Venezuela and British Guiana"), *Bulletin of the Academy of Political and Social Sciences*, Vol. 14, No. 1-2-3-4, Caracas, 1949. Page 30.

in this part of the case, I shall do my best to let the British arbitrators know our views on the position"[1241].

It was obvious that none of the British arbitrators complied with the duty of impartiality, which is a fundamental duty in international arbitrations. In any case, this suspicion is confirmed by another letter from Richard Webster himself sent to Joseph Chamberlain, Secretary of State for the Colonies, dated 19 July 1899, in which he expressed the following: *"If I find it necessary to take any independent action, I shall do so privately through our own Arbitrators and only when I am satisfied that, having regard to expressions of opinion on the part of any member of the Tribunal, it is desirable that our Arbitrators should appreciate our views"*[1242].

In fact, Attorney Richard Webster again communicated with Lord Salisbury and Joseph Chamberlain on 3 October 1899. To the former he said, *"There are one or two important matters in connection with the arbitration which I cannot express very well in writing"*[1243] *and to the latter he wrote as follows, "When you can spare me a few minutes, there are one or two matters in connection with the arbitration which I would like to talk to you about. I cannot express them very well in writing"*[1244].

All of the above confirms that Venezuela-U.K. territorial dispute cannot be fully understood without looking at the Arbitral Award of 3 October 1899 "*within a general historical framework and in terms of*

[1241] Letter of Sir Richard E. Webster to the Marquis of Salisbury, 19 July 1899, Christ Church College, Oxford, Cecil Papers, Special Correspondence. Annex 8 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

[1242] Letter of Sir Richard E. WEBSTER to Mr. CHAMBERLAIN, 19 July 1899, Chamberlain Papers, Birmingham University Library, J.C. 7/5. Anex 9 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

[1243] Letter of Sir Richard E. WEBSTER to the Marquis of Salisbury, 3 October 1899, Christ Church College, Oxford, Cecil Papers, Special Correspondence. Annex 11 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

[1244] Letter of Sir Richard E. Webster to Mr. Chamberlain, 3 October 1899, Chamberlain Papers, Birmingham University Library, J.C. 7/5. Anex 9 to the Letter of the Agent of the Bolivarian Republic of Venezuela to the Registrar of the Court, dated 8 November 2022, I.DD No. 001763.

Anglo-Russian relations in the second half of the nineteenth century, in view of their specific interests"[1245].

On 31 August 1907, several years after the coercive execution of the Paris Arbitral Award, an event took place that supports the veracity of Mallet-Prevost's suspicions. On that date, the Anglo-Russian Treaty of Mutual Cordiality was signed, which eased tensions between Russia and the United Kingdom in Central Asia and improved relations between the two countries; with the convention came the independence of Afghanistan, Persia and Tibet. This is confirmed by Dr. Gros Espiell when he observes that: *"The Anglo-Russian rapprochement, initiated in 1895, in accordance with the ideas that Martens had already put forward in 1879, would finally and definitively materialize in the Convention Relative to Persia, Afghanistan and Tibet, signed in St. Petersburg by Isvlasky, Minister of Foreign Affairs of the Russian Empire and Nicolson, English Ambassador, on 31 August 1907"*[1246].

The Anglo-Russian Treaty of Mutual Cordiality was one of the agreements that together with the Franco-Russian Alliance and the Franco-British Entente Cordiale consolidated the Triple Entente[1247], formed by France, Russia and the United Kingdom. The main motivation for this Treaty was "the growing German aggressiveness" and, by virtue of it, the United Kingdom and Russia *"finally settled their historical colonial differences"*[1248].

To detract from the value and credibility of this forceful memorandum by lawyer Severo Mallet-Prevost, Guyana has argued in

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[1245] Héctor GROS ESPIELL (Translator), Quoted Above, Page 48.

[1246] *Ibidem,* Page 72.

[1247] María SOL ALDONATE, *"A 110 años. Formación de la Triple Entente"* ("110 Years Later. Formation of the Triple Entente."), Universidad de la Plata-International Relations Institute, Buenos Aires, 2017. *"In 1912, France and Russia ratified their alliance through a protocol in which they established that both powers supported the political-strategic goals of each other and agreed to intervene should one of them be attacked. Great Britain, on its part, having entered into an alliance for a different reason (concerned with keeping its dominance over the seas and the power of its Empire), considered it appropriate to strengthen its position in the North Sea in light of the German advances."*

[1248] See: "Acuerdo Anglo-Ruso 1907" ("The 1907 Anglo-Rusian Agreement") in Glosario de Historia de las Relaciones Internacionales durante el siglo XX ("Historical Glossary of Unternational Relations in the XX Century"). Available at: http://www.historiasiglo20.org/GLOS/angloruso.htm.

its application to the ICJ that the memorandum was disclosed many years after the award was rendered and that it is dubious because of the close relations of its author with Venezuelan State ,which even awarded him the Order of the Liberator[1249]. Such a consideration is rather banal, since there is no sustainable causal relationship between the receipt of an award and the preparation of a letter with posthumous effect, from which no benefit can be extracted for the signatory or any interest that he represents at the time of its dissemination.

74. **26 March 1951**: The IV Meeting of American Foreign Ministers began. There, Luis Emilio Gómez Ruiz, Minister of Foreign Relations of Venezuela, denounced the nullity of the Paris Arbitral Award of 1899.

75. **28 March 1954**: The X Pan American Conference, known as the Caracas Conference, took place, where Dr. Ramón Carmona, Legal Consultant of the Ministry of Foreign Relations of Venezuela, ratified the position assumed in 1951 by Luis Gómez Ruiz, Minister of Foreign Relations of Venezuela, that no change in the status of the Colony of British Guiana could affect the legitimate territorial rights of Venezuela.

76. **1956**: José Loreto Arismendi, Minister of Foreign Relations of Venezuela during the government of Marcos Pérez Jiménez, ratified the position of Luis Gómez Ruiz, Minister of Foreign Relations of Venezuela, and Ramón Carmona, Legal Consultant of the Ministry of Foreign Relations of Venezuela, that no change of status of the British Guiana Colony would affect the legitimate territorial rights of Venezuela.

77. **1960**: Rigoberto Henríquez Vera, diplomat and congressman, ratified the opinion previously expressed by Luis Gómez Ruiz, Minister

[1249] International Court of Justice, "Memorial of Guyana", Volume I, Page 13. "In its pursuit of this goal, Venezuela attempted to impugn the validity of the Award that respected, affirmed, and sustained till then, for over six decades.For this purpose, Venezuela invoked a secret memorandum, supposedly written in 1944 by Severo MALLET-PREVOST, a not so prominent member of the Venezuelan legal team in the 1899 arbitral process, supposedly containing instructions that it should not be published until after his death (that took place in 1949). It is said that the memorandum was written 45 years after the events that it supposedly described, and in the same year in which Venezuela bestowed the Orden del Libertador on Mr. MALLET-PREVOST "in testimony of the high esteem the Venezuelan people have and always shall have for him."

of Foreign Relations of Venezuela, Ramón Carmona, Legal Advisor to the Ministry of Foreign Relations of Venezuela, and José Loreto Arismendi, Minister of Foreign Relations of Venezuela, before the Chamber of Deputies of Venezuelan Congress, in the presence of a parliamentary delegation from the United Kingdom. That is, that no change in the status of the colony of British Guiana would affect the legitimate territorial rights of Venezuela, and demanded the reparation for the injustice suffered as a result of the Paris Arbitration Award.

78. **22 February 1962**: Carlos Sosa Rodríguez, Permanent Representative of Venezuela to the United Nations Organization during the 130th meeting of the XVI Annual Session of the General Assembly of the United Nations, ratified the position of the Ministry of Foreign Relations of Venezuela that a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice.

79. **12 November 1962**: Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, presented a statement before the 348th Session of the Special Political Committee of the XVII United Nations Assembly on 12 November 1962. On that occasion, he ratified the position of Ambassador Carlos Sosa Rodríguez with respect to the claim and invoked the historic Venezuelan position that the Paris Arbitral Award is null and void.

80. **18 March 1965**: *The report presented by Venezuelan experts Ojer and Gonzalez to the national government*[1250] on the question of the boundaries with British Guyana has been published. It refers to the titles of Venezuela over the Essequibo territory; the details of the controversy between Venezuela and the United Kingdom during the XIX Century; the lack of participation of Venezuela in the formulation of the Treaty of Washington of 1897 and the reasons why the Paris Arbitration Award is null and void. In addition, the report includes statements by personalities who participated in the Paris Arbitration, the reactions of the international press, and several maps that demonstrate that the process openly violated Venezuela's legitimate rights.

With regard to Venezuela's titles to the Essequibo territory, the report points out that Spain was the State that discovered and colonized

[1250] Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above.

the territory of Guyana, a fact that was recognized by the other powers between the 15th and 16th centuries. When the Treaty of Münster was signed, there was no Dutch post located west of the Essequibo River.

The Jesuit experts, Ojer and Gonzalez, relate that the Dutch only had insignificant posts in the area for a very short time which constituted violations of the Treaty of Münster. They argue, the United Kingdom obtained the territory of British Guiana upon the signing the Treaty of London in 1814. However, the boundary with Venezuela was always located at the Essequibo River. This is stated in the Cruz Cano Map, published by Francisco de Miranda in 1799 with the approval of the British government.

Ojer and González state in their report that even when Venezuela was part of the Republic of Colombia, it was always made known to the United Kingdom that the border with the British Guiana Colony was the line of the Essequibo River. These statements are supported by the diplomatic declarations of Francisco Antonio Zea in 1821; José Rafael Revenga in 1823; José Manuel Hurtado in 1824 and Pedro Gual in 1825. In addition, as the Jesuit fathers state in their report, *"when Spain signed in Madrid on 30 March 1845 the* Treaty of Recognition *of the sovereignty of our country over the territory known under the old name of the General Captaincy of Venezuela, it included the Province of Guayana, bordered to the East by the Essequibo River"*[1251].

The report includes a study of the Anglo-Venezuelan controversy, revealing the progressive increase in British claims after the publication of the first Schomburgk line in 1835 and the formal beginning of the controversy in 1840 with the so-called pseudo-Schomburgk line.

According to information gathered by experts from British confidential archives, *"both the Foreign Office and the Colonial Office rejected Schomburgk's arguments in favour of his 1840 pseudo-line. Those two Ministries concluded that the Prussian naturalist had misinterpreted historical documents and had used them with partiality and sectarianism"*[1252].

Furthermore, the report states that when Schomburgk was again commissioned to survey the border between Venezuela and British

[1251] *Ibidem,* Page 8.
[1252] *Ídem.*

Guiana -based on the 1840 line- he exceeded the instructions given to him by the government and *"erected posts, marked trees and made acts of possession that gave rise to formal protests by Venezuela"*[1253].

Moreover, as Ojer and Gonzalez point out, *"Lord Aberdeen's minutes of 1841 qualify Schomburgk's action as premature, stating that, as a surveyor, he had no reason to take possession"*[1254].

In any case, from the review of British Archives by Jesuit experts it follows that *"the internal documentation of the Foreign Office, the Colonial Office and the Government of Demerara reveals that the publication of the maps that included the pseudo-Schomburgk line of 1840 had an official nature and represented the maximum British claim against Venezuela. Thus, we know today that it was under the direction of the British Government and the Demerara Government that the following maps were prepared: (a) The Foreign Office Memorandum Map of 1857 on the Guiana controversy; (b) The Memorandum map of C. Chalmers, Crown Surveyor of the Colony (1867); (c) The Schomburgk-Walker map of 1872; (d) The Brown map of 1875; (e) The Stanford map of 1875"*[1255]. All these maps make it clear that the United Kingdom recognized from 1840 to 1886 *"as Venezuelan territories without dispute all the upper Barima and all the Cuyuní from its headwaters to the mouth of the Otomong"*[1256].

British aspirations grew rapidly under pressure from the mining interests of the United Kingdom.. The United Kingdom *"further advanced its colonialist ambitions to near Upata, a few kilometres from the Orinoco, with the so-called line of the British maximum claim"*[1257].

Ojer and Gonzalez's research confirmed that *"Great Britain rejected the constant Venezuelan proposals to submit the issue to arbitration because its government considered that it lacked arguments and that a fully judicial decision would be unfavourable"*[1258] and thereby always refused to resolve the territorial dispute with Venezuela through arbitration.

[1253] *Ibidem,* Page 10.
[1254] *Ídem.*
[1255] *Ídem.*
[1256] *Ídem.*
[1257] *Ibidem,* Page 11.
[1258] *Ídem.*

Researchers Ojer and Gonzalez explain the reason why the United Kingdom constantly changed its position regarding the border of the British Guiana Colony with Venezuela. It was the fact that the United Kingdom never trusted its title to the disputed territory[1259]. That is why "*the Aberdeen (1844), Granville (1881), Rosebery (1886) and other lines all responded to the interests of the British Guiana colonists in their respective periods"*[1260].

When the United Kingdom of Great Britain and United Kingdom finally agreed to settle the dispute with Venezuela through arbitration after the intervention of the United States of America, the negotiations of the Washington Arbitration Treaty began. Regarding this treaty, Ojer and Gonzalez state that *"this investigation proves that during the course of the negotiations Venezuela was kept marginalized, particularly in the final and most important phase. Consulted on the prescription clause, negotiations continued despite and against the objections of Venezuelan Ministry of Foreign Relations. Moreover, Richard Olney agreed with Great Britain to exclude Venezuela from the Arbitral Tribunal"*[1261].

Regarding the prescription rule, included in Article IV of the Treaty of Washington, the aforementioned report allows us to conclude that even if the British misinterpretation of the prescription rule is accepted, the possibility of granting such a vast territory to the United Kingdom does not follow from it.

Indeed, the map included in the report shows that the territory that the United Kingdom could acquire through the prescription rule was much smaller than the one finally granted by the award to the United Kingdom. The map clearly shows which territories were occupied by the British in 1840, then between 1886 and 1890, and then after 1890. Thus, the prescription clause was not applicable to a territory as vast as the one finally awarded to the United Kingdom; on the contrary, the prescription rule could only be applied to a considerably smaller territorial portion[1262].

1259 *Ídem.*
1260 *Ídem.*
1261 *Ídem.*
1262 *Ídem.*

Undoubtedly, the territory shown on the map is significantly smaller than that awarded to the United Kingdom in the Paris Arbitral Award, since, even in the worst of interpretations, these were the territories to which the prescription rule could apply. Therefore, the Paris Arbitral Award wrongly applied the prescription rule in favour of the United Kingdom, thereby violating Article IV of the arbitration treaty and it was flawed because the arbitrators exceeded their powers.

Another serious violation of the treaty's obligations imposed on the arbitrators is related to the so-called first Schomburgk line of 1835, which was not taken into account by the judges. This first Schomburgk line *"only diverges from said river about 45 miles approximately from the* coast*, at the confluence of the Mazaruni and Cuyuní Rivers with the Essequibo and thence forming a sort of pocket, west of the Essequibo River, to the point on the* coast *where the Moroco River flows into it"*[1263]. Previously, and on the contrary, the arbitral tribunal took into account the extended line of Hebert's map of 1842, a line which shows significant evidence of falsification and alteration, namely:

"Venezuela has evidence that the British Foreign Office did not know of this line until June 1886. This is a serious indication that the original map, in the possession of the Colonial Office since 1842, had been corrupted"[1264].

As for the flaws in the Paris Arbitral Award, the report states that *"the first flaw in the 1899 Award is that it purported to attribute legal value to a line adulterated by Great Britain: the so-called expanded line of the 1842 Hebert map"*[1265].

The lack of reasoning was also denounced in the report as one of the flaws of the Paris Arbitral Award. In this regard, they stated the following: *"We can affirm that the Arbitral Tribunal that rendered*

[1263] Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, "*Informe que los expertos venezolanos para la cuestión de límites con Guayana Británica presentan al gobierno nacional"*, ("The Venezuelan Experts' Report to National Government in the matter of the Border with British Guiana"), *Bulletin of the Academy of Political and Social Sciences,* Nº 91, Caracas, 1983. Page 122.

[1264] Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 13.

[1265] *Ídem.*

the judgement in the British-Venezuelan border dispute did not fulfil its obligation and, therefore, by submitting a decision without the corresponding reasoning, it did not proceed in accordance with the rules of international law. As a result, the decision of the Arbitral Tribunal lacks validity in international law, at least as of the date on which such invalidity is invoked"[1266].

Ojer and Gonzalez pointed out in their report that the Paris Arbitral Award was also invalidated because the arbitrators exceeded their powers. First of all, it must be noted, as pointed out by the experts that *"the arbitral compromise, as established in 1897, had provided that the decision should be based on the principles of law and in particular on the principle of uti possidetis juris of 1810"*[1267].

Despite the terms set forth in the Treaty of Washington and as confirmed by the report *"the decision of the Arbitral Tribunal did not took into account either the principle of uti possidetis juris or the stipulation contained in Rule "a" of Art. IV, and, even in the interpretation most favourable to Great Britain, the Tribunal exceeded its powers, since it did not state the reasons for which it attributed to that country dominion over that territory during the fifty years prior to the award, the only truth being that those territories belonged, prior to 1810, to the General Captaincy of Venezuela, a future independent State"*[1268].

Furthermore, the Paris Arbitral Award was flawed for arbitrators ruled *ultra petita*, as *"the Arbitral Tribunal exceeded its powers by deciding and regulating an issue whose examination had not been contemplated in the arbitral compromise; that is, it ruled on the free navigation of the Barima and Amacuro Rivers and regulated their use"*[1269].

Ojer and Gonzalez ratified in their investigation that the Paris Arbitral Award had another flaw that *"consists in not having been a decision of law, in accordance with the agreement, but a compromise"*[1270]. This is

[1266] *Ibidem,* Page 14.
[1267] *Ídem.*
[1268] *Ibidem,* Page 16.
[1269] *Ídem.*
[1270] *Ibidem,* Page 17.

recognized by the American and European press, the members of the Paris Arbitral Tribunal and the lawyers of the parties[1271].

The documents reviewed by Ojer and González in the British Archives showed that *"the award was a compromise obtained by extortion"*[1272] in the nature of a political bargain. Several statements concur in this conclusion, among them, those of Severo Mallet-Prevost; George Buchanan; Perry Allen; Sir Richard Webster; Lord Russell; José María Rojas; José Andrade; L. de la Chanonie; Georges A. Pariset; Caroline Harrison; Charles Alexander Harris; A. L. Mason and R.J. Block[1273].

Ojer and Gonzalez agreed with the opinion of several experts in international arbitration between States that: *"the authors and practice of international law generally admit the nullity of awards in two cases: in the case of incompetence of the judge (absence of a valid arbitration agreement or treaty), or in the case of arbitrators exceeding their powers (extension of the decision on matters that were not included in the arbitration or judicial agreement, or application of rules such as those of equity, for example, which had been explicitly or implicitly excluded by the parties)"*[1274].

Regarding the enforcement of the Paris Arbitral Award, Ojer and Gonzalez insisted that *"if Venezuela concurred with Great Britain in the demarcation of the so-called boundary of the award, it was because of the tremendous pressure of circumstances, to avoid greater evils"*[1275]. They also pointed out that the participation of Venezuelan commission in the demarcation was of a strictly technical nature and *"did not imply assent to the alleged judgment of the Arbitral Tribunal"*[1276].

Venezuela protested the Paris Arbitral Award since it was rendered. The experts state in their report that the first official claim before the Paris Arbitral Award was made by José María Rojas, who was the only Venezuelan lawyer who forming part of the country's defence team

1271 *Ídem.*
1272 *Ídem.*
1273 *Ídem.*
1274 *Ibidem,* Page 16.
1275 *Ibidem,* Page 22.
1276 *Ídem.*

during the Paris Arbitration. On 4 October 1899; and once the Paris Arbitration Award was rendered, he severely criticized the decision, stating that it was a derisory decision and a manifest injustice[1277]. President Ignacio Andrade also criticized the Paris Arbitral Award and indicated that the decision "*had only restored to Venezuela a part of its usurped territory"*[1278].

Venezuelan press immediately reacted by criticizing the Paris Arbitral Award. In fact, experts Ojer and Gonzalez reported in their report of 17 October 1899, published in the newspaper El Tiempo they denounced the arbitral decision[1279].

In a note dated 4 December 1899, the British Minister in Caracas at that time, "*stated his opinion about the justice of the so-called award"*[1280]. Faced with this situation, Venezuelan Minister of Foreign Relations responded a few days later and indicated that he could refute the arguments of the British Minister in Caracas[1281]. As a result, the Minister of Foreign Relations *"came to the conclusion that the arbitration decision contained such flaws that authorized him to invoke its invalidity. He decided not to denounce it because he could not face the formidable power of his adversary, since he no longer had the support of the United States, which had come to an entente with the United Kingdom"*[1282].

The rapprochement between the United States of America and the United Kingdom during the Paris Arbitration became more evident with the words of the English press a day after the Paris Arbitral Award was rendered, which read as follows: "*We have no doubt that the United States will force Venezuela to accept the verdict and that they will act appropriately in the event that problems arise with respect to the enforcement of the decision"*[1283].

1277 *Ibidem,* Page 21.
1278 *Ídem.*
1279 *Ídem.*
1280 *Ídem.*
1281 *Ídem.*
1282 *Ídem.*
1283 *Ídem.*

Venezuelan claim of the Essequibo territory at some moments in our history could not be raised with all the force it deserved, but there were reasons for this. Indeed, the report states, *"the internal and international situation of Venezuela in the* first *half of the 20th Century forced it to postpone the denunciation of the award. But the press, Venezuelan writers and Venezuelan teachers have been teaching successive generations that the boundaries of the award do not correspond to Venezuela's legitimate rights"*[1284].

On 5 December 1899, the British Minister in Caracas sent a note to the government of the United Kingdom indicating that Venezuela intended to postpone the demarcation of the border established in the Paris Arbitral Award[1285].

According to Ojer Celigueta y González *"in July 1900, the British Minister notified the Government of Venezuela that if a Commission was not sent before 3 October Great Britain would proceed alone to initiate the demarcation. On 8 October the same Minister notified The Venezuelan Foreign Ministry that the Governor of British Guiana had been instructed to begin the demarcation work. On the 19th the British Commissioners had already erected the Punta Playa milestone. Venezuela, faced with this manifest pressure, had no alternative but to send a demarcation Commission"*[1286].

According to the report, Venezuela from 1915 to 1917 *"insisted in vain before Great Britain to redo the demarcation of some sectors of the frontier, the British Government resisted this, basing itself on the painful war circumstances their country was going through"*[1287]. Venezuela had to wait for better conditions to claim with all the force that an injustice of that magnitude demanded, but the position of rejection of the Paris Arbitral Award had been fixed since 4 October 1899.

During the twentieth century, Venezuela insisted on many occasions on the need to redress the grave injustice it had suffered as a result of the Paris Award. Among them, Ojer and González point out the following:

1284 *Ibidem,* Page 22.
1285 *Ibidem,* Page 21
1286 *Ídem.*
1287 *Ibidem,* Page 22.

i. In 1944, Venezuelan Ambassador in Washington, Diógenes Escalante, *"invoking the new spirit of equity among nations, demanded the amicable reparation of the injustice committed by the award"*[1288].

ii. On 30 June 1944, during the session of the Chamber of Deputies of Venezuelan Congress, Congressman José A. Marturet *"ratified the traditional position of Venezuela before the award, demanding the revision of its borders with British Guyana"*[1289]. (Highlighting Added).

iii. On 17 July 1944, the President of Venezuelan Congress, Manuel Egaña, during the closing session of that legislative body, expressed his support for the position of the Executive Branch and said: "*And here I want to take up and confirm the desire for revision expressed before the world and in the presence of the President of the Republic by Ambassador Escalante, and before this Congress, categorically, by Deputy Marturet; I want to take up and confirm, I repeat, the desire for revision of the sentence by which British imperialism dispossessed us of a large part of our Guyana"*[1290].

iv. On 18 July 1944, press statements by members of the Standing Committees on Foreign Relations of the Legislative Chambers, *"who represented different political parties, also expressed themselves on the need to revise the 1899 award"*[1291].

v. On 30 March 1948, Rómulo Betancourt, who headed Venezuelan delegation that attended the IX International American Conference, expressed that *"In advocating the principle of self-determination of colonial peoples to decide about their own destiny, we do not deny in any way the right of certain nations of America to obtain certain portions of hemispheric territory that in justice may belong to them, nor do we renounce what Venezuelans, in the event of a serene and cordial revaluation of the history and geography of the*

1288 *Ibidem,* Page 23.
1289 *Ídem.*
1290 *Ídem.*
1291 *Ídem.*

Americas, could assert in favour of their territorial aspirations over areas now under colonial tutelage and which were formerly within our own sphere"[1292].

vi. In 1949, Severo Mallet-Prevost's memorandum was published *"which revealed the intimacies of the Paris farce"*[1293]. This led Venezuelan historians, under the instructions of Venezuelan Ministry of Foreign Relations, *"to search in the British Archives for new documents that would further clarify the details of that farce. Fifty years had passed and for the* first *time it was possible to study those documents in the public archives of Great Britain"*[1294].

vii. In 1951, during the administration of Acting President Germán Suárez Flamerich, the Minister of Foreign Relations of Venezuela, Luís Gómez Ruíz, during the IV Meeting of Consultation of the Ministers of Foreign Affairs of the American Countries, demanded *"the equitable rectification of the injustice committed by the Court of Arbitration"*[1295]. On the other hand, and during that same moment, the Charge of the Ministry of Foreign Affairs, Rafael Gallegos Medina, declared before the press in Caracas that: *"The Ministry of Foreign Affairs has never renounced to this just aspiration of Venezuelans"*[1296].

viii. In March 1954, during the X Inter-American Conference held in Caracas, the legal consultant of the Ministry of Foreign Affairs, Ramón Carmona, expressed the following: "*In accordance with the foregoing, no decision regarding colonies adopted at the present Conference may diminish the rights that belong to Venezuela in this respect or be interpreted, in any case, as a renunciation of the same"*[1297].

ix. In February 1956, Venezuelan Minister of Foreign Relations, José Loreto Arismendi, *"ratified the traditional Venezuelan*

[1292] *Ibidem,* Pages 23-24.
[1293] *Ibidem,* Page 24.
[1294] *Ídem.*
[1295] *Ídem.*
[1296] *Ídem.*
[1297] *Ídem.*

position regarding the boundaries with that colony, that it would not be affected by any change of status that might take place in that border territory"[1298].

x. In March 1960, the diplomat and deputy Rigoberto Henríquez Vera, in the Chamber of Deputies of Venezuelan Congress and in the presence of a parliamentary delegation from the United Kingdom, pointed out that: "*A change of status in English Guiana will not invalidate the just aspirations of our people for equitable reparations, and through cordial understanding, for the great damages suffered by the nation by virtue of the unjust ruling of 1899, in which peculiar circumstances prevailed that caused our country the loss of over sixty thousand square miles of its territory"*[1299].

xi. In February 1962, Venezuelan Ambassador to the UN, Dr. Carlos Sosa Rodríguez, ratified before the UN Commission on Trusteeship and Non-Self-Governing Territories the position held by Venezuelan Ministry of Foreign Relations according to which a change in the status of the colony of British Guiana would not change the legitimate Venezuelan aspiration to obtain justice[1300].

xii. During the sessions dated 28 March and 4 April of 1962 of the Chamber of Deputies of Venezuelan Congress "after hearing the addresses of the representatives of all political parties in support of the position of Venezuelan Ministry of Foreign Relations on the award, the following agreement was approved: "*To endorse the policy of Venezuela on the boundary dispute between the English possession and our country regarding the territory of which we were dispossessed by colonialism; and, on the other hand, to support without reservation the total independence of English Guiana and its incorporation into the democratic system of life"*[1301].

1298 *Ibidem,* Page 25.
1299 *Ídem.*
1300 *Ídem.*
1301 *Ibidem,* Page 25.

xiii. On 12 November 1962, Marcos Falcón Briceño, Minister of Foreign Relations of Venezuela, ratified before the 348th Session of the Special Political Committee of the XVII United Nations Assembly the position of Ambassador Carlos Sosa Rodríguez regarding the claim and invoked the historical Venezuelan position that the Paris Arbitral Award is null and void[1302].

According to the report, after the conversations between the representatives of the United Kingdom and Venezuela *"an agreement was reached between those two countries, with the concurrence of the Government of British Guiana, whereby the three Governments would examine the documents relating to this question, and that they would inform the United Nations on the results of the conversations. This was so declared, with the authorization of the parties concerned, by the Chairman of the Special Political Committee, Mr. Leopoldo Benitez (representative of Ecuador) on 16 November 1962"*[1303].

xiv. In November 1963, after some agreements had been reached through diplomatic channels, *"the Foreign Ministers of Venezuela and the United Kingdom, Dr. Marcos Falcón Briceño and the Honourable R. A. Butler, respectively, met in London"*[1304].

xv. On 5 November 1963, Venezuelan Minister of Foreign Relations, Marcos Falcón Briceño, "*presented to Her Britannic Majesty's Foreign Secretary an Aide-Memoire on Venezuela's views on the dispute"*[1305]. The conclusion of that aide-memoire was that: *"Historical truth and justice demand that Venezuela claim the full return of the territory of which it has been dispossessed"*[1306]. In that same meeting, Ojer participated as an exponent of the historical side of Venezuelan claim over the Essequibo territory, should it be necessary to expand on

1302 *Ídem.*
1303 *Ibidem,* Page 26.
1304 *Ídem.*
1305 *Ídem.*
1306 *Ídem.*

the explanations of the Minister of Foreign Relations Marcos Falcón Briceño[1307].

The report has an additional value, as the first page indicates: *"Each of the statements contained in this Report are supported by their respective documents, which were presented to Great Britain in the conversations between experts, during the 15 sessions that took place in London between the months of February and May 1964"*[1308].

The Ojer & Gonzalez report is one of the most convincing elements that Venezuela has to prove the nullity of the Paris Arbitral Award. Referring to this report, Dr. Óscar García-Velutini recalls that *"the* first *conclusion formulated therein is that Venezuela had to accept the Arbitration Treaty of 1897 under undue pressure and deceit on the part of the United States and Great Britain, which negotiated the basis of the compromise to the exclusion of the Venezuelan Government in the last and decisive phase of the negotiation; and Venezuela, the Report continues, was so neglected, that the United States and Great Britain agreed from the beginning of the negotiation that no Venezuelan jurist would be part of the Arbitral Tribunal"*[1309].

81. **17 February 1966**: Aristides Calvani, Minister of Foreign Relations of Venezuela, signed the Geneva Agreement intended to lead the parties to a practical settlement of the dispute on the basis of Venezuelan contention that the Paris Arbitral Award is null and void.

82. **13 April 1966**: Venezuelan Congress ratified the Geneva Agreement by the *"Law approving the Agreement signed in Geneva on 17 February 1966 by the Governments of Venezuela and the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana, to settle the controversy between Venezuela and the United Kingdom on the boundary with British Guiana"*.

1307 Pablo OJER CELIGUETA, Quoted Above, Page 44.

1308 Hermann GONZÁLEZ OROPEZA and Pablo OJER CELIGUETA, Quoted Above, Page 1.

1309 Oscar GARCÍA-VELUTINI, "*Facultad, acción y efecto de arbitrar"* ("The Power, Action and Effect of Arbitrating"), Editorial Arte, Caracas, 1960. Page 17.

83. **26 May 1966**: The United Kingdom recognized the independence of Guyana in the Commonwealth of Nations. In addition, Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, sent from Caracas the respective note of recognition of the new State. Venezuela only recognized the territories of the new State located east of the Essequibo River, safeguarding its rights over the Essequibo Guiana.

84. **18 June 1970**: During the first government of President Rafael Caldera, the Minister of Foreign Affairs, Aristides Calvani, signed the Protocol of Port of Spain, subscribed between Venezuela, the United Kingdom and Guyana. Roland Charles Colin Hunt, High Commissioner of the United Kingdom of Great Britain and Northern Ireland in Trinidad and Tobago, signed for the United Kingdom, and Minister of State Shridath S. Ramphal signed on behalf of Guyana.

The Port of Spain Protocol was signed four years after the adoption of the Geneva Agreement, during which time the Mixed Commission failed to settle the dispute. The purpose of the Port of Spain Protocol was to suspend the application of the Geneva Agreement for a period of 12 years, thus paralyzing the dispute and delaying the application of the means of settlement provided p in Article 33 of the UNC.

When Venezuela signed the Port of Spain Protocol, it was negotiating the delimitation of marine and submarine areas north of the Gulf of Venezuela with the Republic of Colombia[1310]. For this reason, Venezuela decided to suspend the effects of the Geneva Agreement and take care of the border problems it had with the Republic of Colombia.

85. **4 April 1981**: President Luis Herrera Campíns, made public that the government of Venezuela was not willing to extend the Protocol of Port of Spain[1311].

[1310] Sobre esto véase en general AREA PEREIRA, Leandro, *"A vuelo de pájaro: La delimitación de las áreas marinas y submarinas al norte del Golfo de Venezuela"*, ("A Quick Look at the Delimitation of Marine an Submarine Areas North of the Gulf of Venezuela") in *La diplomacia venezolana en democracia (1958-1998)* ("Venezuelan Diplomacy in Democracy. Fernando GERBASI (compilation), Kalathos Ediciones, Madrid, 2018.

[1311] *"Del Acuerdo de Ginebra al Protocolo de Puerto España"* ("From the Geneva Agreement to the Port of Spain Protocol"), on the Web-Site: *El Espacio Acuático Venezolano* (The Venezuelan Acquatic Space). Available at: https://elespacioacuaticovenezolano.com/2015/09/24/del-acuerdo-de-ginebra-al-protocolo-de-puerto-espana-sectoracuatico-elesequiboesnuestro/.

86. **10 April 1981**: The declaration of the Minister of Foreign Relations, Doctor José Alberto Zambrano Velasco, referring to the decision not to extend the Geneva Agreement was made public. In said statement the Minister of Foreign Affairs expressed, among other things, the following:

> *"The National Government has made public by a communiqué dated 4 April 1981 the decision of President Herrera Campíns not to extend the Port of Spain Protocol. This is undoubtedly a transcendental determination, which places our just claim over the Essequibo Territory in a clear perspective. Therefore, to continue the controversy on whether or not the Port of Spain Protocol should be denounced; or whether or not it should have been signed eleven years ago, seems unnecessary and even sterile. The Government's decision does not lend itself to interpretation. Without stopping to assess the historical significance of the Port of Spain Protocol, the truth is that this instrument will not be renewed and the Government believes that new ways must be explored to materialize our claim and believes that its decision reflects the national sentiment"*[1312].

87. **11 December 1981**: the Ministry of Foreign Affairs issued a communiqué regarding the provisions of Article IV of the Geneva Agreement, which after the decision not to renew the Port of Spain Protocol, which included the route to follow to achieve the resolution of the boundary controversy between Venezuela and Guyana. That communiqué expressed that:

> *"After more than eleven years of application of the Port of Spain Protocol, President Luis Herrera Campíns, interpreting a broad national consensus, and in the full conviction that such determination is the most adequate for the interests of the country and for the guarantee of international peace and security, has decided to put an end to the application of that Treaty as of 18 June 1982.*

[1312] Declaration of Chancellor Doctor José Alberto ZAMBRANO VELASCO regarding the non-extension of the Port of Spain Protocol (Caracas, 10 April 1981)" on the Web-Site: *El Esequibo en nuestro*. (The Essequibo is Ours) Available at: http://esequibonuestro.blogspot.com/search?q=4+de+abril+de+1981.

As a consequence of that decision, as of the aforementioned date our claim will be governed by the Geneva Agreement and, specifically, by the provisions of its Article IV, which refers to the means of peaceful settlement set forth in Article 33 of the United Nations Charter, which are: 1) Negotiation; 2) Investigation; 3) Mediation; 4) Conciliation; 5) Arbitration; 6) Judicial Settlement; 7) Recourse to Regional Organizations or Agreements; 8) Other peaceful means.

The decision of the Venezuelan Government not to extend the Port of Spain Protocol entails the firm determination to comply with and demand compliance with the Geneva Agreement. This Treaty establishes an obligation to negotiate a satisfactory solution for the practical settlement of the dispute, so that it is resolved in a manner acceptable to both parties. We have repeatedly complained that Guyana has failed to comply with this obligation to negotiate in good faith. At this moment, when a new turn is being taken on the issue, Venezuela renews the hope that Guyana will rectify this conduct and that genuine negotiations will be undertaken, aimed at resolving the dispute.

The strength of Venezuela's position lies not only in the fact it is right in the face of the injustice committed, but also, and inseparably, in its traditional respect for the international commitments it has undertaken and in its willingness to apply the Geneva Agreement"[1313].

88. **11 November 1989**: Javier Pérez de Cuéllar, Secretary-General of the United Nations, appointed Meredith Grenadian Alister McIntyre as Good Officer in the dispute between Venezuela and Guyana.

89. **20 September 1999**: Meredith Alister McIntyre resigned as Good Officer in the dispute between Venezuela and Guyana.

90. **1 November 1999**: Javier Pérez de Cuéllar, Secretary-General of the United Nations, appointed Barbadian Oliver Jackman as Good Officer in the dispute between Venezuela and Guyana.

[1313] "Communiqué of the Venezuelan Chancellory regarding the provisions of Article IV of the Geneva Agreement (Caracas, 11 December 1981)" on the Web-Site: *El Esequibo en nuestro*. (The Essequibo is Ours) Available at: http://esequibonuestro.blogspot.com/2012/06/comunicado-de-la-cancilleria-de.html

91. **24 January 2007**: Oliver Jackman, Good Officer appointed by the Secretary-General of the United Nations, Javier Pérez de Cuéllar, passed away.

92. **9 October 2009**: Ban Ki-moon, Secretary-General of the United Nations, appointed Norman Girvan as Good Officer in the controversy between Venezuela and Guyana.

93. **9 April 2014**: Norman Girvan, Good Officer appointed by the Secretary-General of the United Nations Ban Ki-moon, passed away.

94. **31 October 2016**: Ban Ki-moon, Secretary-General of the United Nations, informed by a communiqué that it would not be possible to appoint another good officer and decided to incorporate a mediation element to the good offices process. Ban Ki-moon set a deadline of the end of 2017 to determine whether there was significant progress in the good offices process. If not, he would resort to judicial settlement before the ICJ, unless the parties requested him not to do so.

95. **23 February 2017**: Antonio Guterres, Secretary-General of the United Nations, appointed Dag Nylander as Good Officer in the dispute between Venezuela and Guyana. To that end, he took into account the formula indicated by former UN Secretary-General Ban Ki-moon, which implied the incorporation of a mediation element to the good offices process.

96. **30 January 2018**: After no progress was achieved in the good offices process, Antonio Guterres, UN Secretary-General, chose the ICJ as the means of settlement of the territorial dispute, in accordance with his interpretation of the second paragraph of Article IV of the Geneva Agreement.

97. **29 March 2018**: Guyana sued Venezuela before the ICJ and requested it to confirm the validity of the Paris Arbitral Award of 1899.

98. **19 June 2018**: The ICJ set the deadline for the submission of memorial and counter-memorial by Guyana and Venezuela, respectively.

99. **19 November 2018**: Guyana submitted its four-volume memorial to the ICJ.

100. **28 November 2019**: Venezuela sent a memorandum stating that the ICJ has no jurisdiction to hear the matter.

101. **30 June 2020**: A public hearing was held at two o'clock in the afternoon at the Peace Palace, presided over by President Abdulqawi

Ahmed Yusuf concerning the case of the Arbitral Award of 3 October 1899.

102. **18 December 2020**: By judgment dated 18 December 2020, the ICJ decided the matter on jurisdiction initiated pursuant to Article 36.6 of the Statute and declared itself competent to hear the claim filed by Guyana against Venezuela[1314]. By this judgment the ICJ made two very important decisions, one regarding its own jurisdiction to hear the case and the other regarding the scope of such jurisdiction. In effect, the ICJ decided the following:

a. With twelve votes in favour and four against, it decided that it has jurisdiction to hear the claim filed by Guyana on 29 March 2018 regarding the validity of the Arbitral Award of 3 October 1899 and the related issue of the final settlement of the land boundary dispute between Guyana and Venezuela.

   The ICJ admitted the subject matter of the dispute and decided that it is competent to rule on the legal validity of the Paris Arbitral Award of 3 October 1899. To that end, the ICJ will have to analyse the legal and historical titles of the disputing States. At the same time, the ICJ recognizes that declaring the nullity or validity of the Paris Arbitral Award would not put an end to the dispute. Indeed, the ICJ will have to rule on additional or related issues that are decisive for the final settlement of the dispute.

   If the ICJ determines that the Paris Arbitral Award is valid, the boundary situation between Venezuela and Guyana shall be maintained as established in said award. On the other hand, if the ICJ declares the nullity of the Paris Arbitral Award, then it will have to rule on other important aspects. One of them is the new territorial delimitation, which could no longer be the border established by the arbitrators in 1899. Another equally important aspect is the maritime delimitation between the two territories, which has a special commercial impact due to the presence of abundant oil deposits in the area.

[1314] See: International Court of Justice, *Judgment of 18 December 2020* on the Court's Jurisdiction-18 December 2020. Available at: https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-00-EN.pdf

The interpretation of the scope of its own jurisdiction will determine whether the ICJ will be able to resolve directly the related issues referred to above or whether it will entrust this task to another international jurisdictional or political body.

b. The ICJ unanimously decided that it does not have jurisdiction to hear the claims of Guyana arising out of events occurring after the signing of the Geneva Agreement of 17 February 1966[1315]. With this, the ICJ established a critical date, 17 February 1966, when the Geneva Agreement was signed.

The ICJ based its decision on paragraph 2 of Article IV of the Geneva Agreement of 17 February 1966, which states:

> *"If within three months after the receipt of the Final Report, the Government of Venezuela and the Government of Guyana have not reached agreement with respect to the choice of one of the means of settlement provided for in Article 33 of the United Nations Charter, they shall refer the decision on the means of settlement to an appropriate international body to be agreed upon by both Governments,* ***or if no agreement is reached on this point, to the Secretary-General of the United Nations.*** *If the means thus chosen do not lead to a settlement of the dispute, that organ, or,* ***as the case may be, the Secretary-General of the United Nations, shall choose another of the means provided for in Article 33 of the United Nations Charter,*** *and so on, until the dispute has been settled, or until all the means of peaceful settlement contemplated in said Article have been exhausted"*[1316]. (Highlighting Added).

In the case of the dispute between Venezuela and Guyana, the decision was referred to the UN Secretary-General. According to the ICJ, the UN Secretary-General could choose another of the mechanisms established in Article 33 of the UNC. Said provision states in its number 1:

[1315] See: International Court of Justice, "Judgment of 18 December 2020. Jurisdiction of the Court", Page 42. Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171_20201218_JUD_01-00-EN.pdf.

[1316] See: Héctor FAÚNDEZ LEDESMA, Quoted Above, Pages 349 & ff.

> *"The parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration,* ***judicial settlement****, resort to regional agencies or arrangements, or other peaceful means of their own choice"*[1317]. (Highlighting Added).

The ICJ considered that the aforementioned article mentions judicial settlement among the settlement mechanisms. Thus, Article IV.2 empowers the UN Secretary-General to choose the means set forth in Article 33 of the UNC and, consequently, allows him to choose judicial settlement as a means of solution.

In exercising this power, UN Secretary-General Antonio Guterres, in a letter dated 30 January 2018 and sent to both parties, stated that he had chosen the ICJ as the next instance to resolve the dispute.

According to the ICJ, the above reasoning should be considered in the light of Article 36 of the Statute, the first paragraph of which allows it to extend its jurisdiction to any dispute submitted to it by the parties.:

> *"The jurisdiction of the Court shall extend to all disputes submitted to it by the parties and to all matters specifically provided for in the Charter of the United Nations or in the treaties and conventions in force"*[1318].

By the aforementioned judgment, the ICJ established the critical date of the dispute that determines the scope of its jurisdiction in time and limits it to the time the Geneva Agreement was signed. This is equivalent to saying that the ICJ will hear the case with respect to events occurring before 17 February 1966. Of course, it must also consider the rules of the Geneva Agreement, which is the instrument on which the ICJ based its jurisdiction to hear the case.

It is worth emphasizing now the importance of the Geneva Agreement, whose signature not only constitutes the temporal limit of the ICJ's jurisdiction, but it is also a binding instrument for Venezuela, the United Kingdom and Guyana that recognizes the historical

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[1317] *Ídem.*

[1318] Statute of the International Court of Justice. Available at: https://www.icj-cij.org/public/files/statute-of-the-court/statute-of-the-court-es.pdf.

Venezuelan claim regarding the nullity of the Paris Arbitral Award of 3 October 1899.

The recognition of a dispute regarding the validity of the Paris Arbitral Award by the Geneva Agreement suggests that the award is not protected by the principle of intangibility of *res judicata*. Even if the Geneva Agreement did not exist, the Paris Arbitral Award would not be protected by the principle of intangibility either, since it is a decision that suffers from obvious flaws that entails its nullity and only those rulings that have been duly issued have this protection of intangibility.

In this regard, we should take into account the contents of the memorandum sent by Dr. Andres Aguilar Madwsley to Dr. Rafael Caldera in April 1966, referring to the Geneva Agreement signed on February 17th of that same year:

> *"It should not be ruled out that on these or other issues, after lengthy and arduous discussions, it may be concluded that it is not possible to reach an arbitration compromise acceptable to both parties. In such a case, there would be no other recourse than judicial settlement. According to the official interpretation, the agreement implies that the United Kingdom, and eventually the new state of Guyana, will recognize the jurisdiction of the International Court of Justice. Although there are those who believe that this interpretation is questionable because the Agreement does not expressly refer to the International Court of Justice, let us assume that this question does not arise or, if it does, that the Court declares itself to have jurisdiction to hear the dispute..... On this assumption, the Court may consider that its jurisdiction is limited exclusively to the examination of the dispute between Venezuela and the United Kingdom arising from Venezuelan claim that the arbitral Award of 1899 on the boundary between Venezuela and British Guiana is null and void under Article 1 of the Treaty. In other words, the Court can only rule on the validity of the Award... On the other hand, it must be admitted that the Agreement weakens the Award, not because it recognizes the existence of the dispute -as some have argued- but because the United Kingdom has agreed to a procedure which, at least in theory, could have the effect of rendering it null and void. This undoubtedly improves the legal position of Venezuela, which previously had no means of forcing the United Kingdom to*

submit the matter to arbitration or litigation. This is undoubtedly the most positive aspect of the Geneva Agreement, which it would be mean to silence or ignore, but which it would be imprudent to exaggerate. It is therefore necessary to emphasize that an objective interpretation of the Agreement does not allow us to affirm that the question will necessarily be settled by the means contemplated... Now, the United Kingdom and the new State of Guyana may invoke before the International Court of Justice the authority of res judicata of the Arbitral Award of 1899 and the acquiescence of Venezuela. Indeed, according to the provisions of paragraph (1) of Article V of the Agreement ".... nothing in this Agreement shall be construed as a waiver or diminution by Venezuela, the United Kingdom or British Guiana of any basis of claim to territorial sovereignty in the Territories of Venezuela or British Guiana or of any rights previously asserted or claims to such territorial sovereignty or as prejudicing their position with respect to their recognition or non-recognition of a right to claim or basis of claim by any of them to such territorial sovereignty. To these exceptions and defences, Venezuela could argue that the very conclusion of the Agreement is an express or at least tacit recognition that there has been no such acquiescence and that in any event the United Kingdom, by accepting the procedure therein provided, has tacitly waived the right to avail itself of these defences. It could also allege that the internal and international conditions prevailing in 1899 and in the following years, as well as the discovery many years later of documents confirming Venezuela's vehement suspicions that it had been the victim of an arrangement between two great powers, did not allow it to assert its claim earlier.... Even so, and this must be stated clearly to avoid misunderstandings and disappointments, the Court could declare the United Kingdom's defences admissible without even examining the merits of our arguments to challenge the very validity of the Award (lack of reasons, arbitrators exceeding their powers, ultrapetita). It is necessary to examine the decisions rendered by this High Court in similar cases to be convinced that this is a hypothesis that may occur"[1319].

[1319] Quoted in Luis COVA ARRIA, "La Academia de Ciencias Políticas y Sociales y la defensa del territorio Esequibo", ("The Academy of Political and Social Sciences and the defense of the Essequibo Territory."), Quoted Above, Pages 80-81.

As predicted by Dr. Andres Aguilar Madwsley, the ICJ has declared itself competent to decide on the question of the nullity or validity of the Paris Arbitral Award of 1899.

The Geneva Agreement is fundamental to the dispute and has been recognized by the ICJ. Indeed, the critical date established which determines the ICJ's jurisdiction *ratione temporis* and which coincides with the signature of the Geneva Agreement has positive effects for Venezuela. The ICJ can only consider valid arguments related to facts prior to 17 February 1966. In that regard, Venezuela has a great advantage, since it has historical and legal titles that support its rights over the eastern border, and Venezuela has solid evidence demonstrating the flaws of the Paris Arbitral Award that would allow the ICJ to declare its nullity.

103. **8 March 2021**: By an order of the ICJ, the deadline for the filing of the memorial and counter-memorial was set. Guyana had until 8 March 2022 to file its memorial, which it has already done, while Venezuela has until 8 March 2023 to file its counter-memorial.

104. **8 March 2022**: Guyana filed its memorial, in accordance with the provisions of the order of 8 March 2021 issued by the ICJ.

105. **6 June 2022**: By a communication sent to the ICJ by Delcy Eloína Rodríguez, Vice-President of Venezuela, Ambassador Samuel Moncada Acosta was appointed Agent for Venezuela in the ICJ proceedings. Additionally, Ambassador Félix Plasencia and Elsie Rosales García, lawyer and professor at the Universidad Central de Venezuela, were appointed Co-Agents.

106. **7 June 2022**: Venezuela formally appeared before the ICJ through the opposition of preliminary objections related to the admissibility of the claim introduced by Guyana before the ICJ.

107. **13 June 2022**: The ICJ issued an order setting the deadline to file the brief of observations and arguments to the preliminary objections filed by Venezuela. Through this act, it was confirmed who were the agents that would represent Venezuela before the ICJ. In effect, Samuel Reinaldo Moncada Acosta, Permanent Representative of Venezuela to the UN, was appointed as Agent, and Félix Plasencia, former Minister of Foreign Relations, and Elsie Rosales García, lawyer and professor at the Central University of Venezuela, were appointed as Co-Agents.

108. **17-22 November of 2022**: The representatives of Venezuela presented their arguments during the first public hearing held on Thursday, 17 November 2022. Likewise, the representatives of Guyana presented their arguments on the inadmissibility of the preliminary objections on Friday, 18 November 2022.

On Monday, 21 November 2022 Venezuela submitted its reply to the arguments of Guyana, and on Tuesday, 22 November 2022 Guyana submitted its counter-reply.

Having heard the arguments of the parties, the ICJ now has two options: (i) to declare the preliminary objection proposed by Venezuela admissible, which would extinguish the contentious process initiated by Guyana against Venezuela or (ii) to declare the preliminary objection proposed by Venezuela inadmissible, which would continue the course of the process and terminate the suspensive effect of the incidental question.

Venezuela's position, as demonstrated during this round of hearings, is based on respect for the ICJ. However, this does not mean that Venezuela is in agreement with the judgment whereby the ICJ declared itself competent to resolve the dispute. Furthermore, Venezuela declared during this incidence that it understands the effects of *res judicata* of the referred decision, despite the fact that it is contrary to national interests.

At this point in the proceedings, it may be concluded that Venezuela has assumed its participation in the process and shall make use of all procedural mechanisms provided in the ICJ Statute and Regulations, in addition to taking into account its Practice Directions, to ensure the best possible defence of the highest interests of the Republic.

Venezuela made several general considerations regarding the inadmissibility of the claim of Guyana, due to the fact that an indispensable third party, namely the United Kingdom, is not participating in the proceedings before the ICJ.

Venezuela's other general consideration was with respect to the *res judicata* effect of the ICJ judgment dated 18 December 2020, which is restricted to the question of the ICJ's jurisdiction and does not cover aspects related to the admissibility of the claim introduced by Guyana.

The main argument invoked by Venezuela to support the proposed preliminary objection is that the United Kingdom is an indispensable

third party that must be involved in the proceedings. This argument is based on the ICJ's own jurisprudential doctrine according to which, in certain cases, it is necessary for a third State other than the original parties to participate in the proceedings before this international tribunal, if it has interests and/or rights that have elements of connection to the dispute.

The above is a maxim of a legal-procedural nature arising from the practice of the ICJ, which entails that when the decision on the merits is related to the interests of a third party that is not part to the process, the ICJ must abstain from exercising its jurisdiction, regardless of whether the parties involved in the proceeding accept the judicial settlement through the ICJ.

Venezuela's argument that the United Kingdom is an indispensable third party to the proceedings is based on the following reasons:

1. It was the United Kingdom that resorted to the falsification of maps and documents to dispossess Venezuelan of a part of its territory with a view to the appropriation of their natural resources and to normalize a completely unacceptable situation.
2. It was the United Kingdom that relied on the system of law existing at the time, which did not take into account the principles of sovereign equality and mutual respect between States.
3. It was the United Kingdom that signed the Treaty of Washington of 17 February 1897.
4. It was the United Kingdom that made sure that the tribunal would not have any Venezuelan arbitrator, even in the event of the death or incapacity of any of the previously appointed arbitrators.
5. It was the United Kingdom that participated in the arbitration that resulted in the Paris Arbitral Award of 3 October 1897.
6. It was the United Kingdom that fostered improper contacts with its national arbitrators during the Paris Arbitration proceedings in 1899, resulting in an inappropriate relationship between arbitrators and counsel for the party. This vitiates any arbitration proceedings.
7. The United Kingdom remains a party to the Geneva Agreement of 17 February 1966.

8. A decision of the ICJ on the subject matter of this dispute necessarily implies a pronouncement on the conduct of the United Kingdom, and could declare the international responsibility of that State without having participated in the proceedings.

To justify their request, the representatives of Venezuela argued that the *res judicata* effect of the judgment of 18 December 2020 on jurisdiction does not prevent the opposition of preliminary objections relating to the admissibility of the claim of Guyana and that there is a clear distinction between jurisdiction and admissibility, which is deduced from the jurisprudence of the ICJ.

Venezuela also invoked the jurisprudential doctrine established in the judgment of *"Monetary Gold Removed from Rome in 1943"* (Italy v. France, the United Kingdom, and the United States of America)[1320], and the *"East Timor"* judgment (Portugal v. Australia)[1321].

The principle of monetary gold is a maxim of a legal-procedural nature arising from ICJ practice which lays down that in cases where the decision on the merits is related to the interests of a third party that is not involved in the dispute and does not accept the jurisdiction of the ICJ, that high jurisdictional body must abstain from exercising its jurisdiction, regardless of whether the parties involved in the proceedings accept judicial settlement through the ICJ.

Venezuela explained the nature of the exception based on the principle of monetary gold and clarified that the ICJ has accepted, at least implicitly, and contrary to what Guyana would have us believe, that the principle of monetary gold is an objection that effectively relates to the admissibility of a given case.

The monetary gold principle is a product of ICJ jurisprudence. The first case in which it was applied -and hence its name- was the case of *"Monetary Gold removed from Rome in 1943"*. The controversy arose because a certain amount of monetary gold was removed by the Germans from Rome in 1943.

Subsequently, the gold was recovered in Germany and was found to belong to Albania. The German Reparation Agreement of 1946

[1320] Available at: https://www.icj-cij.org/en/case/19.
[1321] Available at: https://www.icj-cij.org/en/case/84.

stated that the monetary gold found in Germany was to be pooled for distribution among the countries entitled to receive a share of it. The United Kingdom claimed that the gold should be handed over to it in partial compliance with the 1949 ICJ judgment in the Corfu Channel case. Italy, on the other hand, claimed that the gold should be delivered to it in partial satisfaction of the damages it claimed to have suffered as a result of an Albanian law of 13 January 1945.

In the Washington Declaration of 25 April 1951, the Governments of France, the United Kingdom and the United States, which had been entrusted with the implementation of the reparations agreement, decided that the gold should be handed over to the United Kingdom unless, within a specified time, either Italy or Albania requested the ICJ to rule on their respective rights. Albania took no action, but Italy submitted a request to the ICJ. However, Italy raised the preliminary question of whether the ICJ was competent to rule on the validity of its claim against Albania and from this arises the principle of monetary gold because the ICJ stated in its judgment of 15 June 1954 that, without the consent of Albania, it could not hear a dispute between that country and Italy and therefore could not decide the issues raised.

Venezuela explained the reasons that justify the relationship of the United Kingdom with the dispute, which consequently allow the application of the principle of monetary gold.

The first reason is that the real object of the dispute is to determine whether the United Kingdom has been responsible for fraudulent behaviour. The second is that a decision on the conduct of the United Kingdom is a prerequisite to a decision on the merits of the dispute.

The determination of the existence of fraudulent conduct is an issue that undoubtedly affects the dignity of a State. Venezuela submits that the United Kingdom is an indispensable party that must join the proceedings to address this very serious allegation. Indeed, it is not only a question of the land boundary, as Guyana claims, but of the validity of the arbitral compromise and the award which are the real subject matter of the dispute.

Guyana did not pronounce itself on the consequences of the nullity of the compromise and the arbitral award. These legal consequences are extremely important. It is an issue of international responsibility

involving the United Kingdom and Northern Ireland. As the Vienna Convention on the Law of Treaties sets out in Article 69.2 concerning the consequences of the invalidity of a treaty:

> *"2. If acts have nevertheless been performed in reliance on such a treaty:*
> *(a) any party may require any other party to establish as far as possible in their mutual relations the situation which would have existed if those acts had not been performed;*
> *(b) acts performed in good faith before the nullity has been pleaded shall not become unlawful by reason only of the nullity of the treaty..."*

Thus, Venezuela asserted that a decision on the merits of the case would necessarily imply that the ICJ should rule on the conduct of the United Kingdom and Northern Ireland before and during the arbitral proceedings. Consequently, the United Kingdom and Northern Ireland are an indispensable party to this case.

The representatives of Guyana only asserted that for the monetary gold doctrine to apply, it is not sufficient that its decision has *"mere implications"* on third parties such as the United Kingdom, but that the legal interests of an absent third State must constitute "the very subject matter" of a dispute. This argument is misleading because Venezuela had said exactly that if the ICJ exercised its jurisdiction and considered the claim of Guyana admissible, it would have to decide on the legal interests of the United Kingdom and Northern Ireland, which would therefore be the object of the dispute.

If, as a prerequisite for deciding the parties' claims on the merits, the ICJ has to rule on the conduct of an absent third State, then the interests of such absent third State constitute *"the object itself"* and the doctrine of monetary gold applies. Otherwise, we are in the realm of *"mere implications"*.

Guyana emphasized the argument that the United Kingdom and Northern Ireland have no interest in the disputed territory and was strangely silent on the question of the right to due process.

To rule on the applicant's claims, the ICJ would first have to analyse the legality of a third state's conduct in the absence of its consent. In our case, it is sufficient to show that it would be necessary for the ICJ,

to rule on the validity of the compromise or the arbitral award, to make a prior finding of the fraudulent and therefore unlawful nature of the United Kingdom's conduct.

The United Kingdom is a party to the Geneva Agreement of 17 February 1966, which serves as the basis for the jurisdiction of the ICJ. This demonstrates that Guyana is not the sole successor in rights and obligations. The Geneva Agreement merely states that, once it achieves independence, Guyana will also be a party to the agreement and does not exclude the United Kingdom from the compromise.

Guyana downplays the importance of the Geneva Agreement by saying that it relates only to procedural matters. This has no relevance to the application of the monetary gold principle. Furthermore, it seems artificial to separate substantive and procedural obligations, but that they are intimately linked.

For Venezuela, the representatives of Guyana insist on asserting that under Article IV, paragraph 2, of the Geneva Agreement the United Kingdom would have consented to the exercise of its jurisdiction by the ICJ, without the need for its participating in the proceedings. This interpretation of Article IV has no basis in the text of that provision.

Article IV contains no reference to consent or, more generally, to the position of the United Kingdom regarding the procedures referred to in that provision. These procedures relate to dialogue and cooperation between Venezuela and Guyana following the decolonization of British Guiana. The object and purpose of Article IV is to resolve the border dispute by a practical agreement acceptable to all parties. No link can be established between Article IV and the consent of the United Kingdom to the ICJ procedure, especially since in 1966 the United Kingdom had excluded the possibility of an arbitral or jurisdictional settlement of the dispute.

Even if the United Kingdom is deemed to have given its consent, only if the third State accepts the jurisdiction of the ICJ and becomes a party to the case can the ICJ decide on the rights and obligations of that State. Judge Crawford made it clear: *"the claim is inadmissible, unless the necessary third State is joined as a full party to the proceedings"*.

The non-participation of the indispensable party has other unacceptable effects, especially regarding evidence. If a State is a

party to the dispute, that State, as the ICJ has observed, has a *"duty to cooperate 'by producing all evidence in its possession which may assist the Court in resolving the dispute submitted to it'"*. However, this duty to cooperate is not binding on the United Kingdom, which is not a party to the proceedings.

The foregoing risks creating a situation of great inequality between the parties to the present dispute. Despite this, Guyana has the audacity to ask the ICJ to rule on the obligations of the United Kingdom towards Venezuela without the United Kingdom being obligated either to comply with its judgment or to cooperate in good faith with the proper conduct of the proceedings.

Guyana asserted in its memorial that the 1897 Treaty was concluded in accordance with the relevant rules and that the constitution of the 1899 arbitral tribunal was also valid. In doing so, it completely ignores the conduct of the United Kingdom. Moreover, Guyana resists taking into consideration the concrete elements demonstrating the wrongfulness of this conduct, preferring to refer to the arbitration in abstract terms.

The preliminary objection on admissibility raised by Venezuela against Guyana's claim is excluded from the *res judicata* effect of the judgment of 18 December 2020, because this decision only concerns the ICJ's jurisdiction.

The judgment of 18 December 2020 made it clear that it is the conduct of the United Kingdom and its responsibility under international law that constitutes the subject matter of the dispute. It was only after becoming aware of the content of the aforementioned judgment that Venezuela was able to raise a plea of admissibility based on the jurisprudential doctrine established by the ICJ in the judgment of *"Monetary gold removed from Rome in 1943"* (Italy v. France, the United Kingdom, and the United States of America)[1322] and the *"East Timor"* judgment (Portugal v. Australia)[1323].

In this case, the judgment of 18 December 2020 did not refer, explicitly or implicitly, in word or in substance, to the exception of the monetary gold principle. However, it did decide on jurisdiction *ratione materiae* and jurisdiction *ratione temporis*. This confirms that the *res*

[1322] Available at: https://www.icj-cij.org/en/case/19.
[1323] Available at: https://www.icj-cij.org/en/case/84.

judicata effect of the judgment of 18 December 2020 does not prevent the ICJ from considering Venezuela's preliminary objection because that decision only referred to the ICJ's jurisdiction and did not cover the issue of the admissibility of the claim of Guyana.

The ICJ, by the Ruling of 19 June 2018, decided that the pleadings had to abide by the issue of its jurisdiction. Indeed, this is the only issue dealt with in that Ruling and the only point that was debated by the parties at the time. On that occasion, Venezuela had stated that it considered that the Court manifestly lacked jurisdiction and, in response, Guyana merely indicated that it wished to proceed with the case, without referring to any other issue. Thus, there was no debate on the admissibility of the claim.

Additionally, it is necessary to bear in mind the ICJ's Ruling of 13 June 2022, which not only confirmed that Venezuela's preliminary objection had the effect of suspending the proceedings on the merits, pursuant to Article 79bis, paragraph 3, of the Rules of Court, but also specifically stated that Venezuela's preliminary objection related to the admissibility of the application and not to the jurisdiction of the ICJ.

The ICJ, by Order of 13 June 2022, before noting the admissibility nature of Venezuela's objection, recalled that in its Order of 19 June 2018, it had expressly noted the possibility for Venezuela to make use of its procedural rights as a party to the case. In that regard, Venezuela exercised its right to raise preliminary objections on the admissibility of the claim of Guyana, an issue that, so far, had not been discussed by the parties before the ICJ.

The inadmissibility of Guyana's claim is based on the ICJ's own practice. First, the ICJ has distinguished between questions of jurisdiction and those of admissibility in accordance with the judgment of 18 November 2008 in the Croatia v. Serbia case on the Convention on the Prevention and Punishment of the Crime of Genocide. The aforementioned decision stated that "*Essentially, this objection consists of the assertion that there is a legal reason, even where there is jurisdiction, why the Court should decline to hear the case or, more usually, a specific claim in it"*[1324].

[1324] Available at: https://www.icj-cij.org/public/files/case-related/118/118-20081118-JUD-01-00-EN.pdf.

The precedent of the Croatia v. Serbia decision applies to the case at hand. Indeed, in the ICJ Order of 19 June 2018, the ICJ indicated to the parties that they should refer, during that first incidence on jurisdiction resolved by the judgment of 18 December 2020, only to questions of jurisdiction and not to questions of admissibility.

The representatives of Guyana asserted that for the monetary gold doctrine to apply, it is not sufficient that its decision has "mere implications" on third parties such as the United Kingdom, but that the legal interests of an absent third State must constitute *"the very subject matter"* of a dispute.

Guyana indicated that under the legal principle first established by the ICJ in the Case: *"Monetary Gold Removed from Rome in 1943"* (Italy v. France, the United Kingdom, and the United States of America)[1325] and explained in its subsequent jurisprudence, the United Kingdom is not an indispensable party to these proceedings.

In Guyana's view, the doctrine does not apply, and cannot apply in this case, for two reasons: first, the United Kingdom has no legal interests or legal rights or obligations that would be affected by an ICJ judgment on the merits of this case; and second, the United Kingdom has given its consent, expressed in Article IV of the 1966 Geneva Agreement, for the ICJ to resolve this dispute between Guyana and Venezuela.

The case came to the ICJ following an arbitration that determined that certain gold, looted by German forces in Rome during World War II, belonged to Albania. Italy claimed entitlement to the same gold on the basis of an alleged international wrong that Albania had committed against it. Italy's claim therefore required the ICJ to determine whether Albania, which was not a party to the Monetary Gold case, had committed any international legal breach that would render it liable to Italy. As the ICJ explained "*Therefore, to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether it is obligated to pay Italy any compensation"*.

[1325] Available at: https://www.icj-cij.org/en/case/19.

On this basis, the ICJ concluded that it could not exercise its jurisdiction because, *"In this case, Albania's legal interests would not only be affected by a decision, but would constitute the object of the decision"*. This is the essence of the ICJ's judgment and the rule that establishes for future cases that for the ICJ not to exercise its jurisdiction there must be a need to determine whether the legal interests of an absent party would not only be affected by, but would constitute the very subject matter of the decision on the merits that the ICJ must make. In particular, would an ICJ judgment directly affect the legal rights or obligations of an absent State, as in the case of Albania, which has not consented to its jurisdiction?

The ICJ revisited this question and elaborated on the standard it set out in the case of Monetary Gold, in Phosphates, Nauru v. Australia, in which it rejected Australia's argument that the case should be dismissed under the Monetary Gold standard on the basis that, as Australia argued, its legal interests were identical to those of the United Kingdom and New Zealand, and that any adjudication of its interests would inevitably affect the legal interests of the two absent States. The ICJ explained that: *"In this case, the interests of New Zealand and the United Kingdom are not the real subject of the judgment to be rendered on the merits of Nauru's application, and in that regard the situation is different from that which the ICJ had to deal with in the Monetary Gold case"*.

The ICJ's decision to exercise jurisdiction did not mean that it considered that the legal interests of New Zealand and the United Kingdom would not be affected by the judgment Nauru sought. On the contrary, the ICJ recognized that *"a finding by the Court on the existence or content of the responsibility attributed to Australia by Nauru could have implications for the legal position of the other two States concerned"*. In the Phosphates case, the ICJ took a very different approach: it rejected Australia's preliminary objection because "the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered", because the judgment would not directly affect the legal rights or obligations of those States.

Three years later, the ICJ had to re-interpret and apply its Monetary Gold judgment in the East Timor case (Portugal v. Australia). Venezuela's

counsel cited this case, but did so very selectively. In its key passage, the ICJ upheld Australia's preliminary objection based on the Monetary Gold judgment, because, in its words *"in this case, the effects of the judgment sought by Portugal would amount to a determination that Indonesia's entry and continued presence in East Timor is unlawful and that, consequently, it has no treaty-making power in matters relating to East Timor's continental shelf resources. Indonesia's rights and obligations would therefore constitute the very subject matter of such a judgment rendered in the absence of that State's consent"*.

In this passage, the ICJ made it clear, especially in the last quoted sentence, that the legal interests of an absent State *"will constitute the very subject-matter"* of the case when its judgment directly affects the "*rights and obligations"* of the absent State. Even in upholding Australia's objection, the ICJ took care to reaffirm what it said in the Phosphates case: that the Monetary Gold did not prevent it from exercising its jurisdiction and rendering a judgment that might affect the legal interests of an absent State, provided that the interests of that State did not constitute the very subject matter of the dispute: *"the ICJ emphasizes that it is not necessarily precluded from ruling when the judgment it is called upon to render may affect the legal interests of a State which is not a party to the case"*.

The ICJ reaffirmed this principle once again in its 1998 judgment in Cameroon v. Nigeria. Nigeria objected to Cameroon's request that the Court establish the boundary of the parties across Lake Chad, arguing that this would touch the triple junction with Chad and thus affect the legal interests of an absent State in violation of the Monetary Gold precedent. The Court rejected Nigeria's objection on the now familiar argument that it *"is not necessarily estopped from ruling when the judgment sought from it may affect the legal interests of a State that is not a party to the case"*. In that case, unlike the present case between Guyana and Venezuela, the absent State had a real legal interest in a part of the international boundary to be drawn by the Court. However, the Court ruled that *"the legal interests of Chad, as a third State not a party to the case, do not constitute the very subject-matter of the judgment to be rendered on the merits of Cameroon's claim"*.

What this review of the relevant jurisprudence shows is that the ICJ has declined to exercise jurisdiction under the Monetary Gold standard in only two cases. In both, the Monetary Gold case proper and East Timor, it considered that it could not decide the case without directly affecting the legal rights or obligations of an absent third State -Albania in the first case, Indonesia in the second- and that the legal interests of the absent State constituted the very object of the decision to be rendered.

To answer this question with respect to the case between Guyana and Venezuela -whether the legal interests of the United Kingdom constitute the very object of the judgment to be rendered by the ICJ here- we must consider what is the very object of the present dispute between Guyana and Venezuela.

For the representatives of Guyana this is a matter on which the parties are in agreement. Venezuela submits, and we agree, that the subject matter of this dispute is set out in paragraph 137 of the ICJ Judgment of 18 December 2020. In it: *"the Court concludes that it has jurisdiction to hear Guyana's claims concerning the validity of the 1899 Award on the boundary between British Guiana and Venezuela and the related question of the final settlement of the dispute concerning the land boundary between the territories of the Parties"*.

To the same effect, in the first paragraph of the dispositif, the Court *"Declares that it has jurisdiction to hear the Application filed by Guyana on 29 March 2018 regarding the validity of the Arbitral Award of 3 October 1899 and the related question of the definitive settlement of the dispute concerning the land boundary between Guyana and Venezuela"*.

Therefore, the object of the judgment to be rendered by the Court is the validity of the Arbitral Award of 3 October 1899 and the related question of the final settlement of the land boundary dispute between Guyana and Venezuela.

In these circumstances, the ICJ's task, in considering Venezuela's preliminary objections under the Monetary Gold standard, is to determine whether the United Kingdom has legal interests that would not only be affected by, but would form the very subject matter of, an ICJ judgment on the validity of the 1899 Arbitral Award and the related

question of the final settlement of the land boundary between Guyana and Venezuela.

And this, then, brings us to the fundamental question at the heart of this proceedings: what legal interests, if any, does the United Kingdom have in the validity of the 1899 Arbitral Award, or the definitive settlement of the land boundary between Guyana and Venezuela? And, more importantly, if these legal interests exist, do they constitute the very subject matter of the dispute to be decided by the ICJ?

For Guyana, the answers to these questions are clear: the United Kingdom has no legal interest in the validity of the 1899 Arbitral Award, nor in the final settlement of the land boundary between Guyana and Venezuela. Therefore, it has no legal interests that could constitute the very subject matter of this dispute. In rendering its judgment on the validity of the Arbitral Award of 1899, or the definitive settlement of the land boundary, there are no legal rights or obligations of the United Kingdom that the ICJ could affect. So, there would be no basis, having regard to the Monetary Gold case and subsequent jurisprudence, for the ICJ to decline to exercise its jurisdiction because of the absence of the United Kingdom, irrespective of whether the United Kingdom has consented to the adjudication of these issues by Guyana and Venezuela.

It might be useful for us to ask ourselves this question: does the United Kingdom itself consider that it has legal interests that could be affected by a judgment on the merits in this case, such that it could object to the exercise of ICJ jurisdiction over the issues that have been raised by Guyana? This is a question that Venezuela avoided addressing in its presentation. However, the representatives of Guyana considered it important to take into account the following statements in which the United Kingdom joined other States in welcoming the Court's Judgment of 18 December 2020 and, specifically, the ICJ's decision to resolve Guyana's claims on the validity of the 1899 Award and the definitive settlement of the land boundary between Guyana and Venezuela.

1. This, for example, is apparent from the communiqué issued by the Commonwealth Heads of Government at the conclusion of their meeting in Rwanda on 25 June 2022, in tab 2 of their folders and which was signed by all Heads, including the Prime Minister of the United Kingdom:

"The leaders noted the ICJ's decision of 18 December 2020, that it has jurisdiction to hear the Petition filed by Guyana on 29 March 2018, paving the way for the ICJ to consider the merits of the case concerning the Arbitral Award of 3 October 1899 (Guyana vs. Venezuela) ..... The leaders reiterated their full support for the ongoing judicial process, which aims to bring a peaceful and definitive end to the long-standing dispute between the two countries".

2. On 14 September 2021, the final statement of the Commonwealth Ministerial Group on Guyana, which included the United Kingdom, found in tab 4 of their folders, contained this paragraph, *"The Group expressed its unwavering support for the ongoing judicial process before the International Court of Justice chosen by the Secretary-General of the United Nations under the 1966 Geneva Agreement and the Group continues to encourage Venezuela to participate in that process"*.
3. A similar statement was signed by the United Kingdom Foreign Secretary and his counterparts from CARICOM and the Dominican Republic at the conclusion of the 10th United Kingdom-Caribbean Forum on 18 March 2021. The final communiqué, in tab 3 of the folders, included this paragraph, *"Ministers welcomed the 18 December 2020 decision of the International Court of Justice that it has jurisdiction to consider Guyana's claim concerning the validity of the 1899 arbitral award, which fixed the land boundary between then British Guiana and Venezuela"*.

ICJ's jurisprudence is clear as to the mandatory nature of objecting the exercise of jurisdiction, which differentiates the objection based on the principle of the Monetary Gold case from an objection to admissibility, and its jurisprudence is also very clear in that the legal effect of such an objection is not to render inadmissible the request initiating the proceedings.

In the Monetary Gold matter, the Italian Government *"requested from the ICJ to rule on the preliminary question of its jurisdiction to hear the merits of the claim"*. This was not a question of admissibility

of the claim, but of a *"preliminary question of the jurisdiction of the International Court of Justice"* to hear one of the claims made in the lawsuit. On this question of jurisdiction, the ICJ *"states that the jurisdiction conferred on it by the common agreement [of the parties] does not authorize it, in the absence of Albania's consent, to rule on the Italian Government's first submission of the lawsuit"*. Albania's lack of consent is a question of jurisdiction which limits the jurisdiction of the ICJ and has the effect of compelling it not to exercise its jurisdiction.

In the East Timor case -the only other case in which the ICJ applied the Monetary Gold principle- Australia argued that *"[Portugal's] claim ... contravenes the principle of consent which precludes the adjudication of Indonesia's legal liability without its consent.* In the dispositive part of its counter-memorial, Australia concluded that *"the ICJ does not have jurisdiction to decide on the Portuguese claims, or the claims are inadmissible"*. The question of the admissibility of Portugal's claims is not a matter for the ICJ to decide. Thus, the question of the admissibility of the claims made in the Portuguese complaint was raised by Australia only on a subsidiary basis, in the understanding that the question of the third party absent from the proceedings raised primarily a question of jurisdiction linked to the lack of consent of such third party. Only in the latter respect did the ICJ identify the nature and legal effect of the objection raised by Australia.

Also, in the East Timor case the ICJ insisted *"that one of the fundamental principles of its Statute is that it cannot decide a dispute between States unless they have consented to its jurisdiction"*. As in the Monetary Gold case, the ICJ examined the Australian objection in light of the cardinal principle of consent, which governs its jurisdiction. Without declaring the Australian objection inadmissible, and in accordance with its previous jurisprudence, the ICJ placed the objection within the scope of the question of its jurisdiction, and did so both in terms of its merits and its effects. In the operative part of its judgment, the ICJ *"did not know how to exercise the jurisdiction conferred upon it in the present case"*.

Moreover, for Guyana, the preliminary objection on admissibility of the claim proposed by Venezuela is meaningless since the ICJ in paragraph 115 of its judgment of 18 December 2020 held that the

decision taken by the Secretary-General of the United Nations, based on Article IV.2 of the Geneva Agreement, would be hindered if the subsequent consent of the parties involved in the territorial dispute were required for it to take effect.

The application of the principle of Monetary Gold, according to Guyana, would violate the succession between States and the principle of self-determination of peoples and it points out that the only purpose of this argument is to divert attention from what is really important.

Guyana has sought to stress the importance of the fact that the ICJ, in its Ruling of 19 June 2018, had considered it necessary "*to be informed of all the factual and legal grounds on which the Parties rely as to their jurisdiction"*, a formula which, in Guyana's view, was intended to encompass *"any potential limits to the ICJ's jurisdiction regarding any of the claims"* contained in the petition.

Guyana asserted in its memorial that the 1897 Treaty was concluded in accordance with the relevant rules and that the constitution of the 1899 arbitral tribunal was also valid.

The representatives of Guyana pointed out that Venezuela's preliminary objections are barred by the *res judicata* effects of the ICJ judgment of 18 December 2020. Guyana indicated that what Venezuela is asking the ICJ through its preliminary objections is to undo its judgment and that Venezuela's preliminary objections are essentially jurisdictional and therefore late under Article 79bis of the Rules. The representatives of Guyana were emphatic that the only way Venezuela can find to avoid this is to argue that the grounds for the preliminary objections did not exist prior to the Judgment, but arose out of it.

Guyana invoked the primacy of the principle of *res judicata* that applies to all ICJ judgments under Articles 59 and 60 of the Statute and the ICJ's own jurisprudence, which recognizes that judgments are final and unappealable.

In the Bosnian Genocide case, the ICJ dealt with an attempt by Serbia to reopen the judgment confirming its jurisdiction. The ICJ decided that:

> *"In accordance with Article 36, paragraph 6, of the Statute, and once a decision in favour of jurisdiction has been rendered with*

> *the force of res judicata, it is not susceptible of being questioned or re-examined, except by way of review under Article 61 of the Statute"*[1326].

The ICJ went on to substantiate its decision, elucidating the two main purposes of *res judicata*. It stated: *"This result is required by the nature of the judicial function"* and the universally recognized need for "stability of legal relations". Venezuela's objection, Guyana points out using the same words of the ICJ, *"would deprive a litigant [in this case, Guyana] of the benefit of a judgment it has already obtained",* which must be considered *"in general as a violation of the principles governing the legal settlement of disputes"*.

They argue that the judgment of 18 December 2020 has the nature of *res judicata*, so that what was decided by the ICJ can only be questioned under the very strict conditions of a request for review. The review can only be requested *"when it is based on the discovery of some fact" of a decisive nature that was "unknown to the Court"* and to *"the party claiming the review"* of the judgment. They state that these conditions are not met in this case.

The order of 13 June 2022 did not rule on the question of whether Venezuelan objection fell within the category of exceptions to admissibility. The order merely referred to Venezuela's own qualification as an objection to admissibility. The order merely referred to Venezuela's own qualification of its preliminary objections in describing the fact that it had filed them.

The parties differ as to whether the ICJ's exercise of jurisdiction is included in the *"question of jurisdiction"* referred to in the 19 June 2018 order. However, the terms of the providence did not require the parties to inform the ICJ of their possible lack of jurisdiction. For the attorneys of Guyana, jurisdiction is a term that encompasses both the question of the existence of jurisdiction and the question of its exercise.

The representatives of Guyana said that their position is not that the terms of the order cover questions of admissibility as such. They only stated that the objection raised by Venezuela does not fall into

[1326] Page 101. Available at: https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf.

this category, both because of its profound nature and consequences, if admitted, and because of the very particular context of the Geneva Agreement.

Moreover, at the time the 19 June 2018 Order was adopted, it was already very clear that the issue of the validity of the Award was the subject of the dispute. The Statement of Claim is explicit on this point, as is the Geneva Agreement. Moreover, it was already quite clear that Venezuela was challenging the validity of the award on the basis of the conduct of the United Kingdom.

In 1962, when Venezuela first argued that the award was invalid, it did so allegedly because it was the result of a political transaction carried out behind Venezuela's back. As reproduced verbatim in the Statement of Claim, this Venezuelan claim was known to the ICJ when it adopted the 19 June 2018 Order.

Furthermore, the attorneys of Guyana contend that the merits of the preliminary objection cannot be considered and maintained because of the judgment of 18 December 2020. The representation of Venezuela has said nothing about the fact that its judgment has decided that the ICJ has jurisdiction to hear the claim, words that indicate *res judicata* that the Court has jurisdiction to consider the merits of the case and that it has decided to exercise that power.

So, the question to be decided by the ICJ is whether the objection based on the Monetary Gold principle, which is the object of the present incidental proceedings and which arises in the very particular context of this case, is admissible at this stage of the proceedings or whether, as Guyana argues, Venezuela should have raised this argument within the time limit established by the order, so that it would no longer be entitled to do so by the preliminary objections raised in June 2022.

Guyana submits that what Venezuela is asking the ICJ by its preliminary objections is to undo its judgment and that Venezuela's preliminary objections are essentially jurisdictional and therefore late under Article 79bis of the Rules of Court. The representatives of Guyana were emphatic that the only way Venezuela can find to avoid this is to argue that the grounds for the preliminary objections did not exist prior to the Judgment, but arose out of it.

Guyana invoked the primacy of the principle of *res judicata* that applies to all ICJ judgments under Articles 59 and 60 of the Statute and the ICJ's own jurisprudence, which has long recognized that judgments are final and not subject to appeal.

In the Bosnian Genocide case the ICJ dealt with an attempt by Serbia to reopen the judgment confirming its jurisdiction. The ICJ decided that:

> *"In accordance with Article 36, paragraph 6, of the Statute, and once a decision in favour of jurisdiction has been rendered with the force of res judicata, it is not susceptible of being questioned or re-examined, except by way of review under Article 61 of the Statute"*[1327].

The ICJ went on to explain the two main purposes of res judicata. It stated: *"This result is required by the nature of the judicial function and the universally recognized need for stability of legal relations"*. Therefore, Guyana argues that there is no doubt that the judgment of 18 December 2020 has the nature of res judicata and what was decided by the ICJ can only be challenged under the very strict conditions of an application for review. The revision can only be requested *"when it is based on the discovery of some fact"* of a decisive nature that was *"unknown by the Court"* and by "the party claiming the revision" of the judgment, conditions that the representatives of Guyana say are not met in this case.

They argue that the order of 13 June 2022 did not rule on the question of whether Venezuelan objection fell within the category of objections to admissibility, but that the order merely referred to the qualification that Venezuela itself gave to its preliminary objections in describing the fact that it had filed them.

The parties differ as to whether the ICJ's exercise of jurisdiction is included in the *"question of jurisdiction"* referred to in the 19 June 2018 order. However, the terms of the order did not require the parties to inform the ICJ of their possible lack of jurisdiction. For the counsel

[1327] *Ídem.*

of Guyana jurisdiction is a term that encompasses both the question of the existence of jurisdiction and the question of its exercise.

The representatives of Guyana said that their position is not that the terms of the order cover questions of admissibility as such. They only stated that the objection raised by Venezuela does not fall into this category, both because of its profound nature and consequences if admitted and because of the very particular context of the Geneva Agreement.

Moreover, at the time the 19 June 2018 Order was adopted, it was already very clear that the issue of the validity of the Award was the subject of the dispute. The Statement of Claim is explicit on this point, as is the Geneva Agreement. It was already quite clear that Venezuela was challenging the validity of the award on the basis of the conduct of the United Kingdom.

In 1962, when Venezuela first argued that the award was invalid, it did so allegedly because it was the result of a political transaction carried out behind Venezuela's back and as reproduced verbatim in the Geneva Agreement, the award was invalid. As reproduced verbatim in the Statement of Claim, this Venezuelan claim was known to the ICJ when it adopted the 19 June 2018 Order.

Furthermore, the counsel of Guyana contends that the merits of the preliminary objection cannot be considered and maintained because of the judgment of 18 December 2020. The representation of Venezuela has said nothing about the fact that the judgment has decided that the ICJ has jurisdiction to hear the claim, words that indicate under *res judicata* that the Court has jurisdiction to consider the merits of the case and that it has decided to exercise that power.

So, the question to be decided by the ICJ is whether the objection based on the monetary gold principle, which is the subject of the present incidental proceedings and which arises in the very particular context of this case, is admissible at this stage of the proceedings or whether, as Guyana argues, Venezuela should have raised this argument within the time limit established by the order, so that it was no longer entitled to do so by way of the preliminary objections filed in June 2022.

109. **6 April 2023**: On 6 April 2023, the ICJ rendered a judgment by which it ruled on the preliminary objection filed on 7 June 2022

by Venezuela regarding the admissibility of the claim brought by Guyana[1328].

The ICJ examined the arguments of Venezuela and Guyana and ruled on the relevant issues raised in this incidental proceeding. Among those points were mainly the admissibility of Venezuela's preliminary objections and the analysis of the merits of the preliminary objections.

Judge Joan E. Donoghue, President of the International Court of Justice[1329]

In addition, the judgment addressed other important issues not only for the specific case, but also for the evolution of the ICJ's jurisprudence in relation to the preliminary objection of admissibility of the claim based on the monetary gold principle; the requirements necessary for a third State to acquire the character of indispensable party and the interpretation of treaties under the Vienna Convention on the Law of Treaties.

The judgment, adopted by a majority of the judges, was accompanied by four separate statements and a so-called partly individual and partly dissenting opinion. The four separate statements are by Indian judge Dalveer Bhandari, Jamaican judge Patrick Robinson, Japanese judge Yuji Iwasawa and German ad hoc judge, appointed by Guyana, Rüdiger

[1328] International Court of Justice, "*Judgment of 6 April 2023"*. Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-00-EN.pdf

[1329] Image extracted from the multimedia gallery of the International Court of Justice.. Available at: https://www.icj-cij.org/sites/default/files/multimedia_galleries/2_1.jpg.

Wolfrum. The so-called partially individual and partially dissenting opinion was delivered by the Belgian ad hoc judge, appointed by Venezuela, Philippe Couvreur.

First, the ICJ unanimously declared the preliminary objection presented by Venezuela admissible. Then, with fourteen votes in favour and Judge ad hoc Philippe Couvreur voting against, the ICJ declared the preliminary objection inadmissible.

Finally, with fourteen votes in favour and Judge ad hoc Couvreur voting against, the ICJ confirmed that it has jurisdiction to decide on the merits of the claims of Guyana, insofar as they fall within the scope of paragraph 138, sub-paragraph 1, of the judgment of 18 December 2020.

a. Admissibility of the Preliminary Objections submitted by Venezuela

The ICJ first examined the admissibility of the Preliminary Objections submitted by Venezuela before proceeding to consider their content. The ICJ reviewed the arguments presented by both parties -Venezuela and Guyana- and ruled on the legal-procedural nature of the preliminary objection presented by Venezuela.

The preliminary objection questioned the admissibility of the claim submitted by Guyana and was based on ICJ jurisprudence, in particular the precedent of the Monetary Gold case *("Monetary Gold"*), according to which the ICJ cannot exercise its jurisdiction when it is called upon to rule on the interests of a third State which is not a party to the proceedings and must be regarded as an indispensable party.

Furthermore, the ICJ took into consideration Venezuela's argument that the preliminary objection was admissible because it related to the admissibility of the claim and not to the ICJ's jurisdiction. The ICJ also held that its December 2020 decision only concerned jurisdiction and not admissibility. The ICJ took into account that Venezuela argued that its objection was not limited by the time limit set by the ICJ in its order of 19 June 2018.

It is important to note that the preliminary objections submitted by Venezuela attacked the admissibility of Guyana's claim and challenged the exercise of the ICJ's jurisdiction and not the existence of jurisdiction *per se*.

This distinction was admitted by the ICJ. If the preliminary objections had been related to the existence of jurisdiction, they would have been inadmissible for the ICJ, because the issues related to the existence of jurisdiction were already decided by the ICJ in the judgment of 18 December 2020 and enjoy the protection of *res iudicata*.

The ICJ examined Guyana's argument that the preliminary objection raised by Venezuela concerned the exercise of ICJ jurisdiction and should therefore be rejected as inadmissible. It also considered Guyana's argument that Venezuela was no longer entitled to raise a preliminary objection challenging the ICJ's jurisdiction after the judgment of 18 December 2020, in which the ICJ found that it had jurisdiction over part of Guyana's claims.

The ICJ concluded that the preliminary objection raised by Venezuela is admissible and that it was not limited by the time limit set out in the order issued by the ICJ on 19 June 2018.

The ICJ recalled that in the past it had decided that when a preliminary objection relating to the indispensability of a third State is rejected, the objection is deemed to relate to the exercise of jurisdiction rather than to the existence of jurisdiction.

b. Substantive Examination of the Preliminary Objection

Having established its admissibility, the ICJ proceeded to examine the merits of the preliminary objection raised by Venezuela. The preliminary objection was based on the consideration that the United Kingdom and Northern Ireland was an indispensable third party in the case and that the ICJ could not decide the question of the validity of the Award of 3 October 1899 without its participation.

Venezuela submitted that a decision on the merits of the case would necessarily involve an assessment of the fraudulent conduct allegedly attributable to the United Kingdom and Northern Ireland in relation to the Award of 3 October 1899. It alleged that it had been coerced and deceived by the United Kingdom into entering into the 1897 Treaty of Washington. It further argued that during the arbitral proceedings there were certain improper communications between the United Kingdom lawyers and the arbitrators it had appointed. In addition, Venezuela

argued that the United Kingdom submitted forged maps to the arbitral tribunal, which invalidated the Paris Arbitral Award.

Guyana argued that the United Kingdom and Northern Ireland was not an indispensable third party in the case and that it had no legal interest that could be affected by the ICJ's decision on the validity of the Paris Arbitral Award.

The ICJ rejected the preliminary objection raised by Venezuela and decided that the United Kingdom and Northern Ireland is not an indispensable party to the case and that it could decide the question of the validity of the 1899 Award without its participation. The ICJ concluded that the case concerned a dispute between Guyana and Venezuela. Furthermore, the ICJ clarified that the United Kingdom and Northern Ireland had no legal interests that could be affected by the ICJ's decision on the validity of the Paris Arbitral Award.

b.1. The ICJ's particular Analysis of the Geneva Agreement of 17 February 1966

The judgment concerns the interpretation of the 1966 Geneva Agreement signed between Guyana and Venezuela. Venezuela argued that the legal interests of the United Kingdom and Northern Ireland would be the main subject of the ICJ's decision, based on the principle of monetary gold.

However, the ICJ noted that the two countries currently involved in the case, as well as the United Kingdom and Northern Ireland, are parties to the Geneva Agreement, the instrument on which the ICJ's jurisdiction is based. Therefore, the ICJ considered it appropriate to analyse the legal implications of the United Kingdom and Northern Ireland being party to the Geneva Agreement, which in turn requires an interpretation of the relevant provisions of the Geneva Agreement.

The ICJ noted that in interpreting the Geneva Agreement it applied the rules of treaty interpretation found in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties, which reflect the rules of customary international law. These provisions set out rules on the correct interpretation of international treaties.

Article 31 of the Vienna Convention on the Law of Treaties enshrines the general rule governing the interpretation of international treaties. Indeed, the aforementioned article provides:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. For the purpose of the interpretation of a treaty, the context shall comprise, in addition to the text, including its preamble and annexes:
a) any agreement which relates to the treaty and was agreed between all the parties in connection with the conclusion of the treaty;
b) any instrument formulated by one or more parties in connection with entering into the treaty and accepted by the other parties as an instrument relating to the treaty.
3. Together with the context, account shall be taken of:
a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; and
b) any subsequent practice in the application of the treaty embodying the agreement of the parties regarding the interpretation of the treaty.
c) any relevant rules of international law applicable in the relations between the parties.
4. A term shall be given a special meaning if it is established that such was the intention of the parties"[1330].

Article 32 of the Vienna Convention on the Law of Treaties provides for supplementary means of interpretation, the function of which is to verify the interpretation resulting from the application of the general rule of Article 31 or to determine its meaning in specific cases. In fact, the above-mentioned provision states that:

"Recourse may be had to supplementary means of interpretation, in particular to the preparatory work of the treaty and to the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation given in accordance with article 31:

[1330] United Nations, Vienna Convention on the Law of Treaties, in force since 27 January 1980. Available at: https://www.oas.org/36ag/espanol/doc_referencia/convencion_viena.pdf.

(a) leaves the meaning ambiguous or obscure; or
(b) would lead to a result which would be manifestly absurd or unreasonable"[1331].

Article 33 of the Vienna Convention on the Law of Treaties refers to the rules of interpretation of treaties that have been translated into several languages. Indeed, the aforementioned article provides:

"1. Where a treaty has been authenticated in two or more languages, the text shall be equally authoritative in each language, unless the treaty provides or the parties agree that if there is a discrepancy one of the texts shall prevail.
2. A version of the treaty in a language other than that in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty shall be presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails as provided in paragraph 1, when a comparison of the authentic texts reveals a difference of meaning which cannot be resolved by the application of Articles 31 and 39, the meaning which best reconciles those texts, having regard to the object and purpose of the treaty, shall be adopted"[1332].

The ICJ stressed that it interpreted the Geneva Agreement in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

The ICJ considered that the context of the Geneva Agreement included the independence of British Guiana, which was achieved three months after the signing of the Geneva Agreement.

Articles I and II of the Geneva Agreement regulate the initial stage of the process for the settlement of the dispute between the parties and indicate the role of Venezuela and British Guiana in that process.

Article I of the Geneva Agreement provides for the creation of a Mixed Commission to seek satisfactory solutions for the practical

1331 *Ídem*.
1332 *Ídem.*

settlement of the dispute between Venezuela and the United Kingdom and Ireland. The first paragraph of Article II provides that, within two months of the Agreement entering into force, two representatives of the Mixed Commission shall be appointed by the Government of British Guiana and two by the Government of Venezuela.

The ICJ concluded that, while Article I of the Geneva Agreement describes the dispute as existing between the United Kingdom and Ireland and Venezuela, Article II gives no role to the United Kingdom and Northern Ireland in the initial stage of the dispute settlement process. Instead, it assigns responsibility for the appointment of representatives to the Mixed Commission to British Guiana and Venezuela.

Article IV of the Geneva Agreement, which establishes the mechanism for the final settlement of the dispute, contains no reference to the United Kingdom and Northern Ireland in paragraphs 1 and 2. These paragraphs state that if the Mixed Commission does not reach a comprehensive agreement for the settlement of the dispute within four years from the date of the Agreement, it shall refer any outstanding questions to the Governments of Guyana and Venezuela, who shall choose one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations.

The ICJ stated that the Geneva Agreement assigns specific roles to Guyana and Venezuela. It further noted that the provisions of the Geneva Agreement do not give the United Kingdom and Northern Ireland any role in the choice or participation in the means of settlement of the dispute.

Therefore, the ICJ considered that the scheme established by Articles II and IV of the Geneva Agreement reflects a common understanding of all parties that the dispute was to be settled by Guyana and Venezuela.

The ICJ also indicated that when the United Kingdom and Northern Ireland accepted the Geneva Agreement, it was aware that settlement of the dispute between Guyana and Venezuela without its participation might involve consideration of certain allegations by Venezuela of wrongdoing by the United Kingdom's authorities during the Paris arbitration.

This is because, in February 1962, Venezuela informed the Secretary-General of the United Nations of the existence of a dispute

between the United Kingdom and Northern Ireland and Venezuela over the delimitation of the border between Venezuela and British Guiana. In its letter, Venezuela stated that the award was the result of a political transaction made behind the country's back and that it does not recognise an award made in such circumstances.

Therefore, the ICJ concluded that the United Kingdom and Northern Ireland has no role in the settlement of the territorial dispute between Guyana and Venezuela and that the settlement process established in the Geneva Agreement should go ahead without its participation.

c. The International Court of Justice Confirmed its Jurisdiction

In the last operative paragraph of the Judgment of 6 April 2023, the ICJ ratified its jurisdiction to decide on the merits of the claims of Guyana, insofar as they fall within the scope of paragraph 138, sub-paragraph 1, of the Judgment of 18 December 2020, which stated that the ICJ:

> *"1. Declares itself competent to hear the Application filed by Guyana on 29 March 2018, insofar as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the final settlement of the land boundary dispute between Guyana and Venezuela".*

Thus, the ICJ has jurisdiction to rule on the validity or nullity of the Paris Arbitral Award of 3 October 1899 and on the related question of the settlement of the land boundary dispute between the two countries. Furthermore, the ICJ, in its judgment of 6 April 2023, clarified the scope of jurisdiction by admitting that it is possible to rule on the fraud committed by the United Kingdom in the course of the Paris arbitration proceedings in 1899.

The fact that the ICJ is ruling on the fraudulent actions of the United Kingdom during the Paris arbitration does not mean that the participation of that State is necessary for the proceedings to continue. On the contrary, as can be seen from the ruling of 6 April 2023, the ICJ found that the United Kingdom and Northern Ireland knew very well that this could happen and accepted it definitively through the Geneva Agreement of 17 February 1966. Therefore, the ICJ will be able to rule on the arguments of Venezuela related to the conduct of the United

Kingdom by the time the Washington Arbitration Treaty was signed, during the arbitration and once the Paris Arbitral Award of 3 October 1899 was rendered. These include the following:

1. It was the United Kingdom that resorted to the falsification of maps and documents in order to dispossess Venezuelans of part of their territory with a view to the appropriation of their natural resources and to normalise a completely unacceptable situation.
2. It was the United Kingdom that relied on the system of law existing at the time, which did not take into account the principles of sovereign equality and mutual respect between States.
3. It was the United Kingdom that signed the Treaty of Washington of 17 February 1897.
4. It was the United Kingdom that ensured that the tribunal had no Venezuelan arbitrator, even in the event of the death or incapacity of one of the previously appointed arbitrators.
5. It was the United Kingdom that participated in the arbitration that resulted in the Paris Arbitral Award of 3 October 1899.
6. It was the United Kingdom that fostered improper contacts with its national arbitrators during the Paris arbitration proceedings in 1899, resulting in an inappropriate relationship between arbitrators and party lawyers. This invalidates any arbitral proceedings.

d. Separate statements

d.1. Statement of Judge Dalveer Bhandari[1333]

Judge Bhandari explained in his statement that he agrees with the ICJ's award, but expressed his wish to add further conceptual clarifications. He began his statement by recalling that the rejection of the preliminary objection of Venezuela was based on the fact that the United Kingdom and Northern Ireland has no role in the resolution of the dispute and that the principle of monetary gold does not come into play. The ICJ reached these conclusions based on its interpretation of

[1333] International Court of Justice, "Declaration of Judge Bhandari". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-01-EN.pdf.

the 1966 Geneva Agreement and the subsequent practice of the parties to that agreement.

According to the ICJ's interpretation, the Geneva Agreement reflects a common understanding by all parties to that instrument that the dispute existing between the United Kingdom and Northern Ireland and Venezuela on 17 February 1966 would be resolved by Guyana and Venezuela through one of the procedures referenced in the Geneva Agreement. Therefore, as a party to that instrument, the United Kingdom and Northern Ireland accepted that it would have no role in those procedures.

The judge shares the view that the United Kingdom and Northern Ireland was aware of the scope of the dispute regarding the validity of the 1899 Award and that it accepted the Article IV agreement allowing Guyana and Venezuela to submit the dispute to judicial settlement without the participation of the United Kingdom and Northern Ireland. Furthermore, he shares the ICJ's conclusion that subsequent practice confirms this understanding.

The judge also highlights that Venezuela accepted this circumstance by becoming a party to the Geneva Agreement, which means that it waived any right it might have to object to this dispute being resolved by a procedure that does not involve the United Kingdom and Northern Ireland.

Judge Bhandari's statement endorses the ICJ's ruling on the interpretation of the Geneva Agreement and the subsequent practice of the parties to that agreement. He also emphasises that it is the acceptance of these circumstances by all parties involved in the Geneva Agreement that makes this situation unique.

d.2. Separate Opinion of Judge Patrick Robinson[1334]

Judge Patrick Robinson delivered a separate opinion in relation to the acquisition of independence of Guyana by the United Kingdom and Northern Ireland. Judge Robinson concurs with the ICJ's findings expressed in paragraph 108 of the judgment, but made a number of additional comments.

[1334] International Court of Justice, "Separate opinion of Judge Robinson". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-02-EN.pdf.

At the trial, Guyana argued that the United Kingdom and Northern Ireland has no present legal interest or claim to the disputed territory, as it relinquished all territorial claims in relation to this dispute when it granted independence to Guyana in 1966. However, Justice Patrick Robinson states that the United Kingdom and Northern Ireland did not in fact grant independence to Guyana.

At the time of the independence of Guyana in 1966, the right to self-determination had already become a rule of customary international law, by virtue of the adoption of United Nations General Assembly resolution 1514 (XV) on 14 December 1960. Thus, the acquisition of independence by the former colonies was not a gift, a concession or a donation by the colonial powers.

Rather, independence resulted from the fulfilment by the colonial powers of the obligation imposed by paragraph 5 of resolution 1514 to transfer all powers to the peoples of the colonised countries in accordance with their freely expressed will. In other words, independence became an inherent human right of the people and the colonial powers simply fulfilled their duty to transfer powers to the peoples of the colonised countries.

This transformation of the right to self-determination as a customary rule of international law was confirmed by the ICJ in its 2019 advisory opinion on the legal consequences of the separation of the Chagos archipelago from Mauritius in 1965.

Judge Robinson also referred to the title of resolution 1514, *"Declaration on the Granting of Independence to Colonial Countries and Peoples"*, and noted that, while the title may be relevant to interpreting the resolution, the term *"granting of independence"* is not used in the text of resolution 1514. Instead, the resolution states that the right to self-determination is a human right that resides in the people and all that is required for its enjoyment is that it reflects the freely expressed will of the people. In conclusion, Judge Robinson's statement emphasised that the acquisition of independence by the former colonies was not a gift or a concession of colonial power, but an inherent human right of the people to be exercised through their freely expressed will.

d.3. Judge Iwasawa Yuji's statement[1335]

Judge Iwasawa Yuji's statement begins by recalling that the preliminary objection of Venezuela was based on the assertion that the United Kingdom and Northern Ireland is an indispensable third party in the case and, therefore, the claim of Guyana should not be admitted by the ICJ.

Judge Iwasawa explained that the preliminary objection of Venezuela is not an objection to the ICJ's jurisdiction, but to the admissibility of Guyana's claim. This distinction is important because ICJ jurisprudence establishes that arguments based on the Monetary Gold principle concern the admissibility of the claim, not the ICJ's jurisdiction.

In conclusion, Judge Iwasawa's statement is important because it clarifies the legal-procedural nature of the preliminary objection raised by Venezuela and its relationship with the ICJ's jurisprudence on the principle of Monetary Gold.

d.4. Statement of the ad hoc judge appointed by Guyana, Rüdiger Wolfrum[1336]

Judge ad hoc Rüdiger Wolfrum, having voted in favour of the operative part of the judgment, considered it appropriate to present some considerations on the ICJ's reasoning. He discussed three aspects: the relationship between the Monetary Gold Principle and the Geneva Agreement; the subsequent practice of the parties to the Geneva Agreement; and the subject matter of the dispute before the ICJ.

Judge ad hoc Wolfrum noted that the present case was indeed similar to the Monetary Gold case and the East Timor case relied upon by Venezuela. However, the difference lay in the existence of the Geneva Agreement. In his view, the United Kingdom and Northern Ireland, by signing the Geneva Agreement, accepted that the resolution of the dispute by Guyana and Venezuela without their participation could

[1335] International Court of Justice, "Declaration of Judge Iwasawa". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-03-EN.pdf.

[1336] International Court of Justice, "Declaration of Judge ad hoc Wolfrum". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-04-EN.pdf.

involve the discussion of past acts or omissions of the United Kingdom.

Judge ad hoc Wolfrum considered that, properly interpreted, the Geneva Agreement constituted a *lex specialis* for the protection of the interests of the United Kingdom, which were protected in parallel by the principle of Monetary Gold operating in the abstract. Judge ad hoc Wolfrum therefore agreed with the judgment that it was necessary first to interpret the Geneva Agreement to determine whether the United Kingdom and Northern Ireland had stated with sufficient clarity that it left the resolution of the dispute between Guyana and Venezuela to the two parties, with full knowledge of the implications this might have for the United Kingdom and Northern Ireland and whether there was a corresponding agreement of Guyana and Venezuela. Judge ad hoc Wolfrum endorsed the ICJ's interpretation of the Geneva Agreement.

Accordingly, Judge ad hoc Wolfrum concluded that it was not necessary to consider further the applicability of the Monetary Gold Principle. However, in his view, this did not mean that the ICJ could not consider all the information provided by the parties in relation to the alleged fraudulent behaviour of the arbitrators in 1899.

Judge ad hoc Wolfrum further added some clarification on the subject matter of the dispute, because he noted that Venezuela had stated in a variety of contexts that the interests of the United Kingdom and Northern Ireland also formed the very subject matter of any decision that the Court would have to render on the merits.

After recalling the Court's jurisprudence, reiterated by the arbitral tribunal in the South China Sea, Judge ad hoc Wolfrum held that the ICJ, when deciding on the subject matter of a dispute, had always emphasised that special attention should be paid to the formulation of the applicant. He noted that the 2020 judgment established that the subject matter of the dispute was the validity of the 1899 Award on the boundary between British Guiana and Venezuela and the related question of the final settlement of the land boundary between Guyana and Venezuela. According to Judge ad hoc Wolfrum, this object was to be distinguished from the arguments used by the parties to support their respective positions on the dispute.

d.5. Partially Individual and Partially Dissenting Opinion of the ad hoc Judge appointed by Venezuela Philippe Couvreur.[1337]

Judge ad hoc Philippe Couvreur, in a separate opinion, referred firstly to the admissibility of the preliminary objection presented by Venezuela in the case of the dispute it has with Guyana before the ICJ. He further held that there is a difference between the existence of ICJ jurisdiction between the parties and the exercise of such jurisdiction, in particular with respect to a third party.

Judge Couvreur explained that, in a meeting with the Agents of the parties, the Vice-President of Venezuela, Delcy Rodriguez, stated that her Government considered that the ICJ clearly lacked jurisdiction and that it had decided not to participate in the proceedings. She also handed the President of the ICJ a letter from the Head of State of Venezuela stating that there was insufficient basis for the assertion of the ICJ's jurisdiction.

Judge Couvreur recalled that, in response to this denial of jurisdiction, the ICJ decided in its Order of 19 June 2018 that it was necessary to resolve the question of its jurisdiction at first instance, prior to any proceedings on the merits. The deadlines set in the ICJ's order related exclusively to the submission of documents relating to the ICJ's jurisdiction.

Judge Couvreur further referred to the importance of understanding the meaning of the word *jurisdiction* in the specific context of a court and its practice. He explained that, in general, when a court uses the word *jurisdiction*, it is presumed that it is referring to its usual meaning in the legal instruments governing its activity and in its own practice. He also held that, in this specific case, the President of Venezuela raised from the outset the issue justifying the country's decision not to take part in the proceedings and that both the memorial of Guyana and the memorandum of Venezuela focused exclusively on the issue of jurisdiction.

[1337] International Court of Justice, "Partly separate and partly dissenting opinion of Judge ad hoc Couvreur". Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-05-FR.pdf.

Judge Couvreur stressed that the ICJ had at no point addressed the question of the exercise of jurisdiction, the very existence of which had to be discussed and established in the first place. He explained that ICJ jurisprudence makes a clear distinction between the existence of jurisdiction and the exercise of that jurisdiction. He further recalled that the ICJ has considered the rights of absent third parties to be an obstacle to the exercise of jurisdiction previously established between the parties. He pointed out that questions of admissibility may be of a formal or substantive nature and that, unlike questions of jurisdiction, they are not related to the proper exercise of the jurisdictional function in a particular case. In this context, Judge Couvreur explained why the ICJ has refrained from qualifying objections by absent third parties as objections to admissibility.

Judge Couvreur stated that, according to the Rules, the ICJ has the power to examine issues that are not strictly issues of jurisdiction or admissibility of the claim, but which require preliminary examination due to their nature. In this case, although the parties are the same and the *petitum* is the same, the *causa petendi* is not identical in the two phases of the case, so that the preliminary objection of Venezuela of 7 June 2022 is not *res judicata* and is perfectly admissible.

Judge Couvreur addressed the question of the legitimacy of Guyana as a party to the ICJ proceedings, arguing that the nation has a legitimate interest in defending the integrity of what it considers its territory, even if the title underpinning its territorial basis is disputed. In addition, the judge focused on the question of whether the United Kingdom and Northern Ireland is an indispensable third party in the case and to this end recalled that ICJ jurisprudence developed in previous cases cannot automatically apply to this case. For the precedent of the Monetary Gold case to be applicable, it was necessary to consider whether the legal interests of the United Kingdom and Northern Ireland are affected by any ICJ decision on the merits of the dispute.

Judge Couvreur considered whether the United Kingdom and Northern Ireland has sufficient legal interest in the case to oppose the resolution of the question of the validity of Guyana's title to the disputed territory. In this regard, Judge Couvreur argued that the legal interest of the United Kingdom and Northern Ireland is so tenuous that the ICJ

should be able to resolve the question of the validity of the award in its absence without undermining the principle of monetary gold.

However, if the grounds for annulment of the award relate directly to the conduct of the United Kingdom and Northern Ireland, the situation would be different. In that case, the judge considered that the United Kingdom and Northern Ireland would have a sufficient legal interest in the case to oppose the resolution of the question of the award's validity. In support of his position, Judge Couvreur mentioned some arguments presented by Venezuela that criticise the validity of the award and that refer directly to the behaviour of the United Kingdom and Northern Ireland and the validity of the Washington Treaty.

Judge Couvreur referred to the Commission's draft Direction 9 on the question of *State succession in matters of State responsibility*, recalling that this instrument provides that an injured State may, in certain circumstances, even after the date of succession, invoke the responsibility of the predecessor State, such as in the case of a newly independent State whose territory was dependent on the international relations of the predecessor State immediately prior to succession.

Judge Couvreur explained that the acts of which the United Kingdom and Northern Ireland are accused during the negotiation of the 1897 Treaty and the preparation of the 1899 Paris Arbitral Award cannot be imputed to Guyana simply because it succeeded the United Kingdom and Northern Ireland in the disputed territory. The proper legal interests of the United Kingdom and Northern Ireland are distinct from those of Guyana at the heart of the dispute to be resolved by the ICJ.

Judge Couvreur insisted that the ICJ cannot rule on the subject matter of the claim without first having to rule on certain aspects of the behaviour of the United Kingdom and Northern Ireland. In his view, the argument of Guyana that the United Kingdom and Northern Ireland would have accepted the ICJ's jurisdiction to settle the dispute is problematic.

For Judge Couvreur, the consent of states to the jurisdiction of the Court depends on very high standards, the satisfaction of which is difficult to prove in the present case. He also pointed out that the ICJ cannot exercise its jurisdiction over a State if that State is not a party to the proceedings in question, as to do so would violate the principles of

reciprocity and equality between States and the adversarial principle. The position taken by Guyana could undermine legal certainty and complicate the procedure, which in turn would hinder the final settlement of the dispute.

As it appears from the separate opinion under consideration, establishing the unequivocal and unconditional consent of the United Kingdom and Northern Ireland to the ICJ ruling in its absence -and without any further agreement- on the commission of wrongdoing alleged against it in this case is too important to resort to mere assumptions or speculation. Furthermore, Judge Couvreur indicated that the sole purpose of the United Kingdom and Northern Ireland in becoming a party to the Geneva Agreement was to facilitate the settlement of the territorial dispute it had bequeathed to the newly independent Guyana. Therefore, the consent of the United Kingdom and Northern Ireland cannot be inferred from assumptions or speculation and that any interpretation of the Geneva Agreement must be consistent with the principles enshrined in the ICJ Statute, which is an integral part of the UN Charter.

Judge Couvreur recalled that the ICJ has in the past been very demanding on the requirement of a state's express consent before pronouncing on its conduct. Therefore, the judge emphasised that the ICJ should have required the express and clear consent of the United Kingdom and Northern Ireland to submit to its jurisdiction.

In addition to the above, Judge Couvreur stated that, regardless of how the argument based on an alleged consent of the United Kingdom and Northern Ireland has been dealt with, the rejection of the preliminary objection submitted by Venezuela is in no way justified. To this effect, it recalled that the letter of the Secretary-General of the United Nations, dated 30 January 2018, by which he notified his decision to choose the ICJ as the means of dispute settlement under Article IV, paragraph 2, of the Geneva Agreement, was not addressed to the United Kingdom and Northern Ireland. However, the judgment of 18 December 2020 confirmed that this decision was the basis for the ICJ's jurisdiction in the case. This, in Judge Couvreur's view, means that jurisdiction does not extend to the United Kingdom and Northern Ireland and its own acts. This would confirm that the choice of the United Kingdom and

Northern Ireland to remain a third party to the proceedings was duly considered when the ICJ established its jurisdiction to hear the case.

Judge Couvreur insisted on the importance of establishing a State's consent to the jurisdiction of the Court in order to strengthen legal certainty and the confidence of States. He also pointed out the potential procedural difficulties that could arise in a new instance involving the third State -in this case the United Kingdom and Northern Ireland- by virtue of a jurisdictional link allegedly created through an agreement.

In the last part of his opinion, Judge Couvreur expressed his concern about the way in which the ICJ has analysed the case, avoiding examining certain arguments put forward by the parties. In his view, the approach adopted by the ICJ does not avoid the difficulties raised by the theory on which the consent of the United Kingdom and Northern Ireland was based and poses problems for the proper administration of justice.

Finally, Judge Couvreur expressed his disagreement with the majority of the ICJ judges as to the application of the Monetary Gold principle in this case, and pointed out that, unlike previous cases in which this jurisprudence was applied, the facts of this case are not well established at this stage. He also indicated that to accept Venezuela's plea, based on the absence of the United Kingdom and Northern Ireland from the proceedings, would be to prejudge the merits of the case. As Judge Couvreur rightly pointed out, the preliminary objection raised by Venezuela is intrinsically linked to the merits of the case.

For the reasons referred to above, Judge Couvreur concluded that the objection raised by Venezuela was not exclusively preliminary and, consequently, should be examined on the merits of the case.

110**. 8 April 2024**: The ICJ, after ruling on the preliminary objections procedure, issued an order by which it established 8 April 2024 as the deadline by which Venezuela must present its Counter-Memorial on the merits of the dispute it maintains with the Cooperative Republic of Guyana regarding the nullity or validity of the Paris Arbitral Award of 3 October 1899.

XII. ANNEXES

1. PAPAL BULL OF ALEXANDER VI "INTER CAETERA" DATED 4 MAY, 1493, WHEREBY THE TERRITORIES OF SOUTH AMERICA WERE DIVIDED BETWEEN SPAIN AND PORTUGAL BASED ON THE DISCOVERIES OF BOTH NATIONS.[1338]

TRANSLATION.
(From the copy printed in Lisbon in the year 1750).

Alexander, bishop, servant of the servants of God, to the illustrious sovereigns, our very dear son in Christ, Ferdinand, king, and our very dear daughter in Christ, Isabella, queen of Castile, Leon, Aragon, Sicily, and Granada, health and apostolic benediction.

Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. Wherefore inasmuch as by the favour of divine clemency, we, though of insufficient merits, have been called to this Holy See of Peter, recognizing that as true Catholic kings and princes, such as we have known you always to be, and as your illustrious deeds already known to almost the whole world declare, you not only eagerly desire but with every effort, zeal, and diligence, without regard to hardships, expenses, dangers, with the shedding even of your blood, are labouring to that end; recognizing also that you have long since dedicated to this purpose your whole soul and all your endeavours- as witnessed in these times with so much glory to the Divine Name in your recovery of the kingdom of Granada from the yoke of the Saracens- we therefore are rightly led, and hold it as our duty, to grant you even of our own accord and in your favour those things whereby with effort each day more hearty you may be enabled for the honour of God himself and the spread of the Christian rule to carry forward your holy and praiseworthy purpose so pleasing to immortal God.

[1338] Available at: https://www.dipublico.org/117989/bula-del-papa-alejandro-vi-haciendo-donacion-de-la-america-a-los-reyes-catolicos-fernando-e-isabel-en-4-de-mayo-de-1493/

We have indeed learned that you, who for a long time had intended to seek out and discover certain islands and mainland remote and unknown and not hitherto discovered by others, to the end that you might bring to the worship of our Redeemer and the profession of the Catholic faith their residents and inhabitants, having been up to the present time greatly engaged in the siege and recovery of the kingdom itself of Granada were unable to accomplish this holy and praiseworthy purpose; but the said kingdom having at length been regained, as was pleasing to the Lord, you, with the wish to fulfil your desire, chose our beloved son, Christopher Columbus, a man assuredly worthy and of the highest recommendations and fitted for so great an undertaking, whom you furnished with ships and men equipped for like designs, not without the greatest hardships, dangers, and expenses, to make diligent quest for these remote and unknown mainlands and islands through the sea, where hitherto no one had sailed; and they at length, with divine aid and with the utmost diligence sailing in the Ocean sea, discovered certain very remote islands and even mainlands that hitherto had not been discovered by others; wherein dwell very many peoples living in peace, and, as reported, going unclothed, and not eating flesh. Moreover, as your aforesaid envoys are of opinion, these very peoples living in the said islands and countries believe in one God, the Creator in heaven, and seem sufficiently disposed to embrace the Catholic faith and be trained in good morals. And it is hoped that, were they instructed, the name of the Saviour, our Lord Jesus Christ, would easily be introduced into the said countries and islands. Also, on one of the chief of these aforesaid islands the said Christopher has already caused to be put together and built a fortress fairly equipped, wherein he has stationed as garrison certain Christians, companions of his, who are to make search for other remote and unknown islands and mainlands.

In the islands and countries already discovered are found gold, spices, and very many other precious things of diverse kinds and qualities.

Wherefore, as becomes Catholic kings and princes, after earnest consideration of all matters, especially of the rise and spread of the Catholic faith, as was the fashion of your ancestors, kings of renowned memory, you have purposed with the favour of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith.

Hence, heartily commending in the Lord this your holy and praiseworthy purpose, and desirous that it be duly accomplished, and that the name of our Saviour be carried into those regions, we exhort you very earnestly in the Lord and by your reception of holy baptism, whereby you are bound to our

apostolic commands, and by the bowels of the mercy of our Lord Jesus Christ, enjoin strictly, that inasmuch as with eager zeal for the true faith you design to equip and despatch this expedition, you purpose also, as is your duty, to lead the peoples dwelling in those islands and countries to embrace the Christian religion; nor at any time let dangers or hardships deter you therefrom, with the stout hope and trust in your hearts that Almighty God will further your undertakings.

And, in order that you may enter upon so great an undertaking with greater readiness and heartiness endowed with the benefit of our apostolic favour, we, of our own accord, not at your instance nor the request of anyone else in your regard, but of our own sole largess and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde. With this proviso however that none of the islands and mainlands, found and to be found, discovered and to be discovered, beyond that said line towards the west and south, be in the actual possession of any Christian king or prince up to the birthday of our Lord Jesus Christ just past from which the present year one thousand four hundred and ninety-three begins. And we make, appoint, and depute you and your said heirs and successors lords of them with full and free power, authority, and jurisdiction of every kind; with this proviso however, that by this our gift, grant, and assignment no right acquired by any Christian prince, who may be in actual possession of said islands and mainlands prior to the said birthday of our Lord Jesus Christ, is hereby to be understood to be withdrawn or taken away. Moreover, we command you in virtue of holy obedience that, employing all due diligence in the premises, as you also promise- nor do we doubt your compliance therein in accordance with your loyalty and royal greatness of spirit- you should appoint to the aforesaid mainlands and islands worthy, God-fearing, learned, skilled, and experienced men, in order to instruct

the aforesaid inhabitants and residents in the Catholic faith and train them in good morals. Furthermore, under penalty of excommunication *late sententie* to be incurred *ipso facto*, should anyone thus contravene, we strictly forbid all persons of whatsoever rank, even imperial and royal, or of whatsoever estate, degree, order, or condition, to dare, without your special permit or that of your aforesaid heirs and successors, to go for the purpose of trade or any other reason to the islands or mainlands, found and to be found, discovered and to be discovered, towards the west and south, by drawing and establishing a line from the Arctic pole to the Antarctic pole, no matter whether the mainlands and islands, found and to be found, lie in the direction of India or toward any other quarter whatsoever, the said line to be distant one hundred leagues towards the west and south, as is aforesaid, from any of the islands commonly known as the Azores and Cape Verde; apostolic constitutions and ordinances and other decrees whatsoever to the contrary notwithstanding.

We trust in Him from whom empires and governments and all good things proceed, that, should you, with the Lord's guidance, pursue this holy and praiseworthy undertaking, in a short while your hardships and endeavours will attain the most felicitous result, to the happiness and glory of all Christendom.

But inasmuch as it would be difficult to have these present letters sent to all places where desirable, we wish, and with similar accord and knowledge do decree, that to copies of them, signed by the hand of a public notary commissioned therefor, and sealed with the seal of any ecclesiastical officer or ecclesiastical court, the same respect is to be shown in court and outside as well as anywhere else as would be given to these presents should they thus be exhibited or shown.

Let no one, therefore, infringe, or with rash boldness contravene, this our recommendation, exhortation, requisition, gift, grant, assignment, constitution, deputation, decree, mandate, prohibition, and will. Should anyone presume to attempt this, be it known to him that he will incur the wrath of Almighty God and of the blessed apostles Peter and Paul.

Given at Rome, at St. Peter's, in the year of the incarnation of our Lord one thousand four hundred and ninety-three, the fourth of May, and the first year of our pontificate.

Gratis by order of our most holy lord, the pope.

2. TREATY BETWEEN SPAIN AND PORTUGAL CONCLUDED AT TORDESILLAS, ON 7 JUNE 1494, SPECIFYING THE DIVISION IN GREATER DETAIL AND EXTENDING THE PORTUGUESE TERRITORY UP TO 350 LEAGUES FROM CAPE VERDE[1339] - (EXTRACT)

That a boundary or straight line be determined and drawn north and south, from pole to pole, on the said ocean sea, from the Arctic to the Antarctic poles. This boundary or line shall be drawn straight, as aforesaid, at a distance of three hundred and seventy leagues west of the Cape Verde Islands, being calculated by degrees, or by any other manner as may be considered the best and readiest, provided the distance shall be no greater than abovesaid. And all lands, both islands and mainlands, found and discovered already, or to be found and discovered hereafter, by the said King of Portugal and by his vessels on this side of the said line and bound determined as above, toward the east, in either north or south latitude, on the eastern side of the said bound provided the said bound is not crossed, shall belong to, and remain in the possession of, and pertain forever to, the said King of Portugal and his successors. And all other lands, both islands and mainlands, found or to be found hereafter, discovered or to be discovered hereafter, which have been discovered or shall be discovered by the said King and Queen of Castile, Aragon, etc., and by their vessels, on the western side of the said bound, determined as above, after having passed the said bound toward the west, in either its north or south latitude, shall belong to, and remain in the possession of, and pertain forever to, the said King and Queen of Castile, Leon, etc., and to their successors.

SIGNATURES: On behalf of the Catholic Monarchs, signed: Enrique Enriquez de Guzman, Chief Steward of the Kings; Gutierre de Cardenas, Major Commander of Santiago, Royal Accountant; and Dr. Francisco Maldonado. On the Portuguese side, signed: Ruy de Sousa, Juan de Sousa and the justice Arias de Almadana.The Catholic Monarchs ratified it in July in Arevalo, and 100 days later John II ratified it in Setubal.

[1339] Available at: http://cit-tordesillas.es/doc/2081383da4850db1a1819dd6652a11ac.pdf

3. FINAL TREATY OF PEACE AND COMMERCE ADJUSTED BETWEEN S.M.C. AND THE GENERAL STATES OF THE UNITED PROVINCES; SIGNED IN MÜNSTER ON 30 JANUARY 1648 THROUGH WHICH THE KINGDOM OF SPAIN CEDED TO THE NETHERLANDS THE CAMP OF DEMERARA, BERBICE, AND ESSEQUIBO, LOCATED EAST OF THE ESSEQUIBO RIVER.[1340]

Don Felipe IV, by the grace of God, King of Castile, of Leon of Aragon, etc., etc., etc.

To all who shall see these letters, greetings.

Forasmuch as to free the provinces of the Low Countries from the war which for so many years has afflicted them, to relieve them from the miseries and calamities of it, and to restore them to their quiet, splendour and prosperity, as also to end the wars which have extended to other countries and remote seas, we have long desired to come to a good peace with the Lords States General of the free United Provinces of the Netherlands, for the relief of all those on both sides who feel the calamities of the said war: And the city of Münster in Westphalia having been chosen by common consent for the Congress and Treaty of Peace, things in this place have been so favourably successful, that our Ambassadors Extraordinary and Plenipotentiary in virtue of our Powers, have made and concluded with the Ambassadors Extraordinary and Plenipotentiary of the said Lords States the Treaty of Peace herewith inserted to the letter.

In the name and glory of God. Be it known to all, that after the long course of bloody Wars, which have afflicted for so many years the Peoples, Subjects, Kingdoms and Countries of the obedience of the Lords King of Spain, and States General of the United Provinces of the Netherlands, the said Lords King and States, moved by Christian compassion, and desiring to put an end to the public calamities, and to stop the deplorable consequences, inconveniences, damages and dangers, which the further continuance of the said Wars of the Netherlands may bring about, particularly having extended to other States, Countries, Lands and Seas more distant; And to convert the sinister effects of it into the most agreeable effects of a good and sincere pacification on both sides, and into the sweet fruits of a total and firm quietude, for the consolation

[1340] Available at: https://www.dipublico.org/3654/treaty-of-munster-1648-en-espanol/

of the said Peoples and States of their obedience, and for the compensation of the damages suffered, for the common good, not only of the Netherlands, but of all Christendom, inviting and requesting the other Princes and Potentates of it, that by the grace of God, to be moved to the same compassion, and aversion to the misfortunes, ruins and disorders that for so long and so cruelly the heavy scourge of War has caused to be experienced, in order to achieve such a good and desirable end, the said Lords King of Spain Don Felipe IV, and States General of the United Provinces of the Netherlands, have appointed and deputed, namely: the said Lord King Don Gaspar de Bracamonte y Guzmán, Count of Peñaranda, Lord of Aldea Seca de la Frontera, etc., etc., and the said Lords Antonio Brun, Gentleman Counsellor of H. M. C. in His Council of State and Supreme for the affairs of the Netherlands, etc. and the said Lords States General of the United Provinces of the Netherlands, Mr. Bartholt de Gent, Lord of Loenen and Meinerswich, etc.; Mr. Juan Mathenesse, Lord of Mathenesse, Riviere, etc.; Mr. John Mathenesse, Lord of Mathenesse, Riviere, etc. Mr. John de Knuyt, Knight and Lord of the Old and New Vosmar, etc.; Mr. Adrian Paw, Knight and Lord of Heemstede, etc.; Mr. Godart de Reede, Lord of Nederhorst, Vredeland, etc.; Mr. Francis de Donia, Lord of Hineema in Hielsum, etc.; Mr. William Ripperda, Lord of Hengeloo, Boxbergen, etc., and Mr. Adrian Cland of Stedum, Lord of Nittersum, etc., etc., all Ambassadors Extraordinary, etc.; all Ambassadors Extraordinary to Germany and Plenipotentiaries of the said Lords States General for the Treaties of the General Peace, and all authorised with sufficient powers, to be inserted at the end hereof; who having assembled at the city of Münster in Westphalia, destined by common consent for the general Treaty of the Peace of Christendom, by virtue of their said Powers, have made, concluded and adjusted by the said Lords King and States, and in their name the following articles

I. Firstly, the said Lord King declares and acknowledges, that the said Lords General of the United Garlic States and the Provinces thereof respectively, with all their associated Countries, Cities and Lands belonging to them, are free and Sovereign States, Provinces and Countries, over which, nor over their associated Countries, Cities and Lands, as aforesaid, the said Lord King claims nothing, and that at present, or hereafter, he will claim nothing for himself, his Heirs and Successors; And that in consequence thereof he is pleased to treat with the said Lords States as he does at present, a perpetual Peace on the conditions written and declared hereinbelow.

II. Namely, that the said Peace shall be good, firm, faithful, and inviolable; and that in consequence thereof all acts of hostility in whatever manner they may be, between the said Lords King and States General, both by Sea and other

Waters, and, by Land, in all their Kingdoms, Countries, Lands, and Lordships, and for all their subjects and inhabitants, of whatever quality or condition they may be, without exception of place or person, shall cease and be suspended.

III. Each one will remain in possession and effectively enjoy the Countries, Cities, Squares, Lands and Lordships that he has and possesses at present, without being disturbed or disturbed in them, directly or indirectly in any way whatsoever; which is understood to include the Villas, Places, Villages, Villages and plain Country of his dependence; and consequently all the Mayria of Bolduc; as also all the Lordships, Cities, Castles, Villas, Towns, Places, Villages, Hamlets and Plain Country dependent on the said city and Mayria of Bolduc; the City and Marquisate of Bergues-op-zoom; the City and Barony of Breda; the City of Mastrich and its jurisdiction; as also the County of Vroonhoff; the City of Grave and Country of Kuyk, Hulst, and Baylia of Hulst and Hulster-Ambacht; and also Axele-Ambacht, situated on the Southern and Northern coasts of the Geula; as also the Forts which the said Lords States hold at present in the Country of Waes; And all the other towns and Places which the said Lords States hold in Brabant, Flanders and other Parts, shall remain to the said Lords States, with all and the same rights and shares of Sovereignty and Superiority, without any exceptions, and all in the same manner as the United Provinces of the Netherlands hold them. On the understanding that all the rest of the country of Waes, excepting the said Forts, shall remain to the said Lord King of Spain. As for the three quarters on the other side of the Meuse, namely: Falquimont, Dalem and Roleduc, they shall remain in the state in which they are at present; and in case of dispute or controversy, they shall be referred to the "Mipartite" Chamber for decision therein.

IV. The subjects and inhabitants of the countries of the said Lords King and States shall have all good correspondence and friendship, without feeling the offences and injuries which they have received in the past; they may also frequent and make mansion in each other's Countries, and there exercise their traffic and commerce in safety, both by Sea and other Waters, and by Land.

V. The navigation and traffic of the East and West Indies shall be maintained according to and in conformity with the grants made thereon or hereafter made; for the security of which the present Treaty and the ratification thereof, which shall be procured on either side, shall serve; and there shall be included in the said Treaty all the Potentates, Nations and Peoples, with whom the said Lords States or those of the East and West India Company on their behalf, within the limits of the said grants, have friendship and alliance; and each namely, the said Lords King and States respectively, shall remain

in possession and enjoyment of those Lordships, Cities, Castles, Fortresses, Commerce and Countries of the East and West Indies, as also in Brazil, and on the coasts of Asia, Africa and America respectively, which the said Lords King and States respectively hold and possess, comprehending therein especially the Places and Squares which the Portuguese have returned and occupied to the said Lords States since the year 1641; As also the Places and Squares which the said Lords of the States may hereafter conquer and possess without contravening the present Treaty. And the Directors of the East and West India Companies of the United Provinces; as well as the Ministers, Superior and inferior Officers, Soldiers and Sailors, who are now in the service of either of the said two Companies, or have been therein, as well as those who out of their service are still in, or may hereafter be employed, both in this Country, and in the district of the said two Companies respectively; shall be and remain free, and unmolested in all the Countries, which are under the obedience of the said Lord King in Europe; and they may travel, traffic, frequent them as all the other inhabitants of the Countries of the said Lords States, and besides this, it has been treated and stipulated, that the Spaniards shall maintain their navigation in the manner they have it at present in the East Indies, without being able to extend it further, as also the inhabitants of the Netherlands shall abstain from the frequentation of the Squares, which the Castilians have in the East Indies.

VI. And as to the West Indies, the Subjects and Inhabitants of the Kingdoms, Provinces, and Lands of the said Lords King and States respectively, shall abstain from sailing and trading in all Ports, Places, and Squares garrisoned with Forts, Longhouses, or Castles, and in all others possessed by either party, viz. That the Subjects of the said Lord King shall not sail, nor traffic in those occupied by the said Lords States, nor the Subjects of the said Lords States in those held by the said Lord King; and among the Places held by the said Lords States shall be included those which the Portuguese have occupied in Brazil from the said Lords States since the year 1641; as also all the other Places which they hold at present, while the said Portuguese occupy them, without the preceding article derogating from the contents of the present.

VII. And because it is necessary a long time to warn those who are outside the said limits with forces and vessels, in order that they may desist from all acts of hostility, it is agreed, that within the limits of the concession formerly made to the East India Company of the Netherlands, or of that which may be made for its continuance, Peace shall not commence until one year after the date of the conclusion of this Treaty. And as to the limits of the grant formerly made by the States General, or which shall be made for its continuance to the

West India Company, that in the said Places the Peace shall not commence until six months after the said date; it is to be understood that if the notice of the said Peace by the public on either side shall arrive before the said limits respectively, that. If, however, after the expiration of one year, and six months respectively, any act of hostility shall be done within the limits of the said grants, the damages shall be repaired without delay.

VIII. The Subjects and Inhabitants of the Countries of the said Lords King and States, who trafficked in each other's Countries, shall not be obligated to pay greater duties or taxes than the Subjects themselves respectively; So that the Inhabitants and Subjects of the United Netherlands, shall be and remain exempt from a certain twenty per cent, or from any other lesser or greater taxation, which the King of Spain, during the truce of twelve years has levied, or hereafter, directly or indirectly, may wish to levy on the Inhabitants and Subjects of the United Netherlands, or to tax them more than he would on his own subjects.

IX. The said Lords King and States shall not charge outside their respective limits any duties or taxes for the entry, exit, or other charges of merchandise which has passed, whether by water or by land.

X. The Subjects of the said Lords King and States shall enjoy respectively in each other's Countries, the ancient franchise of tolls, which they had been in possession of before the commencement of the War.

XI. The frequentation, intercourse, and commerce between the respective Subjects shall not be impeded, and if any impediments should occur, they shall be actually and effectually removed.

XII. And from the day of the conclusion and ratification of this Peace the King shall cause to cease on the Rhine and Meuse the collection of all Tolls, which before the War have been under the district and jurisdiction of the United Provinces, and especially the Toll of Zeeland; so that the same shall not be collected by his said Majesty, either in the city of Antwerp or elsewhere; on the understanding and condition that from the aforesaid day the States of Zealand shall reciprocally take to their charge and pay before all things from this very day the annuities, which before the year 1572 were mortgaged upon the said Toll, and of which the owners and Collectors of the rent have been in possession and collected before the commencement of the said War, which the owners of the aforesaid other Tolls shall likewise do.

XIII. The boiled white Salt, which comes from the United Provinces to those of the said Majesty, shall be received and admitted without being taxed with greater imposts, than coarse Salt; and in like manner the Salt of the

Provinces of the said Majesty shall be admitted into those of the said Lords of the States, and shall be sold therein, without being taxed either, than that of the said Lords of the States.

XIV. The Rivers of the Scheldt, as also the Canals of Sas, Zuyn, and other mouths of the Sea which go thither, shall be held closed by the said Lords of the States.

XV. The Vessels and Merchandise entering and leaving the Ports of Flanders respectively, shall be and remain taxed by the said Lord King with all those imposts and other charges, which are levied on the merchandise going and coming by the extension of the Scheldt and other Canals, mentioned in the preceding article; and it shall be agreed thereafter between the Parties reciprocally as to the rate of the said equal charge.

XVI. The Hanseatic Cities, with all their citizens, Inhabitants, and Countries, shall enjoy, as to Navigation and Commerce in Spain, and in the Kingdoms and States of Spain, all, and the same rights, franchises, immunities, and privileges, as are hereby granted, or hereinafter granted in favour of, and in respect of, the Subjects, and Inhabitants of the United Provinces of the Netherlands, and reciprocally the said Subjects and Inhabitants of the United Provinces shall enjoy all and the same rights, franchises, immunities, privileges and capitulations as well as to the establishment of Consuls in the Capital Cities, or Maritime Cities of Spain, and other parts where it may be necessary, as to Merchants, Factors, Masters of Ships, Mariners or others, in the same manner as the said Hanseatic Cities in general, or in particular have obtained and used them in the past (1), or shall hereafter obtain and use them, for the safety, benefit and advantage of the Navigation and Commerce of their Cities, Merchants, Factors, Commissaries and others dependent on them.

XVII. The Subjects, and Inhabitants of the Countries of the said Lords States shall also have the same security, and liberty in the Countries of the said Lord King, as was granted to the Subjects of the King of Great Britain by the last Treaty of Peace, and Secret Articles made by the Constable of Castile.

XVIII. The said Lord King shall as soon as possible give the necessary order, in order that honorary places may be appointed for the burial of the bodies of those who on the part of the said Lords of the States shall die in the dominions of the said Lord King.

XIX. The Subjects and Inhabitants of the Countries of the said Lord King, who shall come to the Countries and Lands of the said Lords States, shall, as regards the public exercise of Religion, be governed and conducted with all modesty, without scandal in word or deed, or uttering blasphemies, and the same shall be done and observed by the Subjects and Inhabitants of the

Countries of the said Lords States, who shall come to the Lands of the said Majesty.

XX. Merchants, Masters of Ships, Pilots, Sailors, their Ships, merchandise, goods and other property of theirs, shall not be seized or confiscated by virtue of any general or particular order, or for any cause whatsoever, war or otherwise, nor under the pretext of wishing to use them for the preservation and defence of the Country; But this prohibition does not include seizures and confiscations of justice by ordinary means, on account of debts, own obligations and valid contracts of those to whom the said seizures have been made, in which case they shall proceed as is customary by law and reason.

XXI. Certain Judges shall be appointed on either side, in equal numbers, in the form of a "Mipartite" Chamber, who shall sit in the Provinces of the Netherlands, and in such Places as may be convenient, and this by turns, either under the obedience of the one, or under that of the other, as may be mutually agreed upon; Which Judges appointed by the one and the other party, according to the Commission, and Instruction to be given to them, and upon which they shall take an oath according to a certain form, which shall be arranged by the one and the other party in this matter, shall attend to the trade of the Inhabitants of the said Provinces of the Netherlands, and to the charges and impositions, which shall be levied by the one and the other party upon the merchandise; and if the said Judges shall know, that on either side, or little on both, any excess is made, they shall correct and moderate it. In addition to this, the said Judges shall examine the questions concerning the non-execution of the Treaty, as well as the contraventions of it, which in their time and place may arise, both in the Countries on this side, and in the distant Kingdoms, Countries, Provinces and Islands of Europe, and shall dispose of them summarily and flatly, and shall decide what they shall find expedient in conformity with the Treaty; And the judgments and dispositions of these Judges shall be executed by the Ordinary Judges of the Place where the contravention was made, or against the persons who contravened, as the occurrences may require; and the said Ordinary Judges shall not fail to execute the said execution, or to fail to do so, and to repair the contraventions within six months after they have been required to do so.

XXII. If any judgments and judgments have been rendered between persons of different parties not prohibited, whether in civil or criminal matters, they may not be executed against the persons condemned, nor against their property; and no Letters of Marque or reprisals shall be granted, except with knowledge of cause, and in the cases permitted by the Imperial Laws and Constitutions, and according to the order established by them.

XXIII. It shall not be possible to board, enter, or stop in the Ports, Harbours, Coves, Beaches, and Foreshores of either Country, with Ships and People of War, in such numbers as may give suspicion, without Passport and Licence from him who commands the said Ports, Harbours, Coves, Beaches, and Foreshores, unless they are driven by tempest, or compelled by necessity, and to avoid some dangers of the Sea.

XXIV. Those whose property has been seized and confiscated on the occasion of the War, or their heirs, or those entitled thereto, shall enjoy and take possession of it on their private authority, and by virtue of this Treaty, without need of recourse to Justice, notwithstanding all additions to the Treasury, pledges, gifts made, Treaties, Agreements, and Compromises, with any waivers which may have been put in such Compromises to exclude from any part of such property those whose property it may be; And any and all of the property and rights, which under the present Treaty shall or ought to be restored, reciprocally to their first owners, their heirs, or those entitled thereto, may be sold by such owners, without any particular licence being necessary for the purpose; and accordingly the owners of the rents, which on the part of the Treasuries were constituted in lieu of the property sold, as also of the rents and shares, which are held by the Treasuries respectively, may dispose of the property in them by sale, or otherwise, as of their other property of their own.

XXV. Which shall also be executed for the benefit of the heirs of the late Lord Prince William of Orange, even as regards the rights which they have in the Salines of the County of Burgundy, which shall be restored and left to them, with the Forests of their dependence, in order to that which shall not appear to have been purchased and paid for by the said Majesty.

XXVI. In which are also understood to be included the other goods and rights situated in the Counties of Burgundy and Charolais; and what in consequence of the Treaty of the ninth of April 1609, and of the seventh of January 1610, respectively, has not yet been restored, shall be restored as soon as possible in all places in good faith, to the owners, their heirs, or those who have rights on both sides.

XXVII. As also included herein are the goods and rights, which after the expiration of the Truce of twelve years, were adjudged to the late Count John of Nassau, by Judgment of the Supreme Council of Mechelen, to the prejudice of the Exchequer, or in any other manner, which the Count may have acquired possession of, in whatever Places, Squares or Lordships, in which the said goods and rights may be situated, and by whichever they may be possessed; Which Judgment, by virtue of this Treaty, is and shall be held not to be given, and any further acquisition of the said possession is and shall be void.

XXVIII. And as to the suit of Chaten-Belin, tried in the lifetime of the late Lord Prince of Orange, before the Supreme Council of Mechelen, against the Attorney General of the said Lord King, in respect of the said suit not being tried after one year, which followed, as promised in Article XIV. of the, Truce of twelve years; It is agreed that immediately after the conclusion and ratification of the present Treaty, the Exchequer in the name of his Majesty, or whosoever he may be, shall in effect quit all and any of the property sued for in the said suit, by any and every right whatsoever that may be possessed; And shall relinquish in the name and on behalf of the aforesaid all actions and pretensions which the Exchequer may have or claim in any manner upon the said goods, so that the said Lord Prince, of Orange now, his Heirs, Successors, and such others as may be entitled, shall actually and effectually occupy, and take free and full possession thereof, immediately upon the conclusion and ratification of this Treaty, and by virtue thereof, and without recourse to Justice; Provided that the fruits received and consumed with their charges, until the conclusion of the present Treaty, shall remain for the benefit of the Treasury.

XXIX. Should any difficulty be encountered in any place as to the restitution of the property and rights to be returned, the Judge thereof shall cause such restitution to be made without delay, and shall take the most expeditious measures in this respect, without the restitution being deferred under the pretext of non-payment of the capitation or otherwise.

XXX. The Subjects and Inhabitants of the United Netherlands may, throughout the whole extent of the Lands of the obedience of the said Lord King, avail themselves of such Attorneys, Attorneys, Notaries, Agents and Executors as may appear to them, for which purpose they shall also be appointed by the ordinary Judges when necessary, and these Judges shall be required; and, reciprocally, the Inhabitants and Subjects of the said Lord King who shall come to the Countries of the said Lords of the States shall enjoy the same assistance.

XXXI. If the Treasury shall have caused any confiscated property of either party to be sold, those to whom it shall belong by virtue of the present Treaty, shall be bound to be content, with the interest on the price, at the rate of six per cent, to be paid every year on demand of those who possess the said property, and otherwise it shall be lawful for them to draw on the Funda and estate sold; Provided that in lieu of the property sold, rents redeemed, or the principal thereof, there shall be issued by and in the name of the Treasury respectively, Letters Patent to be laundered from the owners, their heirs, or those entitled thereto; Which shall serve as declaratory evidence to them, in

conformity with the Treaty, with assignment of the annual payment upon a Receiver in the Province where the sale or redemption shall have been made, who shall be appointed; and the price shall be computed at the rate of the first public sale, or otherwise made as of right; the first airing of which rent shall cease one year after the date of the conclusion and ratification of this Treaty.

XXXII. But if the said sales shall have been made by Justice for the good and legitimate debts of those to whom the said property used to belong before the confiscation, it shall be lawful for them, or their heirs and those entitled thereto, to discharge them, paying the price within one year from the day of the present Treaty, after the expiration of which time they shall not be heard of again; and the discharge and redemption having been made by them, they may dispose of the said property as they please, without the necessity of any other license.

XXXIII. Notwithstanding the foregoing, it is not understood to give place to this performance in regard to the houses situated in the Cities, sold on this account, on account of the great inconvenience and notable damage which the purchasers would receive in this respect, on account of the innovations and repairs which might have been made in the said houses, the liquidation of which would be very long and difficult.

XXXIV. And as for the repairs and improvements made in other property sold, the redemption of which is permitted, if they should be attempted, the Ordinary Judges will do justice with knowledge of the cause, the funds and inheritances being mortgaged for the amount in which the improvements are liquidated, without it being lawful for the said purchasers to use the right of retention to be paid and satisfied.

XXXV. All concealed goods and rights, movable, immovable, rents, shares, debts, credits and others, which have not been seized by the Treasury, with due knowledge of cause before the conclusion and ratification of this Treaty, shall remain at the free and full disposal of the owners, their heirs, or those entitled thereto, with all the fruits, rents, products and emoluments; And likewise, those who have concealed the said goods and rights, or their heirs, shall not on this account be molested by the Treasury respectively; but the owners, their heirs, or those entitled thereto, shall have action against any of them, as against their own property.

XXXVI. The trees cut down after the day of the conclusion of this Treaty, and which on the same day have been on the estates, as well as the trees sold, which at the time of the said conclusion have not yet been cut down, shall remain with the owners, notwithstanding their sale, and without their being obliged to pay any price.

XXXVII. The fruits, rents, and rentals of the Lords, Lands, Tithes, Fisheries, Houses, Rents and other products of the property, which according to the Treaty shall be restored, fallen after the day of the conclusion of this Treaty, shall remain for the whole year to the proprietors, their successors or those entitled thereto.

XXXVIII. The leases of the property, seized or forfeited (though made for many years) shall expire in the same year of the conclusion of the Treaty, according to the custom of the respective places where the said property was situated; and the leases falling after the day of the conclusion of the Treaty, as aforesaid, shall be paid to the owners; It is to be understood that if the lessor of the said goods shall have made any expenses for the benefit of them for this ally, that these shall be paid by the owners to the Lessor, according to custom, or at the discretion of the Judges of the place where the said goods were situated.

XXXIX. The sale of confiscated or seized property, made after the conclusion of the Treaty, shall be considered as null and void; as also the sale made before the said conclusion against the Capitulations or Agreements made particularly with certain Cities.

XL. The houses of private persons restored, or to be restored in accordance with the Treaty, shall not be reciprocally encumbered with lodgings or other charges, in any other manner, nor more than the houses of other inhabitants of equal quality.

XLI. No one shall be hindered on either side, directly or indirectly, from moving from the place of his habitation, on payment of the appropriate fees, and if any hindrances are placed after the Treaty, they shall be removed promptly.

XLII. If any Fortifications or public works have been made by either party, with the permission and authority of the Superiors of the Places, the restitution of which is to be made by the present Treaty, the owners thereof shall be bound to be content with the valuation, which shall be made by the Ordinary Judges, both of the said places and of the Jurisdiction which they had there, unless the Parties agree thereon in good faith, as well as satisfaction shall be made to the owners of the property applied to the Fortifications, public works, or pious places.

XLIII. As to the property of Churches, Colleges and other pious places, situated in the United Provinces, which are dependent members of the Churches, Benefices and Colleges, which are of the obedience of the said Lord King, what has not been sold before the conclusion of the present Treaty

shall be delivered and restored to them, and they shall again enter into his possession and enjoyment of his private authority, and without the aid of Justice, although without being able to dispose of them, as aforesaid; But as to those which shall have been sold before the said time, or given in payment by the States of any of the Provinces, the rent of the price shall be paid to them every year, at the rate of six per cent, by the Province which shall have made the said sale, or given the said property in payment, and shall likewise be assigned in such manner that they may be secured; the same shall be done and observed on the part of the said Lord King.

XLIV. As to the claims and interests which the said Lord Prince of Orange may have in respect of the goods of which he is not in possession, they shall be settled by a separate treaty to the satisfaction of the said Lord Prince of Orange; but as to the goods and effects of which the said Lord Prince is in possession by gift and grant of the said Lords States General in the Baylia of Hulster-Ambacht and other parts, of which the said Lords States have given him; Soon after confirmation, all the same shall remain to him absolutely in full ownership, for the benefit of himself and his successors, and nothing can be claimed of the said property, by virtue of certain articles of this Treaty.

XLV. As to certain other points which in addition to what is contained in the preceding article have been separately treated, and adjusted, and signed in two different writs, the one of the eighth day of January, and the other of the twenty-seventh day of December, 1647, by, and in the name of the said Lord Prince of Orange; the said Writs and all that is contained therein, shall take effect and be confirmed, fulfilled, and executed according to their form, and tenor, in the same manner as if all the said points in general, or each of them in particular, were inserted to the letter in the present Treaty; And this notwithstanding, any other clauses of the present Treaty contrary thereto, which are understood to be repealed, and are hereby expressly repealed by this Article; and the said clauses, so far as the contents of the said two Writs are concerned, are and shall be held not to have been made, and by reason thereof the effect, fulfilment, and execution of the said two Writs of the eighth of January, and twenty-seventh of December, 1647, shall in no way be impeded, or retarded.

XLVI. Those to whom the confiscated property is to be restored, shall not be bound to pay the arrears of the rents, charges, and other obligations specially hypothecated and assigned upon the said property, for the time that they have not enjoyed them; and if for this they shall be remonstrated against, or molested by either party, they shall be acquitted. And if it shall be found to

be certain that all the property of any one of either party has been confiscated or seized in such a manner that he has not retained any means of being able to pay the rents or interest due during the confiscation or seizure, he shall not only be released from the royal charges and rents, in conformity with the Treaty, but also from the general and personal charges of the rents and interest which have become due during the said time.

XLVII. Nor can any claim be made in respect of property sold or granted to be sold or redeemed (2), but only the charges only to which the possessors have been bound by the treaties made thereon, with the interest on the entrance monies, if any have been given, also at the rate of six per cent, as aforesaid.

XLVIII. Judgments rendered upon the property and rights forfeited between the Parties which have recognized the Judges, and have been legitimately defended, shall survive; and the condemned shall not be admitted to challenge them, except by the Ordinary Means.

XIIX. The said Lord King cedes and relinquishes all claims of redemption and all other rights and claims which he may have or claim in any manner whatsoever to the City of Grave, Country of Kuyck, its appurtenances and dependencies, the ancient Barony of Brabant, formerly held in pawn by the Lord Prince of Orange, and the redemption of which pawn was left and converted into property and ceded for the benefit of the late Lord Prince Maurice in December 1611, by the States General of the United Netherlands, as sovereigns of the City of Grave and Country of Kuyck, according to and in conformity with the Letters Patent issued thereon; And by virtue of which conversion and cession the said present Lord Prince of Orange, his heirs and successors, or those entitled thereto, shall forever enjoy the full and entire ownership of the said city and Country of Kuyck, its appurtenances and dependencies.

L. The said lord King also cedes and renounces any and all rights and claims, whether of ownership, cession or otherwise, which he may in any way claim over the city, county and manors of Linghen and its four villages and other rights pertaining thereto, as well as over the towns and manors of Linghen and its four villages and other rights pertaining thereto; as also upon the towns and manors of Bevegarde, Cloppenburgh and other claims to and against whomsoever, to the end that they may be really and effectually for ever to the said Lord Prince of Orange, his Heirs and Successors, or to those who have an action, with full right of ownership, according to the Letters of Donation and Investiture of the Emperor Charles V, dated the third day of November 1546, and to the Compromise made; then between the Count of Buren and the Count of Teckelnborg, dated the fifth day of March 1548, and

finally in consequence of the Cession made thereon in November 1578, which the said Lord King has confirmed and confirms by the present Treaty as far as it relates to him.

LI. The said Lords King and States shall each appoint for their part Judges and Magistrates for the administration of justice and police in the Towns, Cities, and forts, which by the present Treaty are to be restored to their owners, so that they may enjoy them.

LII. The High Barracks of Gelderland shall be exchanged for an equivalent; and in case the said equivalent cannot be concluded, the business shall be referred to the "Mipartite" Chamber, to be decided therein within six months after the conclusion and ratification of the Treaty.

LIII. The said Lord King undertakes to procure effectually the continuance and observance of Neutrality and Friendship, and good neighbourliness on the part of His Imperial Majesty and of the Empire with the said Lords States, to which continuance and observance the said Lords States also reciprocally bind themselves; and their confirmation shall be made within two months on the part of His Imperial Majesty, and within one year on the part of the Empire, after the conclusion and ratification of the present Treaty (1).

LIV. The furniture confiscated and fruits fallen before the conclusion of the present Treaty, shall not be subject to restitution.

LV. The chattel stocks, which the said Lords King or States have remitted, for the benefit of particular debtors, before the conclusion of the present Treaty, shall be extinguished by either party.

LVI. The time during the War, commencing from the year 1567, until the beginning of the Truce of twelve years, as well as that which has elapsed since the expiration of the said Truce, until the conclusion of the present Treaty, shall not be taken into account as occasioning injury or damage to any person on this account.

LVII. Those who, during the War, have retired to neutral Countries, shall also enjoy the benefit of this Treaty, and may live wherever they please, and may also return to their former domiciles, to dwell therein in safety, observing the Laws of the Country, without their property being seized on account of their residence, in any place whatsoever, nor shall they be deprived of the enjoyment thereof.

LVIII. No new Forts shall be built on either side in the Netherlands, nor shall any new Canals or Moats be opened, by which water may be taken away from either side.

LIX. The Lords of the House of Nassau, as well as Count John Albert of Solms, Governor of Mastricht, shall not be prosecuted or molested in their

persons or property, on account of the debts contracted by the late Lord Prince William of Orange from the year 1567, until his death, nor for the arrears due during the seizure and sequestration of the property encumbered therewith.

LX. If any contravention of the present Treaty shall be made by any private individuals, without order of the said Lords King or States, the damage shall be redressed in the same place where the contravention shall have been made, if there they shall be apprehended, or else in that of their domicile, without their bodies, or goods in any manner whatsoever, to be pursued elsewhere; and it shall not be lawful to come to arms, or break the peace on this account, but it shall be permitted, in case of manifest denial of justice, to avail themselves as is customary of Letters of Marque or Reprisals.

LXI. All disinheritances and dispositions made in hatred of war are declared to be null and void; and under disinheritances made in hatred of war are understood to include those which are made for any cause from which the war has proceeded, or which depend upon it.

LXII. The subjects and inhabitants of the Countries of the said Lords King and States, of whatever quality and condition they may be, declare that they are qualified to succeed one another, either by Testament or intestate, according to the customs of the places; and if any of them have previously been entitled to certain successions, they shall be maintained and preserved in them.

LXIII. All prisoners of war shall be surrendered on both sides, without the payment of any ransom, and without distinction or reservation of prisoners, who have served outside the Netherlands, and under other banners or flags than those of the said Lords of the States.

LXIV. The payment of the arrears of contributions, which at the time of the conclusion of the Treaty remain unpaid by the persons and property of either party, shall be regulated and determined by those on both sides who have the superintendence of the contributions.

LXV. And all that shall be proposed or alleged during the negotiation, either by word or in writing on either side, shall not be glossed or interpreted in any way in favour or to the prejudice of any one, directly or indirectly, but that the said Lords King and States General and particulars, as well as all the Princes, Counts, Barons, Knights, Citizens and other Inhabitants of their respective Kingdoms and Countries of whatever quality, state or condition they may be, shall be left with their rights, according to the tenor of the Treaty and its conclusion.

LXVI. The respective Inhabitants and Subjects of the said Lords King and States shall really enjoy the effect of Article XV of the Truce of twelve

years(1) already ended, and the effect of Article X of the adjustment which was made on the seventh of January 1610, and this on account of the fact that during the term of the said Truce, the said effect was not followed, nor procured by either party.

LXVII. The boundaries in Flanders and elsewhere shall be regulated so as to belong to the jurisdiction of one party or the other, upon which instructions shall be awaited and delivered so that the said boundaries may be regulated in due course.

LXVIII. On the part and side of the said Lord King of Spain, the Forts named here shall be demolished next to the Lock and in its environs, namely: San Job, San Donas, the Fort of 1a Estrella, the Fort of Santa Teresa, the Fort of San Fadrique, the Fort of Santa Isabel, the Fort of San Pablo and the Papemuzt Redoubt. And on the side and part of the said Lords States the following Forts will be demolished, namely: The two Forts of the Island of Casand, called Orange and Frederick, the two of Pas, all those on the river Scheldt to the Eastern side, except Lilo and the Fort of Kildrecht, called Spinola, about the demolition of which, which is to be reciprocally had, it shall be agreed between the Parties to adjust their equivalent (2).

LXIX. All the Registers, Records, Files, Letters, Archives and Papers, as also bags of Processes, concerning respectively, some of the United Provinces, Associated Countries, Cities and Members, or some Inhabitants thereof, which are in the Courts, Chanceries, Councils and Chambers of Police, Justice, Exchequer, Feuds or Archives, whether in Avennes, Malines or other Places, which are under the obedience of the said Lord King, shall be delivered in good faith to those who on the part of the said Provinces respectively have commission to ask for them; And the same shall be done on the part of the said Lords States with the Provinces, Cities and individuals of the obedience of the said Lord King.

LXX. To the City of the Sluice shall be left the jurisdiction of the Waters, as it has it.

LXXI. The Dike which crosses and closes the river of Soute, near San Donas, shall be removed and opened, and a sas (1) shall be made and built there, the guarding of which shall be agreed upon, as has been said above in order to the demolition of the Forts.

LXXII. There shall be included in this Treaty of Peace those who, before the change of acceptance or ratification, or three months afterwards, shall be appointed by either party; within which time the said Lord King shall appoint such of them as he shall think fit. On the part of the said Lords of the States, the Prince Landgrave of Hess-Cassel, with his Countries, Cities and States; the

Count of Ostfriesland; the Hanseatic Cities and particularly Lübeck, Bremen and Hamburg, the said Lords of the States reserving the right to appoint within the said term such others as they may think fit (2).

LXXIII. As to the claim of the Earl of Flodorp, that the Castle of Leth, with the goods which depended on it and all other goods and Villages which may belong to him in those environs and were seized from the said Lord King, the restitution is granted; and likewise that of the Castle, except for what may be decided between the conclusion of the present Treaty and its Ratification, regarding the maintenance of a garrison on the part of the said Lord King or the demolition of the new Fortifications built after the said Castle was occupied (3).

LXXIV. In regard to that which on the eighth day of December, 1646, was discussed and agreed between the Ambassadors Extraordinary and Plenipotentiaries of the said Lords King and States, concerning Ruger Huygens, by and on behalf of his wife the Lady Anne Margaret of Stralen, this shall have all its out and effect and shall be fulfilled and executed in the same manner as if it were inserted to the letter in the present Treaty.

LXXV. And in order that the present Treaty may be better observed, the said Lords King and States reciprocally promise to aid and employ their forces and means each of themselves to render the passes free and the Seas and Rivers navigable, and secure against the raids of mutineers, Corsairs, Pirates and Robbers, and to punish them rigorously if they can be caught.

LXXVI. In addition to this they promise not to do anything against or to the prejudice of the present Treaty, nor to permit it to be done directly or indirectly; and if it should be done, to repair it without difficulty or delay; and they bind themselves reciprocally to the observance of all the aforesaid (and the said Lord King for himself and his Successors) and for the firmness of this obligation they renounce all Laws, Customs and any other things contrary to this.

LXXVII. The present Treaty shall be ratified and approved by the said Lords King and States; and the Letters of Ratification shall be delivered on either side in good and due form within the term of two months; and if the said Ratification shall come sooner, all acts of hostility between the parties shall thereupon cease, without waiting for the expiration of the said term; on the understanding that after the conclusion and signature of the present Treaty, the hostility of both Parties shall not cease, without the Ratification of the King of Spain being first delivered and exchanged in due substance and form for that of the said Lords States of the United Provinces.

LXXVII. But notwithstanding this, the affairs of both parties shall remain in the same state and constitution as they were at the time of the conclusion of the present Treaty, and until the said reciprocal Ratification shall be exchanged and delivered.

LXXIX. This Treaty shall be published everywhere where appropriate, immediately after the Ratifications of the one and the other party have been exchanged and delivered; and all acts of hostility shall thereupon cease.

4. PEACE AND FRIENDSHIP TREATY OF UTRECHT BETWEEN SPAIN AND GREAT BRITAIN - 13 JULY 1713.[1341]

Preamble

The supreme Arbiter of all things having been served to exercise his divine mercy, inclining to the solicitude of peace and concord the minds of the princes who have hitherto been agitated with arms in a war which has filled almost the whole Christian orb with blood and death; And there being no other thing more ardently desired by the most serene and most powerful prince Philip V, by the grace of God, Catholic king of Spain, and the most serene and most powerful princess Anne, by the grace of God, queen of Great Britain, France and Hibernia; nor any other thing more vehemently desired than to re-establish and strengthen with new bonds of reciprocal convenience the ancient friendship and confederation of the Spanish and English, so that it may pass into the remotest posterity with almost indissoluble ties: To conclude, therefore, happily this business so useful and for so many reasons desired, they appointed on one side and on the other their extraordinary and plenipotentiary ambassadors, giving them suitable instructions, namely, the Catholic King on his part the most excellent Sir Don Francisco María de Paula Tellez Jirón, Benavides, Carrillo, and Toledo, Ponce de León, Duke of Osuna, Count of Ureña, Marquis of Peñafiel, grandee of the first class, gentleman of his chamber, chamberlain and chief cupbearer, chief notary of his kingdoms of Castile, knight of the order of Calatrava, major Clavero of the same order and knighthood, and commander of it and of that of Usagre in that of Santiago, captain of the first Spanish company of his bodyguards, and to the most excellent Sir Don Isidro Casado de Rosales, Marquis of Monteleon, of the Council of the Indies, extraordinary and plenipotentiary ambassadors of his Catholic Majesty, and the Queen of Great Britain for hers, to the most reverend lord John, bishop of Bristol, of her privy council and keeper of the secret seal, Dean of Windsor and secretary of the most noble order of the Jarretera, and to the most excellent lord Thomas, earl of Strafford, Viscount Wentwoile, VVoodhouse and Staineborugh, Baron of Ravy, Newmarch and Overseliy, Privy Council, Lieutenant General of their armies, First Commissary of the Admiralty of Great Britain and Ireland, Knight of the Most Noble Order of the Garter, Ambassador Extraordinary and Plenipotentiary to the States General of the United Provinces of the Netherlands: Which ambassadors extraordinary

[1341] Available at: https://es.wikisource.org/wiki/Tratado_de_Paz_y_Amistad_de_Utrecht_entre_Espa%C3%B1a_y_Gran_Breta%C3%B1a.

and plenipotentiary according to the tenor of what has been agreed and agreed upon by the ministers of both parties, as well at the court of Madrid as at the court of London, consented to and adjusted the following articles of peace and friendship.

Article I

There shall be a Christian and universal peace, and a perpetual and true friendship between the Most Serene and most powerful Prince Philip V, Catholic King of Spain, and the Most Serene and most powerful Princess Anne, Queen of Great Britain; between their heirs and successors, and also between the kingdoms, states, dominions and provinces of the one and the other prince, wherever situated, as well as between the subjects of the one and the other; And this peace shall be so sincerely kept and preserved that neither party shall attempt by any pretext whatsoever to do any injury or harm to the other, nor can or shall aid or assist by any means whatsoever whoever shall attempt or desire to do it any injury, and on the contrary, their Majesties shall be bound to seek each the utility, honour and convenience of the other, labouring with the greatest care to promote by further demonstrations of friendship the peace now established, that it may become more and more firm every day.

Article II

Being certain that the war which is happily ended by this peace, was begun and has been continued for so many years with great force, immense expense and almost infinite number of deaths because of the great danger which the close union of the kingdoms of Spain and France threatened the liberty and health of the whole of Europe; And wishing to remove from the minds of men the care and suspicion of this union and to establish the peace and tranquillity of the Christian world with the just equilibrium of the powers (which is the best and most solid foundation of a reciprocal friendship and lasting peace), both the Catholic King and the Most Christian King have agreed to prevent, with the most just precautions, that the kingdoms of Spain and France may never be united under the same dominion, nor be one and the same king of both monarchies; and to this end his Catholic Majesty solemnly renounced most solemnly for himself and his heirs and successors all right, title and claim to the crown of France in the following manner and words.

(Here are inserted the first seven instruments of renunciation which are placed in the treaty of this date with the Duke of Savoy).

And his Catholic Majesty renews and confirms by this article the most solemn renunciation of his which is mentioned. And this having been established as a pragmatic and fundamental law, he promises again in the most obligatory manner that he will inviolably observe it and will take care

that it be observed, endeavouring with the greatest care and arranging with the greatest diligence that the said renunciations be irrevocably observed and executed, both on the part of Spain and on that of France; For if they remain in full force and effect and are observed in good faith on both sides, together with the other transactions which have the same end in view, the crowns of Spain and France will be so divided and separated from each other that they will never be able to be reunited.

Article III

There shall be from both parties perpetual amnesty and forgetfulness of all hostilities which during the recent war have been consented to in any place and manner by either party; so that at no time by them or by any other cause or pretext shall either party directly or indirectly cause enmity or annoyance to the other under colour of justice, or by way of fact, or suffer it to be caused.

Article IV

All prisoners of both parties, and every one of them of whatever state or condition they may be, shall, after the ratification of the present treaty, be set at their first liberty without any price to be paid for them, paying only such debts as they may have contracted during the time of their detention.

Article V

To give greater firmness to the peace re-established, and to the faithful and unbroken friendship, and to cut off all occasions of distrust which may at any time arise from the right and order established for the hereditary succession to the kingdom of Great Britain, and of the limitation thereof made by the laws of Great Britain (formed and established in the reign both of the late King William III, of glorious memory, and of the present Queen) in favour of the progeny of the said lady reigning, and of the Serene Princess Sophia, Dowager Electress of Brunswick, and of her heirs in the Protestant line of Hanover; To preserve therefore the said succession undamaged according to the laws of Great Britain, the Catholic King sincerely and solemnly acknowledges the aforesaid limitation of the succession to the kingdom of Great Britain, and declares and promises that it is and shall be perpetually pleasing and acceptable to him and to his heirs and successors under royal faith and word, and pledging his honour and that of his successors. The Catholic King further promises under the same bond of his honour and royal word, that neither he nor his heirs and successors shall at any time acknowledge or hold him or his heirs and successors to be King or Queen of Great Britain but the said Lady Queen and her successors, according to the tenor of the limitation established by the laws and statutes of Great Britain.

Article VI

The Catholic King further promises on behalf of himself and his heirs and successors that he will not at any time trouble or molest the said Queen of Great Britain, nor her heirs and successors, descendants of the said Protestant family holding the crown of Great Britain and the dominions subject thereto: nor at any time shall the said Catholic King or any of his successors give aid, aid, favour, or advice directly or indirectly by land or sea, by money, arms, ammunition, stores of war, ships, soldiers, sailors, or otherwise, to any person or persons, if any, who for any cause or pretext whatsoever attempt to oppose the said succession, either by war declared, or by fomenting sedition, or by plotting conspiracies against the prince or princes who shall hold the throne of Great Britain by virtue of the acts passed in that parliament, or against that prince or princess to whom, by the acts of parliament, the succession shall, as aforesaid, belong.

Article VII

The ordinary channels of justice shall be reopened in the kingdoms and dominions of both Majesties, so that all the subjects of either party may freely plead and obtain the rights, claims and actions, according to the laws, constitutions and statutes of either kingdom; and especially if there be any complaint of injuries and wrongs done in time of peace or in the beginning of this war against the tenor of the treaties, care shall be taken to redress the wrongs first according to the forms of justice.

Article VIII

The use of navigation and commerce shall be free between the subjects of both kingdoms as it was in former times during the peace and before the declaration of this war, the Catholic King of Spain, Charles II, of glorious memory, reigning, according to the pacts of friendship, confederation, and commerce which were established between the two nations, according to the ancient customs, letters patent, cedulas, and other acts specially made in this particular, and also according to the treaty or treaties of commerce which will be already concluded at Madrid, or will be concluded hereafter. And as among other conditions of the general peace, it has been established by common consent as a principal and fundamental rule, that the navigation and use of the commerce of the West Indies of the dominion of Spain shall remain in the same state as it was in the time of the said Catholic King Charles II, in order that this rule may be observed in the future with inviolable faith so that it may not be broken and all grounds of distrust and suspicion about this business be avoided and removed, it has been specially agreed and established, That by no title or pretext whatsoever, directly or indirectly, may any licence or power ever

be granted to the French or any other nation to sail, trade or introduce negroes, goods, merchandise or other things into the dominions of America belonging to the crown of Spain, except that which is agreed by the treaty or treaties of commerce aforesaid and by the rights and privileges granted in the agreement vulgarly called the *asiento de negros*, mentioned in article 12; And except also what the said Catholic King or his heirs or descendants shall offer by the treaty or treaties for the introduction of negroes into the Spanish West Indies, after the said agreement of the *asiento de negros* has been concluded. And in order that navigation and commerce to the West Indies may be more firmly and amply secured, it is also hereby agreed and settled that neither the Catholic King nor any of his heirs and successors may sell, cede, pledge or transfer to the French or to any other nation any lands, dominions or territories of Spanish America, nor any part thereof, nor in any way alienate it from himself or from the crown of Spain. And on the contrary, in order that the dominions of Spanish America may be preserved more entire, the Queen of Great Britain promises that she will request and give aid to the Spaniards so that the ancient limits of their dominions in America may be restored and fixed as they were in the time of the said Catholic King Charles II, if it should be found that in any way or by any pretext they should have suffered any dismemberment or breakdown after the death of the said Catholic King Charles II.

Article IX

It is also agreed and established as a general rule, that each and every subject of both kingdoms, in all the lands and places of one and the other, as regards the rights, impositions and charges concerning persons, merchandise, ships, freights, navigation and commerce, shall use and enjoy at least the same privileges, franchises and immunities, and have in all things equal favour with the subjects of France or of any other foreign nation, sailors, navigation and commerce, to use and enjoy at least the same privileges, frankness and immunities, and to have in all things equal favour as the subjects of France or of any other foreign nation, the most friendly, use, possess and enjoy, or may hereafter have and enjoy.

Article X

The Catholic King, for himself and his heirs and successors, hereby cedes to the Crown of Great Britain the full and entire ownership of the city and castle of Gibraltar, together with its harbour, defences and fortresses belonging to it, giving the said property absolutely to be held and enjoyed by it in full right and forever, without any exception or impediment whatsoever. But, in order to avoid any abuses and frauds in the introduction of merchandise, the Catholic King wishes, and supposes it to be so understood, that the said

property be ceded to Great Britain without any territorial jurisdiction and without any open communication with the surrounding country by land. And as the communication by sea with the coast of Spain cannot be open and safe at all times, and hence it may result that the soldiers of the garrison of Gibraltar and the neighbours of that city are reduced to great distress, it being the mind of the Catholic King only to prevent, as aforesaid, the fraudulent introduction of merchandise by land, it has been agreed that in these cases the provision and other things necessary for the use of the troops of the garrison, of the inhabitants or of the ships in the port may be bought for cash in the land of neighbouring Spain.

But if any goods brought into Gibraltar, whether for the exchange of provisions or for any other purpose, shall be seized, they shall be forfeited to the Treasury, and a complaint of this contravention of the present Treaty shall be severely punished against the guilty parties. And her Britannic Majesty, at the request of the Catholic King, consents and agrees that neither Jews nor Moors shall for any reason be allowed to dwell or have domicile in the said city of Gibraltar, nor shall Moorish warships be allowed to enter or harbour in the port of that city, whereby the communication from Spain to Ceuta may be cut off, or the Spanish coasts be infested by the corsairs of the Moors. And as there are treaties of friendship, liberty and frequency of commerce between the English and some parts of the coast of Africa, it must always be understood that the Moors and their ships, which come only to trade, cannot be denied entry into the port of Gibraltar.

Her Majesty the Queen of Great Britain further promises that the inhabitants of the said City of Gibraltar shall be granted the free use of the Roman Catholic Religion.

If at any time it shall seem expedient to the Crown of Great Britain to give, sell, alienate in any manner whatsoever the property of the said City of Gibraltar, it is agreed and covenanted by this Treaty that the Crown of Spain shall be given the first share before others to redeem the same.

Article XI

The Catholic King for himself and his heirs and successors also cedes to the Crown of Great Britain the whole island of Minorca, transferring to it for ever all right and full dominion over the said island, and especially over the said city, castle, port and defences of the bosom of Minorca, commonly called Port Mahon, together with the other ports, places and villas situated in the said island. But it is foreseen, as in the preceding article, that no Moorish warships which may infest the coasts of Spain with their privateering shall be allowed to enter Puerto Mahon, nor any other port of the said island of Minorca; and

only Moors and their ships which come to trade shall be allowed to enter the said island, according to the pacts made with them. The Queen of Great Britain also promises on her part, that if at any time the island of Minorca and the ports, places and villas situated therein should be alienated from the crown of her kingdoms, it shall be given first place to the crown of Spain over another nation to redeem the possession and ownership of the said island. Her Britannic Majesty also promises that she will cause all the inhabitants of that island, both ecclesiastics and laymen, to enjoy securely and peaceably all their goods and honours and to be allowed the free use of the Roman Catholic religion; and that for the preservation of this religion in that island such means shall be taken as do not appear to be entirely opposed to the civil government and laws of Great Britain. They may also enjoy their goods and honours who are at present in the service of his Catholic Majesty, and even if they remain there; and it shall be lawful for anyone who wishes to leave that island to sell his goods and pass them freely to Spain.

Article XII

The Catholic King gives and concedes to her Britannic Majesty and to the company of his vassals formed for this purpose the power to introduce negroes into various parts of his Catholic Majesty's dominions in America, which is vulgarly called the *asiento de negros*, which is granted to them to the exclusion of Spaniards and any others for a period of thirty continuous years to begin on the 1st of May, 1713, with the same conditions as the French enjoyed, or could or should enjoy at any time, together with the territory or territories which he shall designate to be given to the French for the purpose of giving them to the French. May 1st, 1713, with the same conditions that the French enjoyed or could or should enjoy at some time, together with the territory or territories that the Catholic King will indicate to give them to the company of the seat in a convenient place in the River Plate (without paying any rights or tributes for them to the company), during the time of the aforesaid *asiento* and no longer) and also taking care that the territories and establishments that will be given to it be suitable and capable for the cultivation and grazing of cattle for the maintenance of the employees in the company and of their negroes, and that these be kept there safely until the time of their sale; And also that the ships of the company may reach the land and be protected from all danger. But it shall always be permitted to the Catholic king to place in the said place or factory an officer to see that nothing is done against his royal interests, and all those who in that place are commissioners of the company or belong to it shall be subject to the inspection of this officer in all that concerns the said territories; and if any doubts, difficulties or controversies should arise between

the said officer and the commissioners of the company, they shall be brought to the governor of Buenos Aires to be judged by him. In addition to this the Catholic king wished to grant the said company other great advantages, which are more fully and extensively explained in the treaty of the *asiento de negros* which was made and concluded at Madrid on the 26th of March of the present year of 1713; which *asiento de negros*, all its clauses, conditions, immunities and privileges contained therein and which are not contrary to this article, are understood and are to be understood to be part of this treaty in the same manner as if they were inserted in it word for word.

Article XIII

Seeing that the Queen of Great Britain does not cease to urge with the utmost efficacy that all the inhabitants of the principality of Catalonia, of whatever state and condition they may be, may obtain, not only complete and perpetual oblivion of all that has been executed during this war, and enjoy full possession of all their estates and honours, but also that they may preserve unharmed and intact their ancient privileges, the Catholic King, for the attention of her British Majesty, hereby grants and confirms to any inhabitants of Catalonia, not only the desired amnesty together with the full possession of all their goods and honours, but also gives and grants them all those privileges which the inhabitants of the two Castilles possess and enjoy, and henceforth may possess and enjoy, which of all the peoples of Spain are the most beloved to the Catholic King.

Article XIV

The Catholic King having also desired, at the entreaty of her Britannic Majesty, to cede the kingdom of Sicily to his Royal Highness Victor Amadeus, Duke of Savoy, and it having been ceded to him with effect in the treaty made this day between his Catholic Majesty and his Royal Highness of Savoy, his Britannic Majesty promises and offers that she will take every care that in the absence of male heirs of the house of Savoy, the possession of the said kingdom of Sicily shall again return to the crown of Spain: And his Britannic Majesty further consents that the said kingdom may not be alienated under any pretext or in any manner whatsoever, nor be given to any other prince or state but to the Catholic King of Spain and his heirs and successors. And as the Catholic King has declared to his Britannic Majesty that it would be most agreeable and most pleasing to him, that not only the subjects of the kingdom of Sicily, although they live in the dominions of Spain and serve his Catholic Majesty, but other Spaniards and subjects of Spain who have property or honours in the kingdom of Sicily, shall enjoy them without any diminution, and shall in no way be vexed or disturbed under the pretext of their personal absence

from that kingdom, and he also promises willingly on his part to consent reciprocally that the subjects of the said kingdom of Sicily and others of his royal highness, if they have goods or honours in Spain or in other dominions thereof, shall enjoy them without any diminution, and shall in no way be vexed or disturbed under the pretext of their personal absence; Wherefore his Britannic Majesty offers that he will pass his offices and command his extraordinary ambassadors and plenipotentiaries who are in Utrecht, to make the most effective diligences so that the Catholic King and his Royal Highness may adjust themselves reciprocally on this point, disposing and securing it in the most convenient manner between them.

Article XV

Their royal Majesties, each for their part, renew and confirm all the treaties of peace, friendship, confederation, and commerce made and concluded between the crown of Spain and Great Britain heretofore, and the said treaties are hereby renewed and confirmed as fully and explicitly as if each were now inserted, namely, in so far as they are not found contrary to the treaties of peace and commerce recently made and signed; And especially are confirmed and corroborated by this treaty of peace the pacts, alliances, and conventions which regard both the use of commerce and navigation in Europe and elsewhere, and the introduction of negroes into Spanish America, and those which have already been made or will be made as soon as possible at Madrid between the two nations. And because it is urged on the part of Spain that the Biscayans and other subjects of her Catholic Majesty have a certain right to fish in the island of Newfoundland, it is agreed by her British Majesty that the Biscayans and other peoples of Spain shall be preserved unharmed in all the privileges which they may rightfully claim.

Article XVI

Since in the agreement of armistice which was made between her Britannic Majesty and the most Christian King for four months from the 23rd day of August next which was confirmed by the accession of the Catholic King, and now confirms him by this treaty, as its extension made until the 22nd day of April of this year, it was expressly capitulated among other conditions in what cases the vessels, It is now agreed that in such cases the laws of that armistice shall remain in full force, and that all things concerning such seizures, whether made in the British or northern seas or elsewhere, shall be governed in good faith by the tenor of them.

Article XVII

If it shall happen through inconsideration, imprudence, or any other cause, that any subject of the two royal Majesties shall do or commit any thing on land, sea, or fresh water, in any part of the world, whereby the present treaty

is less observed, or any particular article of it shall not thereby be interrupted or broken, the peace and good correspondence between the lord Catholic King and the lady Queen of Great Britain; But it shall remain in its first vigour and firmness, and the said subject alone shall be responsible for his own act and shall pay the penalties prescribed by the laws and statutes of the law of nations.

Article XVIII

But (God forbid) if at any time the quenched enmity between their Catholic and British Majesties should again be renewed, and should break out into declared war, the vessels, merchandise, and movable or immovable property of the subjects of either party, seized in the ports and dominions of the other, shall not be forfeited to the Treasury; But the said subjects of both Majesties shall be granted by the one party and the other a full term of six months, in order that they may sell, carry or transport wherever they please without alpine nuisance the said effects, or any other thing that is theirs, and leave those places.

Article XIX

The kings, princes, and states mentioned in the following articles, and such others as by common consent of both parties shall be appointed by the one and the other before the exchange of the ratifications, or within six months thereafter, shall be included in this treaty in token of mutual friendship; their Catholic and British Majesties being persuaded that they will recognise the provisions made and set forth in it.

Article XX

All that shall be contained in the adjustment of peace which is to be made between his most sacred royal Majesty of Spain and his most sacred royal Majesty of Portugal, preceding the approval of the most sacred royal Majesty of Great Britain, shall be held as an essential part of this treaty, as if it were put in it to the letter: and her British Majesty, besides this, offers herself as surety or guarantor of the said composition of peace, as she has actually and by express words offered that she will fulfil it to the end that it may be most inviolably and religiously observed.

Article XXI

The treaty of peace made this day between her Catholic Majesty and his Royal Highness the Duke of Savoy is specially included and confirmed in this treaty as an essential part thereof, in the same manner as if it were inserted in it to the letter: the Lady Queen of Great Britain expressly declaring that she wishes to be bound by the stipulations of firmness and guarantee promised therein.

Article XXII

The Most Serene King of Sweden with his kingdoms, lordships, provinces and rights, as also the Most Serene Princes the Grand Duke of Tuscany and the Duke of Parma, together with their peoples and subjects, and also with the liberties and profits of the commerce of the said subjects shall be included in this treaty in all the best form.

Article XXIII

The Most Serene Republic of Venice shall be included in this treaty, especially and to the best of its ability, for having observed exactly during this war the pacts of neutrality between the belligerent parties, and for the many other offices of humanity which it has performed, its dignity, power and security always being inviolate, as a common friend of both Majesties, and to whom both wish at all times to give tokens of sincere friendship, as the interests of both may require.

Article XXIV

It was also the pleasure of their Majesties to include in this treaty the most serene Republic of Genoa, which by a constant neutrality observed in this war has cultivated and strengthened the ancient friendship with the two crowns of Spain and Great Britain: their Majesties desiring that the benefit of this peace may be extended to all that may be convenient, and that their subjects may henceforth enjoy in all things and everywhere the same freedom of commerce as they had at one time, and while Charles II. king of Spain is living.

Article XXV

The city of Dantzick is also included in these covenants, to the effect that it may hereafter enjoy the ancient benefits which it enjoyed before now in commerce in both kingdoms, whether by treaty or by ancient custom.

Article XXVI

The ratifications of this treaty, made solemnly and in due form, shall be exhibited and duly delivered reciprocally and duly within six weeks from the day of date, or sooner if possible. In witness whereof, the aforesaid Ambassadors Extraordinary and Plenipotentiaries, having reciprocally presented and exchanged in due form the copies of their plenipotentiaries, signed the present treaty, and sealed it with their seals, at Utrecht on the 13th day of July, 1713. -The Duke of Osuna. -The Marquis of Monteleon. -Joh. Bristol: E. P. S.-Strafford.

First separate article

In addition to that which was agreed and stipulated in the treaty made at Madrid on the 27th day of March last between the Marquis of Bedmar on behalf of his Catholic Majesty and the Baron of Lexington on behalf of

his British Majesty, it is agreed and accorded in this separate article which shall have the same force as if it were inserted verbatim in the treaty which their Majesties have made this day, that his Catholic Majesty being firmly resolved not to consent to any other alienation of dominions, provinces or lands belonging to the crown of Spain, of whatever kind and on whatever part they may be, and solemnly offering the same on his part by virtue of this article, her British Majesty hereby offers to reciprocate the same on her part by virtue of this article, provinces or lands belonging to the crown of Spain, of whatever kind and in whatever part they may be, and solemnly offering the same on her part by virtue of this article, so her Britannic Majesty reciprocally offers on her part that she wishes to persist in the reasons and dictates by which she has forewarned and cautioned that neither of the parties making war can in making peace ask or obtain from his Catholic Majesty any other dismemberment of any part of the monarchy of Spain; And that his Catholic Majesty refusing these new pretensions, her Britannic Majesty will so direct this business as to entirely desist from them. And it having appeared to her Britannic Majesty that it is of common utility that a new confederation be established between the Catholic King, her Britannic Majesty, and the King of Portugal, whereby the security of the crown of Portugal may be provided for, his Catholic Majesty hereby consents to and accepts so useful a work.

In witness whereof we, extraordinary legates and plenipotentiaries of their Catholic and British Majesties by virtue of our full powers which we have mutually delivered to each other, sign the present article and seal it with our seals at Utrecht on the 13th day of the month of July 1713. This article is to be ratified, and the exchange of the ratifications is to be made at Utrecht within six weeks, or sooner if possible. - The Duke of Osuna. -The Marquis de Montelcon. -Joh. Bristol. -Strafford.

Second separate article

For the record of how much her sacred Majesty the Queen of Great Britain esteems the said lady Princess of the Ursins, already bound herself in article 21 of the conventions of peace signed at Madrid on the 27th of March last, by the Marquis of Bedmar on behalf of her Catholic Majesty and the Baron of Lexington on behalf of her British Majesty, and she binds herself again by the present article for herself and her successors, promises and offers that he will truly and without delay do and procure that the said lady Princess of the Ursins shall be put in the royal and actual possession of the duchy of Limburg or such other dominions as may be subrogated in the provinces of Flanders to the entire satisfaction of the said lady Princess of the Ursins, with the full, independent and absolute sovereignty, free of all fiefs and of any

other defeated, yielding the rent of thirty thousand escudos a year, according to the form and tenor and according to the mind of the despatch granted by his Catholic Majesty to the said lady princess on the 28th of September 1711, which is as follows.

"Philip, by the grace of God, King of Castile, of Leon (all titles follow). To all present and future who shall read or hear these read health."

"Our dearest and most beloved cousin the Princess of the Ursins has done us from the beginning of our reign and continues to do us such pleasing and distinguished services that we have thought it no longer necessary to defer giving her particular tokens of our recognition and of the esteem in which we hold her person. The said princess, after having renounced the rank and prerogatives which she had at the court of Rome to accept the post of chief chamberlain to the queen our most beloved wife, has joined her at Nice in Provence, conducted her to our states of Spain, and has discharged all her duties with such attention, accuracy and discretion that she has gained all the confidence and consideration possible. When on leaving to take command of our armies from the kingdoms and states of Italy we entrusted the regency of the kingdoms of Spain to the queen, our dearest wife, the princess of the Ursins redoubled her zeal and assiduity towards her person, constantly assisted her with her care and advice with such prudence and affection, that we have been touched at all times and on all occasions by the happy results of such judicious, faithful and esteemed conduct. After it pleased God to bless our royal house by securing the cession of it with happy offspring, the Princess of the Ursinos also took care in a tender and efficient manner of the education of our dearest and most beloved son the Prince of Asturias, of which we can already see the fruit and progress. All these services so distinguished and important for the good of our states and the happiness of the kingdom; the care with which the said princess gives us more and more proof each day of her complete affection for our person and those of the queen, our dearest wife and princes our sons, and the good result of the salutary advice she has given us, moved us to seek means of rewarding her in a manner proportionate to so many services and whose reward will serve in the future as a sure sign of the greatness of our recognition, and of the merit and virtues that adorn her. This led us to devise to secure for her not only a considerable income, but also a country which she may enjoy with the title of sovereignty; to which we are all the more disposed, as the said princess is descended from the house of Tremouille, one of the most ancient and illustrious of France, and has been related not only to princes of the blood of the house of France, but also to many other sovereign houses of Europe, besides which the enlightenment and

wisdom of her conduct in everything shows us that she will govern with justice the countries and peoples that will be subject to her; And that this illustrious grace will always be looked upon as the just result of the justice and munificence of sovereigns towards those who have been happy enough to render them important services. Therefore, we declare that by virtue of our full power, proper motion and royal and absolute authority, we have given, ceded and conveyed, and hereby give, cede and convey in our very dear and beloved cousin Marie Anne de la Tremouille, Princess of the Ursins, for herself, her heirs, successors and others to whom it may concern, the duchy, city and palace of Limburg, which is part of the Spanish Netherlands, with the cities, towns, villages, villas, castles, houses, territory and other circumstances and dependencies of the said duchy, as all is understood and found, for the enjoyment of the said princess of the Ursins, her heirs, successors and others to whom it may concern, houses, territory and other circumstances and dependencies of the said duchy, as all is understood and found, to be enjoyed by the said princess of the Ursins, her heirs, successors and others to whom it may correspond in full ownership and perfect sovereignty, without our reserving or retaining any of it for us or our successors the kings of Spain, under any title, whether of appeal or of fief, and also without reversion in any case or at any time; from all of which we release the said duchy of Limburg and dependencies included in the present donation; to which effect as far as it is or may be necessary, we have extinguished and abolished the said rights. We will that the said princess of the Ursins exercise in her name all the said rights and sovereignty in the said duchy of Limburg, territories and jurisdictions annexed thereto with the same authority as we exercised and had the right to exercise them before the present; And to enjoy therein all the rents, fruits, profits and emoluments of all kinds, ordinary, extraordinary and casual, of whatever nature they may be, both in the collation and patronage of benefices, and in the provision and dismissal of offices, both in the portages, introductions, subsidies, taxes and other duties expressed or not expressed, and for the defence of the country and tranquillity of the people; whether for the levying of the contributions of the said duchy and dependencies, of which rights and revenues the said princess of the Ursines shall begin to enjoy from the day of these presents, from which date the agents, receivers, managers and employees in the collection of the said revenues, shall account for them and deliver their products to the proxies of the said princess; acting thus, they shall be validly discharged to us, as we hereby discharge them: And therefore, the said Princess of the Ursins shall be the unchangeable owner of the said Duchy of Limburg and its dependencies, both as to the sovereignty and the revenues and others

belonging thereto, in full, free and entire ownership, with power to dispose of the same by donation among the living or testamentary in favour of the person and on such terms and conditions as she may see fit, or by exchange or otherwise; And the same rights and faculties shall correspond successively thereafter to his next heir, if she has not otherwise disposed of it. For which purpose we have discharged, acquitted and released, and we hereby discharge, absolve and release the inhabitants of the said duchy of Limburg and dependencies of whatever state, quality or condition they may be, both ecclesiastical and secular, political, military and those of any other classes and conditions they may be, and each one of them in general and in particular, from the oaths of fidelity, faith and obedience, promises, obligations and duties which they kept to us as sovereign lord and prince. We order and charge them most expressly that by virtue of these presents they receive and recognise the said princess of the Ursins, and after her heirs, successors or successive successors in title by their sovereign princes and lords, that they swear to her the oaths of fidelity and obedience in the customary manner, and furthermore, that they give and pay to it all honour, reverence, affection, obedience, fidelity and service as good and loyal subjects are bound to pay to their lord and sovereign, and as they have paid hitherto to our predecessor kings and to ourselves. Moreover, it being our intention that the said duchy of Limburg and dependencies shall produce at least in favour of the said princess of the Ursins, her heirs, successors and assigns a certain and positive annual income of thirty thousand escudos (each escutcheon of eight reals of double silver, ancient coin of Castile) deducting the local charges, conservation of the places and maintenance of the officers which it is customary to pay and maintain from the revenues of the duchy, it is our will and desire that during the first year in which, after having taken possession, the Princess of the Ursins shall enjoy the said duchy, and after the publication of the peace, a statement of the products and charges of the duchy of Limburg and its dependencies shall be drawn up in the presence of the persons to whom commissions shall be given, both by us and by the Princess of the Ursins: And in case, after deduction of the aforesaid charges, the proceeds in favour of the said Princess of the Ursins do not amount to the net value of thirty thousand escudos per annum, either by reason of alienations which may have been made of any part of the duchy, or because some of the aforesaid rights, circumstances and dependencies may have been transferred to the said Princess of the Ursins, rents, circumstances and dependencies have been sold, pledged or charged with revenues or also with debts for sums borrowed or advanced, in which case we orde, and intend that all shall be redeemed and performed, and that the purchasers, lenders,

censurers, as well as the purchasers of the said rights, rents, circumstances and dependencies, shall be paid in full. We order that all shall be redeemed and discharged, and that the purchasers, lenders, censurers and other creditors shall be reimbursed, paid and satisfied from the proceeds of the most sound contributions of the other provinces of the Spanish Netherlands: so that the said princess shall fully and truly and unencumbered enjoy the said thirty thousand escudos of annuity; for which purpose and until the full repayment of the redemption of the said alienations, pledges, annuities, advances or other borrowings whatsoever, the creditors of alienated or pledged funds, censualists or others whatsoever shall be notified, as we hereby notify them, to receive the falls or interest on their capitals from the said annuities of the other provinces of the Spanish Netherlands; And, accordingly, we have assigned and conveyed, do assign and convey henceforth the whole or any part of our revenues which shall accrue to the lenders and creditors until the concurrence of their credits in principal and interest, so that they may hold and receive them until their full reimbursement. And if it shall appear that notwithstanding the said restitutions and repayments which shall be made or assigned, the revenue of the said duchy of Limburg shall not reach the said sum of thirty thousand escudos per annum liquid, it is our will that it be dismembered, as we hereby dismember from the other countries belonging to us, adjacent to the said duchy of Limburg, such other cities, towns, villages and territories as may be necessary to make up with their revenues and amalgamated produce what shall be lacking of the said thirty thousand escudos of revenue in the duchy of Limburg; Which cities, towns, villages, villas and territories together, their routes, circumstances and dependencies shall be dismembered from our lordships, and shall henceforth and forever be united and joined to the said duchy of Limburg to be possessed by the said princess with the same title of sovereignty, jurisdiction and prerogatives annexed thereto and as if they were part of the said duchy of Limburg. " "And in consideration that by the various propositions which from time to time have been made to us to arrive at the peace which we and the other princes and states of Europe engaged in the present war so desire, tend some to dismember the said Spanish Netherlands from the other states which compose our monarchy, we declare it to be our intention that the present shall not be altered in any way by the treaties of peace which shall be made, And that all the princes and powers interested in the said propositions ratify the dismemberment which by the said prentices we make of the said duchy of Limburg and the erection thereof in full sovereignty, in favour of the princess of the Ursins, so that she shall be placed and remain in full and peaceful possession and enjoyment thereof to the full extent of the present, according

to its form and tenor and without any reservation or restriction whatsoever. We wish the present donation to be one of the conditions of the treaties to be made concerning the said Spanish Netherlands; that the said Princess of the Ursins, her descendants, successors and assigns may enjoy the said Duchy of Limburg, circumstances and dependencies, fully, peacefully, perpetually and forever, with title of sovereignty, without hindrance or encumbrance; to the contrary and for which purpose and to bind those whom it may touch, with our full royal power and authority, we make good any faults and omissions of fact or law which may exist or occur in the present gift, cession and conveyance, whether by defect in the expression of the value of the rents and charges of the said Duchy of Limburg, which are not specified or declared, and which may be required by previous ordinances, which and the repeals therein expressly contained, we have hereby repealed and do hereby repeal, for this is our will and desire. We will that the present letters patent be delivered to the said princess of the Ursins, that she may cause them to be recorded and published wherever necessary; and also that she may cause them to be inserted with the donation and cession contained therein, in the treaty of peace to be negotiated, making herself included therein and acknowledged as sovereign princess of the duchy of Limburg, and in such capacity to exercise the rights which correspond to her, and to make treaties and alliances with the princes and sovereigns who shall intervene therein. We charge the ministers and ambassadors who shall attend the same on our behalf to acknowledge it as such, and all our officers in the said duchy of Limburg to obey these presents as soon as they shall be notified to them: and that the present gift may be a thing firm and stable for ever and perpetually, we have signed the present letters with our hand, and have caused our great seal to be affixed to them. We wish and order that they be registered in each and every one of our Councils and Courts of Accounts where applicable. Given in our city of Corella, kingdom of Navarre, on the 28th of September of the year of grace of 1711, and of our kingdom the eleventh". And the said lady Queen of Great Britain promises that she will defend at all times and forever the said lady Princess of the Ursins and her successors, or their successors, in the royal, present and peaceful possession of the said sovereignty and dominion against all and any; And that he will not permit the said lady princess to be ever molested, disturbed, or disturbed by any person in the said possession, whether attempted by way of law or deed; and inasmuch as the said lady princess of the Ursins should already have been given the royal possession of the said sovereignty of Limburg, or of the subrogated lordships, as aforesaid, by virtue of the said convention of the 27th of March, and has not yet been given to her, so for the

greater caution the lady queen of Great Britain promises and offers by her royal word, that she will not give or deliver to any person the said provinces of Catholic Flanders, nor permit them to be given or delivered, but that she will keep them not only until the said lady Princess of the Ursins shall be in the present and peaceful possession of the said sovereignty, but also until the prince to whom the said provinces of Flanders are to be given and surrendered shall recognise and maintain the said lady Princess of the Ursins as sovereign lady of the said sovereignty, as aforesaid. The present article is to be ratified and the ratifications are to be exchanged at Utrecht within six weeks, and sooner if possible. In witness whereof, we the extraordinary and plenipotentiary legates of the most Serene Queen of Great Britain sign the present article, and seal it with our seals at Utrecht on the 13th day of the month of July, in the year of our Lord 1713. -The Duke of Osuna. -The Marquis of Monteleon. -Joh. Bristol: E: P: S: Strafford.

Separate Article Three

It is agreed by this separate article, which is to remain concealed and to have the same force as if it were inserted word for word in the treaty of peace made this day, that her Britannic Majesty will in any place and as far as necessary interpose her offices for the preservation unimpaired to Spain of the right of direct dominion in the fief of the Seine: That his Britannic Majesty in any place and as far as necessary will interpose his offices to preserve unharmed to Spain the right of direct dominion in the fief of Seine, which right belongs to his Catholic Majesty; and reciprocally I promise the said Catholic King that he will never by any title or protest admit or permit any enquiry against the Grand Duke of Tuscany for the investiture violently received from others during this war, nor for what with greater force may happen on account of the present war; but all that has been committed and is returned to his Majesty he forgives, and offers to give the investiture of Sena to the said grand duke and the princes his descendants with the same conditions contained in the preceding investitures granted by the Catholic kings of Spain, his predecessors, without taking away or adding anything, and that he will with every effort preserve the said grand duke and the princes his descendants in the full and peaceful possession of the said Spanish state and fief; and in the event of the absence of the male descendants of the said grand duke, the King of Spain, wishing to condescend in a pleasing spirit to the entreaties of the Queen of Great Britain, offers for himself and his successors that he will immediately give the investiture of Sena in the same manner and on the same conditions to the lady Electriz Palatina, daughter of the said grand duke; And that he will defend and preserve her in the peaceful possession

of the said estate of Sena, so that the said lady Electriz Palatina will possess and enjoy the said fief entirely, notwithstanding any provisions whatsoever, and especially those in which it appears that females of the family of the said grand duke are excluded from this fief; which provisions his Catholic Majesty hereby expressly abrogates in favour of the said lady Electriz Palatina alone; and as, besides this, their Catholic and British Majesties, with an eye to future times, know how important it is for the tranquillity of Italy and for the good of Tuscany that the state of Siena be always attached and united to that of Florence; Therefore the Catholic King in his own name and that of his successors promises that he and the Kings of Spain who succeed them, will grant the investiture to the male successors of the house of the Grand Duke of Tuscany in the dominion of Florence with the same conditions and clauses set forth in the foregoing, and that he will put them in possession of the state of Seine, and will defend them therein provided they are friends of both the Spanish and British crowns, and seek to merit their grace and patronage. This article is to be ratified and the ratifications are to be exchanged at Utrecht within weeks or sooner if possible. In witness whereof, we, extraordinary legates and plenipotentiaries of their Catholic and British Majesties, by virtue of the power of the plenipotencies exchanged this day, do sign the present article and seal it with our seals at Utrecht on the 13th day of July, in the year of our Lord 1713. -The Duke of Osuna. -The Marquis of Monteleon. - Joh: Bristol: E. P: S: - Strafford. Anne, Queen of Great Britain, ratified purely and simply the foregoing treaty and separate articles on the 31st of the same July, and his Catholic Majesty Don Philip V on the 4th of August of the said year 1713; with the restriction touching article 25 in respect of the town of Lantzick.

5. TREATY SIGNED IN MADRID, 13 JANUARY 1750, TO DETERMINE THE LIMITS OF THE STATES BELONGING TO THE CROWNS OF SPAIN AND PORTUGAL IN ASIA AND AMERICA.[1342]

Article I

The present treaty shall be the only foundation and rule to be followed hereafter for the division and limits of the dominions in all America and Asia; and by virtue of it any right and action which the two Crowns may allege, by reason of the bull of Pope Alexander VI, of happy memory, and of the treaties of Tordesillas, of Lisbon and Utrecht, of the deed of sale granted at Saragossa, and of any other treaties, conventions and promises, shall be abolished; That all this, in so far as it deals with the boundary line, shall be of no value and effect, as if it had not been determined in all other respects in its force and effect. And in future no more shall be treated of the said line, nor may this means be used for the decision of any difficulty occurring over the limits, but only of the boundary prescribed in the present articles, as an invariable rule, and much less subject to controversy.

Article II

The Philippine Islands, and those adjacent to them which the Crown of Spain possesses, shall belong to it forever; notwithstanding any claim which may be alleged on the part of the Crown of Portugal on account of what was determined in the said treaty of Tordesillas, and notwithstanding the conditions contained in the deed celebrated at Saragossa, 22 April 1529; and without the Crown of Portugal being able to repeat anything of the price which it paid for the sale concluded in the said deed. To which effect His Most Fidel Majesty, on behalf of himself and his heirs and successors, makes the most ample and formal renunciation of any right and action which he may have, on the said principles or on any other grounds, to the said Islands, and to the restitution of the amount paid by virtue of the said deed.

Article III

In the same manner, the Crown of Portugal shall belong to all that it has occupied by the river Marañon, or of the Amazons above, and the land on both banks of this river, as far as the places which will be said below; as

[1342] Available at: http://www.cervantesvirtual.com/obra-visor/tratado-firmado-en-madrid-a-13-de-enero-de-1750-para-determinar-los-limites-de-los-estados-pertenecientes-a-las-coronas-de-espana-y-portugal-en-asia-y-america-0/html/ff8d40ae-82b1-11df-acc7-002185ce6064_2.html.

also all that it has occupied in the district of Matogroso, and from this place towards the eastern part and Brazil; notwithstanding any claim which may be alleged on the part of the Crown of Spain, on account of what was determined in the aforesaid treaty of Tordesillas. To which effect His Catholic Majesty, on behalf of himself and his heirs and successors, formally renounces and formally renounces any right and action, which by virtue of the said treaty or by any other title, he may have to the aforementioned territories.

Article IV

The boundaries of the dominion of the two Monarchies shall begin at the bar formed, on the coast of the sea, by the stream which flows out at the foot of the Monte de los Castillos Grandes; from the foot of which the frontier shall continue, seeking in a straight line the highest, or summit of the mountains, whose slopes descend on one side to the coast which runs north of the said stream, or to the Laguna Merin, or the Miní, and on the other, to the coast which runs from the said stream to the south, or to the river of La Plata. In such a way that the summits of the mountains serve as a line of the domain of the two Crowns. And thus the frontier shall be followed, until it finds the main source and headwaters of the Rio Negro, and above them it shall continue to the main source of the river Ibicuí, continuing, downstream from this river, to where it empties into the Uruguay along its eastern bank, all the slopes that descend to the said lagoon, or to the Rio Grande de San Pedro, remaining from Portugal; and from Spain, those that descend to the rivers that are to unite with the Rio de la Plata.

Article V

It will ascend from the mouth of the Ibicuí, by the waters of the Uruguay, until it meets that of the river Pepirí or Pequirí, which drains into the Uruguay by its western bank; and will continue, upstream of the Pepirí, to its main source, from which it will continue by the highest part of the land, to the main headwaters of the nearest river, which flows into the Grande de Curitibá, which by another name they call Iguazú; by the waters of the said river, nearest to the origin of the Pepirí, and then, by those of the Iguazú, or Rio Grande de Curitibá, it will continue the line to where the same Iguazú flows into the Paraná by its eastern bank and from this mouth it will continue, upstream of the Paraná, to where the Igurey river joins it, and by its western bank.

Article VI

From the mouth of the Igurey it will continue, upstream, until it finds its main source, and from it will seek in a straight line, by the highest part of the land, the main headwaters of the nearest river which drains into the Paraguay by its eastern bank, which will perhaps be the one they call Corrientes; and will

descend, with the waters of this river, to its entrance into the Paraguay; from the mouth of which it will ascend, by the main channel which the Paraguay leaves in dry weather, and by its waters, until it finds the marshes formed by this river, called the Laguna de los Xarayes, and crossing this lagoon, to the mouth of the river Jaurú.

Article VII

From the mouth of the Jaurú, on the western side, the frontier shall continue in a straight line to the southern bank of the Guaporé River, opposite the mouth of the Sararé River, which enters the said Guaparé by its northern bank. Provided, however, that if the Commissioners who are to be dispatched for the settlement of the boundaries in this part, in view of the country, find between the Jaurú and Guaporé rivers, other rivers or natural terms whereby more comfortably and with greater certainty the line can be marked in that place, always saving the navigation of the Jaurú, which should be exclusive to the Portuguese, and the road they usually take from Cuyabá to Matogroso, the two High Contracting Parties consent and approve that it be so established, without regard to any more or less portion of land, which may remain on one side or the other. From the place, which on the southern bank of the Guaporé shall be designated as the terminus of the line, as explained above, the frontier shall run down the entire current of the Guaporé River, until below its junction with the Mamoré River, which rises in the Province of Santa Cruz de la Sierra, and crosses the Mission of the Moxos, and together they form the river called the Madera, which enters the Marañon, or Amazon, on its southern bank.

Article VIII

It shall descend by the waters of these two rivers already united, to the place situated at an equal distance from the said river Marañon, or Amazon, and from the mouth of the said Mamoré; and from that place it shall continue, by a line east west, until it meets the eastern bank of the river Jabarí, which enters the Marañon by its southern shore; and descending by the waters of the Jabarí, to where it empties into the Marañón, or Amazon, it shall continue, downstream from this river, to the westernmost mouth of the Japurá, which drains into it on the northern bank.

Article IX

The frontier shall continue through the middle of the Japurá River, and along the other rivers that join it and come nearer to the northern course, until it reaches the top of the range of mountains that mediate between the Orinoco River and the Marañón, or Amazon; and it shall continue along the summit of these mountains to the east, as far as the dominion of one and the other monarchy extends. The persons, appointed by both Crowns to establish the

limits, as provided in the present article, shall take particular care to mark the boundary in this part, ascending upstream from the westernmost mouth of the Japurá. In such a manner that the establishments which the Portuguese now have on the banks of this river and of the Negro are left covered; as also the communication, or canal, of which they avail themselves between these two rivers; and that no place shall be given for the Spaniards, under any pretext or interpretation, to introduce them either into the said communication, or for the Portuguese to go up the Orinoco River, or to extend into the provinces populated by Spain, or into the uninhabited areas which are to belong to them, according to the present articles. To whose effect they will indicate the limits by the lagoons and rivers, straightening the line of the line, as much as it could be, towards the north, without repairing to the little more or less of the land that remains to one or to another Crown, as long as the expressed ends are achieved.

Article X

All islands found in any of the rivers through which the line is to pass, as provided in the preceding articles, shall belong to the dominion to which they are nearest in dry weather.

Article XI

At the same time that the Commissioners appointed by both Crowns are marking the boundaries of the entire frontier, they shall make the necessary observations to form an individual map of the whole of it; from which copies shall be made as may seem necessary, signed by all, and shall be kept by the two Courts, in case any dispute should arise hereafter on account of any infraction; in which case, and in any other case, they shall be considered authentic, and shall be full proof. And in order that there may not be the slightest doubt, the said Commissioners shall name by common agreement the rivers and mountains which do not have names, and shall mark them on the map with as much individuality as possible.

Article XII

In view of the common convenience of the two nations, and in order to avoid any kind of controversy in the future, the mutual cessions contained in the following articles have been established and arranged.

Article XIII

His Most Fidel Majesty, in his name and that of his heirs and successors, cedes forever to the Crown of Spain the Colonia del Sacramento, and all its territory adjacent thereto on the northern margin of the Rio de la Plata, up to the confines declared in Article IV; and the squares, ports and establishments comprised in the same place; as also the navigation of the same Rio de la

Plata, which shall belong entirely to the Crown of Spain. And in order that it may have effect, His Most Fidel Majesty renounces all the right and action which he had reserved to his Crown by the provisional treaty of 7 May 1681, and the possession, right and action which belongs to him and may touch him, by virtue of Articles V and IV of the treaty of Utrecht, of 6 February 1715, or by any other convention, title or foundation.

Article XIV

His Catholic Majesty, on behalf of himself and his heirs, cedes forever to the Crown of Portugal all that is occupied by Spain, or that by any title or right may belong to it, in any part of the lands that by the present articles are declared to belong to Portugal; from the mountain of the Great Castles and its southern slope and sea shore, to the head and main source of the Ibicuí River. And he also cedes all and any towns and establishments that may have been made, on the part of Spain, in the angle of land between the northern bank of the Ibicuí River and the eastern bank of the Uruguay, and those that may have been founded on the eastern bank of the Pepirí River and the town of Santa Rosa, and any others that may have been established, on the part of Spain, on the bank of the Guaporé River to the eastern side.

His most faithful Majesty cedes in the same manner to Spain all the land that runs from the western mouth of the Japurá River, and lies in between, between the same river and the Marañón, or Amazon, and all the navigation of the Izá River, and all that follows from the latter river to the west, with the town of San Cristóbal and any other, which on the part of Portugal may have been founded in that space of land making mutual deliveries with the following qualities.

Article XV

The Colonia del Sacramento will be surrendered on the part of Portugal, without taking from it more than the artillery, gunpowder, ammunition, and vessels for the service of the same square; and the inhabitants will be free to remain in it, or to retire to other lands of the Portuguese dominion, with their effects and furniture, selling the real estate. The Governor, officers and soldiers shall also take all their effects, and shall have the same liberty to sell their real estate.

Article XVI

From the towns or villages, which His Catholic Majesty cedes on the eastern bank of the river Uruguay, the missionaries shall leave with the furniture and effects, taking with them the Indians to populate them in other lands of Spain; and the said Indians may also take all their furniture, goods and semi-goods, and the arms, powder and ammunition they have; in which

form the towns shall be given to the Crown of Portugal, with all their houses, churches and buildings, and the property and possession of the land. Those which are ceded by both Majesties, Catholic and Most Faithful, on the banks of the rivers Pequirí, Guaporé, and Marañón, shall be surrendered with the same circumstances as the Colonia del Sacramento, as provided for in Article XIV; and the Indians on either side shall have the same liberty to leave or remain, in the same manner and with the same qualities as the inhabitants of that plaza may do; only, those who leave shall lose the ownership of the real estate, if they have any.

Article XVII

In consequence of the frontier and limits determined in the preceding articles, the Crown of Portugal shall have the Monte de los Castillos Grandes with its southern slope, and may fortify it, maintaining a guard there, but may not populate it; the two nations having the common use of the bar or inlet formed there by the sea, which was discussed in Article IV.

Article XVIII

The navigation of that part of the rivers through which the frontier is to pass shall be common to the two nations; and generally, where both banks of the rivers belong to one of the two Crowns, the navigation shall be exclusively theirs; and the same shall be understood of that part of the said rivers, the navigation being common to the two nations where it is common, and exclusive where it belongs to one of them. And as regards the summit of the mountain range, which is to serve as a boundary between the Maranon and the Orinoco, all the slopes which fall into the Orinoco shall belong to Spain, and those which fall into the Maranon or Amazon shall belong to Portugal.

Article XIX

In all the frontier trade between the two nations shall be forbidden and contraband; and the laws promulgated by both Crowns concerning this matter shall remain in force and effect. And in addition to this prohibition, no person shall pass from the territory of one nation to that of the other by land, nor by water; nor shall he navigate in the whole or any part of the rivers which are not exclusive of his nation, or common, under any pretext or motive, without first obtaining a license from the Governor, or from the superior of the land where he is to go, or who goes, sent by the Governor of his territory to solicit some business. For which purpose he shall carry his passport, and the transgressors shall be punished, with this difference; if they are apprehended in another's territory, they shall be put in prison, and shall be kept therein for the time of the will of the Governor, or superior who caused them to be apprehended; but if they cannot be apprehended, the Governor, or superior of the land

where they enter, shall form a process with justification of the persons and the offense, and with it shall require the judge of the transgressors, to punish them in the same manner. Exempt from the aforementioned penalties are those who, while navigating on the rivers along which the frontier runs, are forced to enter other people's land because of some urgent necessity, and who must state this necessity. And in order to remove all occasion for discord, it shall not be lawful to erect any kind of fortification on the rivers whose navigation is common, nor on their banks; nor shall it be lawful to place vessels of registry, nor artillery, nor to establish any force, which in any way may impede free and common navigation; Nor shall it be lawful for either party to visit, search, or compel the vessels of the opposing parties to go to their banks, and they may only prevent and punish the vassals of the other nation, if they bring them to theirs, except in case of indispensable necessity, as aforesaid.

Article XX

In order to avoid certain damages which may be occasioned, it was agreed that in the mountains where, in conformity with the preceding articles, the line is drawn on their summits, it shall not be lawful for either of the two powers to erect fortifications on the same summits, nor to permit their vassals to make any settlements on them.

Article XXI

War being the principal occasion of abuses and a motive for altering the most well-arranged rules, it is the wish of their Majesties, Catholic and Most Faithful, that if (which God forbid) there should ever be a rupture between the two Crowns, the vassals of both established in all South America shall remain in peace; living one and the other as if there were no such war between the Sovereigns, without the least hostility either on their own, or together with their allies. And the motives and leaders of any invasion, however slight it may be, shall be punished with irremissible death, and any prey made by them shall be restored in good faith in full. And likewise, neither of the nations shall permit the convenient use of their ports, and much less the transit through their territories of southern America, to the enemies of the other, when they attempt to take advantage of them to harass it; even if it were at a time when the two nations were at war with each other in another region. The said continuance of perpetual peace and good neighbourliness, shall not only take place in the lands and islands of southern America, between the confining subjects of the two monarchies, but also in the rivers, ports and coasts, and in the Ocean Sea, from the height of the southern extremity of the island of San Antonio, one of those of Cape Verde towards the south, and from the meridian which passes through its western extremity towards the west. So that no warship, privateer

or vessel of either of the two Crowns may, within the said terms, at any time, attack, insult or do the slightest injury to the vessels and subjects of the other; and for any attack to the contrary, prompt satisfaction shall be given, with full restitution of whatever may have been seized, and the transgressors shall be severely punished. Neither of the two nations shall admit into their ports and lands of the said South America any friendly or neutral ships or merchants, knowing that they intend to introduce their commerce into the lands of the other, and break the laws whereby the two Monarchs govern those dominions. And for the punctual observance of all that is expressed in this article, the most effective orders shall be given by both Cortes to their respective governors, commanders, and justices; it being well understood, that even in the case, which is not expected, that there may be some incident or oversight against what is promised or stipulated in this article, this shall not prejudice the perpetual and inviolable observance of all the rest that is hereby agreed upon.

Article XXII

In order to determine, with as much precision as may be necessary, and without the slightest doubt in the future, the places through which the line shall pass in some parts which are not distinctly named and specified in the preceding articles, and also to declare to which of the two dominions the islands which are found in the rivers which are to serve as frontiers shall belong, Both Majesties shall appoint, as soon as possible, intelligent commissioners, who, by visiting the entire line, shall adjust with the greatest distinction and clarity, the places through which the demarcation is to run, by virtue of what is expressed in this treaty; Putting signs in the places that seem convenient; and those in which they are conformed, will be valid perpetually, by virtue of the approval and ratification of both Majesties. But in case they cannot agree on any point, they shall give an account to the Most Serene Kings, to decide the doubt in just and convenient terms; it being well understood that what the said commissioners fail to adjust, shall in no way prejudice the force and observance of the present treaty, which, independent of this, shall remain firm and inviolable in its clauses and determinations, serving in the future as a fixed, perpetual and unalterable rule, for the commons of the dominion of the two Crowns.

Article XXIII

It shall be determined between the two Majesties the day on which the mutual deliveries are to be made of the Colonia del Sacramento with the adjacent territory, and of the lands and towns included in the cession made by His Catholic Majesty on the eastern bank of the Uruguay River; which day shall not pass the year, after this treaty is signed. To which effect, as soon as it

is ratified, their Majesties, Catholic and Most Faithful, will pass the necessary orders to be exchanged between the said Plenipotentiaries; and as regards the surrender of the other towns or villages ceded by both parties, it will be executed at the time that the commissioners, appointed by them, arrive at the places of their situation, examining and establishing the limits; and those who are to go to these places will be dispatched with the greatest brevity.

Article XXIV

It is declared, that the cessions contained in the present articles shall not be considered as determined equivalent to each other; but that they are made with respect to the total of what was controverted and alleged, or reciprocally ceded, and those conveniences and comforts which at present resulted to one and the other party. And in consideration of this, the agreement and determination of limits expressed herein is deemed just and convenient for both parties, and as such is recognized and approved by their Majesties, in their own name, and that of their heirs and successors; renouncing any other claim to the contrary, and promising in the same manner, that at no time, and on no grounds whatsoever, shall they dispute what is set forth and agreed upon in these articles; nor on the pretext of injury, or any other, shall they claim any other compensation or equivalent of their mutual rights and cessions referred to.

Article XXV

For the fuller security of this treaty, the two High Contracting Parties agree to guarantee to each other the whole frontier and adjacencies of their dominions in South America, as above expressed; obliging each to aid and succour the other against any attack or invasion, until, with effect, it is in the peaceful possession and free and entire use of that which would usurp it. And this obligation, as to the coasts of the sea and the countries surrounding them, on the part of His Most Faithful Majesty shall extend to the banks of the Orinoco, on either side, and from Castillos to the Strait of Magellan; and on the part of His Catholic Majesty, it shall extend to the banks on either side of the river of the Amazon or Maranon, and from the said Castillo to the Port of Santos. But, as regards the interior of South America, this obligation shall be indefinite, and in any case of invasion or uprising, each of the Crowns shall aid and succour the other, until things are restored to a peaceful state.

Article XXVI

This treaty, with all its clauses and determinations, shall be of perpetual force between the two Crowns; so that, even in case (God forbid) war should be declared between them, it shall remain firm or invariable during the war itself, and after it; without being deemed interrupted or needing to be validated. And

it shall hereby be approved, confirmed and ratified by the two Most Serene Kings, and the exchange of the ratifications shall be made within one month after its date, or sooner if possible.

In witness whereof, and by virtue of the orders and full powers, which We, the said Plenipotentiaries, have received from our Masters, we sign the present treaty, and seal it with the seal of our arms. Given at Madrid, on the thirteenth day of January, one thousand seven hundred and fifty.

Don José de Carvajal y Lancastre.

Don Tomas Da Silva Tellez.

6. SIMÓN BOLÍVAR'S DECREE OF 15 OCTOBER 1817, INCORPORATING THE PROVINCE OF GUAYANA TO VENEZUELA AND INDICATING ITS DEPARTMENTS.[1343]

General Headquarters of Angostura, 15 October 1817.

SIMÓN BOLÍVAR, etc.

As the Province of Guayana, lately taken for the first time under the protection of our arms and laws, is to be incorporated to the Republic, I have had the good will to decree and do decree the following.

Article 1º- The Province of Guayana in all its extension is hereby united to the territory of Venezuela, and shall, from today, form an integral part of the Republic.

Article 2- The Province of Guayana is divided into three Departments.

1º- Department of the Upper Orinoco, whose limits are To the North: the currents of the Orinoco from the mouth of the Apure [1] to the mouth of the Caura River [2]. To the East: the Caura River from its mouth to its source [3], from this straight line to the town of La Esmeralda [4], and crossing the Orinoco here, the communication between this and the Negro River [5] through the Casiquiare [6], and from its confluence with the Negro River the currents of the latter to the town of Guaycaba [7]. To the South: the currents of the Negro River from Guaycaba to San Pablo [8]. To the West: taking the Atabapu River [9] from its source to its confluence with the Orinoco, and the currents of the latter to the mouth of Apure.

2º- Department of the Centre. To the North: the currents of the Orinoco from the mouth of the Caura to the mouth of the Caroní [10]. To the East: the currents of this one, until its origin straight line to the Parime Lake [11], and from here the Amanavisi River [12] from its origin to its confluence with the Parime River [13]. To the South: a straight line from this last point to Guaycaba. To the West: the limits indicated to the East of the Department of the Upper Orinoco.

3º- Department of the Lower Orinoco. To the North: the currents of the Orinoco from the mouth of the Caroní to the mouth of the sea along the Rio Grande [14], and the coast of the sea to Fort Muruca [15] exclusive. To the

[1343] See: Libertador Simón Bolívar's Decree dated in Angostura on 15 October 1817, incorporating the Province of Guayana to the Republic of Venezuela and indicating its Departments. Available at: http://www.archivodellibertador.gob.ve/escritos/buscador/spip.php?article2283.

East and South: the limits with the foreign possessions. To the West: those that have been indicated for the Department of the Centre to the East.

Article 3- The islands that the Orinoco forms in its currents belong to the Department that is in front of them, or in front of its greatest extension if its situation is at the mouths of any of the rivers that divide one Department from another.

Given, signed in my hand, etc.
[BOLIVAR]

* From the copyist. Archivo del Libertador, vol. 23, fol. 202. There is no record of Bolivar's signature or rubric. The document was written in Jacinto Martel's handwriting. The following marginal note appears "Incorporation of the Province of Guayana to Venezuela". The document is in the notebook of "Registro de Decretos" (Record of Decrees) identified in the main note of Doc. Nº 1958.

7. LAW ON THE TERRITORIAL DIVISION OF THE REPUBLIC OF COLOMBIA OF 25 JUNE 1824.[1344]

LAW
(25 June)
On the Territorial Division of the Republic.
The Senate and the House of Representatives of the Republic of Colombia, assembled in Congress.

CONSIDERING:

1º– That the territory of the Republic should have a regular division in its Departments and Provinces, with respect to its extension and population, as convenient for bo[th] the easy and prompt public administration in all its branches, from which the happiness of the peoples derives.

2º– That the comfortable division, proportionate to local circumstances, facilitating the dispatch of the chiefs and courts, excuses the towns from delays, expenses and losses for the constitutional meetings in the primary elections and electoral assemblies, for the resources to the superior authorities, and for the achievement of prompt and good governmental, economic administration and justice.

3º– That finally, the territorial division of the Republic being consistent in everything with the provisions of Articles 8, 20, 26, 27, and 29 of the constitution; in consequence thereof,

DECREE:

Article 1[st] - The entire territory of Colombia is divided into twelve Departments, which, with their capital cities, are as follows. 1[st] Orinoco, its capital Cumaná; 2[nd] Venezuela, its capital Caracas; 3[rd] Apure, its capital Barinas; 4[th] Zulia, its capital Maracaibo; 5[th] Boyacá, its capital Tunja; 6[th] Cundinamarca, its capital Bogotá; 7[th] Magdalena, its capital Cartagena; 8[th] Cauca, its capital Popayán; 9[th] Istmo (Isthmus), its capital Panama; 10[th] Ecuador, its capital Quito; 11[th] Asuay, its capital Cuenca; 12[th] Guayaquil, its capital Guayaquil. These twelve Departments shall comprise the following Provinces and Cantons:

[1344] Available at: https://es.wikisource.org/wiki/Ley_del_25_de_junio_de_1824_(Gran_Colombia)#:~:text=1%C2%BA%E2%80%94Que%20el%20territorio%20de,la%20felicidad%20de%20los%20pueblos.

Article 2nd - The Department of Orinoco, Provinces: 1st of Cumaná, its capital Cumaná; 2nd of Guayana, its capital Santo Tomás de Angostura; 3rd of Barcelona, its capital Barcelona; and 4th of Margarita, its capital La Asunción.

§ 1st The Cantons of the Province of Cumaná and their capitals are: 1st Cumaná; 2nd Cumanacoa; 3rd Aragua Cumanés; 4th Maturín; 5th Cariaco; 6th Carúpano; 7th Rio Caribe; 8th Güiria.

§ 2nd The Cantons of the Province of Guayana and their capitals are: 1st Santo Tomás de Angostura; 2nd Río Negro, its capital Atabapo; 3rd Alto Orinoco, its capital Caicara; 4th Caura, its capital Moitaco; 5th Guayana Vieja; 6th Caroni; 7th Upata; 8th La Pastora; 9th La Barceloneta.

§ 3rd The Cantons of the Province of Barcelona and their capitals are: 1st Barcelona; 2nd Píritu; 3rd Pilar; 4th Aragua; 5th Pao; 6th San Diego;

§ 4th The Cantons of the Province of Margarita and their capitals are: 1st La Asunción; 2nd El Norte.

Article 3rd - The Department of Venezuela comprises the Provinces: 1st of Caracas, its capital Caracas; and 2nd of Carabobo, its capital Valencia.

§ 1st The Cantons of the Province of Caracas and their capitals are: 1st Caracas; 2nd Guaira; 3rd Caucagua; 4th Rio Chico; 5th Sabana de Ocumare; 6th La Victoria; 7th Maracay; 8th Cura; 9th San Sebastian'; 10th Santa Maria de Ipire; 11th Chaguaramas; 12th Calabozo.

§ 2nd The Cantons of the Province of Carabobo and their capitals are: 1st Valencia; 2nd Puerto Cabello; 3rd Nirgua; 4th San Carlos; 5th San Felipe; 6th Barquisimeto; 7th Carora; 8th Tocuyo; 9th Quíbor.

Article 4th - The Department of Apure comprises the Provinces: 1st of Barinas, its capital Barinas and 2nd of Apure, its capital Achaguas.

§ 1st The Cantons of the Province of Barinas and its capitals are: 1st Barinas; 2nd Obispos; 3rd Mijagual; 4th Guanarito; 5th Nutrias; 6th San Jaime; 7th Guanare; 8th Ospinos; 9th Araure; 10th Pedraza.

§ 2nd The Cantons of the Province of Apure and their capitals are: 1st Achagnas; 2nd San Fernando; 3rd Mantecal; 4th Guasdualito.

Article 5th - The Department of Zulia comprises the Provinces: 1st of Maracaibo, its capital Maracaibo; 2nd of Coro, its capital Coro; 3rd of Merida, its capital Merida; and 4th of Trujillo, its capital Trujillo.

§ 1st The Cantons of the Province of Maracaibo and their capitals are: 1st Maracaibo; 2nd Perijá; 3rd San Carlos de Zulia; 4th Gibraltar; 5th Puerto de Altagracia.

§ 2nd The Cantons of the Province of Coro and their capitals are: 1st Coro; 2nd San Luis; 3rd Paraguaná, its head town Pueblo Nuevo; 4th Casigua; 5th Cumarebo.

§ 3rd The Cantons of the Province of Mérida and their capitals are: 1st Mérida; 2nd Mucuchies; 3rd Ejido; 4th Bailadores; 5th La Grita; 6th San Cristóbal; 7th San Antonio de Táchira.

§ 4th The Cantons of the Province of Trujillo and their capitals are: 1st Trujillo; 2nd Escuque; 3rd Boconó; and 4th Carache.

Article 6th - The Department of Boyacá comprises the Provinces: 1st of Tunja, its capital Tunja; 2nd of Pamplona, its capital Pamplona; 3rd El Socorro, its capital Socorro, and 4th of Casanare, its capital Pore.

§ 1st The Cantons of the Province of Tunja and their capitals are: 1st Tunja; 2nd Leiva; 3rd Chiquinquirá; 4th Muso; 5th Sogamoso; 6th Tensa; its capital Guateque; 7th Cocuy; 8th Santa Rosa; 9th Suatá; 10th Turmeque; 11st Garagoa.

§ 2nd The Cantons of the Province of Pamplona and their capitals are: 1st Pamplona; 2nd Villa de San José de Cúcuta; 3rd El Rosario de Cúcuta; 4th Salazar; 5th La Concepción; 6th Málaga; 7th Girón; 8th Bucaramanga; 9th Piedecuesta.

§ 3rd The Cantons of the Province of Socorro and their capitals are: 1st Socorro; 2nd San Gil; 3rd Carichara; 4th Charalá; 5th Zapatoca; 6th Vélez; 7th Moniquirá.

§ 4th The Cantons of the Province of Casanare and their capitals are: 1st Pore; 2nd Arauca; 3rd Chire, and for the time being Tame; 4th Santiago, and for the time being Taguana; 5th Macuco; 6th Nunchía.

Article 7th - The Department of Cundinamarca comprises the Provinces: 1st of Bogotá, its capital Bogotá; 2nd of Antioquia, its capital Antioquia; 3rd of Mariquita, its capital Honda; and 4th of Neiva, its capital Neiva.

§ 1st The Cantons of the Province of Bogotá and their capitals are: 1st Bogotá; 2nd Funza; 3rd Mesa; 4th Tocaima; 5th Fusagasugá; 6th Cáqueza; 7th San Martín; 8th Zipaquirá; 9th Ubaté; 10th Chocontá; 11st Guaduas.

§ 2nd The Cantons of the Province of Antioquia and their capitals are: 1st Antioquia; 2nd Medellín; 3rd Rionegro; 4th Marinilla; 5th Santa Rosa de Osos; 6th Northeast, its capital Remedios.

§ 3rd The Cantons of the Province of Mariquita and its capital are: 1st Honda; 2nd Mariquita; 3rd Ibagué; 4th La Palma.

§ 4th The Cantons of the Province of Neiva and their capitals are: 1st Neiva; 2nd La Purificación; 3rd La Plata; 4th Timaná.

Article 8th - The Department of Magdalena comprises the Provinces: 1st of Cartagena, its capital Cartagena; 2nd of Santa Marta, its capital Santa Marta; and 3rd of Riohacha, its capital Riohacha.

§ 1st The Cantons of the Province of Cartagena and their capitals are: 1st Cartagena; 2nd Barranquilla; 3rd Soledad; 4th Mahates; 5th Corosal; 6th El Carmen; 7th Tolú; 8th Chinú; 9th Magangué; 10th San Benito Abad; 11th Lorica; 12th Mompós; 13th Majagual; 14th Simití; 15th Islas de San Andrés.

§ 2nd The Cantons of the Province of Santa Marta and their capitals are: 1st Santa Marta: 2nd Valledupar: 3rd Ocaña: 4th Plato: 5th Tamalameque: 6th Valencia de Jesús.

§ 3rd The Cantons of the Province of Riohacha and its capital are: 1st Riohacha; 2nd Cesar, its head San Juan del Cesar.

Article 9th - The Department of Cauca comprises the Provinces: 1st of Popayán, its capital Popayán; 2nd of Chocó, its capital Quibdó; 3rd of Pasto, its capital Pasto; and 4th of Buenaventura, its capital for now Iscuandé.

§ 1st The Cantons of the Province of Popayán and their capitals are: 1st Popayán; 2nd Almaguer; 3rd Caloto; 4th Cali; 5th Roldanillo; 6th Buga; 7th Palmira; 8th Cartago; 9th Tulúa; 10th Toro; 11st Supía.

§ 2nd The Cantons of the Province of Chocó and their capitals are: 1st Atrato, its capital Quibdó; and 2nd San Juan, its capital Nóvita.

§ 3rd The Cantons of the Province of Pasto and its capital are: 1st Pasto; 2nd Túquerres; 3rd Ipiales.

§ 4th The Cantons of the Province of Buenaventura and its capital are: 1st Iscuandé; 2nd Barbacoas; 3rd Tumaco; 4th Micay, its capital Guapi; and 5th Raposo, its capital now La Cruz.

Article 10th - The Department of the Isthmus comprises the Provinces: 1st of Panama, its capital Panama; 2nd of Veragua, its capital Veragua.

§ 1st The Cantons of the Province of Panama are: 1st Panama: 2nd Portobelo; 3rd Chorreras; 4th Nata; 5th Los Santos; and 6th Yavisa.

§ 2nd The Cantons of the Province of Veragua and its capital are: 1st Santiago de Veragua; 2nd Mesa; 3rd Alanje; 4th Gaimí, its head Remedios.

Article 11th - The Department of Ecuador comprises the Provinces: 1st of Pichincha, its capital Quito; 2nd of Imbabura, its capital Ibarra; 3rd of Chimborazo, its capital Riobamba.

§ 1st The Cantons of the Province of Pichincha and their capitals are: 1st Quito; 2nd Machachi; 3rd Latacunga; 4th Quijos; 5th Esmeraldas.

§ 2nd The Cantons of the Province of Imbabura and their capitals are: 1st Ibarra; 2nd Otabalo; 3rd Cotacachi; and 4th Cayambe.

§ 3rd The Cantons of the Province of Chimborazo and its capital are: 1st Riobamba; 2nd Ambato; 3rd Guano; 4th Guaranda; 5th Alausí; and 6th Macas.

Article 12º - The Department of Asuay comprises the Provinces: 1st of Cuenca, its capital Cuenca; 2nd of Loja, its capital Loja; and 3rd of Jaén de Bracamoros and Mainas, its capital Jaén.

§ 1st The Cantons of the Province of Cuenca and its capital are: 1st Cuenca; 2nd Cañar: 3rd Gualaseo; and 4th Giron.

§ 2nd The Cantons of the Province of Loja and their capitals are: 1st Loja; 2nd Zaruma; 3rd Carimanga; 4th Catacocha.

§ 3rd The Cantons of the Province of Jaén and Mainas and their capitals are: 1 Jaén; 2 Borja, and 3 Jeveros.

Article 13º - The Department of Guayaquil comprises the Provinces: 1st of Guayaquil, its capital Guayaquil and 2nd of Manabi, its capital Puertoviejo.

§ 1st The Cantons of the Province of Guayaquil and its capitals are: 1st Guayaquil; 2nd Daule; 3rd Babahoyo; 4th Baba; 5| Punta de Santa Elena; and 6th Machala.

§ 2nd The Cantons of the Province of Manabi and its capital are: 1st Puertoviejo; 2nd Jipijapa; 3rd Montecristi.

Article 14th - The said Cantons shall, for the constitutional effects, be contained in Articles 8, 20, 26, 27, and 29 of the constitution; but, as concerns their political and administrative government of public finances, two or more Cantons may join together forming a circuit, under the authority of a single political judge.

Article 15th - If any of the Cantons mentioned in this law cannot have municipalities due to their small population or other circumstances, the Executive Branch shall provisionally add their territory to one or more closer municipalities, reporting to Congress for their arrangement, according to the provisions of Article 155 of the Constitution, without prejudice that, in the Cantons that are very large as regards territory or population, two or more political judges may be established, at the discretion of the Executive Branch.

Article 16th - But the capital of the Cantons which must subsist, shall have a municipality in accordance with the provisions of the same article. Consequently, the new capital of these Cantons, which, at present, are merely parishes, shall be erected and shall be erected as towns, and the Executive Branch, after the legal requirements have been met, shall issue them the corresponding title on paper of the first class of the first seal.

Article 17th - The Executive Branch shall provisionally set the boundaries of the Cantons created by this law. Those of the Provinces and Departments shall be those presently known, or those established by this law. The Executive Branch, however, shall have the maps drawn up, and acquire the necessary news and knowledge, so that, by passing them to Congress, the legislature may definitively designate the limits of the Departments, Provinces, and Cantons.

Article 18th - The Province of Caracas shall be separated from that of Carabobo by a line, beginning at the eastern limits of the parish of Cuyagua, a

straight line from the shore of the sea to the point of Cabrera, cutting the lagoon of Tacarigua or Valencia, and continuing through the town of Magdaleno, to the west of the towns of Cura and Calabozo, to Apure, this Province to include the Cantons listed in Article 4.

Article 19th - The new Province of Carabobo, which occupies the western part of the territory, cut by the aforementioned dividing line, will keep the limits it currently has with respect to the other bordering Provinces, with the exception of the Cantons of Guanare, Ospinos, and Araure, which are added to the Province of Barinas, where the passage of the river of Cojedes through Caramacate shall serve as a limit to the new Province of Carabobo.

Article 20th - To the Department of Ecuador correspond, in the interior, the limits that divide it from those of Asuay and Guayaquil, and, in the coastal part, from the port of Atacames, near the mouth of the Esmeraldas River, to the mouth of the Ancon, southern limit of the Province of Buenaventura on the coasts of the South Sea.

Article 21st - The new Province of Manabí in the Department of Guayaquil, occupies the part of the territory of Esmeraldas, which, following the coast, goes from the Colonche River to and including Atacames. In the interior it shall have the limits that have separated the Province of Quito from this part of the Province of Esmeraldas.

Article 22nd - The Department of Cauca is separated from that of Ecuador by the limits that have separated the Province of Popayán at the Carchi River, which serves as boundaries to the Province of Pasto.

Article 23rd - The new Departments shall not elect senators or representatives until the next constitutional assemblies: and the new Provinces shall, until then, not have provincial electoral assemblies either.

Made in Bogota on 23 June 1824.

– The President of the Senate, José María del Real,

– The Vice-President of the House of Representatives, José Rafael Mosquera,

– The Secretary of the Senate, Antonio José Caro,

– The representative, Secretary of the House of Representatives, José Joaquín Suares.

Government Palace in Bogota on 25 June 1824, Implement.

– Francisco de Paula Santander.

– For H.E. the Vice-President of the Republic in charge of the Executive Branch.

– The Secretary of State of the Office of the Interior, José Manuel Restrepo.

8. TREATY OF COOPERATION AND FRIENDSHIP BETWEEN COLOMBIA AND GREAT BRITAIN ADOPTED ON 1 APRIL 1825, APPROVED BY DECREE OF THE CONGRESS OF COLOMBIA ON 23 MAY 1825 AND RATIFIED BY THE GOVERNMENT OF COLOMBIA ON THAT SAME DATE.[1345]

Treaty of Friendship, Navigation and Commerce.

Bogotá, 1 April 1825.

Approved by Decree of the Congress of Colombia on 23 May 1825 and ratified by the Government of Colombia on the same date.

Additional Declaration of 7 November 1825 approved by Decree of the Congress of Colombia on 14 March 1825 and ratified on 14 March 1826.

Ratifications exchanged in London on 7 November 1825.

Gazette of Colombia, No. 228.

National Codification, Volume II, Nos. 252 and 266.

In the name of the Holy Trinity.

Extensive commercial relations having been established, for a series of years between various Provinces or countries of America, which united now constitute the Republic of Colombia, and the dominions of His Majesty the King of the United Kingdom, it has seemed expedient, both for the security and encouragement of that commercial correspondence, and to maintain good intelligence between the said Republic and his said Majesty, that the relations now subsisting between them should be regularly known, and confirmed by a Treaty of friendship, commerce, and navigation.

To this end, they have appointed their respective Plenipotentiaries, namely: the Vice-President, in charge of the Executive Branch of the Republic of Colombia; Pedro Gual, the Secretary of State and of the Office of Foreign Affairs of the same; and General Pedro Briceño Méndez; and his Majesty the King of Great Britain and Ireland, Juan Potter Hamilton, Squire, and Patricio Campbell, Squire; who, after having been communicated their respective full powers, found in due and proper form, have agreed and concluded the following articles:

[1345] Ministry of Foreign Relations of Colombia, *"Tratado de Cooperación y Amistad entre Colombia y Gran Bretaña"* ("Treaty of Cooperation and Friendship between Colombia and Great Britainm") adopted on 1 April 1825, Available at: http://apw.cancilleria.gov.co/Tratados/adjuntosTratados/UK-01-04-1825.PDF.

Article 1st There shall be perpetual, firm and sincere friendship between the Republic and people of Colombia, and the subject dominions of His Majesty the King of the United Kingdom, his heirs and successors.

Article 2nd There shall be between all the territories of Colombia and the territories of His Britannic Majesty in Europe, a reciprocal freedom of commerce. The citizens and subjects of the countries, respectively, shall be at liberty to go freely and safely with their vessels and cargoes to all those places, ports and rivers, in the aforesaid territories, to which other foreigners are allowed, or shall be allowed to go, to enter the same, and to remain and reside in any part of the said territories, respectively; also to hire and occupy houses, and warehouses for the objects of their commerce; and, generally, the merchants and traffickers of each Nation, respectively, shall enjoy the fullest protection and security for their commerce, being always subject to the laws and statutes of the countries, respectively.

Article 3rd His Majesty the King of the United Kingdom is further bound to that the citizens of Colombia shall have the same freedom of commerce and navigation as has been stipulated in the preceding article, in all his dominions situated outside Europe, to the full extent to which it is now permitted, or shall hereafter be permitted to any other nation.

Article 4th No other or higher duties shall be imposed upon the importation into the territories of Colombia of any articles of the natural produce, productions or manufactures of the dominions of His Britannic Majesty, nor shall any other or higher duties be imposed upon the importation into the territories of His Britannic Majesty of any articles of the natural produce, productions or manufactures of Colombia, than those which are paid or payable for like articles, when they are the natural produce, productions or manufactures of any other foreign country; nor shall any other or higher duties or taxes be imposed, in the territories or dominions of either of the Contracting Parties, on the exportation of any articles to the territories or dominions of the other, than those which are paid or payable for the exportation of the same articles to any other foreign country. Nor shall any prohibition be imposed upon the exportation or importation of any articles of the natural produce, productions or manufactures of the territories and dominions of Colombia or of Her Britannic Majesty, for the said territories or dominions of Colombia, or for the said territories or dominions of Her Britannic Majesty, which are not equally extended to all other nations.

Article 5th No other or higher duties or taxes shall be imposed, by reason of tonnage, beacon or port emoluments, pilotage, salvage in case of damage or shipwreck, or any other local expenses, in any of the ports of His Britannic

Majesty's dominions, on Colombian vessels, than those payable in the same ports by British vessels.

Article 6th The same duties shall be paid on the importation, into His Britannic Majesty's dominions, of any article of the natural produce, productions, or manufactures of Colombia, whether such importation be made in British or Colombian vessels; and the same duties shall be paid on the importation into the territories of Colombia of any article of the natural produce, productions, or manufactures of His Britannic Majesty's dominions, whether such importation be made in Colombian or British vessels. The same duties shall be paid, and the same discounts and gratuities granted, upon the exportation of any articles of the natural produce, productions, or manufactures of Colombia, for the dominions of Her Britannic Majesty, whether such exportation be made in British or in Colombian vessels; and the same duties shall be paid, and the same discounts and gratuities granted, upon the exportation for Colombia of any articles of the natural produce, productions, or manufactures of the dominions of Her Britannic Majesty, whether such exportation be made in Colombian or in British vessels.

Article 7th To avoid any misunderstanding, with respect to the rules which may respectively constitute a Colombian or British vessel, it is hereby agreed that every vessel built in the territories of Colombia, and owned by her citizens or by some of them, and whose Captain and three fourths of the seamen, at least, are Colombian citizens, except in cases where the laws provide otherwise for extreme circumstances, shall be considered as a Colombian vessel; and every ship built in the dominions of Her Britannic Majesty, and owned by British subjects or by any of them, and whose Captain and at least three-fourths of the seamen are British subjects, except in cases where the laws provide otherwise in extreme circumstances, shall be considered as a British ship.

Article 8th All merchants, commanders of vessels, and other citizens and subjects of the Republic of Colombia, and of Her Britannic Majesty, shall have entire liberty in all the territories of both powers, respectively, to manage their own business by themselves, or entrust it to the management of whomsoever they please, as broker, factor, agent, or interpreter; nor shall they be obligated to employ any other persons for those objects, nor to pay them any salary or remuneration, unless they wish to employ them; and absolute liberty shall be granted in all cases to the buyer and seller, to contract and set the price of any effects, goods or merchandise imported into, or exported from the territories of either of the two contracting parties, as they may choose.

Article 9th In all matters relating to the loading and unloading of vessels, the security of merchandise, goods and effects, the succession of movable

property, and the disposition of movable property of every kind and description, by sale, gift, exchange or will, or otherwise, as well as to the administration of justice, the citizens and subjects of the two Contracting Parties shall enjoy, in their respective territories and dominions, the same privileges, liberties and rights as the most favoured nation; and no higher taxes or duties shall be imposed upon them in any of these respects than are or shall be paid by the citizens or subjects of the power in whose territories or dominions they reside. They are exempt from all forced military service, both on land or at sea, and from all forced loans, or military levies or requisitions; nor shall they be compelled to pay any ordinary tax greater than that paid by the citizens or subjects of either power, under any pretext whatsoever.

Article 10th. It shall be free to each of the Contracting Parties to appoint Consuls for the protection of commerce, to reside in the territories and dominions of the other Party; but before any Consul shall act as such, he shall be approved and admitted in the customary manner by the Government to which he is sent; and either of the Contracting Parties may except from the residence of Consuls such particular places as either of them may deem proper to except.

Article 11th For the better security of commerce between the citizens of Colombia and the subjects of Her Britannic Majesty, it is agreed, that if any interruption of the friendly commercial correspondence, or any rupture between the two Contracting Parties should unfortunately happen at any time, the citizens or subjects of the two Contracting Parties, resident in the dominions of the other, shall have the privilege of remaining and continuing their traffic there without any kind of interruption, so long as they conduct themselves peaceably and commit no offence against the laws; and their effects and property, whether entrusted to private individuals or to the State, shall not be subject to occupation or sequestration, nor to any other claims than those which may be made to the same effects or property belonging to citizens or subjects of the Power in which they reside.

Article 12th The citizens of Colombia shall enjoy, in all the dominions of His Britannic Majesty, perfect and unlimited liberty of conscience, and the liberty to exercise their religion publicly and privately, within their private houses or in the chapels or places of worship destined for that purpose, according to the system of toleration established in His Majesty's dominions. Likewise, the subjects of His Britannic Majesty, resident in the territories of Colombia, shall enjoy the most perfect and entire security of conscience, without being thereby exposed to being disturbed, bothered, or perturbed by reason of their religious belief, nor in the exercises proper to their religion,

provided they do so in private houses, and with the decorum due to divine worship, respecting the established laws, customs and usages. The subjects of His Britannic Majesty, who die in the said territories of Colombia, shall also be at liberty to have themselves buried in convenient and suitable places, which they themselves shall designate and establish, with the agreement of the local authorities, for that purpose; and the funerals or sepulchres of the dead shall not be disturbed in any way or for any reason whatsoever.

Article 13th The Government of Colombia undertakes to co-operate with His Britannic Majesty for the total abolition of the slave traffic, and to prohibit all persons inhabiting the territory of Colombia, in the most effective manner, from taking any part in such traffic.

Article 14th And inasmuch as it would be convenient and useful to facilitate further the mutual good correspondence between the two contracting Parties, and to avoid hereafter all sorts of difficulties, that other articles should be proposed and added to the present Treaty, which for want of time and the haste of circumstances cannot now be drawn up with due perfection, it was and is agreed on the part of both Powers, that they will, without the least possible delay, lend themselves to treat and agree upon such articles as are wanting in this Treaty, and are mutually judged advantageous; and said articles, when agreed upon and duly ratified, shall form part of the present Treaty of friendship, commerce and navigation.

Article 15th The present Treaty of friendship, commerce and navigation shall be ratified by the President or Vice-President in charge of the Executive Branch of the Republic of Colombia, and with the consent and approval of the Congress of the same, and by His Majesty the King of the United Kingdom, and the ratifications shall be exchanged in London within six months, counted from this day, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present, and affixed their respective seals.

Given in the city of Bogotá on the eighteenth day of April in the year of our Lord one thousand eight hundred and twenty-five.

(L.S.) Pedro Gual
(L.S.) Pedro Briceño Méndez
(L.S.) John Potter Hamilton
(L.S.) Patrick Campbell

ADDITIONAL ITEM

Inasmuch as, in the present state of the Colombian navy, it would not be possible for Colombia to take advantage of the reciprocity established by the fifth, sixth and seventh articles of the Treaty signed today, if that part which stipulates that, in order to be considered as a Colombian vessel, the vessel must have been actually built in Colombia, is immediately put into execution: it is agreed that for the space of seven years, to be counted from the date of the ratification of this Treaty, every vessel of any construction, which is bona fide, owned by any or some of the citizens of Colombia, and whose Captain and three-fourths of the seamen, at least, are also Colombian citizens, except in cases where the laws provide otherwise for extreme circumstances, shall be considered as a Colombian vessel: His Majesty the King of the United Kingdom reserving the right, at the end of the said term of seven years, to claim the principle of reciprocal restriction stipulated in the seventh article above referred to, if the interests of British shipping should be prejudiced by the present exception to that reciprocity in favour of Colombian vessels.

The present additional article shall have the same force and validity as if it had been inserted, word for word, in the Treaty signed today; it shall be ratified, and the ratifications shall be exchanged, at the same time.

In witness whereof, the respective Plenipotentiaries have signed it, and affixed their respective seals.

Given in the city of Bogotá on the eighteenth day of April in the year of our Lord one thousand eight hundred and twenty-five.

(L.S.) Pedro Gual
(L.S.) Pedro Briceño Méndez
(L.S.) John Potter Hamilton
(L.S.) Patrick Campbell

Note: The full ratifications of this Treaty and its additional article were exchanged in London in due form, on 7 November of the same year of 1825.

9. TREATY OF RECOGNITION, PEACE AND FRIENDSHIP SIGNED IN MADRID ON 30 MARCH 1845 WHEREBY SPAIN RECOGNIZED THE REPUBLIC OF VENEZUELA.[1346]

- **Legislative approval: 26 May 1845.**
- **Executive ratification: 27 May 1845.**
- **Exchange of ratifications: in Madrid on 22 June 1846.**

Venezuela on the one hand and Her Majesty the Queen of Spain Doña Isabel II on the other, animated by the same desire to erase the vestiges of the past struggle and to seal with a public and solemn act of reconciliation and peace the good relations that naturally already exist between the citizens and subjects of both States and that will become closer and closer every day for the benefit and advantage of both, have determined to celebrate with such a plausible object a Treaty of Peace, based on principles of justice and reciprocal convenience: Venezuela appointing as its Plenipotentiary Mr. Alejo Fortique, Minister of the Superior Court of Justice of Caracas and present Envoy Extraordinary and Minister Plenipotentiary of the Republic to His Britannic Majesty, and His Catholic Majesty Mr. Francisco Martinez de la Rosa, of the Council of State, Knight Grand Cross of the Royal and distinguished Spanish Order of Charles III, of the Order of Christ of Portugal, of the Order of Leopold of Belgium, and of the Order of the Saviour of Greece, and his Minister of State and of the Office, and after having exhibited their full powers and finding them in due form have agreed upon the following articles:

Article 1st. H.M.C., using the power vested in him by decree of the Cortes Generales del Reino *(General Courts of the Kingdom)* of 4 December 1836, renounces for himself, his heirs and successors, the sovereignty, rights and actions that correspond to him over the American territory, known under the ancient name of Capitanía General de Venezuela, today Venezuela.

Article 2nd. As a consequence of this renunciation and cession H.M.C. recognizes as a free, sovereign and independent Nation Venezuela composed of the provinces and territories expressed in its Constitution: and other subsequent laws to wit: Margarita, Guayana, Cumaná, Barcelona, Caracas, Carabobo,

[1346] *Academia Nacional de la Historia* (National History Academy) *"Reconocimiento de la Independencia por España"* ("Spain's Acknowledgement of the Independence") - 30 March 1845 - Available at: http://www.anhvenezuela.org/admin/Biblioteca/Textos%20Historicos%20de%20Venezuela/Reconocimiento%20de%20la%20Independencia%20por%20Espana%20%20%281845%29.pdf.

Barquisimeto, Barinas, Apure, Mérida, Trujillo, Coro, and Maracaibo and any other territories and islands that may belong to it.

Article 3rd. There will be total oblivion of the past and a general and complete amnesty for all the citizens of Venezuela, and the Spaniards, without any exception whatsoever, whichever party they may have followed during the wars and dissensions happily ended by the present Treaty. This amnesty is stipulated and is to be given by the high interposition of H.M.C. in proof of the desire that animates him to cement on principles of benevolence, the peace, union and close friendship that from now on forever must be preserved between his subjects and the citizens of Venezuela.

Article 4th. Venezuela and H.M.C. agree that the respective citizens and subjects of both Nations shall keep their rights free and expeditious to claim and obtain justice and full satisfaction of the debts contracted between them bona fide, as well as that no obstacle or impediment shall be placed by the public authority on the rights they may claim by reason of marriage, inheritance by will or intestate, succession or by any other title of acquisition, recognized by the laws of the country in which the claim takes place.

Article 5th. Venezuela, animated by feelings of justice and equity, spontaneously recognizes as a consolidable national debt the amount of the debt of the Treasury of the Spanish Government that is registered in the books of account and detail of the Treasuries of the former General Captaincy of Venezuela or that results by other legitimate and equivalent means; However, it being difficult due to the peculiar circumstances of the Republic and the disastrous war already happily ended, to establish this point definitively, and both parties longing to conclude this Treaty of Peace and Friendship as soon as possible, as common interests demand, have agreed to leave its resolution for a later arrangement. It is to be understood, however, that the amounts that according to said arrangement are qualified and admitted as legitimate payment, while this is not verified, will earn five percent annual interest, beginning to be counted from one year after the ratifications of the present Treaty have been exchanged and this debt will be subject to the general rules established in the Republic on the matter.

Article 6th. All movable or immovable property, jewels, money, or other effects of any kind which may have been seized or confiscated from citizens of Venezuela or subjects of H.M.C. on the occasion of the war and which are still in the possession or at the disposal of the Government in whose name the seizure or confiscation was made, shall be immediately returned to their former owners or to their heirs or legitimate representatives, without any of them ever having the right to claim anything on account of the products that

such property has yielded or could and should have yielded since the seizure or confiscation.

Article 7th. Damages as well as improvements that may have occurred in such property since then for any reason whatsoever, may not be claimed either by one party or the other.

Article 8th. The owners of those movable or immovable properties which, having been seized or confiscated by the Government of the Republic, have been later sold, adjudicated, or in any way disposed of by the Government, shall be given by the Government the competent indemnification. This indemnity shall be made at the choice of the owners, their heirs or legitimate representatives, on paper of the consolidable debt of the Republic, earning interest at the rate of three percent per annum, which shall begin to run one year after the ratifications of the present Treaty have been exchanged, following from this date the fate of the other creditors of the same kind of the Republic, or on lands belonging to the State. Both for the indemnity in the aforesaid paper and in lands, the value of the confiscated goods at the time of the seizure or confiscation shall be considered: proceeding in all things in good faith and in an amicable and non-judicial manner to avoid any motive of displeasure between the subjects of both countries, and to prove on the contrary the mutual desire for peace and fraternity in which all are animated.

Article 9th. If the indemnity should take place on paper of the consolidable debt, the Government of the Republic shall give a document of credit against the State, which shall earn the interest expressed from the time fixed in the preceding article, even if the document is issued after that time: and if it is verified on public lands after the year following the exchange of the ratifications, there shall be added to the value of the lands given in indemnity for the property lost, the amount of lands more than is calculated equivalent to the credit of the primitive ones if these had been delivered within the year following the referred exchange or before: in terms that the indemnity be effective and complete when it occurs.

Article 10th. The citizens of Venezuela or Spanish subjects who by virtue of the provisions of the foregoing articles have any claim to make before one or the other Government, shall present it within a period of four years counted from the exchange of the ratifications of the present Treaty, accompanying a concise account of the facts, supported by reliable documents that justify the legitimacy of the claim; and after said four years no new claims of this kind shall be admitted under any pretext whatsoever.

Article 11th. In order to avoid any reason of disagreement on the understanding and exact execution of the preceding articles, both contracting

parties declare that they will not make any reciprocal claim for damages caused by the war or for any other reason, limiting themselves to those expressed in this Treaty.

Article 12th. In the same spirit, and in order to avoid any cause for complaint or claim in the future, both parties reciprocally promise not to consent, from their respective territories, to conspire against the security or tranquillity of the other State and its dependencies by preventing any expedition prepared with such a harmful object, and by employing against the persons guilty of such an attempt the most effective remedies allowed by the laws of each country.

Article 13th. In order to erase at once every vestige of division between the subjects of both countries, so closely united today by the ties of origin, religion, language, customs, and affections, it is agreed by both contracting parties:

1. That the Spaniards who for particular reasons have resided in Venezuela and adopted that nationality, may retake their original nationality, giving them a period of one year from the date of the exchange of ratifications of the present Treaty to make use of this right. The way to verify this will be by being registered in the Registry of Spaniards that will be opened in the Legation or Consulate of Spain that is established in the Republic, as a consequence of this Treaty, and the Government of the same will be informed for its due knowledge, of the number, profession or occupation of those who are Spaniards in the Register on the day that it is closed after the expiration of the indicated term. After this term, only those coming from Spain and its dominions will be considered Spaniards who by their nationality carry passports of Spanish authorities and have themselves registered in said Register upon their arrival.
2. Venezuelans in Spain and Spaniards in Venezuela, may freely possess all kinds of movable or immovable property, have establishments of any kind, exercise all kinds of industry and commerce, either wholesale and retail, being considered in each country as national subjects those who so establish themselves, and as such subject to the common laws of the country where they possess, reside or exercise their industry or commerce; bring into the country their securities in full, dispose of them, succeed by will or intestate, all on the same terms and under the same conditions as the natives.

Article 14th. The citizens of Venezuela in Spain and the Spanish subjects in Venezuela shall not be subject to service in the army, navy or national militia, and shall be exempt from all forced loans, paying only for the goods of which they are owners or industry they exercise, the same contributions as the natives of the country.

Article 15th. Venezuela and H.M.C. agree to proceed as soon as possible to adjust a Treaty of commerce on principles of reciprocal usefulness and advantages.

Article 16th. In order to facilitate commercial relations between the two States, the merchant vessels of each country shall be admitted to the ports of the other with the same advantages enjoyed by those of the more favoured nations; without any more or greater duties than those known as port duties being required of them than those paid by the former.

Article 17th. Venezuela and H.M.C. shall enjoy the faculty of appointing diplomatic and consular agents of each other's dominions, and, accredited and recognized as such, shall enjoy the franchises, privileges and immunities enjoyed by those of the most favoured nations.

Article 18th. The Consuls and Vice-Consuls of Venezuela in Spain and those of Spain in Venezuela shall intervene in the successions of the subjects of each country who are established, resident or transient in the territory of the other, by will or intestate: also in cases of shipwreck or disaster, they may issue and endorse passports to the respective subjects and exercise the other functions proper to their office.

Article 19th. Venezuela and H.M.C. wishing to preserve the peace and good harmony which they have just happily re-established by the present Treaty, they solemnly and formally declare:

1. That any advantage they may acquire by virtue of the preceding articles, is and must be understood as a compensation of the benefits mutually conferred by them; and
2. That if (God forbid) the good harmony which should reign in the future between the contracting parties should be interrupted by lack of understanding of the articles herein agreed upon or by any other reason of grievance, neither party may authorize acts of hostility or reprisal by sea or land, without first having presented to the other a memorandum justifying the reasons on which the complaint or grievance is based, and refusing to make the corresponding satisfaction.

Article 20th. The present Treaty as extended in twenty articles shall be ratified and the instruments of ratification hereof shall be exchanged at this

Court within eighteen months from the day on which it is signed, or sooner, as both parties may desire. In witness whereof the respective Plenipotentiaries have signed and affixed their private seals.

MADE at Madrid on the thirtieth day of March, one thousand eight hundred and forty-five.

/L.S./ Alejo Fortique (Venezuela)
/L.S./ Francisco Martinez de la Rosa (Spain)

10. LETTER FROM THE BRITISH CONSUL GENERAL IN CARACAS, BELFORD HINTON WILSON, TO THE SECRETARY OF STATE AND FOREIGN RELATIONS OF VENEZUELA, VICENTE LECUNA, ON THE PROPOSAL OF THE BRITISH GOVERNMENT TO THE VENEZUELAN GOVERNMENT TO AGREE ON THE COMMITMENT OF BOTH COUNTRIES TO NOT OCCUPY THE DISPUTED TERRITORY AND TO CEASE MUTUAL ACCUSATIONS OF TERRITORIAL USURPATION (FIRST NOTE COMPOSING THE *STATU QUO* TREATY OF 1850).[1347]

British Legation- No. 118.
Caracas, 18 November 1850.

Mr. Vicente Lecuna,
Secretary of State and Foreign Relations of Venezuela.

On the third of April last, the undersigned, Her Britannic Majesty's Chargé d'Affaires, had the honour to show to Mr. Fernando Olavarría, then Secretary of State and Foreign Relations of Venezuela, an original report which, on the preceding day, the undersigned had sent to Her Majesty's Principal Secretary for Foreign Affairs, setting forth the character and object of a propaganda of falsehood and calumny, as to the conduct and policy of the British Government in the boundary question between Great Britain and Venezuela; and at the same time the undersigned informed S.S. of the steps which had been taken by the British Government in the matter of boundaries between Great Britain and Venezuela. S. of the steps he had taken to contradict the rumour maliciously spread in Venezuela that Great Britain intends to claim the Province of Venezuelan Guiana.

These steps consisted principally in assuring the Venezuelan Government that the propaganda had been false, and by communicating to the Venezuelan Government a copy of an official letter which, on the 20th of the previous March, had been sent by Mr. Kenneth Mathison,

[1347] José Rafael GAMERO LANZ, "Convenio de *Statu quo* del 18 de noviembre de 1850" ("The *Statu quo* Convention of 18 November, 1850," an article published on 19 November 2018. Available at: https://www.linkedin.com/pulse/convenio-de-status-quo-del-18-noviembre-1850-jos%C3%A9-rafael-gamero-lanz/?originalSubdomain=es.

British Vice-Consul in Bolivar, in which, after stating what had been in reality the course and conduct of His Majesty's Government in this matter since November 1847, he formally declared that the intentions of His Majesty's Government, with the manifest object of serving the private interest of a certain well-known individual, and the political tricks which had been imputed since 1813 to His Majesty's Government since 1813, were not true, and that the intentions which, with the manifest object of serving the private interest of a certain well-known individual, and the political tricks of propaganda, had been imputed since 1813 to His Majesty's Government, are not only entirely and absolutely lacking in the least foundation, but are precisely the opposite of the truth.

A copy and translation of this letter to Mr. Mathison were published by the Venezuelan Government in Nº 981 of the Official Gazette of Venezuela; and on the 13th of May last, His Majesty's Government approved the conduct of the undersigned in this respect.

The undersigned will here observe that, on April 5, he read, translating it to H.E. the President, the above-mentioned report which he gave to his Government, a report whose original, as he has already said, he had shown on the 3rd of that month to Mr. Olavarría who reads English.

On the 13th of that same month of April, the undersigned thought it his duty to transmit to his Government extracts of letters, which were sent to him in Bolivar by Vice-Consul Mr. Mathison dated March 2, 8, 18, 22 and 30, saying that orders had been given to the authorities of the Province of Guayana to put it in a state of defence, and to repair and arm the dismantled and abandoned forts; and finally, that the Governor, José Tomás Machado, had spoken of raising a fort at the point of Barima, whose right of possession is in dispute between Great Britain and Venezuela.

The undersigned also believed it to be his duty to communicate to his Government the introduction in the House of Representatives of a bill, which is recorded in Nº 02 of the Journal of Debates, and authorizes the Executive Government to immediately build a fort at the point which serves as the boundary between Venezuela and British Guiana, failing however, to state by name what point that is, thus authorizing the Executive Government to commit *de facto* aggression and usurpation in

the territory disputed between the two countries, by the construction of a fort at some point which Venezuela may claim, although Great Britain may equally claim legitimate possession of that point.

The tone and language employed with Great Britain in the course of the discussions on this project, which the undersigned will not stop to characterize, left no reasonable ground for doubting the imminence of the danger to which British rights would be exposed should the project pass into law.

The undersigned, however, gladly gave an account to his Government of the friendly assurances which he received from H.E. the President, and of the judicious conduct which he did indeed observe, and also that the bill has not yet become a law.

But with regard to the existence of a propaganda to mislead and excite public opinion in Venezuela, as to the question of boundaries between British and Venezuelan Guiana, and the consequent possibility of aggression and usurpation on the part of the authorities of Venezuelan Guiana in the territory disputed by the two countries, Viscount Palmerston, on 15 July, transmitted to the undersigned, for his knowledge and government, a copy of a letter which had been sent by H.E. S. to the Lords commissioners of the Admiralty, in which he informs them of the Queen's commands as to the orders to be given to the Vice-Admiral commanding Her Majesty's naval forces in the West Indies, as to the course to pursue if Venezuelan authorities build fortifications in the territory disputed by Great Britain and Venezuela.

The undersigned has also been instructed to call the serious attention of the President and Government of Venezuela to this matter, and to declare that while, on the one hand, Her Majesty's Government has no intention of occupying or usurping the disputed territory, on the other hand, it will not look with indifference upon the aggressions of Venezuela upon that territory.

The undersigned has been further instructed to say that, in these circumstances, His Majesty's Government hopes that positive instructions will be sent to Venezuelan authorities in Guiana, to the effect that they will refrain from taking measures which the British authorities might justly regard as aggressions; for, if taken, such measures would necessarily lead to a collision which would be deeply

felt by His Majesty's Government, but for the consequences of which, whatever they might be, His Majesty's Government would hold Venezuela entirely responsible.

Venezuelan Government cannot, without doing an injustice to Great Britain, distrust for a moment the sincerity of the formal declaration, now made in the name and by the express order of Her Majesty's Government, that Great Britain has no intention of occupying or usurping the disputed territory; consequently, the Venezuelan Government cannot, in the same spirit of good faith and friendship, refuse to make a similar declaration to Her Majesty's Government; namely, that Venezuela itself has no intention of occupying or usurping the disputed territory.

The systematic perseverance with which, since 1843, propaganda has fabricated and circulated false rumours concerning the conduct and policy of His Majesty's Government with regard to Venezuelan Guiana, has, among other harmful effects, served the ends of that propaganda, keeping an unhealthy spirit of distrust and puerile credulity alive with regard to all frivolous rumours touching this question of limits, and thus exposing the friendly relations between Great Britain and Venezuela to be interrupted at any moment by a collision between the two countries arising from some sudden and perhaps unauthorized aggression on the part of the local authorities of Venezuela, whether committed by building forts or by occupying and usurping the disputed territory.

His Majesty's Government, as already stated, will neither order nor sanction such usurpations or occupation on the part of the British authorities; and, if at any time they err in the determination in this respect, the undersigned is persuaded that he would willingly renew his orders in the matter; He is therefore satisfied that, in accordance with the friendly directions of His Majesty's Government, the government of Venezuela will not hesitate in sending positive orders to Venezuelan authorities in Guiana to refrain from taking measures which the British authorities may justly consider as aggressions.

On last 14th and 15th, the undersigned privately made the instructions given him by Viscount Palmerston known to Senor Vicente Lecuna, and to His Excellency the President; and then fully explained the amiable considerations which had moved him not inform the contents thereof to

the Venezuelan Government when he received them, which was on the 18th of June last, and to continue to defer their formal communication in writing until the opportunity should present itself.

It seems that both His Excellency the President and Mr. Lecuna appreciated in all its value the friendliness of this course of action.

However, being of the opinion that it was agreed in the interviews that the undersigned held with Mr. Lecuna on the 15th and 16th of the current month, that the right moment has arrived to make this information known, he has lost no time in expressing those instructions in this note.

The undersigned avails himself of this opportunity to renew to Mr. Lecuna the assurances of his distinguished consideration.

(Signed) Belford Hinton Wilson.

11. LETTER OF 20 DECEMBER 1850 BY VICENTE LECUNA REPLYING TO THE NOTE OF 18 NOVEMBER 1850 BY THE BRITISH. (SECOND NOTE COMPOSING THE *STATU QUO* TREATY OF 1850).[1348]

Republic of Venezuela. Foreign Relations Office

Caracas, 20 December 1850.

Mr. Lecuna to Mr. Wilson.

The undersigned, Secretary of Foreign Relations of Venezuela, had the honour to receive and present to the Executive Branch the note of the Acting Chargé d'Affaires of Her Britannic Majesty, dated the 18th of last month, and contracted to disprove the rumours that have circulated in the country that Great Britain intends to take possession of Venezuelan Guiana, mentioning the steps she has taken to achieve said effect and that she has instructed the Government; declaring on behalf of his Government that he has no intention of occupying or usurping the territory disputed by the two countries, which he also requests that Venezuela declare on its part, asking that orders be sent to the authorities of Guiana not to take any measures that could justly be considered as aggressions by the British, and alluding to the causes that have moved him to defer making this communication.

By order of His Excellency the President of the Republic, the undersigned states in reply that: the Government has never been able to persuade itself that Great Britain, disregarding the open negotiation in the matter, and the rights alleged in the question of limits pending between the two countries, would wish to employ force to occupy the land that each party claims; more so after having been assured so many times by Mr. Wilson and as sincerely as the Executive Branch believes, that these imputations have no foundation whatsoever, on the contrary, they are precisely the opposite of the truth. Leaning on such confidence, fortified by the protest which the said note includes, the Government has no difficulty in declaring, as it does, that Venezuela has no intention whatsoever of occupying or usurping any part of the territory whose dominion is in dispute, nor will it view with indifference

[1348] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Page 34. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

that Great Britain should proceed otherwise. Furthermore, the authorities of Guiana will be ordered to abstain from taking any steps which would violate the obligation which the Government has here contracted, and which might lead to disastrous results, as Mr. Wilson assures us has been done, and, if necessary, will be repeated in good faith with respect to the authorities of English Guiana. Finally, the Government duly appreciates the reasons which have weighed on Mr. Wilson's mind for not complying, of course, with the instructions received on the subject.

The undersigned avails himself of this opportunity to renew to Mr. Wilson the assurances of his distinguished consideration.

(Signed) VICENTE LECUNA.

Mr. Belford Hinton Wilson,
Chargé d'Affaires of His Britannic Majesty.

12. NOTE FROM THE MINISTER OF FOREIGN RELATIONS OF VENEZUELA, DIEGO BAUTISTA URBANEJA, TO THE RESIDENT MINISTER OF HER BRITISH MAJESTY, MR. F.R. SAINT JOHN, DATED 26 JANUARY 1887.[1349]

MINISTRY OF FOREIGN AFFAIRS.

CARACAS, 26 January 1887.

Doctor Diego B. Urbaneja to Mr. F. R. Saint John. Your Excellency:

Pursuant to what was sent to Your Excellency by this Ministry on 7 December last, the President of the Republic sent Messrs. Engineer Doctor Jesús Muñoz Tébar and General Santiago Rodil as Commissioners to Barima and other points, with the objects already indicated.

The Chief of the Commission has just returned here, and has informed the Government of the results.

Unfortunately, the serious news that motivated this measure has been confirmed.

Firstly, the Commissioners found two Commissaries, Messrs. Francis Stephen Neame and G. B. Jeffry, in the neighbourhood of the right bank of the Amacuro River. They presented their orders as Rural Constables issued by Mr. Michael McTurk, who is titled Stipendiary Magistrate of Her Majesty, in and for the Colony of British Guiana, on 10 March 1885 and 6 September 1886, respectively. In replying to a note from the Commissioners, the Commissaries assured them that they had received no instructions to oppose Venezuelan authorities of the left to go down the Amacuro; but did have the authorization to prevent any Venezuelan vessel from selling rum or spirituous liquors in British territories, and added that anyone selling rum without the proper license granted by their (the Demerara) Government might be apprehended at any time.

In the same hamlet of Amacuro, the commission took sworn statements from Venezuelan Commissary Mr. Roberto Wells and from Mr. Aniceto Ramones and Mr. Alfonso Figueredo. Their depositions corroborated the capture and abduction of the former in that very place, his transportation to Georgetown and confinement in gaol there for two months, his trial and

[1349] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Pages 155-161. L. Weiss & Company impresores (printers), New York, 1896. Available at: https://play.google.com/store/books/details?id=b8FAAQAAMAAJ&rdid=book-b8FAAQAAMAAJ&rdot=1

sentencing to the fine of twenty-five ‘fuertes’; and further established the fact of the existence of a wooden house with a thatched roof which serves as a public office, displays the English flag, was built by order and at the expense of the Colonial Government and was seen by the Commissioners. It was also ascertained in the same manner that an English coast guard schooner named Transfer has made voyages to Amacuro several times transporting a British Magistrate and armed police officers for the purpose of hearing, judging, and deciding criminal and police cases; and that both at Amacuro and Barima vessels lawfully despatched from Ciudad Bolivar are searched and forbidden to sell goods or proceed to the Barima branch, unless in ballast, and required to take out patent at Georgetown for trading.

The Commissioners moved to the right bank of the Amacuro, where they put themselves in written and verbal communication with the aforesaid Commissaries. They then proceeded to the neighbourhood of Aruca, where they were told that there was a Commissary by the name of Harrington, who was absent at the time, and that a Justice of the Peace was there for three months on occasion of the murder of a Cooli, and whose perpetrator was apprehended and taken to Georgetown for trial. He was sentenced to five years in prison. In Cuabana, a hamlet located on the right bank of the Guaima River, they found a ‘caney’ (hut) that serves as a Protestant church and public school, built under the direction of missionary Walter Heard. The Marriage Registry carried there, states that the place belongs to the Essequibo County. No Commissary was found on site; but, according to the report of school teacher Mr. Jacobus Ingles, the Colonial Government has one in the town of Guaramuri, on the coast of the Moroco River.

Likewise, the Commission ascertained that gold mines were being exploited by English authority in our territory located between the Cuyuní, Mazaruni, and Puruni rivers, and that a great quantity of that mineral had already been exported by the English Customs.

Finally, the Commission went to Georgetown, and, through the Consulate of Venezuela in that city, made the objects of its assignment known to the Governor of Demerara, as well as what it had done by virtue of that assignment, and the violations of Venezuelan territory that it had ascertained. The Secretary of the said British employee limited himself to replying on the sixth of this month that he referred to the notice published in the London Gazette on 22 October 1886, of which he enclosed a copy, and stated that the districts referred to in the official note of the Commission were included in the limits established by the terms of the notice and form part of the Colony of British Guiana.

In the notice, it is proclaimed and notified that inasmuch as there is a dispute between His Majesty's Government and the Government of Venezuela as to the boundaries of British Guiana, a colony of His Majesty, and Venezuela, and inasmuch as it has come to the knowledge of His Majesty's Government that the Government of Venezuela has made or proposes to make grants of lands within the territory claimed by His Majesty's Government, no such titles shall be admitted or recognized, and any person who takes possession of such lands or exercises any right therein under the pretext of such titles shall be tried as a violator of property, according to the laws of the colony. In conclusion it is said that a map showing the boundaries between British Guiana and Venezuela, claimed by His Majesty's Government, may be seen in the library of the Colonial Office, Downing Street, or at the Government Secretariat in Georgetown, British Guiana.

It is not understood why those limits are not specified in the notice itself, but have been left in a map which is separate from the notification with which they are connected.

Now, it appears that there is no longer the least doubt that an extensive territory of Venezuela, and the great artery to the north of the continent of South America, the Orinoco, are in fact under the authority of the British Government, on the contemptible ground that there is a boundary dispute between the Republic and Her Britannic Majesty. The logical conclusion of the existence of a controversy over land and water ownership, should be at the very least the convenience of neutralizing by common agreement the places of litigation, pending the decision of the same. But to resolve one of the contenders alone and with disregard for the rights of the other, the appropriation of the thing in controversy, is, in the light of all jurisprudence, an unjustifiable violation of the most sacred right of nations, it is a mortal wound to the Sovereignty of the Republic. Great Britain has reproved in an analogous case the very fact that it is now executing with Venezuela.

In accordance with the Certificate issued by the King of Spain in 1768, the province of Guayana was bordered to the South with the Amazon and to the East with the Atlantic. Thus, acquisitions by other powers within those limits were valid only insofar as they were legitimized by the subsequent consent of that monarchy. With regard to the Netherlands, in whose rights Great Britain has succeeded, the only thing left in their possession, of the said Shire, were the settlements of Essequibo, Demerara, Berbice and Surinam, which had been seized by the Dutch during the long war with their former metropolis, which ended with the Münster Treaty in 1648. That the Dutch did not possess at that time any other colonies than the aforementioned, is confirmed by the agreement of extradition between Spain and the Netherlands concluded in

Aranjuez at the end of the 18th Century, on 23 June 1791, in which only those are enumerated. And it is noteworthy that the Dutch could not continue to advance on the Spanish possessions, because Article 6 of the Münster forbade them to sail there and traffic with them. Despite this, they continued to advance; but, far from consenting to new usurpations, Spain used arms to repel them. Lord Aberdeen himself recalls in his note of 30 March 1844, to Mr. Fortique, that in 1797 Spain attacked the fort of New Zealand, without any importance being attached to their unfavourable success. What is to be proven is not the superiority of their forces over the garrison of the Dutch, but the opposition to their advances. Consequently, everything beyond the Essequibo was outside of the jurisdiction of Holland, which, on the other hand, did not cede to Great Britain in 1814 but the establishments of Essequibo, Demerara and Berbice.

In 1844, Lord Aberdeen proposed the Moroco as a boundary.

In 1881, Lord Granville presented Venezuela with a line beginning 29 miles east of the eastern bank of the Barima.

In 1886, Lord Rosebery asked for a boundary starting from the sea shore to the west of the Guaima River.

In 1868, the Governor of Demerara, in a decree on the division of records, did not establish a more northerly one than that of the Pomarón.

It was on 6 November 1886, when, repealing that decree by order of Her Majesty's Government, she established new divisions that reach the eastern bank of the Amacuro.

It was also in 1885 and 1886, when she appointed Commissioners for Amacuro. In 1841 Engineer Schomburgk capriciously pointed out the limits claimed today by Her Majesty's Government and placed posts and other signs.

Alarmed by such a fact, the Government sent two Commissioners to Demerara to demand explanations, and ordered its Minister in London to demand the removal of the marks.

The Governor of Demerara told the Commissioners that, as the boundaries were really undefined and in question, Mr. Schomburgk's operation had not been and could not have been made with a view to take possession, but merely as a marking of the presumed line on the part of British Guiana, and that, therefore, so long as the boundaries were undetermined, the Government of Venezuela must trust that no fort would be built on the land in question, nor would any troops or forces be sent to it.

Lord Aberdeen, on his part, replied that the marks placed by Mr. Schomburgk at some points of the country he had explored were only a preliminary step subject to future discussion between the two Governments; that they were the only tangible means of preparing to discuss the question of boundaries with the Government of Venezuela; that they were set for that

express purpose, and not, as the Government of Venezuela professed to fear, with the intention of indicating dominion and empire on the part of Great Britain. He added that he was pleased to learn from a note from Mr. Fortique that the two Commissioners sent by this Government to English Guiana had been able to ascertain, from the reports of the Governor of that Colony, that Punta Barima had not been occupied by English authorities. This note was written on 11 December 1841.

Shortly after, on 31 January 1842, Lord Aberdeen ordered the removal of the marks, in order to put an end to the misunderstanding that reigned in Venezuela regarding the object of Mr. Schomburgk's reconnaissance, and to attend to the renewed representations of Mr. Fortique.

It is beyond the intelligence of Venezuela to reconcile then proceeding, whereby it was evident that during the controversy no possession of the territory could be taken, and the fact of the present, whereby the British Government has arrogated to itself the dominion of what it says it claims.

And I must here state for the record that she has never understood the ownership of the places situated beyond the mouth of the Pomarón to be disputed, but only of those between that river and the Essequibo; and it is quite clear from Lord Aberdeen's protest that she was satisfied with the mouth of the Moroco as the western boundary of the British possessions.

But, even if it were admitted by way of argument that the disputed land was larger, neither would Great Britain have had the right to occupy it, not only by reason of the thing itself, but also because they assumed the obligation not occupy the disputed territory.

I refer to the Convention held in November 1850 by exchange of notes with Mr. Wilson, Chargé d'Affaires of Great Britain, at his request and by force of strict instructions from his Government. He, first of all, declared then widespread rumours that Great Britain wished to claim Venezuelan Guiana groundless and the opposite of the truth; he then declared that Great Britain would not occupy or usurp the territory in dispute, nor order such occupations or usurpations, nor sanction them on the part of their authorities; and he asked for and obtained analogous declarations from Venezuela.

It is clear then that Great Britain has infringed that agreement, its own work, penetrating into Venezuela through forbidden places, visiting the rivers Guaima, Morajuana, Amacuro and Brazo Barima; planting notices of its laws being in force there, on the trees of the banks; appointing commissioners; seizing a Venezuelan Commissary under pretext of having mistreated a Portuguese national, albeit within the jurisdiction of the Republic, taking him to Georgetown, imprisoning him, judging him, and imposing on him the

penalty of twenty 'pesos fuertes'; establishing a public office in Amacuro; travelling from where he was to Barima by means of the coast guard schooner Transfer, including the regions in the District of the Governor of Demerara; sending a Judge there to hear and decide police and criminal cases; authorizing the exploitation of mines in Venezuelan territory, and finally, appropriating it because he says that the dispute of limits is pending.

As Minister of the Republic, General Guzman Blanco demanded from the British Government, in a note dated July 28th, the satisfaction that such facts demand; and the answer has been to proclaim and notify, through notice published on 21 October 1886, in the London Gazette, that what engineer Schomburgk's demarcation includes is theirs.

That is to say, that the Government of Great Britain by itself and before itself, to the exclusion of Venezuela, has resolved that it owns the mouth of the Orinoco, the most important river of the Republic, and of which the Barima and Morajuana are branches, and even Punta Barima, which its Chargé d'Affaires, Sir Robert Porter, spontaneously recognized on 26 May 1836, to be under the sovereignty of Venezuela.

She has on many occasions proposed that the matter be submitted to the judgment of an arbitrator at law, and the Government of S. M. has refused on grounds that it cannot apply this method to boundary disputes. It has persisted in its refusal, notwithstanding it has been reminded that by Agreements of 1827 and 1871 it referred boundary disputes with the United States, one over possessions in North America, and the other over the Haro Canal, to an arbitrator with the circumstance that, in the latter case, the proposal came from himself up to six times.

Venezuela continues to be willing to terminate the dispute by recourse to arbitration, the only method compatible with its current Constitution.

In merit of the foregoing, the President of the Republic demands from Her Majesty that Venezuelan territory from the mouths of the Orinoco to the Pomarón, which she has unduly occupied, be vacated; in the understanding that, in the event of a negative answer or if no answer has been given by next February 20th, the time of the meeting of Congress, to whom the Government must give an account of everything, diplomatic relations between the two countries will be severed.

I renew to Your Excellency the assurances of my high consideration.
DIEGO B. URBANEJA.

His Excellency Mr. F. R. Saint John,
Resident Minister of H.M.B.

13. NOTE FROM THE MINISTER OF FOREIGN RELATIONS OF VENEZUELA, DIEGO BAUTISTA URBANEJA, TO THE RESIDENT MINISTER OF HER BRITISH MAJESTY, MR. F.R. SAINT JOHN, WHEREBY DIPLOMATIC RELATIONS BETWEEN VENEZUELA AND THE UNITED KINGDOM WERE SEVERED, DATED 20 FEBRUARY 1887.[1350]

Doctor Diego Urbaneja to Mr. F. R. Saint John.

Your Excellency:

Venezuela succeeded Spain in its rights over the General Captaincy of the same name, by the Treaty of Recognition signed in Madrid on 30 March 1845.

The province of Guayana was part of the General Captaincy.

The limits of this province were the Atlantic Ocean to the east and the Amazon River to the south.

Only by cessions from Spain could those boundaries have been diminished.

The Dutch had taken possession of some points of Guayana during their long war of emancipation, and when Spain recognized them as independent, it agreed to legitimize their usurpations on the coasts of America, by the treaty concluded in Münster on 30 January 1648.

The establishments which the Dutch were left in possession of were not specified therein; but in the extradition agreement of Aranjuez, dated 23 June 1791, the colonies of Puerto Rico, Coro, and the Orinoco were named as Spanish, and, those situated opposite the other, St. Eustatius, Curaçao, and Essequibo, Demerara, Berbice and Surinam, as Dutch.

Of the last four colonies, the Netherlands transferred three, those of Essequibo, Demerara and Berbice, to Great Britain, by the Treaty of London of 13 August 1814.

The English do not possess in Guyana other titles than those thus transferred to them by Holland.

It is to be noted, that although the Dutch, in contravention of the said treaty of Münster, which forbade them even to sail and traffic to the Spanish possessions, sought to advance towards them, His Catholic Majesty invariably resisted these usurping attempts with arms.

[1350] See: *Historia oficial de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted Above, Pages 167 & ff.

That the Dutch themselves did not believe themselves to be the legitimate owners of any more territory than the Essequibo on the northern side of their colonies is proven by the fact that they did not include anyone else in the action of the aforementioned alienation from Great Britain.

Thus, by 1810, the Essequibo was the boundary of the Province of Guayana with Holland; and, according to the Constitution, it belongs to Venezuela.

Since 1822 the Government of Colombia, Venezuela's predecessor, claimed the Essequibo as property of the Republic.

In 1841, Engineer Mr. Schomburgk, Commissioner of the English Government, made explorations in Venezuelan Guyana and planted posts and other signs of possession as far as Barima and Amacuro.

Public opinion in Venezuela was exalted, the Government complained, and Her Britannic Majesty ordered the removal of the marks, explaining that they had not been put up as signs of empire.

Since then, Venezuela clamoured for a treaty to resolve the border dispute.

It was not until 1844 when the Plenipotentiary of the Republic in London, after a lengthy preparation of the preliminary requirements, opened the negotiation for the treaty. Relying on conventional law, on history and on the authority of geographical charts, the Essequibo was proposed as the frontier.

Lord Aberdeen, Secretary of Foreign Affairs of Her Britannic Majesty, proposed the Moroco. With this, he said, Venezuela would have free ownership of the Orinoco.

The Republic did not accept a line that deprived it of the space located between the Essequibo and the Moroco, and to which the British could not claim any title whatsoever.

In 1850, the rumour spread that Great Britain wanted to claim Venezuelan Guyana. This was denied by Mr. Wilson, Chargé d'Affaires of that nation in Caracas. He affirmed that it was precisely the opposite of the truth; that his Government had no intention of occupying or usurping the disputed territory; that it would not order such occupations or usurpations, nor would it sanction them on the part of its authorities; that it would order them to abstain from such acts, and would gladly renew its instructions if necessary. He requested and obtained from Venezuela analogous declarations.

The territory in dispute was not then designated; but Venezuela has never understood it to be that between the Pomarón and the Amacuro, but the territory circumscribed by the Pomarón and the Essequibo.

Without ever losing sight of the question, Venezuela urged a settlement in 1876. After five years, in September 1881, Lord Granville presented a new demarcation starting at a place on the sea coast twenty-nine miles east of the

right bank of the Barima River. He also said that, with this, he satisfied the reasonable pretension and demand of Venezuela, and ceded it the so-called Dardanelles of the Orinoco and the complete dominion of its mouth.

Neither did the Republic accept such a line, which for no known reason is much more harmful to it than that of Lord Aberdeen.

In 1883, the British Government linked the three questions of limits, additional tax of 30% on merchandise coming from the Antilles, and pecuniary claims; and urged for their amicable and simultaneous adjustment.

General Guzman Blanco accordingly went to London with broad powers as Envoy Extraordinary and Minister Plenipotentiary. He devoted himself with great effort to the conclusion of those matters.

In the negotiation of the new trade treaty, he already had the written promise of Her Majesty's Government to apply arbitration to all disputes between the two countries. This involved the negotiation of boundaries. But before the agreement was signed, there was a change of cabinet. Lord Granville's successor, while fulfilling the promises of the previous Administration to other States, refused to keep the one made to Venezuela. He claimed that Great Britain could not apply arbitration to boundary disputes. He forgot that they had applied it in 1827 and 1871 to disputes of this kind with the United States, the arbitrator in the first being the King of Holland, and, in the second, the present Emperor of Germany. This one concerned the Haro Canal, and it was the British Government who six times invoked and finally obtained the arbitration.

In July 1886, as a result of the efforts of Venezuelan Legation, Lord Rosebery presented a frontier that began to the West of the Guaima, and was considered unacceptable for several reasons, among others that of joining the demand for the free navigation and commerce of the Orinoco.

While negotiations were taking place in Europe, agents of the Governor of Demerara penetrated into Venezuelan Guyana since 26 October 1884, put up marks and notices, and again arrived at the Amacuro, and took the commissioner Mr. Roberto Wells to judge and punish him for the mistreatment of a Portuguese subject, as in fact they did, despite not having jurisdiction in the place of the occurrences.

At the same time, they declared those places to be British territory, and the same laws of the neighbouring English Colony to be in force there. Venezuelan legation made a well-founded claim for such undeserved grievances and demanded the reparations that the case authorized.

Venezuela's complaints have gone unheeded. They have not even received a response. It seems that they have been taken as a pretext for the

aggravation of the offenses. With the news of the latest events, the President of the Republic called Your Excellency on 6 December 1886, and asked you for any reports you might have on the incredible occurrences. He also informed Your Excellency that he was going to order the construction of a lighthouse in Punta Barima, as had been recommended since 1836, with the most earnest request, by Sir Robert Ker Porter, Chargé d'Affaires of Great Britain. Your Excellency refused to give the requested explanations, as the President had not consented to defer the execution of his purpose until you had consulted your Government on the case. That is to say, Your Excellency wished that the President did not practice an administrative act in the territory of Venezuela without seeking permission from Her Britannic Majesty, who, with no right at all, has occupied and retained it. Your Excellency has instructed me in reply that he would consider the occupation of Punta Barima as a breach of the aforesaid agreement of 1850, not occupy or usurp the territory in dispute. And he further told me that, however, as the lighthouse would be of general utility, he does not wish to insist unduly on his rights, and will not oppose its construction if an arrangement is made concerning the amount of land to be occupied for that purpose, and undertakes in writing not to regard that fact as prejudicial to the British claim to the disputed territory, of which Punta Barima is a part, and not to interpret it henceforth as proof of the right of Venezuela in Punta Barima, nor as acquiescence of Great Britain in such a supposition.

It seemed most unusual to the Republic that the agreement of 1850, violated by Great Britain for its own benefit, should be invoked against it. And it has rejected conditions the acceptance of which would have been destructive of its rights, and has declared that such a reply aggravates the situation of things more and more. It cannot be otherwise, since, by alleging the covenant, the British Cabinet acknowledges the duty of complying with it, and its conduct is in singular contrast with what ought to be the rule thereof.

In order to proceed with the construction of the lighthouse and for other purposes, the President, last December, sent a Commission composed of Dr. Jesús Muñoz Tébar and General Santiago Rodil. They travelled through various points, beginning with the Amacuro, and, as a result of their personal observations, they have brought the following reports. They found on the right bank of the Amacuro two Commissaries, Messrs. Francis Stephen Neame and G. B. Jeffry, both appointed by Mr. Michael McTurk, who is titled Stipendiary Magistrate of Her Majesty, in and for the Colony of British Guiana, the first on 10 March 1885, and the second on 6 September 1886. These Commissaries are authorized to prevent any Venezuelan vessel from selling rum or spirituous liquors without a license from the Governor of Demerara, and to apprehend

anyone who does so. They ascertained the existence of a wooden house which serves in Amacuro as a public office and displays the English flag, and was paid for by the Government of Demerara. They ascertained that a British coastguard, schooner by the name of Transfer, has made several trips to Amacuro carrying, with armed police officers, a Magistrate who judges and decides police and criminal cases. They learned that in Amacuro and Barima the vessels legally dispatched from Ciudad Bolivar are recorded and are forbidden from selling their merchandise and continuing to the Barima branch, unless in ballast. They had news of the existence of another Commissary named Harrington in the neighbourhood of Aruca, and of a Magistrate having been there for the last three months to arrest and judge the murderer of a Cooli, who was sentenced to five years imprisonment. In Cuabana, they found a Protestant church that at the same time is a school, and whose Marriage Registry shows that the place pertains to the Essequibo County. The Commission learned that the Colonial Government has another Commissary in the town of Guaramuri on the coast of the Moroco River. It also acquired the certainty of gold mines being worked by English authority in Venezuelan territory located between the rivers Cuyuní, Mazaruni, and Puruni, and of a great quantity of that mineral having already been exported by the Demerara Customs. The Commissioners went to Georgetown, and, through the respective Venezuelan Consul, informed the Governor of the objects of their assignment, as well as what they had done by virtue of that assignment, and the violations of Venezuelan territory that they had found. The Secretary of the Interior replied on January 6th that he referred to the notice published in the London Gazette of 22 October 1886, and added that the places referred to in the official note of the Commission were included in the limits established by the terms of the notice, and are a part of the British Guiana Colony. The notice proclaims and notifies that, inasmuch as there is a dispute between His Majesty's Government and the Government of Venezuela as to the boundaries of British Guiana, a colony of His Majesty, and Venezuela, and inasmuch as it has come to the knowledge of His Majesty's Government that the Government of Venezuela has made or proposes to make grants of lands within the territory claimed by His Majesty's Government, no such titles shall be admitted or recognized, and any person who takes possession of such lands or exercises any right therein under the pretext of such titles shall be tried as a violator of property, according to the laws of the colony. In conclusion it is said that a map showing the boundaries between British Guiana and Venezuela, claimed by His Majesty's Government, may be seen in the library of the Colonial Office, Downing Street, or at the Government Secretariat in Georgetown, British Guiana.

Add to this that, in 1868, the Governor of Demerara, in a decree on division of records, established no other more northerly limit than that of Pomarón; and that, he revoked it on 6 November 1886, by order of Her Majesty's Government, and doubtlessly for that sole purpose, he created new divisions reaching as far as the eastern shore of Amacuro.

The limits that the English Government does today not claim, but has occupied, are those that engineer Schomburgk capriciously laid down in 1841.

Strengthened by the most solid foundations, reiterating its disposition to end the controversy by arbitration, the Government, on last January 26th, demanded of Her Britannic Majesty the evacuation of Venezuelan territory from the mouths of the Orinoco to the Pomarón, which she has unduly occupied, in the understanding that, in the event of a negative answer or if no answer has been given by next February 20th, diplomatic relations between the two countries would be cut off from then on.

On the 31st of that same month of January, when answering on the conditions under which the English Government would consent to the construction of the lighthouse at Punta Barima, that demand was renewed, together with the acceptance of arbitration.

On the 11th of this month, I was informed by Your Excellency that having telegraphed my note of January 26th to Her Majesty's Government, I had received orders to say in reply that he, while still willing to enter into amicable negotiations for the purpose of settling the matter of Guiana's limits, cannot accede to the present demands of the Government of Venezuela, as much as he would regret the procedure indicated in my letter.

For this reason, I repeated and ratified in all its parts the contents of the notes of 26th and 31st of January, since the Executive is not allowed to open a new discussion while Great Britain does not vacate the entire territory up to the Pomarón River, as Venezuela has perfect right to claim, in accordance with the agreement of 1850.

February 20th has arrived, and the predicted case of the refusal of Venezuela's claims.

Thus, Great Britain rejects the just and moderate demand for a redress of the grievances which the Republic has made and continues to make in the midst of the friendship which the latter has constantly professed to her, and the existence of a treaty establishing it.

Great Britain has violated the territory of Venezuela by entering it through forbidden places, appointing Commissioners, establishing Government offices flying the English flag, seizing, judging, and punishing an employee of Venezuela, sending a judge there who has said such places are British

with armed police officers, decreeing prohibitions of commerce, travelling the space between Amacuro and Barima by coastguard schooner, comprising these rivers in the jurisdiction of the Governor of Demerara, authorizing the benefit of mines included in the soil of the Republic, and exercising other acts of dominion.

Great Britain has arrogated to itself the right to decide for itself and before itself and in its favour a matter that touches Great Britain as much as Venezuela.

Great Britain has declared itself the owner of the Orinoco, the great fluvial artery of the north of South America, seizing the Barima channel, one of its mouths, and, by this means of commerce, vast regions belonging to various countries.

Great Britain has applied in this matter with Venezuela a course of action which they have condemned in other cases.

Great Britain has founded its claim to ownership of the places where it has just settled, on that the boundaries thereof are in dispute with Venezuela.

Great Britain has, to its advantage, violated the agreement which they themselves proposed to Venezuela on 18 November 1850, and occupied the territory guaranteed under that agreement.

Great Britain intends to condition the establishment of a lighthouse at Punta Barima, over which the British Chargé d'Affaires spontaneously recognized the sovereignty of Venezuela on 26 May 1836.

Great Britain does not want to apply to Venezuela the arbitration it applied to the United States of America in 1827 and in 1871, to resolve boundary questions, in the latter case with Great Britain's repeated insistence.

Great Britain has been progressively increasing its advances from Essequibo to Pomarón, Moroco, Guaima, Barima, and Amacuro.

Great Britain has, therefore violated Venezuela's rights of sovereignty and independence, depriving it of the holiest and most inviolable property of a nation; namely, that of its territory.

Consequently, not having to maintain friendly relations with a State that thus injures it, Venezuela suspends them as of this day;

and protests before the Government of Her Britannic Majesty, before all civilized nations, before the world in general, against the acts of despoilment which, to its detriment, the Government of Great Britain has consummated, and which at no time nor for any reason will it recognize as capable of altering in the least the rights which it has inherited from Spain, and regarding which it will always be ready to submit to the judgment of a third power.

Having written the foregoing note, I have received the one which Your Excellency sent to me on the 19th, and in which you inform me by order of Her Majesty's Government that, having learned of the recent visit of two Venezuelan Commissioners to the part of the territory claimed by Great Britain as belonging to British Guiana, and what they executed there, interference touching British subjects in those places will no longer be permitted.

This shows ever more that Great Britain now clearly arrogates to itself complete jurisdiction over the territory of Venezuelan Guiana which it has occupied, because it claims it and intends to act in respect of it as its true and exclusive owner, without the slightest regard for the rights of the Republic, which holds it as its own. Consequently, it cannot but ratify, as it does ratify, its previous complaints and protests against a course of action as arbitrary as it is depressive, and which it will always consider null and void and of no effect.

I renew to Your Excellency the remonstrances of my high consideration.

DIEGO B. URBANEJA.

His Excellency Mr. F. R. Saint John,
Resident Minister of H.B.M., etc., etc., etc., etc.

14. LETTER OF GENERAL DOMINGO SIFONTES SENT TO CARLOS PUMAR, DIRECTOR OF THE CARACAS NEWSPAPER 'EL TIEMPO', ON 19 APRIL 1895.[1351]

Caracas 19 April 1895.

Señor Don Carlos Pumar. Director of El Tiempo.
Your Office.

In view of the report published in Nº 616 of your enlightened newspaper, under the title of "English Inspector Barnes", concerning the events that took place on the banks of the Cuyuní River in August of last year and January of this year, it is my duty to correct the deliberate errors made by the aforementioned English officer in his account, all the more so as he seeks to offend not only my personal dignity but also that of the government which I had the honour of representing in those events, in my capacity as National Commissioner in that region.

In order to clarify the facts, it is necessary for me to go back to the state of affairs in March 1894. That was the date of my arrival in these regions, honoured with the position of National Commissioner of the Cuyuní and its tributaries, granted to me by the present Supreme Justice of the Nation.

Since the primary objective of my mission was to promote colonisation in the part of the Republic under my jurisdiction, I set out to examine the extensive clearings on the banks of the Yuruán and Cuyuní Rivers.

The seat of the General Commissariat was established on the left bank of this last river, naming the rising population "El Dorado".

In March, there were only nine houses between one bank and the other: 6 on the left and 3 on the right. Of the latter, two with their respective farms, were founded in 1870, by Jose Francisco and Loreto Lira, and Miguel Angel Gonzalez and Lorenzo Rivas; and the other was built in 1890 by a British subject named Mc Turk, opposite the mouth of the Yuruán, in which six individuals of the same nationality resided, occupied in the work of a small 'conuco' *(a small artisanal farm)*, and, from April or May, under the orders of the appointed Inspector Barnes.

I was visited by him, and there existed between us few but courteous relations -and, according to what Barnes himself says in his report- by

[1351] Juan MATORANO, *"La carta de Domingo Sifontes sobre el incidente del Cuyuní"* ("Domingo Sifontes' Letter on the Cuyuní Incident"), published in *Aporrea* on July 29th, 2015. Available at: https://www.aporrea.org/actualidad/a211477.html.

disposition of the Demerara Government, he tried to disturb a young man of German nationality, William Faull, in his house-building and farm work on the right bank, by having him and his labourers removed from the said place. Faull complained to the Commissariat and was authorized to enrol a larger number of labourers with their respective 'machetes'- upon seeing them in greater numbers, the Englishman went home.

Next morning, the post was again occupied by the same English agents, but armed with rifles. Somewhat annoyed by such inexplicable tenacity and odious pretension, I also ordered eight armed men be put at full orders, for any eventuality. Just as on the previous day, the English were dislodged without causing them any harm, and at the same time they were notified not to attempt a repetition of that instruction.

This incident, however, did not alter my good relations with Barnes, who, by his fine manner, gained my personal appreciation.

From that day on, I left a guard of seven policemen at said point, determined as I was to keep a proper watch on the river, to impede at all costs the smuggling traffic, which was previously carried on by agreement with the English themselves.

The colonization was progressing in such a way that by the last days of December there were 23 houses, some already finished and others under construction.

On the Coroco River- thirty leagues further down- a tributary of the Cuyuní, on the right, citizen Pedro Ravelo built a house and encouraged the cultivation of small fruits.

This place is the same old possession in which, with the character of Venezuelan authority named by the Government of the old Yuruary Territory, the ill-fated General Felipe Parra, lived years earlier, in 1890.

That the conflict that took place on January 2nd was premeditated by the usurper colonizers of Demerara, is proven by the editorial of the Argosy, of 24 November of last year, in which a probable collision between Venezuelans and Englishmen of the Yuruán was predicted, and the loss of precious lives, of Englishmen of course, was lamented in advance, while hurling the most hurtful adjectives and the most atrocious insults at us Venezuelans.

The most eloquent proof is to be found in the following note sent by Mr. Barnes to the person in charge of the Cuyuní Commissariat, during my absence from "El Dorado", due to the serious illness that put my life at risk.- Read *.

"...Yuruán Police Station - Cuyuní River - British Guiana - 13 December 1894 - To the Commanding Officer of Venezuelan Station - "El Dorado" - Rio

Cuyuní – Venezuela - Sir: Referring to my Letters of 12 and 13 October of 1894, sent to General Sifontes, in connection with the sale made by Manuela Casañas of the house and conuco which she owned on the British side of the Cuyuní River to one of the Officers, I now have the honour to let you know that, in my two aforementioned letters, I expressed that I gave the purchaser convenient time to move the purchased articles.- Two months having already gone by, I believe that this was more than reasonable time for the purpose; and I, therefore, inform you that the remaining fruits, house, etc., etc...must be removed from the said conuco before 31December 1894.- On the 1st of January 1895, I will, in fact, take possession of the said conuco and all it contains, in the name of the Government of British Guiana; and I will not allow anyone to enter it without my permission- During the last three days some Venezuelan soldiers have dismantled a place immediately adjacent to the said conuco, despite my warnings.- I protest, therefore, with the utmost energy against the continued violation of British territory, in which Venezuelan soldiers persist.- All of which I shall report to my Government at the earliest opportunity.- Please acknowledge receipt of this note.- I am your, obediently, etc.- D. D. Barnes…"

The haughty tone of the above note hurts patriotism; and with what I have already stated and with what has been reported by Mr. Barnes himself, it does not require much effort to ascertain the premeditation in the attack by the English; and this is even more irrefutable, when Barnes himself solemnly declares in his report, to have been previously authorized by his Government to proceed as he did, treacherously seizing our police post, at a time when the guard in charge of watching over it was in the barracks practicing ordinary exercises, something that happened frequently.

These were acts that made us lose patience and stirred our spirit of revolt, so it was not surprising that the citizens of "El Dorado" were angry, and even the foreigners themselves shared in the natural indignation at the unusual attack that challenged patriotism; Captain Dominguez, our police force chief, hastily crossed the river with a part of his agents and mended the inferred outrage, taking the aggressors to prison.

I was given express notification and set out for "El Dorado" immediately, where I arrived in the afternoon of the 8th.

I began to institute legal proceedings, and take testimonies, all of which were all in accord, that of Barnes himself among them, written in English in his own handwriting, the arrest was decreed.

Barnes proposed leaving the Cuyuní, demanding that I should let him go to Demerara by river, a demand I could not accede to; - notwithstanding, I

made him several concessions, one of them being that of allowing Mr. George Cipriani, a friend of his and an employee of my office, to accompany him to Ciudad Bolivar;- because I considered the committed punishable, I believed that he might incur grave responsibility towards my government. I told him so personally, while I also expressed the sorrow I felt at the procedure that patriotic duty imposed upon me to take with respect to him in such circumstances; Barnes replied, cordially squeezing my hand: "... I understand your duties, General; and in spite of everything, I proffer to you my personal and sincere friendship. I, also, as a subordinate and servant of my country, do nothing more than comply with the orders I receive..." He also told me that on the day of his arrest, people from the town and my subordinates had caused him some damage in his establishment.

Endeavouring to remove any reason for complaint, I hastened to pay him the amount of the damage caused, without finding out anything about the matter, relying on his word. In reference to this, I keep the receipt that he gave me together with the detailed list of the items that he said were missing.

Faced with the great question of the usurpation of the territory in the most valuable part of our rich Guayana, who, out of Venezuelans, would earnestly stop to consider this fact, without making himself a lèse patrière, an accomplice of the English?

It was plausible, and I am pleased that national hatred did not, on that day of patriotic indignation, lead to greater repercussions.

As to the ill-treatment given to an English subject, the individual to whom Mr. Barnes has referred is a deaf madman. Impertinent when drunk, whom the river guard made sleep out in the open air one night, as they themselves did, to prevent him from taking a boat during the night. A few days later he was arrested, because when he walked by the guard, the sergeant asked him for a piece of paper that he tried to hide. Insolent because the Sergeant insisted he hand it over, he was belted by a policeman. Warned by Barnes, who sought me out for the purpose, I made them release him on the spot and reprimanded the policeman (this is what the English inspector himself stated and published on another occasion). I also ordered them to not pay further attention to that poor devil, whatever insolence he might utter at certain moments. This same individual asked me for help to leave and I ordered he be given passage and maintenance to Ciudad Bolivar. Barnes knows all this and keeps quiet about it!

The other events are included by the Inspector in a Report; but it is necessary to state that he and his companions were released in Upata, without arriving at their destination.

The file with which they were sent was opened by Mr. Cesar Urdaneta.

But what the British officer as a gentleman should not have kept silent is: that all the expenses, his, his deputy's, those of the seven individuals of his office, and those of the madman, from the day of his arrest on January 2nd until his arrival in San Felix on the 28th of that same month, were all paid for by the General Commissariat. He should also have said that my personal considerations for him were so spontaneous, that I even made my own mule available for the trip, and that in Guasipati as well as Upata and other points he travelled through, he always showed me perfect recognition for the attentions he received both from me and the individuals that composed the escort, Colonel Luis Manuel Salazar and Officers Luis Barrios Gomez and Pedro Manuel Hernandez, and citizen George Cipriani. See proof of this in the following letter that Barnes sent to me from Upata: (*)

"...Upata: 21st of January, 1895.
Señor General D. A. Sifontes.

Dear General.

I am honoured to inform you that yesterday, upon our arrival here, we were released by order of the President, and are now proceeding to Georgetown, via Trinidad- I cannot, however, leave Venezuela without saying that, since our departure from the Cuyuní, Señor Luis Manuel Salazar has lavished upon us the greatest care and attention in everything we needed, and that we have nothing to complain of; I must say the same of his companions. I thank you personally for all the trouble you have taken- not doubting also to have caused you inconveniences with the bringing of Mr. Cipriani. With friendly regards from Mr. Baker and myself, I have the honour to sign off, your obedient servant.- D.A. Barnes…"

How does this procedure fit in with what Barnes later stated in his Report, in which he appears to meanly exaggerate the facts, while concealing others that could exalt him if he were truthful and just?

But, how much is Mr. Barnes unjust in London, if already from Altagracia, where he met Mr. Cesar Urdaneta, he understood the ground on which it was more convenient for him to place himself? In front of the individuals of the escort, who accompanied the Englishmen up to that place, Urdaneta said to Barnes, upon meeting them:

- "...I know that you have been mistreated a lot".

- "No sir", replied the Englishman, "we have been treated well and General Sifontes paid us for a little damage done to us by your people".

- "No; I know that you have been treated very badly. General Sifontes is to blame for all that has happened. The Government has disapproved of his actions and is calling him to Caracas. I have come to replace him. So, I hope that you will return with me to your post, because, with me, you will have all kinds of guarantees..".

A Demerara colonist would not defend the cause of the Usurpation better than Urdaneta.

The Englishman can say against us as much as he pleases; to procure our disrepute is in his interest; but a Venezuelan, in the matter in hand, could not, without being debased, defend the interests of the invader this way.

What interest did Urdaneta have in making me look responsible for what had happened? He was in Ciudad Bolivar on the 2nd of January, and I was twenty-three leagues away from Cuyuní on the same day -he knew for a fact because he was under the same roof as I in "El Dorado" that I was taken from my hammock at that time, in the last days of November, seriously ill.- He also knew that on the 23rd of December, while at my house in Buen Retiro to spend Easter with me, I left my room for the first time to go for a walk with him and other friends, Messrs. Luis N. Neyr, Carlos Lezama and others, to a neighbouring house, where I arrived with difficulty, such was my state of weakness caused by the fevers.

What interest forced Urdaneta, distinguished by me on all occasions, to become on his return, a few days later, my arbitrary enemy?

The post of the Cuyuní? He well knows that it is not mine and that I have always served it with the greatest dignity and good will, and I hope he can carry it out as patriotism and the interests of the Republic advise.

I had refrained from speaking, notwithstanding the fact that the voice of intrigue has been meanly and cruelly raised to distort the facts that have occurred and have been narrated by me; but the inaccuracies in which the English Officer has incurred in his report published in London compel me to interrupt my silence, in order to inform public opinion and leave, for my part, the honour and the rights of the Nation well placed, and at the same time saving my notion of a public employee.

In the hope that you will decide to publish this letter, I remain your

Servant and Compatriot
Domingo Antonio Sifontes

15. LETTER OF 20 JULY 1895 FROM THE SECRETARY OF STATE OF THE UNITED STATES, RICHARD OLNEY TO THOMAS R. BAYARD DATED 20 JULY 1895. (THE "20-ROUND CANNON SHOT").[1352]

DEPARTMENT OF STATE
No. 804.

WASHINGTON, 20 July 1895.

Mr. Olney to Mr. Bayard.
His Excellency Mr. Thomas F. Bayard, etc., etc., etc., etc.,
London.

Sir:

I have received orders from the President to communicate to your Excellency his opinion on a matter on which he has thought uneasily and of which he has not formed a judgment without full knowledge of its grave importance, as well as of the serious responsibility which any action to be taken now will entail.

I do not propose, as for the present object it is not necessary, to give here a detailed account of the pending controversy between Great Britain and Venezuela, concerning the western boundary of the colony of British Guiana. The dispute dates from long ago and began, at least, at the time when Great Britain acquired, by the treaty concluded with the Netherlands in 1814, "the establishments of Demerara, Essequibo and Berbice". From then until today the dividing line between these "establishments" (today called British Guiana) and Venezuela has not ceased to be a matter of constant dispute. It must be agreed that the pretensions of both parties are of a somewhat indefinite nature. On the one hand, Venezuela has declared in all its constitutions of government, since it became an independent nation, that its territorial limits were the same as those of the General Captaincy of Venezuela in 1810. However, "out of moderation and prudence" it is said, it has contented itself with claiming the Essequibo line- that is to say, the line of the Essequibo River- as the true

[1352] See the book by the name of: "*Historia official de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted above, Pages 293-318.

boundary between Venezuela and Great Britain. On the other hand, an equal degree of vagueness distinguishes Great Britain's claim.

It does not seem proven, for example, that in 1814 the "establishments" then acquired by Great Britain had clearly defined western limits, which can be identified now, and which are either the limits insisted upon today, or the primitive limits which have been the basis of legitimate territorial extensions. On the contrary, being in actual possession of a district called the Pomarón District, Great Britain remained apparently indifferent as to the exact extent of the colony until 1840, when it commissioned an engineer, Sir Robert Schomburgk, to examine and fix its boundaries. The result was that Schomburgk's line was fixed by survey and by boundaries, drawn on maps, and at first indicated on the ground itself by posts, monograms and other such symbols. If it was hoped that Venezuela would consent to this line, it was soon seen that the hope was unfounded. Venezuela protested immediately and so energetically and effectively that it was explained to them that the line was merely an attempt- part of a general boundary project which interested Brazil and the Netherlands as much as Venezuela- and by Lord Aberdeen's express order the monuments placed by Schomburgk were removed. In these circumstances it seems impossible to consider the Schomburgk line claimed by Great Britain as of right; nor otherwise than as a line which had its origin in reasons of convenience and opportunity. Since 1840 Great Britain has from time to time indicated other boundary lines, but all of them as conventional lines, for which the consent of Venezuela has been solicited, but which in no case, it is believed, have been claimed as a right. Thus, none of the parties today maintains the boundary line of strict right, since Great Britain has not formulated absolutely such a pretension, while Venezuela does not insist on that of the Essequibo, but as a liberal concession made to its antagonist.

Other points of the situation must be briefly studied, namely, the continued development of the indefinite claim of Great Britain; the result of the various attempts at arbitration which have been made during the controversy, and the part taken so far by the United States in the question. As has already been seen, the exploration of the Schomburgk line in 1840 was immediately followed by a protest on the part of Venezuela, and on the part of Great Britain by conduct which might fairly be interpreted as disapproval of that line. Indeed, in addition to the circumstances already noted, Lord Aberdeen himself proposed in 1844 a line beginning at the Moroco River, which was an obvious abandonment of the Schomburgk line. Notwithstanding this, every alteration of British claims since then has advanced the boundary of British Guiana further and further westward from the line proposed by Lord Aberdeen. The

Granville line of 1881 fixed the point of departure at twenty-nine miles from the Moroco, in the direction of Barima Point. The Rosebery line of 1886 fixed it west of the Guaima River, and by that time, if the British authority known as *"The Statesman's Year Book"* is to be believed, the area of British Guiana was suddenly increased by about 33,000 square miles, as it is listed as 76,000 square miles in 1885, and 109,000 square miles in 1887. The Salisbury line of 1890 marked the starting point of the line at the mouth of the Amacuro, west of Punta Barima, on the Orinoco. Finally, in 1893, a second Rosebery line took the boundary from a point west of the Amacuro to the source of the Cumano River and the Sierra de Usupamo. The various claims listed above have not been made solely on paper. Each of these claims has been accompanied , or immediately followed , by the exercise of more or less jurisdiction , which has been all the more vexatious and unjustifiable , the more so , as is alleged in 1850 , that a convention was entered into which obligated both parties to abstain from the occupation of the territory , until the dispute had been settled.

As the British claims have been developing in the manner described above, Venezuela has been making serious and repeated efforts to obtain a settlement of the boundary question. Indeed, taking into account the disturbances of a war of independence and frequent internal revolutions, it may well be said that Venezuela has never ceased its efforts to obtain a settlement. Naturally she could only do so by peaceful means, for all recourse to force against her powerful adversary was out of the question. Accordingly, soon after the Schomburgk line had been drawn, an effort was made to settle the frontier by treaty, and it seemed that a satisfactory result was to be reached, when in 1844 the death of Venezuelan plenipotentiary put an end to the negotiations.

In 1848 Venezuela entered a period of civil wars that lasted more than a quarter of a Century, and the negotiations that were interrupted in 1844 were not resumed until 1876. In this year Venezuela proposed to end the question, accepting the Moroco line proposed by Lord Aberdeen. But Lord Granville, without giving any reason for it, rejected the proposal and indicated a new line, covering a large stretch of territory to which it seemed, with Lord Aberdeen's proposal, that all pretension had been abandoned. Venezuela refused to accept, and negotiations continued without result until 1882, when it was convinced that the only recourse left to it was the arbitration of the controversy. But before the latter made any definite proposal, Great Britain took the initiative by proposing the conclusion of a treaty in which several other questions would be settled, in addition to that of the disputed limits. The result was that a treaty was practically agreed upon in 1886 with the Gladstone government, containing a general arbitration clause, whereby the parties could

have submitted the boundary dispute to the decision of a third power, or of several powers friendly to both.

Before the treaty was signed, however, the Gladstone administration was replaced by that of Lord Salisbury, which refused to accept the arbitration clause of the treaty, notwithstanding the just hopes of Venezuela, which were founded on the emphatic declaration made by the Prime Minister before the House of Lords, that no serious government could think of not respecting the engagements of its predecessor. Since then Venezuela, on the one hand, has been offering and asking for arbitration, while, on the other, Great Britain has replied by insisting on the condition that any arbitration must refer only to that portion of the disputed territory which lies west of a line designated by herself. As this condition seemed inadmissible to Venezuela, and as, during the proceedings, England continued to seize territories held as Venezuelan, Venezuela in 1887 suspended diplomatic relations with Great Britain, protesting "before Her Britannic Majesty's Government, before all civilized nations and before the world in general, against the acts of spoliation committed to her prejudice by the Government of Great Britain, which she will at no time and for no consideration recognize as capable of altering in the least the rights which she has inherited from Spain, and in respect of which she will always be willing to submit to the decision of a third power. "

Diplomatic relations have not yet been re-established, well that the new and flagrant British aggressions alleged forced Venezuela to resume demarches on the boundary question in 1890, through its Minister in Paris and Special Envoy for the case, and in 1893, through a confidential Agent, Señor Michelena. These demarches, however, met with the same fate as the previous ones. Great Britain refused to arbitrate, except for the territory situated to the west of an arbitrary line drawn by itself. All attempts to this end ceased in 26 October 1893, when Mr. Michelena made the following statement to the Foreign Office:

"I comply with the strictest duty in raising again, in the name of the Government of Venezuela, the most solemn protest against the proceedings of the Colony of British Guiana, which constitute an invasion of the territory of the Republic, and against the declaration contained in the communication of Your Excellency, that the Government of H.M.B. considers that part of the territory as belonging to British Guiana and admits no claim to it on the part of Venezuela. In support of this protest I reproduce all the arguments presented to Your Excellency in my note of 20 September last, and those which have been presented by the Government of Venezuela on the various occasions on which I have raised the same protest.

"I leave to the Government of S. M. B. all responsibility for the incidents which may ensue in the future, because of the necessity in which Venezuela is placed to oppose by all possible means the dispossession of a part of her territory, for by disdaining her just request to put an end to this violent state of things by the decision of an arbitrator, the Government of S. M. disregards her rights and imposes upon her the painful though peremptory duty of providing for her own legitimate defence".

"The United States have not looked, nor given their traditional policy, could they look with indifference upon the territorial controversy between Great Britain and Venezuela. The note sent to the British Foreign Office, in which Venezuela initiated the negotiations in 1876, was immediately communicated to this Government. In January 1881, Mr. Evarts, then Secretary of State, replied to a note from Venezuelan Minister in Washington, concerning certain demonstrations at the mouth of the Orinoco, in the following terms:

"In reply I have to inform you that, in view of the deep interest of the Government of the United States in all matters relating to attempts of invasion, on the part of foreign nations, of the territory of any of the Republics of this continent, this Government could not view with indifference that England should acquire by force the said territory, if the mission of the vessels now at the mouth of the Orinoco be to this end. This Government awaits, therefore, with natural anxiety, the more detailed reports which the Government of Venezuela has promised and which it hopes will not be long in coming".

The following February Mr. Evarts wrote again on the same subject:

"Referring to your note of the 21st of December last, relative to the operations of certain British warships at or near the mouth of the Orinoco River; and to my reply dated the 31st of last month, as well as to the recent occasions on which, in our conferences relative to the object of your mission, the subject of your mission has been mentioned, I deem it advisable now that I am about to retire from the office I hold, to allude to the interest with which the Government of the United States has been interested in the matter. I consider it advisable now that I am about to separate from the office I hold, to allude to the interest with which the Government of the United States cannot fail to view the intentions attributed to the Government of Great Britain in regard to the dominion of an American territory, and to express how sorry I am that I have not received the further reports concerning those intentions which you promised me in your note in time to give them the attention which, notwithstanding the overwork following the expiration of an administrative period, I should have been glad to give them. I do not doubt, however, that the manifestations that you will make in compliance with the new orders that

you will receive from your Government, will deserve the same serious and solicitous consideration at the hands of my successor".

In November 1882, the President of Venezuela communicated to the Secretary of State the situation in which the negotiations with Great Britain then found themselves, and sent a copy of a note which it was intended to write, proposing to have recourse to arbitration; he expressed the hope that the United States would give him their opinion and advice, as well as such assistance as they might judge advisable to give to Venezuela in order to obtain that justice might be done to her. Mr. Frelinghuysen replied in a note sent to the United States Minister in Caracas in the following terms:

"This Government has already expressed the opinion that arbitration of such disputes is a convenient remedy, in case mutual settlement is not reached, and has shown itself ready to propose to Great Britain this method of settlement, should Venezuela so desire. This Government thinks that the offer of its good offices would not be so profitable, if the United States were to approach Great Britain advocating a solution prejudiced in favour of Venezuela. The Government believes that in order to advise and assist Venezuela, the United States should confine itself to renewing its proposition of arbitration and the offer of its good offices in this direction. This proposition is all the easier to make since, as appears from the instructions sent on the same day of 15 July 1882, by Senor Seijas to Venezuelan Minister in London, the President of Venezuela has proposed to the British Government that the dispute be submitted to the arbitration of a third power".

"You will take advantage of the first occasion that presents itself to submit the foregoing considerations to Senor Seijas, telling him that although the Government of the United States is confident that the proposal for arbitration made directly to the British Government will have a favourable result (if it has not already had one, by its acceptance in principle), it will gladly lend its assistance in insisting in a friendly manner with the British Government that it accept the proposition that has been made to it; at the same time you will say to Senor Seijas (in conference with Mr. Seijas) that you will not be able to accept the proposal that has been made to the British Government, and that you will not be able to accept the proposal that has been made to the British Government. to Mr. Seijas (in personal conference and not with the formality of a written communication) that the United States, in strongly advocating recourse to arbitration to settle international disputes of interest to the states of America, do not seek to offer themselves as their arbitrator; that, considering all these questions with impartiality and with no intention or desire to pass judgment on their merits, they will not refuse arbitration if

asked by either party, and that, considering all these questions as essentially and exclusively American, the United States would always prefer to see such controversies settled by the arbitration of an American power rather than of a European power.

"In 1884, General Guzman Blanco, Minister of Venezuela in England, specially appointed to attend to the pending negotiations for the conclusion of a general treaty with Great Britain, was in Washington on his way to London, and after several conferences with the Secretary of State relative to the object of his mission, was recommended, in the following terms, to the good offices of Mr. Lowell, our minister at St. James:

"Necessarily to your discretion it will remain to judge how far your good offices may be profitable near His Majesty's Government for this object. At all events, you will take convenient occasion to let Lord Granville know that we do not fail to take an interest in any matter, which may affect the interests of a sister Republic on the American continent, and its situation in the family of nations".

"Should General Guzman Blanco address you requesting advice and assistance to carry out the purpose of his mission, you will show him due consideration, and without committing the United States to any particular political solution, will endeavour to put into practice the purpose of this communication".

This Government did not fail to observe the progress of General Guzman Blanco's demarches, and in December 1886, in order to prevent the rupture of diplomatic relations-which were in fact broken off in the following February, Mr. Bayard, then Secretary of State, gave our Minister in Great Britain orders to offer the arbitration of the United States in the following terms:

"It does not appear that the good offices of this Government have so far been offered to prevent a rupture between Great Britain and Venezuela. As I indicated to you in my note No. 58, our inaction in this respect seems to have been due to the repugnance which Venezuela had to the United States Government taking any step which would relate to the action of the British Government and which might, even apparently, prejudice the remedy of arbitration or mediation which Venezuela desired. The records on file, however, fully testify to our friendly interest in the settlement of the dispute; and the reports now received justify my, through you, in offering to Her Majesty's Government the good offices of the United States in promoting an amicable settlement of the respective claims of Great Britain and Venezuela in this matter".

"As a proof of the impartiality with which we regard the question, we offer our arbitration, if acceptable, to both nations. We do not hesitate to do this, because the dispute turns on historical facts, simple and easy to ascertain.

"As a test of the impartiality with which we view the question, we offer our arbitration, if acceptable, to both nations. We do not hesitate to do this, because the dispute turns on historical facts, simple and easy to ascertain".

"Your Majesty's Government will readily understand that this attitude of friendly neutrality and entire impartiality touching the merits of a controversy, which consists solely of a difference of fact between our friends and neighbours, is entirely compatible with the feeling of responsibility which touches the United States as it relates to the South American Republics. The doctrines which we enunciated two generations ago, at the instance of the British Government and with its moral support and approval, have lost with time nothing of their vigour or importance, and the Governments of Great Britain and the United States are equally interested in maintaining a situation whose prudence has been demonstrated by the experience of more than half a Century.

"It is desirable, therefore, that You should express to Lord Iddesleigh, in such prudent terms as Your good judgment may inspire, the satisfaction which the Government of the United States will receive from seeing that Your wishes in this particular have influenced His Majesty's Government".

This offer of mediation was declined by Great Britain, with the statement that it had already received an equal offer from another quarter, and that the Queen's Government still retained the hope of arriving at a settlement by direct diplomatic approaches. Having been informed, in February 1888, that the Governor of British Guiana had laid claim to the territory to be traversed by the line of a projected railroad between Ciudad Bolivar and Guasipati, Mr. Bayard sent a note to our Minister in England, from which I extract the following:

"The claim which, it is now said, has been made by the authorities of British Guiana, necessarily gives rise to grave uneasiness, and to the fear that the territorial claim does not conform to historical traditions or evidence, but is apparently indefinite. So far it does not appear that at any time the district, of which Guasipati is the centre, has been claimed as British territory, nor that British jurisdiction has ever been exercised over its inhabitants; and if the alleged decree of the Governor of British Guiana be true, it is not comprehensible how a line of railroad between Ciudad Bolivar and Guasipati can penetrate into or traverse territory which is under the dominion of Great Britain".

"In truth the line claimed by Great Britain as the western boundary of British Guiana is uncertain and vague. It is enough to examine the List of the Department of the British Colonies, of some years ago, to notice it. In the 1877 edition, for example, the line runs almost due south from the mouth of the Amacuro to the confluence of the Cotinga and Takutú rivers. In the 1887 edition, ten years later, it makes a large turn to the west, following the Yuruari. Guasipati is situated at a considerable distance to the west of the line officially claimed in 1887, and it may perhaps be instructive to compare it with the map which will undoubtedly be found in the Colonial Department List of the present year".

"It would be well for you to express again to Lord Salisbury the great satisfaction which this Government would receive in seeing the dispute with Venezuela settled amicably and honourably by arbitration, or otherwise, and our readiness to do what conveniently we can to contribute to this result".

"In the course of your conversation you may refer to the publication made in the London Financier of January 24th (of which you may procure a copy and show it to Lord Salisbury) and express the fear that the widening claims of Great Britain to possess territories, over which the jurisdiction of Venezuela has never been disputed, will lessen the chances of a practical settlement".

"Should it turn out, in reality, that there is no fixed limit to British claims to the frontier, it would not only render ineffectual our willingness to contribute to a settlement, but would necessarily give rise to a feeling of grave uneasiness".

News having been received in 1889 that Barima, situated at the mouth of the Orinoco, had been declared a British port, Lord Blaine, then Secretary of State, authorized Lord White to hold a conference with Lord Salisbury, tending to the restoration of diplomatic relations between Great Britain and Venezuela, on the basis of the temporary restoration of the *statu quo*, and on 10 May and 6 May 1890, he sent the following telegrams to Lord Lincoln, our Minister in England (1 May 1890):

"Lord Lincoln will employ his good offices near Lord Salisbury in order to bring about the re-establishment of diplomatic relations between Great Britain and Venezuela, as a preliminary step to the settlement of the boundary dispute by arbitration. The proposals of Great Britain and the United States made jointly to Portugal, which have just been put into effect, seem to make this a favourable moment to submit this question to international arbitration. Lord Lincoln is requested to propose to Lord Salisbury that, in order to obtain a settlement, an informal conference be held in Washington or London between the representatives of the three powers. At this conference the attitude of the

United States will be solely that of impartial friendship for the two litigants". (6 May 1890.)

"It is desired, however, that you will do all that is compatible with our attitude of impartial friendship to bring about a compromise between the litigants, whereby the merits of the dispute may be fairly ascertained and the rights of each party fairly confirmed. The neutral attitude of this Government does not permit it to express an opinion as to what those rights may be; but it is assured that the shaky foundation on which the British boundary question has rested for several years is an obstacle to its being able to make a correct appreciation of the nature and grounds of its claim, and that alone can authorize it to form an opinion".

In the course of the same year of 1890 Venezuela sent a special envoy to London to procure the reestablishment of diplomatic relations with Great Britain, through the good offices of the United States Minister. But this mission had no result, because Venezuela always made it a condition for the reestablishment of diplomatic relations that the boundary dispute be submitted to arbitration. Since the steps initiated by Mr. Michelena in 1893 ceased, Venezuela has repeatedly called the attention of the United States to the controversy; it has insisted on its importance for the United States as well as for Venezuela; it has stated that the question is in an acute state- which makes it imperative that the United States take precise measures- and has not ceased to request the services and support of the United States in order to reach a definitive settlement. These demarches have not been regarded with indifference, and our Ambassador to Great Britain has been constantly ordered to use all his influence in the direction of the restoration of diplomatic relations between Great Britain and Venezuela, and in favour of the arbitration of the boundary controversy. The Secretary of State, in a communication sent on 13 July 1894, to Mr. Bayard, expressed himself in the following terms:

"The President is moved by the desire that a peaceful and honourable settlement of the difficulties existing between an American State and a powerful transatlantic nation may be obtained, and he would be pleased to see diplomatic relations re-established between them which would contribute to this result".

"I see but two equitable solutions of the present controversy. One is the determination by arbitration of the rights of the disputants, as respective successors to the rights of Holland and Spain, over the region in question. Another is the establishment of a new boundary line in accordance with the dictates of mutual convenience and consideration. The two Governments having heretofore been unable to agree upon a conventional line, the firm

and constant advocacy which the United States and England have made of the principle of arbitration, and of their appeal to it for the settlement of important questions arising between them, renders this means of arriving at an agreement especially apropos in the present case, and this Government will gladly do all in its power to contribute to a determination in this direction".

In subsequent communications sent to Mr. Bayard, he was recommended to inquire whether Great Britain would be willing to receive a Minister from Venezuela. In his annual message, to Congress last 3 December, the President made use of the following language:

"The frontier of British Guiana still remains in dispute between Great Britain and Venezuela. Believing that its early settlement, on a basis just and honourable to both parties, is in accordance with the policy we have established, of removing from this hemisphere every cause of disagreement with nations beyond the ocean, I shall renew the efforts heretofore made to procure the re-establishment of diplomatic relations between the litigants, and induce them to submit the question to arbitration; a remedy which Great Britain so conspicuously favours in principle and respects in practice, and which is so earnestly solicited by her weaker adversary".

And on the 22nd of February, by resolution of the Houses, Congress declared:

"That the intimation of the President ... that Great Britain y Venezuela submit to an amicable arbitration their boundary dispute, be warmly recommended to the favourable consideration of the parties concerned".

The important circumstances of the existing situation, as they result from the relation which precedes, briefly stated are:

1. The title to a territory of indefinite extent, but acknowledged to be very vast, is in dispute between Great Britain on the one hand, and the South American Republic of Venezuela on the other.
2. The disparity of force between the claimants is such, that Venezuela can only hope for the establishment of her rights by peaceful methods- by settlement with her adversary, either upon the issue itself, or upon arbitration.
3. The controversy has existed for more than half a Century, with variations of the pretensions of Great Britain; during this time, many vehement and persistent efforts made by Venezuela to establish a boundary by agreement have been without result.
4. Recognizing the futility of efforts to obtain a conventional line, Venezuela has for a quarter of a Century sought and fought for arbitration.

5. Great Britain, however, has always and consistently refused arbitration, except on condition that Venezuela relinquish a large part of her claim, and grant her a large portion of the disputed territory.
6. By the frequent interposition of his good offices, at the request of Venezuela; by his constant insistence in promoting the re-establishment of diplomatic relations between the two countries; by his urging the arbitration of the disputed boundary; by the offer of his services as arbitrator; by the expression of its grave concern whenever it has been informed of new acts of aggression on the part of England in Venezuelan territory, the Government of the United States has made it manifest to Great Britain, and to the world, that this is a controversy which affects its honour and its interests, and that it cannot look with indifference upon its continuance.

Believe that the accuracy of the above analysis of the situation is indisputable. In it appears such a situation, that those who are in charge of the interests of the United States are today obligated to determine exactly what those interests are and what conduct they demand. It compels them to resolve to what extent the United States can and should intervene in a controversy, which exists between Great Britain and Venezuela, and which alone principally concerns them, and to decide to what extent the United States is bound to take care that the integrity of Venezuelan territory does not suffer from the pretensions of its powerful antagonist. Does such a right and such a duty correspond to the United States? If not, the United States have already done all, if not more than all, that could be justified by a purely sentimental interest in the affairs of the two countries, and to carry their interposition further would be unseemly, and a lack of dignity which might well expose them to accusation of impertinent meddling in matters in which they have no real interest. On the other hand, if such a right and duty exist, the exercise and performance of them do not permit of any action which is ineffectual, and which, if the power of the United States is adequate, will not result in the accomplishment of the object in view. The question of principle thus posed, and having regard to established national policy, does not appear to be difficult of solution. But the grave practical consequences which depend upon its determination demand that it should be carefully considered, and that the grounds of the conclusions arrived at should be stated frankly and at length.

That there are circumstances in which a nation may justly interpose itself in a controversy to which two or more other distinct nations are direct and immediate parties, is canon admitted in international law. The doctrine

is expressed in more general terms, and is perhaps not susceptible of more precise exposition. It has been declared, in substance, that a nation may avail itself of this right whenever what is done or proposed to be done by one of the parties principally interested is a direct threat to its own integrity, tranquillity or welfare. The justice of this rule, when applied in good faith, will not be disputed anywhere. On the other hand, as an inevitable, though unfortunate, consequence of its vast scope, this rule has often served as a cloak for daring projects of plunder and aggrandizement. What interests us now, however, is not so much the general rule as one of its forms, which is specially and distinctly American. In the solemn counsels of his farewell address, Washington explicitly warned his countrymen to beware of meddling in the politics and controversies of the European powers.

"Europe (he said) possesses a set of primary interests which have little or no relation to us. It must therefore enter into frequent controversies, the causes of which are entirely foreign to our interests. Hence, therefore, it would be imprudent in us to complicate ourselves by artificial ties in the ordinary vicissitudes of their politics, or in the ordinary combinations and collisions of their friendships or enmities. Our remote and distant situation puts us in a position to observe a different course of conduct."

During the administration of President Monroe for the first time this doctrine of the Farewell Address was studied in all its phases and all its practical consequences examined. The Farewell Address, while removing America from the field of European policy, was silent as to the role Europe should be allowed to play in America. It was doubtless believed that the latest addition to the family of nations should not hasten to lay down rules for the government of its oldest members, and that the propriety and expediency of notifying the powers of Europe of a complete, proper, and peculiar American policy which excluded them from all intervention in the political affairs of America, might well appear doubtful to a generation which had still fresh in its memory the French alliance, with its manifold advantages, for the cause of American independence.

But twenty years later the situation had changed. The new-born nation had grown considerably in power and resources; it had demonstrated its strength by sea and by land, both in the conflicts of war and in the tasks of peace; and it had begun to realize the dominant position which the character of its inhabitants, its free institutions, and its remoteness from the main scene of European strife gave one on this continent. The Monroe administration did not hesitate, therefore, to accept and apply the logic of the Farewell Address, declaring, in effect, that American non-intervention in European affairs implied European non-intervention in American affairs. Undoubtedly conceiving that

complete European non-intervention in American affairs would be bought at little cost by complete American non-intervention in European affairs, President Monroe employed the following language in his celebrated Message of 2 December 1823:

"We have never taken part, nor does it suit our policy to take part, in the wars of the European powers, by means which concern them alone. Only when we see our rights invaded or seriously threatened do we feel the offenses or prepare to defend ourselves. With the evolutions of this hemisphere, we are necessarily more closely connected, for reasons which must be apparent to the enlightened and impartial observer. The political system of the Allied powers is essentially different in this respect from that of America. The difference arises from that which exists in their respective governments. And to the defence of ours, which has been established at the loss of so much blood and money, and formed by the wisdom of its most enlightened citizens, and under which we have enjoyed so much happiness, is consecrated this whole nation. We owe it, therefore, to the sincerity and friendly relations existing between the United States and those powers, to declare that we shall regard every attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and happiness.

"We have not intervened, nor will we intervene in the colonies or dependencies of European powers now existing. But with respect to governments which have declared their independence and sustained it, and whose independence we have recognized after mature consideration, and on principles of justice, we cannot look upon any intervention on the part of any European nation, whether for the purpose of oppressing them or otherwise directing their destinies, but as a manifestation of an unfriendly disposition toward the United States. Our policy towards Europe, adopted since the beginning of the wars which have so long disturbed that part of the globe, remains nevertheless the same, namely, not to intervene in the internal affairs of any of its powers; to regard as legitimate for us the de facto government; to cultivate friendly relations with it and to preserve those relations by a frank, firm, and manly policy, abiding in every case by the legitimate claims of each power, without submitting to the offenses of any. But as regards these continents, the circumstances are eminently and notoriously different. It is not impossible for the allied powers to extend their political system to any part of any one of them, without endangering our peace and happiness; nor can anyone believe that our brethren of the South, left to their own free will, would spontaneously adopt it. It is likewise impossible, therefore, that we should look with indifference upon such an intervention, whatever form it may take".

The Monroe administration was not content, however, with formulating a correct rule for directing the relations between Europe and America. Its object was also to secure the practical benefits which were to result from the application of the rule. Hence the message, just quoted, declared that the American continents were fully occupied, and not subject to future colonization by European powers. To this spirit and purpose must also be attributed the passages in the same message, which treat as an act of enmity to the United States any violation of the rule against the intervention of European powers in the affairs of America. It was realized that it was useless to establish such a rule, unless its observance could be made effective. It was evident that the only power capable of enforcing it in this hemisphere was the United States. It was therefore boldly declared, not only that Europe should not intervene in American affairs, but that any European power which did so would be considered as acting against the interests of the United States and provoking their opposition.

That America is nowhere open to colonization has long been universally conceded, although, when this proposition was first laid down, it was not so admitted. We are therefore concerned today only with that other practical application of the Monroe doctrine, the disregard of which, on the part of a European power, must be regarded as an act of enmity towards the United States. The exact purpose and limitations of this rule cannot be too clearly conceived. It does not establish a general protectorate of the United States over the other American states. It does not relieve any American state from the obligations imposed upon it by international law, nor does it prevent any directly interested European power from compelling them to comply with such obligations, or from inflicting upon them the punishment deserved for failure to comply with them. It does not propose to intervene in the internal affairs of any American state or in its relations with other American states. It does not justify any attempt on our part to change the established form of government of any American state, or to prevent the people of that state from changing that form of government, as it pleases or suits them. The rule in question has but one end, but one object. It is that no European power, or any combination of European powers, shall forcibly deprive any American state of the right and power to govern itself, and to shape by itself its own political destiny.

That the rule thus defined has been accepted by the public law of this country, ever since it was enacted, cannot be justly denied. Its promulgation by the Monroe administration, precisely at that time, was doubtless due to the inspiration of Great Britain, who on the spot gave it her frank and unqualified approval, which has never been withdrawn. But the rule was settled and

formulated by the Monroe administration, as a distinctly American doctrine, of great importance to the security and prosperity of the United States, after the most careful consideration by a Cabinet which numbered in its midst a John Quincy Adams, a Calhoun, a Crawford, and a Wirt, and which before proceeding called in consultation with Jefferson and Madison. Its enactment was received with applause by all the people of the nation, without regard to party. Three years later Webster declared that the doctrine enclosed the honour of the nation. "I look upon it," he said, "as part of the treasures of its reputation, and as far as it does me, I intend to observe it," and added:

"I regard the message of December 1823, as a bright page in our history. I will not help to erase it, nor tear it out, nor by any act of mine will it be tarnished or sullied. It did honour to the sagacity of the Government, and I will not diminish that honour".

Although the rule commended by Webster in such favourable terms has never been formally adopted by Congress, the House of Representatives in 1864 declared itself against the Mexican monarchy, which the French were trying to establish, because it did not agree with the policy of the United States, and in 1889 the Senate declared that it disapproved of the participation of any European power in the canal through the isthmus of Darien, or Central America. It is evident that, if a rule has been frankly and uniformly proclaimed and observed by the Executive of the Government for more than seventy years, without having been expressly repudiated by Congress, it must be conclusively presumed to have received its sanction.

The plain truth is that every Administration since that of President Monroe has had occasion, and sometimes more than one, to y study and consider the Monroe doctrine, and in every case have endorsed it in the most emphatic manner. Presidents have insisted upon it in their messages to Congress, and Secretaries of State have again and again made it the subject of diplomatic representations. And if one looks for the practical results of the rule, one will find that they have been neither scarce nor obscure. Its first and immediate effect was indeed very important and far-reaching. It was a dominant factor in the emancipation of South America, and the independent States into which that region is now divided owe their existence in great part to it. Then the most notable event that is due to that rule is the evacuation of Mexico by the French at the end of the civil war. But we also owe to it the clauses of the Clayton-Bulwer treaty, which at the same time declared neutral all inter-oceanic canals through Central America and expressly excluded Great Britain from the right to occupy any part of Central America or to exercise jurisdiction over it. It has been applied to Cuba in the concept that, while respecting the sovereignty of

Spain, it would prevent the island from being occupied by another European power. It has influenced the abandonment of any idea of British protectorate over the Mosquito Coast.

President Polk, in the case of the Yucatan and the projected voluntary cession of that country to Great Britain or Spain, relied, though perhaps erroneously, on the Monroe doctrine, when he declared in a special message to Congress on the subject that the United States could not consent to such a cession. In somewhat similar vein, however, Secretary Fish asserted, in 1870, that President Grant had but conformed to "the teaching of all our history" when he declared in his annual message of that year that the dependencies then existing were no longer regarded as susceptible of cession by one European power to another, and that upon the cessation of their present relation as colonies they would become independent powers. Another manifestation of the rule, though apparently not necessarily required by its letter or spirit, is to be found in the opposition to the arbitration of South American controversies by a European power. American questions, it has been said, must be settled by the Americans, and for this reason the United States went so far as to refuse to mediate between Chile and Peru in union with Great Britain and France. Finally, among other reasons because the authority of the Monroe Doctrine and the prestige of the United States as its expositor and guarantor would suffer serious damage, Secretary Bayard strongly opposed support for the Pelletier claim against Haiti.

"The United States (he said) have proclaimed themselves protectors of this Western world, in which they are by far the strongest power, against the intrusion of European sovereignties. They can point with proud satisfaction to the fact that they have declared effectually, and repeatedly, that very serious indeed would be the consequences, if a hostile European foot should set foot, without just cause, in the States of the New World which have emancipated themselves from the dominion of Europe. They have proclaimed that they would uphold, as befits them, the territorial rights of the weaker of those States, considering them not only from the legal point of view, as equal to the greatest nations, but, in view of their distinctive policy, entitled to be regarded by them as the object of their special and benevolent care. I think myself under a duty to say that, if we were to sanction by way of reprisals in Haiti the cruel invasion of her territory and the insult to her sovereignty revealed by the facts before us; if we were to approve that invasion by a solemn executive act and with the assent of Congress, it would be difficult for us to maintain later that the rights of the New World, of which we are special guardians, had never been invaded by us others themselves".

The foregoing enumeration not only proves the numerous cases in which the rule in question has been upheld and applied, but also demonstrates that Venezuelan boundary controversy falls, from whatever point of view it may be viewed, within the intent and spirit of the rule as it has been uniformly accepted and observed. A doctrine of American public law, so long and so firmly established and sustained, cannot easily be disregarded, in a case where it is justly applicable, even if the considerations upon which it is founded were obscure or questionable. No such objection, however, can be raised to the Monroe doctrine, understood and defined as it has already been. It rests, on the contrary, upon facts and principles as intelligible as they are incontrovertible. It cannot be denied that distance, and three thousand miles of ocean separating them, make a permanent political union between a European and an American state, not only contrary to nature, but improper. But physical and geographical considerations are the least important objections to such a union. Europe, as Washington has said, has a set of primary interests peculiar to itself. America has no part in them, and must not be disturbed or complicated in them. All the great European powers, for example, have today enormous armies and fleets to defend and protect each other. What have the American States to do with this state of affairs, and why should they impoverish themselves with wars or preparations for wars, in the causes or results of which they can have no direct interest? If the whole of Europe should suddenly fly to arms, on account of the fate of Turkey, and would it not be absurd for any American State to find itself intricately involved in the miseries and burdens of the contest? If it did, it would result in a society that would suffer in the cost and losses of the struggle, but not in the benefits resulting from it.

What is true of material interests, is no less true of what may be called the moral interests involved. Those which belong to Europe are peculiar to it, and are entirely distinct from those which belong and are peculiar to America. Europe, as a whole, is monarchical, and with the single important exception of the Republic of France, is devoted to monarchical principles. America, on the other hand, is devoted to a directly contrary principle, to the idea that all people have the inalienable right to govern itself, and the United States of America has presented to the world the most remarkable and conclusive example and proof of the excellence of free institutions, whether from the point of view of national greatness, or from that of individual happiness. It is not, however, necessary to expand on this phase of the subject, whether moral or material interests are to be considered, it cannot but be universally admitted that those of Europe are irreconcilably distinct from those of America, and that all European dominions in the latter are necessarily incongruous and

injurious. But if, for the reasons already stated, the forcible intrusion of European powers into American politics is to be regretted, and if it is to be resisted and impeded, then this resistance and impediment must come from the United States. It would obviously come from them if they were made the point of attack. But, if they do come, they must also come from the United States when any other American State is attacked, for only the United States has the strength adequate to the demands.

Is it true, then, that the security and prosperity of the United States and the United States are so interested in the maintenance of the independence of all the American States, against any European power, that the intervention of the United States is required and justified, whenever that independence is threatened? This question can only naively be answered in one way. *The States of North and South America, by their geographical proximity, by natural sympathy, by the similarity of their governmental constitutions, are friends and allies, commercially and politically, of the United States. To allow any of them to be subjugated by a European power is to turn the tables entirely, and translates into the loss of all the advantages consequent upon their natural relations with us. But this is not all. The people of the United States have a vital interest in the cause of government by the people for themselves. They have secured this right for themselves and its posterity, at the cost of much blood and money. They have exercised it and demonstrated its beneficent action by a career unexampled as far as national greatness and individual happiness are concerned. They believe that they possess the virtue of healing nations and that civilization* must *advance or retreat as they extend or narrow their supremacy. Imbued with these sentiments, it would not perhaps be impossible that the people of the United States should be impelled to active propaganda in behalf of a cause so dear to themselves and to the human race. But the time of the Crusades has passed, and they are content to proclaim and defend the right of the government of the people for themselves, as their own safety and prosperity require. Under that aspect, above all, they believe that no European power should be tolerated to assume by force the political dominion of an American State*.

The prejudices to be feared on this account are no less true, because they are not of immediate imminence in a special case, nor are we to guard less against them because the combination of circumstances which will bring them about cannot be foreseen. The civilized States of the Christian world deal with each other in reality according to the same principles which govern the conduct of individuals. The greater their enlightenment, the more clearly does a State know that its permanent interests require that it be governed by the immutable

principles of right and justice. All of them, however, are liable to succumb to the temptations which present them with seemingly special opportunities for self-aggrandizement, and all of them would recklessly endanger their own security, if they did not remember that to retain the regard and respect of other States, they must rely largely upon their own strength and power. To-day are the United States, practically, sovereign on this continent, and their fiat is law in the matters to which they confine their intervention. Why? Not because of mere friendship or good will felt for them. Not simply because of their elevated character as a civilized State, nor because prudence y justice and equity are the invariable characteristic features of the conduct of the United States. It is because, in addition to all these reasons, their infinite resources, combined with their isolated position, make them masters of the situation and practically invulnerable to the other powers.

All the advantages of this superiority are endangered from the moment that the principle is admitted that the European powers can convert the American States into colonies or provinces of their own. Such a principle would be eagerly exploited, and the powers that did so would immediately acquire a base of operations against us. What would be permitted to one of them could not be denied to another, and it would not be inconceivable that the struggle which is now taking place for the acquisition of Africa should be transferred to South America. If it were, the weaker countries would be unquestionably absorbed, and the final result might be the partition of the whole of South America among the various European powers. The disastrous consequences of such a state of affairs for the United States are obvious. The loss of prestige, of authority and of weight in the councils of the family of nations, would be the least of them. Our only real rivals in peace, as well as enemies in war, would be at our very doors. Hitherto, our history tells us, we have avoided the burdens and evils of an immense standing army and all the other accessories of huge war establishments, and this exemption has contributed in a high degree to our national greatness and wealth, as well as to the happiness of all citizens. But with the powers of Europe permanently encamped on American soil, the continuance of the ideal state we have hitherto enjoyed could not be expected. We, too, would have to arm ourselves to the teeth; we, too, would have to convert the flower of our male population into soldiers and sailors, and by turning them away from their various occupations in peaceful industry, we would have, practically, to annihilate also a large part of the productive energy of the nation.

It is difficult to see how any greater calamity could befall us than this. The blandishments of the friendship of the European powers-of their good

will toward us-of their willingness, if they were our neighbours, to live with us in peace and harmony-cannot suffice to calm our just fears. The people of the United States have learned in the school of experience how far the relations of states to each other depend, not upon sentiment or principle, but upon selfish interest. He will not soon forget that, in the hour of conflict, his anxieties and sorrows were aggravated by the possibility of demonstrations against his national life, on the part of powers with whom he had maintained the most harmonious relations. He is still mindful that France took advantage of the apparent opportunity of our civil war to establish a monarchy in the neighbouring state of Mexico. He understands that, if France and Great Britain had had important possessions to exploit and take advantage of in South America, the temptation to destroy the predominance of the Great Republic in this hemisphere, by seeking its dismemberment, would have been irresistible. From that grave danger it has been saved in the past, and may be saved again in the future, by the action of the sure but silent force of the doctrine proclaimed by President Monroe. On the other hand, to abandon it, disregarding the logic of the situation and the facts of our past experience, would be to renounce a policy which has proved an easy defence against foreign aggression and a fruitful source of internal progress and prosperity.

There is, then, a doctrine of American public law, well founded in principle and abundantly sanctioned by precedent, which entitles the United States and obliges them to treat as an injury done to them, the forcible appropriation by a European power of political dominion over an American state. The application of the doctrine to the boundary dispute between Great Britain and Venezuela remains to be made, and presents no real difficulties. Although the dispute concerns a boundary line, yet, as it is between states, it necessarily means that the political dominion lost by one of the parties is gained by the other. Moreover, the political dominion at stake is of the utmost importance, for it concerns a territory of great extent-the British claim, it will be remembered, was widened, it seems, in two years, about 33,000 square miles-and if it also directly comprises the dominion of the mouth of the Orinoco, it is of immense consequence to the whole river navigation of the interior of South America. It has been intimated, indeed, that with respect to these South American possessions, Great Britain herself is an American state like any other, so that a controversy between her and Venezuela should be settled between the two, as if it were between Venezuela and Brazil, or between Venezuela and Colombia, and does not require or justify the intervention of the United States. If this way of thinking is sustainable, the logical consequence is clear.

Great Britain, as a South American State, must be entirely distinct from Great Britain in general, and if the boundary question cannot be settled

otherwise than by force, it should be left to British Guiana to settle it by her own resources independently, and not by those of the British Empire, an arrangement to which perhaps Venezuela would not object. But the proposition that a European power, with an American dependency, is to be classed, for the purposes of the Monroe doctrine, not as a European, but as an American State, admits of no discussion. If it were adopted, the Monroe doctrine would lose its value entirely and would not be worth sustaining. Not only could all the powers that today had a South American colony extend indefinitely their possessions in this continent, but any other European power could do the same thing, just by taking the trouble to obtain a fraction of South American soil by voluntary cession.

The statement in Monroe's message- that the United States would not intervene in the existing colonies or dependencies of a European power- refers to the colonies or dependencies that existed at the time, with the limits they then had. It has invariably been so interpreted, and must continue to be so interpreted, unless it is to be deprived of all its vital force. Great Britain cannot be considered as a South American State, within the limits of the Monroe doctrine, nor, if she is seizing a Venezuelan territory, is it of material importance that she does so by advancing the frontier of an old colony, rather than by founding a new colony. The difference is a matter of form and not of substance, and if the doctrine is applicable in the one case it must also be applicable in the other. It is not admitted, however, and therefore it cannot be presumed that Great Britain is effectively usurping dominion in Venezuelan territory. At the same time that Venezuela charges usurpation, Great Britain denies it, and the United States cannot take sides for either, until the merits of the question have been authoritatively settled. But if this is true, if the United States cannot, under the present circumstances at least, assume the responsibility of deciding which of the two parties is right and which is wrong, it is certainly entitled to demand that the truth be ascertained. As it has the right to resent and oppose any abduction of Venezuelan territory by Great Britain, so it necessarily has the right to ascertain whether such abduction has already occurred or is now taking place. Otherwise, if the United States does not have the right to know and to have it determined whether or not there is or is not British aggression in Venezuelan territory, its right to protest against such aggression, or to repel it, should not be taken into consideration.

The right to proceed in a case the existence of which one has no right to inquire into, is simply illusory. It being clear, therefore, that the United States may legitimately insist that the merits of the boundary question be determined, it is equally clear that there is but one possible means of determining them,

namely, peaceful arbitration. The impracticability of a conventional settlement has been frequently and fully demonstrated. Even more impossible to consider is recourse to arms, a mode of settling international claims which unfortunately is not yet completely outmoded. Even if it were not to be condemned as a relic of barbarism, and as a crime in itself, such an unequal contest could not be provoked, or even accepted by Great Britain, without evident disrepute to her character as a civilized nation. Great Britain, however, takes no such attitude. On the contrary, it admits that there is a dispute and that arbitration must be resorted to in order to settle it. But, if so far her attitude leaves nothing to be desired, the practical effect of it is completely nullified by her insistence that the arbitration shall relate only to a part of the dispute which, as a condition of arbitrating her right to a part of the disputed territory, the remainder shall be ceded to her. If it were possible to point to a boundary on which both parties had ever agreed, or which they had explicitly or tacitly regarded as such a requirement that the territory granted by such a line to British Guiana should not be regarded as in dispute, it might rest on a reasonable basis. But there is no such line. It has never been admitted that the territory which she insists should be ceded to her as a condition for submitting to arbitration her right to another which has always been claimed by Venezuela, invariably, belonged to Great Britain.

On what principle- except that of its weakness as a nation- is it to be denied the right to have its claim heard and judged by an impartial tribunal? There is no reason, no shadow of apparent reason in the whole voluminous record of the matter. "This must be so because I want it to be so" seems to be the only justification presented by Great Britain. It has been intimated, to the truth, that the British claim in respect of that special territory is founded on an occupation, which, whether accepted or not, has become perfect title by its long continuance. But what prescription, affecting territorial rights can be said to exist between sovereign States? Or if there is, what is the legitimate consequence? It is not that all arbitration is to be denied, but only that submission to it must embrace an additional object, namely, the validity of the prescriptive title asserted, whether from the legal or the factual point of view. The contention that Great Britain cannot in principle be required to submit, and should not submit, its political and sovereign rights of a territorial nature to arbitration, leads to no different result. Applied to the whole or a vital part of the possessions of a sovereign State, that contention cannot be controverted. To hold otherwise would be tantamount to maintaining that a sovereign State is under an obligation to arbitrate its own existence.

But Great Britain itself has shown in several cases that this principle is not relevant when the interests or the territorial area involved are not of predominant magnitude, and the loss of them, as a result of arbitration, does not appreciably affect its honour or its power. Thus she has submitted to arbitration the extension of her colonial possessions with the United States twice, twice with Portugal, and once with Germany, and perhaps in other cases. The arbitration between her and this country of the Northwest water boundary in 1872, is a case in point, which well demonstrates both the effects of long continued use and possession, and the fact that a truly great power does not sacrifice its prestige and dignity by reconsidering even the most energetic repulse of a proposition, when it has become convinced of the evident and intrinsic justice of the cause. By the judgment of the Emperor of Germany, who was the arbitrator in the said case, the United States acquired San Juan and a number of smaller islands off the coast of Vancouver, in consequence of the decision that the phrase "the channel separating the mainland from Vancouver Island," employed in the treaty of Washington of 1846, meant the Haro channel and not the Rosario channel. However, one of the main contentions of Great Britain before the arbitrator was that equity demanded a judgment in their favour, for if it were in favour of the United States, it would deprive British subjects of the navigational rights they had enjoyed since the time Rosario Strait had been explored and delineated in 1798. Thus, although by virtue of the judgment the United States acquired San Juan and the other islands of the group to which it belongs, the British Foreign Secretary had in 1859 given the following instructions to the British Minister in Washington:

"Her Majesty's Government must, therefore, in every case uphold the right of the British Crown to the island of San Juan. The interests at stake, relative to the retention of that island, are too important to admit of a compromise, and Your Majesty will therefore bear in mind that the British Crown's right to the island of St. John is too great. S. will bear in mind, therefore, that whatever final arrangement may be made in regard to the boundary line, His Majesty's Government will not accept any which does not provide that the island of San Juan is reserved to the British Crown*"*.

As already suggested, then, the British demand that her right to a portion of the disputed territory be recognized before consenting to the arbitration of the remainder, seems to rest solely on her own *ipse dixit*. She says to Venezuela in substance, "You can obtain by force nothing of the disputed land, because you are not strong enough; you can obtain nothing by treaty, because I will not agree with you, and you may be fortunate enough to obtain a part by

arbitration, only if you agree to abandon to me another part which I designate". How such an attitude can be defended, nor how it can be reconciled with the love of justice and equity, which are one of the prominent characteristic traits of the English race, is beyond comprehension. Indeed, she deprives Venezuela of the exercise of her free will and virtually violates it. The territory acquired by that means will be taken away by force, as if it were occupied by British troops or covered by British fleets. It seems, therefore, entirely impossible for the United States to assent to such an attitude on the part of Great Britain, or that if they adhere to it, and the enlargement of the limits of British Guiana results therefrom, it should cease to be considered, in substance, as equivalent to an invasion and conquest of Venezuelan territory.

In such circumstances, it seems to the President that his duty is clear and imperative. The assertion of the title of Great Britain to the disputed territory, and her refusal to allow that right to be examined, being tantamount in substance to appropriating the territory, not to protest and warn her that such a course would have to be regarded as prejudicial to the interests of the people of the United States, and in itself oppressive, would be to disregard the established policy, to which the honour and prosperity of this country are intimately bound up. Although it is for another branch of the Government to determine the measures necessary or expedient for the vindication of that policy, it is clear that it is the duty of the Executive to leave nothing undone which would tend to obviate the necessity of that determination.

You are therefore directed to explain the foregoing ideas to Lord Salisbury, by reading him this communication and leaving him a copy of it if he desires it, and to give them further weight with such pertinent considerations as will undoubtedly occur to you. These ideas call for a definite decision on the point whether or not Great Britain consents to submit the whole question of Venezuelan boundary to impartial arbitration. The President sincerely hopes that the conclusion will be by arbitration, and that Great Britain will add one more to the conspicuous precedents she has already established in favour of that judicious and just mode of settling international disputes. If, however, your hope should deceive you by a result which is not to be anticipated, and which in your judgment would only serve to greatly embarrass the future relations between this country and Great Britain, I should desire to be informed of it in time, that I may submit the whole matter to Congress in its next annual message.

I am your obedient servant.

RICHARD OLNEY.

16. MESSAGE FROM PRESIDENT GROVER CLEVELAND TO THE CONGRESS OF THE UNITED STATES RELATIVE TO VENEZUELAN BOUNDARY CONTROVERSY, AND CORRESPONDENCE ON THE SAME SUBJECT WITH THE BRITISH GOVERNMENT, DATED 17 DECEMBER 1895.[1353]

To Congress: In my annual message to Congress on the third of this month, I called your attention to the boundary controversy pending between Great Britain and Venezuela, and set forth the substance of a representation from this Government to that of H. M. Britannia, in which I pointed out some reasons why the adjustment of this question should be submitted to arbitration, and asked if it should be so submitted.

The reply of the British Government, which was then awaited, has since arrived, and I include it herewith together with the note which it answers.

This reply is contained in two communications sent by the British Prime Minister to Sir Julian Pauncefote, Ambassador of Great Britain in this capital. As will be seen, one of the communications is devoted exclusively to observations on the Monroe Doctrine, and maintains that, in the present case, the United States insist on giving a new and strange extension and interpretation to that doctrine; that the reasons justifying the appeal to the doctrine enunciated by President Monroe, are in general inapplicable "to the state of things in which we live today" and especially to a controversy concerning the boundary line between Great Britain and Venezuela.

Without attempting to enlarge upon arguments in reply to these propositions, it will not be too much to indicate that the doctrine upon which we are founded is strong and solid, because it matters to our peace and safety as a nation to maintain it, and is essential to the integrity of our free institutions and to the peaceful preservation of our distinctive form of government. It was declared in the spirit of applying to all periods of our national life, and cannot fall into disuse so long as our Republic subsists. If the balance of power is a just cause of apprehensive anxiety among the Governments of the Old World, and a matter in which we absolutely must not meddle, the observance of the Monroe Doctrine is of no less vital interest to our people and their Government.

Assuming, therefore, that we can justly insist upon this doctrine, without regard to "the state of things in which we live," or to changes of situation

[1353] See the book by the name of: "*Historia official de la discusión entre Venezuela y la Gran Bretaña sobre sus límites en la Guayana"* ("Official History of the Discussion Between Venezuela and Great Britain regarding the Borders with Guiana"), Quoted above, Pages 289-293.

here or elsewhere, there is no apparent reason why its application may not be invoked in the present controversy.

If a European power, extending its frontiers, takes possession of the territory of one of our neighbouring republics, against its will and to the detriment of its rights, it is difficult to understand why that European power should not seek by that means to extend its system of government to the portion of this continent so taken. This is precisely what President Monroe declared "to be dangerous to our peace and security," and there can be no difference between extending the European system by the enlargement of frontiers or in any other way.

It is also said in the British reply, that we should not attempt to apply the Monroe doctrine to the pending dispute, because it embodies no principle of international law which "is founded on the general consent of nations," and that "no statesman, however eminent, and no nation, however powerful, is competent to insert into the code of international law a new principle, which has never before been recognized, nor afterwards accepted by the Government of any other country*"*.

In practice, the principle we hold has peculiar, if not exclusive, relation to the United States. It may not have been explicitly admitted into the code of international law, but since in international councils all nations have title to the rights belonging to them, if the effective application of the Monroe doctrine is a thing we can justly claim, it has a place in the code of international law, as certainly and as surely as if special mention were made of it. And when the United States is a party plaintiff before the high tribunal which administers international law, the question to be determined is, whether or not the claims we present are just and valid, before the justice of that code of laws.

The Monroe doctrine finds its recognition in the principles of international law which are founded on theory that all nations should be protected and supported in their just claims.

Of course, this Government is certain that under the sanction of this doctrine we have clear and undoubted rights. Nor is this unknown in the British reply. The Prime Minister, while not admitting that the Monroe doctrine is applicable in the present circumstances, says: "In declaring that the United States would oppose such enterprises, if they were contemplated, President Monroe adopted a principle which was sympathetic to the English Government at the time. " He further states, "Although the language of President Monroe refers to the pursuit of ends which most Englishmen would agree to find sound, it is impossible to admit that they have been inscribed in the code of international law by any competent authority*"*. And still further,

he says: "He (the Government of H. M. B.) entirely agrees with the opinion apparently held by President Monroe that any disturbance of the existing territorial distribution in the hemisphere, on account of new acquisitions by a European nation, would be an entirely inconvenient change".

In the belief that the doctrine we held was clear and definite; that it was founded on weighty considerations and involved our safety and prosperity; that it was entirely applicable to our present conditions and the state of progress of the world, and that it was directly related to the pending controversy; and with no convictions as to the ultimate merits of the dispute, but with a desire to know satisfactorily and definitely whether Great Britain, under pretence of a boundary claim, was seeking to extend, without any right, her possessions on this continent, or whether she was merely seeking to take possession of a territory which was, in justice, This Government proposed to the Government of Great Britain the recourse to arbitration as a convenient means of settling the question, in order that the painful boundary dispute existing between the two contenders might be determined, and our exact position and relations in regard to the controversy defined.

From the accompanying correspondence it will be seen that this proposition has been rejected by the British Government, for reasons which, in the present circumstances, seem to me far from satisfactory. It is deeply sensible that this excitement, inspired by the friendliest feelings towards the two nations directly interested, and addressed the sentiments of justice and magnanimity of one of the great powers of the world, and touching its relations with another comparatively weak and small, should not have had a better result.

The conduct to be pursued by this Government, in view of the present situation, does not appear to lend itself to serious doubt. Having laboured strenuously for long years to induce Great Britain to submit this dispute to impartial arbitration, and having now been definitely informed of her refusal to do so, there remains but to accept the situation, to recognize her palpable demands, and to proceed accordingly. The present proposition of Great Britain has hitherto never been considered admissible by Venezuela, although no arrangement which this country judges advantageous to itself, and into which it enters of its own free will, will naturally meet with opposition on the part of the United States.

Assuming, however, that the attitude of Venezuela does not change, the dispute has reached a point which imposes upon the United States the duty of taking steps to determine with sufficient certainty, for its justification, what is the true dividing line between Venezuela and British Guiana. The investigation leading to this end must, of course, be made in a careful and judicial manner,

giving due weight to all evidence and to all facts which may be adduced in support of the claims of both parties.

In order that this examination may be made in a thorough and satisfactory manner, I would suggest to Congress that it appropriate an adequate sum to cover the expenses of a Commission, appointed by the Executive, to make the necessary investigation and report on the matter with the least possible delay. This report having been presented and accepted, it will, in my opinion, be the duty of the United States to oppose by every means in her power, as to a direct infringement upon her rights and interests, the appropriation by Great Britain of any lands or the exercise of her authority in any territory which the investigation may show to belong by right to Venezuela.

In making these recommendations I am fully aware of the responsibility assumed, and I fully understand the consequences which may follow.

It is my firm conviction, however, that, as it is painful to contemplate the two great nations of the world, whose common language is English, otherwise than as friendly competitors in the progressive march of civilization, and as persevering and worthy rivals in all the arts of peace, so there is no calamity for a great nation equal to that which will result from a submission to injustice and indolent injury, and the consequent loss of national self-respect and honour, under which the security and greatness of a people are sheltered and defended.

GROVER CLEVELAND.

EXECUTIVE PALACE, 17 December 1895.

17. WASHINGTON ARBITRATION TREATY OF 2 FEBRUARY 1897 BETWEEN VENEZUELA AND THE UNITED KINGDOM.[1354]

Her Majesty the Queen of the United Kingdom and the United States of Venezuela, being desirous to provide an amicable settlement of the question which has arisen between their respective Governments concerning the boundary be-tween the Colony of British Guiana and the United States of Venezuela, having resolved to submit to arbitration the question involved, and to the end of concluding a Treaty for that purpose, have appointed as their respective Plenipotentiaries:

Her Majesty the Queen of the United Kingdom, the Right Honourable Sir Julian Pauncefote, a Member of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of Bath, and of the Most Distinguished Order of St. Michael and St. George, and Her Majesty's Ambassador Extraordinary and Plenipotentiary to the United States:

And the President of the United States of Venezuela, Senor Jose Andrade, Envoy Extraordinary and Minister Plenipotentiary of Venezuela to the United States of America:

Who having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:-

ARTICLE I

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

ARTICLE II

The Tribunal shall consist of five jurists; two on the part of Great Britain, nominated by the members of the Judicial Committee of Her Majesty's Privy Council, namely, the Right Honourable Baron Herschell, Knight Grand Cross of the Most Honourable Order of Bath, and the Honourable Sir Richard Henn Collins, Knight, one of the Justices of Her Britannic Majesty's Supreme Court of the Judicature; two on the part of Venezuela, nominated, one by the President of the United States of Venezuela, namely, the Honourable Melville Weston Fuller, Chief Justice of the United States of America, and one nominated by

[1354] See: Héctor FAÚNDEZ LEDESMA, ("Contentious Jurisdiction of the International Court of Justice and the Case of Guyana v Venezuela") *Academy of Political and Social Sciences*- Editorial Jurídica Venezolana. Caracas, 2020. Pages 335-340.

the Justices of the Supreme Court of the United States of America, namely, the Honourable David Josiah Brewer, a Justice of the Supreme Court of the United States of America; and of a fifth jurist to be selected by the four persons so nominated, or in the event of their failure to agree within three months from the exchange of ratification of the present Treaty, to be so selected by His Majesty the King of Sweden and Norway. The jurist so selected shall be the President of the Tribunal.

In the case of death, absence, or incapacity to serve of any of the four Arbitrators above named, or in the event of any such Arbitrator omitting or declining or ceasing to act as such, another jurist of repute shall be forthwith substituted in his place. If such vacancy shall occur among those nominated on the part of Great Britain, the substitute shall be appointed by the members for the time being of the Judicial Committee of Her Majesty's Privy Council, acting by a majority, and if among those nominated on the part of Venezuela, he shall be appointed by the Justices of the Supreme Court of the United States, acting by a majority. If such vacancy shall occur in the case of the fifth Arbitrator, a substitute shall be selected in the manner herein provided with regard to the original appointment.

ARTICLE III

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

ARTICLE IV

In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to the decision of the controversy, and shall be governed by the following Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to be applicable to the case

RULES

(a) Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription.

(b) The Arbitrators may recognise and give effect to rights and claims resting on any other ground whatever valid according to

international law, and on any principles of international law which the Arbitrators may deem to be applicable to the case, and which are not in contravention of the foregoing rule.

(c) In determining the boundary-line, if territory of one Party be found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of the other Party, such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require.

ARTICLE V

The Arbitrators shall meet at Paris, within sixty days after the delivery of the printed arguments mentioned in Article VIII, and shall proceed impartially and carefully to examine and decide the questions that have been, or shall be, laid before them, as herein provided, on the part of the Governments of Her Britannic Majesty and the United States of Venezuela respectively.

Provided always that the Arbitrators may, if they shall think fit, hold their meetings, or any of them, at any other place which they may determine.

All questions considered by the Tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.

Each of the High Contracting Parties shall name one person as its Agent to attend the Tribunal, and to represent it generally in all matters connected with the Tribunal.

ARTICLE VI

The printed Case of each of the two Parties accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other Party as soon as may be after the appointment of the members of the Tribunal, but within a period not exceeding eight months from the date of the exchange of the ratifications of this Treaty.

ARTICLE VII

Within four months after the delivery on both sides of the printed Case, either Party may in like manner deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a Counter-Case, and additional documents, correspondence, and evidence, in reply to the Case, documents, correspondence, and evidence of the other Party.

If in the Case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to

apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other , through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance notice thereof within thirty days after delivery of the Case, and the original or copy so requested shall be delivered as soon as may be, and within a period not exceeding forty days after receipt of notice.

ARTICLE VIII

It shall be the duty of the Agent of each Party, within three months after the expiration of the time limited for the delivery of the Counter-Case on both sides, to deliver in duplicate to each of the said Arbitrators, and to the Agent of the other party, a printed argument showing the points, and referring to the evidence upon which his Government relies, and either party may also support the same before the Arbitrators by oral argument of Counsel; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by Counsel upon it; but in such case the other party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE IX

The Arbitrators may, for any cause deemed by them sufficient, enlarge either of the periods fixed in Articles VI, VII and VIII by the allowance of thirty days additional.

ARTICLE X

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The decision shall be in duplicate, one copy thereof shall be delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States of Venezuela for his Government.

ARTICLE XI

The Arbitrators shall keep an accurate record of their proceedings, and may employ the necessary officers to assist them.

ARTICLE XII

Each Government shall pay its own Agent and provide the proper remuneration of the Counsel appointed by it, and of the Arbitrators appointed by it or in its behalf, and for the expense of preparing and submitting its Case to the Tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE XIII

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

ARTICLE XIV

The present Treaty shall be duly ratified by Her Britannic Majesty and by the President of the United States of Venezuela, by and with the Congress thereof, and the ratifications shall be exchanged in London or in Washington within six months from the date hereof.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty and have hereunto affixed our seals.

Done in duplicate, at Washington, the second day of February, one thousand eight hundred and ninety-seven.

(L.S.) JULIAN PAUNCEFOTE

(L.S.) JOSÉ ANDRADE

18. DIALOGUE BETWEEN ARBITRATOR LORD RUSELL AND FORMER U.S. PRESIDENT BENJAMIN HARRISON, ACTING "IN DEFENCE OF VENEZUELA'S INTERESTS" AS COUNSEL.

General Harrison:

If you allow me, Mr. Chairman, in connection with Lord Justice's question which requires our appreciation of that matter and which I expected to deal with subsequently, but which perhaps I can take up now, as has been requested. The written argument of Venezuela was prepared on the grounds that the prescription rule mentioned in Rule "a" applies subsequent to 1814. That the Treaty requires this Tribunal to establish the 1814 line, and that our argument is that the rule of adverse possession and prescription can only be applied to a period prior to 1814 since otherwise there was no reason for the drawing of such a line. Regarding the time required for the court to sit, this was explained to us.

Lord Russel:

It is convenient for you and may eliminate problems. As far as I am concerned I only wish to know, in the affirmative or negative, what your position is.

General Harrison:

I am going to prefer, your Honour, not to give a categorical answer, because there is an explanation which I think must go along with it.

Lord Russell:

Very well.

General Harrison:

When the tribunal was installed, we met with a demand from Counsel for Great Britain that we were not at liberty to make that approach, because of the understanding between Mr. Olney, who represented the USA and Mr. Julian Pauncefote, who represented Great Britain was not that, and to give support to that objection, he submitted some notes which were submitted for our consideration notes of which we were not previously aware. When (those notes) were submitted, we, at once, said to Counsel for Great Britain *"Let them be incorporated into evidence without objection, because they may throw light on this question"*.

Some of them are marked "strictly personal" and others "confidential". Perhaps Venezuela could have asked about whether those papers can be used in the making of a Treaty, but we have not asked that question. While

Venezuela does not know, because of the personal and confidential nature of the notes we have admitted in the case, hoping to pursue or renew the argument made by her, which she does not withdraw but submits to the Tribunal for its consideration, on the basis of these notes. It would be candour on my part if I did not say that they, clearly, seem to indicate that Mr. Olney and Mr. Julian Pauncefote understood the limitation period to apply to the years after 1814.

Lord Russel:
Whether subsequently or before, I think that makes it very clear.

The Chairman:
Now Mr. Soley, can you please continue, I put the question to you because of the different years noted. Now I know that, 1814 is the date.

Mr. Soley:
So, according to the Treaty the boundary must be determined in the year 1814, modified by prescription for such period as the Court considers should be applied to the modification of that boundary".

Lord Russell:
In other words, subject to such modifications as may follow from rules (a), (b) or (c).

Mr. Soley:
Now, the Vienna Convention on the Law of Treaties, which reflects customary international law peacefully adhered to, enshrines that:
"For the purposes of the interpretation of a Treaty, the context shall include, in addition to the text, including its preamble and annexes the following:
(a) - any Agreement which refers to the Treaty and has been concluded between all the parties on the occasion of the conclusion of the treaty;
According to the Doctrine, the interpretative declaration may form part of the Treaty or it may be an authentic interpretation emanating from the parties involved.
However, the U.S. Secretary of State, Mr. Olney, was not a party to the treaty, did not represent Venezuela, did not sign the treaty, and did not have the authority to prepare or sign interpretative notes on behalf of Venezuela. Therefore, the notes he made with Ambassador Pauncefote were not an authentic interpretation, were not interpretative, had no value, and did not bind Venezuela in any way.
However, General Harrison, the American representative of Venezuela, admitted it as evidence, to have full legal effect in the trial.

In other words, Great Britain confesses, pleadingly, that it agreed to the arbitration under the condition that the clause of prescription or adverse possession of 50 years be added as an integral part of a valid title, but furthermore, that this period of adverse possession or prescription be counted as of 1814.

19. PARIS ARBITRAL AWARD DATED 3 OCTOBER 1899.[1355]

Whereas, on 2 February 1897, a Treaty of Arbitration was concluded between Her Majesty the Queen of the United Kingdom and the United States of Venezuela, which is of the following tenor:

And whereas the said Treaty was duly ratified and the ratifications were duly exchanged at Washington on the fourteenth day of June, 1897, in conformity with the said Treaty; and whereas after the date of the said Treaty and before the commencement of the Arbitration therein referred to, the Right Honourable Baron Hershell died; And whereas the Right Honourable Charles Baron Rusell of Killowen, Lord Chief Justice of England, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, was duly appointed, in accordance with the terms of the said Treaty by the members of the Judicial Committee of His Majesty's Privy Council, to function in accordance with the said Treaty in the place and stead of the late Baron Hershell;

And whereas the said four Arbitrators, namely, the Honourable Melville Weston Fuller, the Honourable David Josiah Brewer, the Right Honourable Lord Russell of Killowen and the Right Honourable Sir Richard Henn Collins, appointed the fifth Arbitrator. pursuant to the terms of the said Treaty, His Excellency Frederic de Martens. Privy Councillor. Permanent Member of the Council of the Ministry of Foreign Affairs of Russia L. L. D. of the University of Cambridge and Edinburgh.

And whereas the said Arbitrators have duly commenced the Arbitration and have heard and considered the oral and written arguments of counsel representing respectively the United States of Venezuela and Her Majesty the Queen, and have impartially and carefully considered the issues submitted to them, and have investigated and ascertained the extent of the territories belonging to the United Provinces of the Netherlands or to the Kingdom of Spain respectively, or which might be legitimately claimed by the one or the other, at the time of the acquisition of the Colony of Guiana by Great Britain.

We, therefore, the undersigned Arbitrators, do hereby grant and publish our decision, determination and award upon the questions submitted to us by the said Treaty of Arbitration, and, in conformity with the said Treaty of

[1355] Venezuelan Ministry of the People's Power for Foreign Relations, "*Guayana Esequiba. Historia de un despojo"* ("Guiana-Essequibo. The History of a Dispossession"), Caracas, 2015. Pages 91 & ff..

Arbitration, finally decide, adjudge and determine hereby, that the boundary line between the United States of Venezuela and British Guiana is 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 Cuyuní, and thence along the northern bank of the River Cuyuní 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. Provided always that the line of delimitation fixed by this Award shall be subject and without prejudice to any questions now existing, or which may arise, to be determined between the Government of Her Britannic Majesty and the Republic of Brazil, or between the latter Republic and the United States of Venezuela."

In fixing the said boundary line the Arbitrators consider and decide that, in time of peace, the Amacuro and Barima Rivers shall remain open to the navigation of the trading vessels of all nations, subject to all just regulations and the payment of lighthouse or other analogous duties, provided that the duties exacted by Venezuela and by the Government of the Colony of British Guiana in respect of the transit of vessels on the parts of the said rivers belonging respectively to them, shall be fixed at the same rate for the vessels of Venezuela and those of Great Britain, which rate shall not exceed that exacted from any other nation. It is also understood that no customs duties may be demanded, either by Venezuela or by the colony of British Guiana, in respect of merchandise transported in ships, vessels or boats passing through the said rivers, but customs duties shall be demandable only in respect of merchandise landed respectively in the territory of Venezuela and in that of Great Britain.

Done and published in duplicate by us, at Paris, this 3rd day of October A.D. 1899

(L.S.) F. DE MARTENS

(L.S.) MELVILLE WESTON FULLER

(L.S.) DAVID J. BREWER

(L.S.) RUSSEL OF KILLOWEN

(L.S.) R. HENN COLLINS

The authenticity of this translation is hereby certified.

J. M. de Rojas,
Agent of Venezuela
Republic of Venezuela
Ministry of Foreign Affairs

20. POSTHUMOUS MEMORANDUM OF ATTORNEY SEVERO MALLET-PREVOST PUBLISHED IN *AMERICAN JOURNAL OF INTERNATIONAL LAW* IN JULY 1944 BY HIS PARTNER AND EXECUTOR, OTTO SCHOENRICH.[1356]

"Memorandum left to Judge Schoenrich, not to be published, in his judgment, until after my death".

Judge Brewer and I embarked for Europe in January 1899 to attend the first meeting of the Arbitral Tribunal which was to meet in Paris for the purpose of establishing the boundary between Venezuela and Great Britain, the terms of the Protocol which had been signed between Great Britain and Venezuela requiring that the Tribunal should meet at that time; but, as there was inconvenience for all those who had a hand in the arbitration to meet on that date, it was decided to hold a simple preliminary session to comply with the terms of the Protocol, and to defer the meeting to a more convenient date.

Before going to Paris, Judge Brewer and I stopped in London and, while there, Mr. Henry White, Chargé d'Affaires of the United States, gave us an intimate luncheon to which Lord President Russell was invited. It fell to my lot to sit by his side, and in the course of the conversation I ventured to express the opinion that international arbitrations should base their decisions solely on legal grounds. Lord Russell immediately replied: "I entirely disagree with you. I think that international arbitrations should be conducted on a broader basis and that they should take into consideration questions of internal policy on the basis of strict law.

When we met in Paris the following 1 June I met Lord Collins for the first time. During the speeches of Attorney General Sir Richard Webster and myself (which lasted 26 days), it was quite obvious that Lord Collins was sincerely interested in fully realizing the facts of the matter and in determining the law applicable to those facts. He, of course, gave no indication as to how he would vote on the question; but his whole attitude and the numerous questions he asked were critical of the British allegations and gave the impression that he was leaning towards the side of Venezuela.

[1356] Otto SCHOENRICH, "Materia de excepcional importancia para la historia diplomática de Venezuela. La disputa de límites entre Venezuela y La Guayana Británica" ("A Matter of Exceptional Importance in the Diplomatic History of Venezuela. The dispute regarding the Border between Venezuela and British Guiana.") The Academy of Political and Social Sciences, Caracas, 1949.

After Sir Richard Webster and I had concluded our speeches, the Tribunal adjourned for a short vacation of two weeks. The two British arbitrators returned to England and took Mr. Martens with them.

When I entered the apartment where the American arbitrators were waiting for me, Judge Brewer stood up and said very excitedly:

"Mallet-Prevost, it is useless to continue this farce any longer by pretending that we are judges and you are counsel. Judge Fuller and I have decided to confidentially what has just happened. Martens has come to see us and informs us that Russell and Collins are disposed to decide in favour of the Schomburgk line, which, starting from Punta Barima on the Coast, would give Great Britain control of the main mouth of the Orinoco; and that, if we insist on starting the line from the coast at the Moroco River, he will side with the British and approve the Schomburgk line as the true boundary"... "However, he added, he, Martens, was anxious to get a unanimous judgment and, if we accepted the line he proposed, he would obtain the acquiescence of Lord Russel and Lord Collins in order to reach a unanimous decision. What Martens was proposing was that the coast line should begin some distance southeast of Punta Barima, so as to give Venezuela control of the Mouth of the Orinoco, and about 5,000 square miles of territory around that mouth.

"This is what Martens has proposed. Justice Fuller and I are of the opinion that the boundary on the coast should be indicated at the Moroco River. What we have to decide is whether we accept the Martens proposition or subscribe to a dissenting opinion".

"Under these circumstances, Justice Fuller and I have decided to consult with you and I now want to let you know that we are willing to go one way or the other, according to what you wish be done". From what Justice Brewer had just expressed and from the change we had all observed in Lord Collins, I was convinced then, and still believe, that during Martens' visit to England to decide the question on the terms suggested by Martens and that pressure had been brought to bear, one way or the other, upon Collins, in order to get him to follow that course. Naturally, I realized that I alone could not assume the enormous responsibility for the decision required of me. I made this clear to the two arbitrators and asked for their permission to consult with General Harrison. Upon obtaining it, I went to his apartment to discuss the matter with him".

"When I disclosed to General Harrison what had just happened he rose indignantly and, walking to and fro, qualified the conduct of Great Britain and Russia in terms which it is for me useless to repeat. His first reaction was to ask Fuller and Brewer to present a dissenting opinion, but, when he calmed

down and studied the matter from a practical point of view, he said to me: "Mallet-Prevost, if it were ever known that it was in our hands to preserve the mouth of the Orinoco for Venezuela and that we did not do it, we would never be forgiven. What Martens proposes is iniquitous, but I do not see how Fuller and Brewer can do otherwise than agree".

"I agreed with General Harrison and so let Justices Fuller and Brewer know. The decision of the Tribunal was, accordingly, unanimous; but, while it is true that it gave Venezuela the most strategically important sector in dispute, it was unjust to Venezuela and deprived it of a very extensive and important territory, over which Great Britain had in my opinion, not the slightest shadow of a right".

"The foregoing has been dictated by me on 8 February 1944".

Otto Schoenrich.
Member of the firm of Curtis, Mallet-Prevost, Colt & Mosley of New York.

21. EXTRACT FROM THE COMMUNICATION OF PERRY ALLEN, WHO REPRESENTED VENEZUELA AS ONE OF THE THREE SECRETARIES OF THE ARBITRAL TRIBUNAL OF PARIS 1899, SENT TO THE AMBASSADOR OF VENEZUELA IN MEXICO, DR. MANUEL ANTONIO PULIDO MÉNDEZ, ON 19 MARCH 1951.[1357]

Your Excellency Mr. M. A. Pulido Méndez
Ambassador of Venezuela
Mexico

Distinguished and fine friend.

Acceding to the wish expressed by you that I reproduce (....) a memorandum written by your associate, Mr. Severo Mallet Prevost, to be published after his death, (...) I am pleased to comply with what I promised (...).

In the month of December in the year 1899, I being Clerk to Magistrate John M. Harlan, of the Supreme Court of the United States, there was a heated discussion in the American newspapers about the controversy between the Government of Venezuela and that of Great Britain, concerning the boundaries between Venezuela and British Guiana, especially because the British Government stubbornly insisted that what it claimed as the boundaries of British Guiana should be considered British territory, in spite of the protests of the Government of Venezuela, rejecting any offer to submit the question to a Court of Arbitration.

The Government of the United States had taken action in the matter, supporting Venezuela, and did its best to make the British Government accede to the desire of the Venezuelan Government to submit the question to arbitration, but without Great Britain paying any attention to it, until President Cleveland (...), basing himself on the Monroe Doctrine (...), sent a message to the American Congress, in which he said that (...) the only thing that the Government of the United States could do in these circumstances was ... to resist with all the force at its disposal any usurpation that might harm it.

The Court of Arbitration met in Paris in 1899, and three secretaries were appointed, a Frenchman, an Englishman, and another (the undersigned) as secretary on behalf of Venezuela.

[1357] Extract from: http://bibliografilaguayanaesequibacom.blogspot.com/2012/12/extracto-de-la-comunicacion-de-perry.html.

Both the United States and the Venezuelan Governments understood that the question submitted to the Court of Arbitration would have to be decided according to the facts ascertained and the laws applicable to the case, and it is easy to understand Mallet-Prevost's surprise as related by himself in his memorandum published after his death, by his associate Judge Schoenrich, in which he referred to a lunch he attended, seated next to the British arbitrator Lord Russell, at the American Embassy in London before moving to Paris for the preliminary section of the Court of Arbitration in January 1899.

I copy his own words taken from that memorandum, a copy of which I have here before me:

"...I sat next to Lord Russell, and in the course of the Conversation I ventured to express the opinion that international arbitrations should base their decisions exclusively on legal grounds. Lord Russell immediately replied "...I differ entirely from your opinion. I believe that international arbitrations should be more broadly oriented and that they should take into consideration questions of international policy..".

To my mind, if the way to resolve the dispute between Great Britain and Venezuela indicated by Lord Russell had been included in the arbitration agreement as a rule of conduct, it would not have been accepted neither by the Government of Venezuela nor that of the United States.

What happened afterwards has highlighted the lack of a precise rule of conduct set down in writing in the protocol for the government of the arbitrators and the "farce" actually represented by the award that was rendered.

Sir Richard Webster opened the debate in Paris, and I remember that I was struck by the fact that every now and then the speaker was interrupted by the "English arbitrator Lord Russell", (...) tending to give the listeners the impression that he was one of the lawyers on behalf of Great Britain and not one of the judges of the Court of Arbitration. This seems to me to be of great importance since everyone knows that, in private litigation, judges are subject to recusal if it appears (...) that they cannot be impartial judges. And for similar reasons, if, in a court of arbitration, (...) that judge is a subject or citizen of one of the litigants, and, as such, out of obstinacy or patriotism cannot conceive that his own country should not be right in the controversy, in which case there should be a right on the part of the other nation to recuse him, if he is not challengeable and it is considered that in any case he should render his decision in favour of his own country, is he not in fact both judge and party? This cannot be tolerated in such lawsuits between private parties. If the arbitrators of each government believe that their duty imposes on them the obligation of always ruling in favour of their own, is it not obvious that

in order to win the game (...) one of them will make a conquest of a third arbitrator in discord, and if this is so, is there any doubt that such arbitrations are a kind of "farce" (...). Finally, (...) when the debates were over (...) the two English arbitrators left for London, taking with them the Russian President of the Tribunal, F. de Martens (...). I well remember the day appointed by the Arbitral Tribunal to give its decision. The President De Martens (...) said (...) that in the present arbitration all the arbitrators were in agreement and, therefore, that the dispute had been decided by their "unanimous" vote: implying that he had found no difference of opinion among them, so that the award must be considered to be in all things just, legal and equitable, and must be satisfactory to all parties concerned (...) an award which by its injustice caused consternation, not only among the lawyers of Venezuela but on the part of its government and that of the United States

I remember that former President Harrison (...) said afterwards, (...) that he regretted (...) having spent two of the best years of his life in Venezuela (...).) having devoted two of the best years of his life to a matter that had once again become a mere farce, adding that the boundary line fixed by the Arbitral Tribunal made no common sense, that it did not agree at all with the evidence presented, not in accordance with the law; that it did not set a line based on natural boundary lines, as was customary between nations, such as rivers and mountain ranges, but that the line had been drawn in such a way that all the lands on which there supposedly might be gold deposits were awarded to England, and that the marshes and other swampy and unusable lands had been assigned to Venezuela (....).).

It is obvious that this arbitration turned out to be an illusion and a deception for both Venezuela and the United States.

It seems to me that Great Britain has for centuries been accustomed to taking whatever it wanted, and could do so because of its naval and military might, and small nations lacking the strength to resist it have had to suffer the dispossession of their lands without being able to defend themselves. Frankly, every time I reflect on the shameful dispossession in 1899 of part of the territory rightfully belonging to Venezuela, I feel my blood boil, even though more than fifty years have passed since it happened.

But now, Great Britain, weakened by two world wars, and being at present under the threat of yet another, even more terrible one, perhaps instead of being able to "impose its will" on a small country (as President Cleveland said in his alluded message to the American Congress in 1895), could come to depend on the help of Venezuela's oil, as a very important and even decisive element.

Returning to Venezuela the part of its territory that has been taken away from it by Great Britain, would represent for the latter an insignificant value compared to the welfare and security of the Kingdom, and if the third world war breaks out (...) the British (...) would have to depend on the oil of Venezuela (...).

If this situation were to arise, I imagine that Great Britain would be willing to favour, by way of compensation for the aid of the immense oil resources of Venezuela, returning the part of its territory of which it was so blatantly despoiled in the year 1899. But by not doing so, and if the aforementioned situation arose, Great Britain could justly expect that Venezuelans, feeling as resentful and outraged as they are, would not be willing to present England with such a service (...).

Why wait, then, to see whether Great Britain will have to face a situation in a hurry that will force it to beg Venezuelans to put all their oil resources at the disposal of the English for the salvation of their country? Why not take advantage of the present situation to voluntarily make them a friendly gesture tending to make them forget their resentments, and turn them into good friends for the future, offering *ex propio motu* and without demanding compensation, the return of that part of their territory, which was so unjustly taken from them and rectifying the starting point of the boundary line so that it begins from the Boca del Moruco, where it would have begun if the decision of the Arbitral Tribunal had been rendered in accordance with the proven facts and in accordance with the Law? This voluntary act would be warmly applauded not only by Venezuela, but by the people of this hemisphere.

Why not do it right now and not stop doing it until you are obligated to ask for help from Venezuela, since it might be too late?

The English boast that in contests of all kinds that take place in their country, the opponents can always count on "Fair Play" (correct attitude according to the rule of the matter). Would they seriously pretend that there was "Fair Play" in the arbitration of the year 1899? Why not recognize now, that Venezuelans have been right in making their bitter complaints for more than fifty years and demonstrate with that gesture that the English have not departed from their principle of conduct known as "Fair Play", returning to them what in all conscience is theirs?

Perry Allen

22. AIDE MEMOIRE PRESENTED BY DR. MARCOS FALCON BRICEÑO, MINISTER FOR FOREIGN RELATIONS OF VENEZUELA, TO THE HON. R.A. BUTLER, MINISTER FOR FOREIGN AFFAIRS OF GREAT BRITAIN, ON 5 NOVEMBER 1963, AT THE CONFERENCE HELD IN LONDON.[1358]

The history of the frontier between Venezuela and British Guiana can only be fully known and understood through research into the papers of the men involved in it.

These papers have been open to scholars and expert researchers only during the last decade: the papers of Benjamin Harrison, Richard Olney, Lord Salisbury, Joseph Chamberlain, David Brewer, Daniel Gilman, Severo Mallet-Prevost and others.

In light of this newly discovered and compiled evidence, Venezuela has conclusive proof that it suffered moral and legal injury in that it was deceived and deprived of its rightful territory by the 1899 Award.

This new evidence fully confirms Venezuela's argument that the territory west of the Essequibo is rightfully its own, and remains part of its national sovereignty.

Under these circumstances, on 16 November 1962, Venezuela obtained at the United Nations an official agreement to the effect that *"the three Governments will examine the documentation in the possession of all parties and relating to this matter"* (Document A/5313. Agenda item 88).

Venezuela notes with regret that Great Britain has offered for examination only the Foreign Office archives.

In view of the fact that it did not have full access to the British Archives, Venezuela privately sought access to official and private papers of the men who made the history of its eastern frontier.

From the available evidence, the Government of Venezuela has ascertained the following facts:

1) The line of the Award follows Schomburgk's "Expanded Line" very closely. The British Archives demonstrate that the maps on which this line was based were adulterated. Moreover, British evidence showing how the original Schomburgk Line followed along the Essequibo River and that the restricted "Schomburgk" line, which had official nature, was concealed from the Tribunal.

[1358] Ministry of Foreign Relations (1982) *Reclamación de la Guayana Esequiba* ("Claim to the Guiana-Essequibo") Documents 1962-1981, Pages 23 & 24.

2) The injustice of the Award is of such a nature that it gave British Guiana some six thousand eight hundred square miles (approximately 17,604 km.2) of the territory officially recognized by Great Britain as Venezuelan without dispute, until the appearance of the spurious "Expanded Schomburgk Line" in 1886, and this territory was only a part of the area legitimately claimed by Venezuela.
3) The line of the Award was virtually fixed by Great Britain in July 1899 and extrajudicially imposed by British lawyers on British Judges who acted as biased lawyers for their country rather than as Judges.
4) The acceptance of the line of the Award was imposed on the Judges by undue pressure from the President of the Tribunal Professor Frederick de Martens.
5) The line of the Award was not a line of law but one of political compromise, described as a "shady deal" and a "sham" even by British officials.
6) The Tribunal exceeded its powers. It even went so far as to decree the free navigation of the Amacuro and Barima Rivers, a decision evidently conceived to ensure exclusively the interests of Great Britain.
7) By signing the Arbitration Treaty of 1897 under moral coercion, Venezuela was also deceived as to the meaning of the prescription clause.
8) It was not until 1899 that Venezuela had knowledge of the official and secret correspondence that led to the 1897 Treaty. Moreover, it is only now that Venezuela comes to know that the British lawyers exerted undue pressure on the American lawyers in order to force them to accept the British interpretation of the prescription clause.
9) Despite the fact that Venezuela was coerced into acceding to the Treaty, it was nevertheless confident that the Treaty guaranteed a judicial process with exclusion of power to effect any political or diplomatic transaction. However, the decision rendered on 3 October 1899, was one of compromise, not of law.

HISTORICAL TRUTH AND JUSTICE DEMAND THAT VENEZUELA CLAIM THE TOTAL RETURN OF THE TERRITORY FROM WHICH IT HAS BEEN DISPOSSESSED, and in this respect it relies confidently upon the goodwill and co-operation of Her Majesty's Government.

London, 5 November 1963.

23. AGREEMENT TO SETTLE THE DISPUTE BETWEEN VENEZUELA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE BOUNDARY BETWEEN VENEZUELA AND BRITISH GUIANA, DATED 17 FEBRUARY 1966.[1359]

"The Government of Venezuela and that of the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana,

Considering the forthcoming Independence of British Guiana;

Recognizing that closer cooperation between Venezuela and British Guiana would be beneficial to both countries,

Convinced that any pending dispute between Venezuela on the one hand, and the United Kingdom and British Guiana on the other, would prejudice such collaboration and should, therefore, be amicably settled in a manner acceptable to both parties; in accordance with the Agenda which was agreed upon for governmental talks concerning the dispute between Venezuela and the United Kingdom over the boundary with British Guiana, as per the Joint Communiqué of 7 November 1963, have reached the following Agreement to settle the present dispute:

Article I

A Mixed Commission is hereby established with the task of seeking satisfactory solutions for the practical settlement of the dispute between Venezuela and the United Kingdom arising out of Venezuelan contention that the Arbitral Award of 1899 on the boundary between Venezuela and British Guiana is null and void.

Article II

(1) Within two months from the entry of this Agreement into force two Representatives to serve on the Mixed Commission shall be appointed by the Government of Venezuela and two by the Government of British Guiana.

(2) The Government appointing a Representative may replace him at any time, and shall do so immediately if either or both of its Representatives, should be unable to act by reason of illness, death or otherwise.

[1359] United Nations, Treaty Series, Nº 8192, 1966, Pages 322 & ff. Available at: http://www.consulvenevigo.es/subido/ACUERDO%20GINEBRA%20ONU%201966.pdf-

Article III

The Mixed Commission shall submit progress reports at intervals of six months from the date of its first meeting.

Article IV

(1) If, within four years from the date of this Agreement, the Mixed Commission has not reached a complete agreement for the settlement of the dispute, it shall refer any outstanding questions to the Government of Venezuela and the Government of Guyana in its final report. The said Governments shall promptly choose one of the means of peaceful settlement provided for in Article 33 of the United Nations Charter.

(2) If, within three months after receipt of the Final Report, the Government of Venezuela and the Government of Guyana have not reached an agreement on the choice of one of the means of settlement provided for in Article 33 of the United Nations Charter, they shall refer the decision on the means of settlement to an appropriate international body to be agreed upon by both Governments, or, if no agreement is reached on this point, to the Secretary-General of the United Nations. If the means thus chosen do not lead to a settlement of the dispute, that body, or, as the case may be, the Secretary-General of the United Nations, shall choose another of the means provided for in Article 33 of the United Nations Charter, and so on, until the dispute has been settled, or until all the means of peaceful settlement contemplated in that Article have been exhausted.

Article V

(1) In order to facilitate the fullest possible measure of cooperation and mutual understanding, nothing contained in this Agreement shall be construed as a renunciation or diminution by Venezuela, the United Kingdom or British Guiana of any basis of claim to territorial sovereignty in the Territories of Venezuela or British Guiana or of any rights previously asserted, or of claims to such territorial sovereignty or as prejudging their position with respect to their recognition or non-recognition of a right to claim or basis of claim by either of them to such territorial sovereignty.

(2) No act or activity carried out while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Territories of Venezuela or British Guiana, or for creating rights of sovereignty in such Territories, except insofar as such acts or activities are the result of any agreement

reached by the Mixed Commission and accepted in writing by the Government of Venezuela and the Government of Guyana. No new claim or extension of an existing claim to territorial sovereignty in such Territories shall be asserted while this Agreement is in force, nor shall any claim be asserted except in the Mixed Commission while such Commission is in existence.

Article VI

The Mixed Commission shall hold its first meeting at a date and place to be agreed upon by the Governments of Venezuela and British Guiana. This meeting shall be held as soon as possible after the appointment of its members. Thereafter, the Mixed Commission shall meet when and in the manner agreed upon by the Representatives.

Article VII

This Agreement shall enter into force on the date of its signature.

Article VIII

Upon the attainment of British Guiana's Independence, the Government of Guyana shall henceforth be a party to this Agreement, in addition to the Government of Venezuela and the Government of the United Kingdom of Great Britain and Northern Ireland.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate, at Geneva, this seventeenth day of February in the year one thousand nine hundred and sixty-six, in English and Spanish, both texts being equally authentic.

For the Government of Venezuela:
Ignacio IRIBARREN BORGES
Minister of Foreign Affairs

For the Government of the United Kingdom of Great Britain and Northern Ireland:
Michael STEWART
Secretary of State for Foreign Affairs

Forbes BURNHAM
Prime Minister of British Guiana.

24. PROTOCOL TO THE AGREEMENT TO SETTLE THE DISPUTE BETWEEN VENEZUELA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE BOUNDARY BETWEEN VENEZUELA AND BRITISH GUIANA SIGNED AT GENEVA ON 17 FEBRUARY 1966 ("PORT OF SPAIN PROTOCOL"). SIGNED AT PORT OF SPAIN ON 18 JUNE 1970.[1360]

"The Government of Guyana, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Venezuela, have received on this date the Final Report, dated 18 June 1970, of the Mixed Commission established by the Agreement concluded between the Government of the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana, and the Government of Venezuela, at Geneva on 17 February 1966, and referred to herein as the Geneva Agreement; convinced that the promotion of mutual confidence and of a positive and friendly exchange between Guyana and Venezuela will lead to an improvement of their relations, as befits neighbouring and peace-loving nations, have agreed as follows:

Article I

As long as the present Protocol remains in force, the Government of Guyana and the Government of Venezuela, subject to the provisions which follow, will explore every possibility of improving understanding between them and between their peoples and in particular will undertake through normal diplomatic channels periodic reviews of their relations for the purpose of promoting their improvement and with the object of bringing about a constructive advancement of the same.

Article II

As long as this Protocol remains in force, no claim arising out of the contention referred to in Article I of the Geneva Agreement shall be asserted, either by Guyana to territorial sovereignty in the territories of Venezuela, or by Venezuela to territorial sovereignty in the territories of Guyana.

In this Article, references to the territories of Guyana and to the territories of Venezuela shall have the same meaning as references to the territories of British Guiana and to the territories of Venezuela, respectively, in the Geneva Agreement.

[1360] Available at https://es.wikisource.org/wiki/Protocolo_de_Puerto_Espa%C3%B1a.

Article III

As long as this Protocol remains in force, the operation of Article IV of the Geneva Agreement shall be suspended. On the date on which this Protocol ceases to be in force, the operation of the said Article shall be resumed at the point at which it has been suspended, that is to say, as if the Final Report of the Mixed Commission had been submitted on that date, unless the Government of Guyana and the Government of Venezuela have previously declared jointly in writing that they have reached a comprehensive agreement for the settlement of the dispute referred to in the Geneva Agreement or that they have agreed to one of the means of peaceful settlement provided for in Article 33 of the United Nations Charter.

Article IV

As long as the present Protocol remains in force, Article V of the Geneva Agreement shall (without prejudice to its further application after the present Protocol ceases to be in force) have effect regarding the present Protocol in the same manner as it has effect regarding that Agreement, the words "British Guiana" wherever they appear in the said Article being replaced by the word "Guyana", and the following sentences being deleted in paragraph (2) of the said Article:

(a) ", except insofar as such acts or activities are the result of any agreement reached by the Mixed Commission and accepted in writing by the Government of Venezuela and the Government of Guyana", and

(b) ", nor shall any claim be asserted except in the Mixed Commission as long as such commission exists".

The conclusion and effectiveness of this Protocol shall in no case be construed as a waiver or diminution of any right that either party may have at the date of signature of this Protocol, nor as a recognition of any situation, use or claim that may exist at that date.

Article V

This Protocol shall remain in force for an initial period of twelve years, renewable, subject to the provisions of this Article, for successive periods of twelve years each.

Prior to the termination of the initial period or of any renewal period, the Government of Guyana and the Government of Venezuela may decide by written agreement that, as from the termination of the period in question, the Protocol shall continue to be in force for successive renewal periods of less than twelve years each, but not less than five years.

This Protocol may be terminated at the end of the initial period or any renewal period if, at least six months prior to the date on which it is to terminate, the Government of Guyana or the Government of Venezuela gives the other Governments party to this Protocol written notice to that effect.

Unless terminated in accordance with Paragraph (3) of this Article, this Protocol shall be deemed renewed at the end of the initial period or at the end of any renewal period, as the case may be, in accordance with the provisions of this Article.

Article VI

This Protocol to the Geneva Agreement shall be known as the "Port of Spain Protocol", and shall enter into force on the date of its signature.

In witness whereof, the undersigned, being duly authorized to that effect by their respective Governments, have signed the present Protocol.

Done in triplicate at Port of Spain, Trinidad and Tobago, this eighteenth (18th) day of June 1970 in Spanish and English. Both texts are of equal value.

For the Government of Guyana:
Signed by Shridath S. Ramphal
Minister of State

For the Government of the United Kingdom of Great Britain and Northern Ireland:
Signed by R. C. C. Hunte
High Commissioner of the United Kingdom of Great Britain and Northern Ireland to Trinidad and Tobago

For the Government of Venezuela:
Signed by Aristides Calvani
Minister of Foreign Affairs.

25. STATEMENT BY CHANCELLOR JOSÉ ALBERTO ZAMBRANO VELASCO REGARDING THE NON-EXTENSION OF THE PORT OF SPAIN PROTOCOL, DATED 10 APRIL 1981.[1361]

The National Government has by communiqué dated 4 April 1981, made the decision of President Herrera Campíns not to extend the Port of Spain Protocol public. This is, undoubtedly, a transcendental decision, which places our just claim over the Essequibo Territory in a clear perspective. Therefore, continuing the controversy on whether or not the Port of Spain Protocol should be denounced; or whether or not it should have been signed eleven years ago, seems unnecessary and even sterile. The Government's decision does not lend itself to interpretation: without stopping to assess the historical significance of the Port of Spain Protocol, it is certain that this instrument will not be renewed. The Government judges that new ways must be explored to materialize our claim and considers to, with its decision, interpret the national feeling.

Just as the judgment on the appropriateness and timeliness of the Protocol belongs to history, there is no point in debating the legal value of that instrument. While it is true that Article 6 provides that it shall enter into force as from its signature, and that the lack of formal pronouncement of the National Congress on the approval of this Treaty introduces specific particularities in the legal order, it is no less true that it seems purely academic and useless to exercise on the legal scope of all these aspects, when its provisions have been respected for almost eleven years and when the President of Venezuela has announced that there is, on our part, no disposition to do so.

The immediate consequence of the termination of the Port of Spain Protocol is the full reactivation of the procedures set forth in the 1966 Geneva Agreement. That Agreement, which at the time had solid support in the National Congress, provides that Venezuela and Guyana must find a satisfactory solution for the practical settlement of the dispute.

Hence, the most constructive thing for the country, at this time, is to focus our attention and our reflections on the Geneva Agreement. We must assess whether Guyana and Britain have complied in good faith with their obligations under it. We must analyse the procedures established by that Treaty, in order

[1361] Statement by Foreign Minister Dr. José Alberto Zambrano Velasco regarding the non-extension of the Port of Spain Protocol (Caracas, 10 April 1981.) at the web portal *"El Esequibo es nuestro"* ("The Essequibo is Ours". Available athttp://esequibonuestro.blogspot.com/search?q=4+de+abril+de+1981.

to select the one that, within the objectives assigned to it by the Parties, best suits the interest of the country.

In these circumstances, it is essential that Venezuelan position be the expression of a national will, that it not be diluted in small sterile polemics. The unity of Venezuelans is decisive so that it is more clearly understood that, within the respect we have for the existence of a neighbouring and friendly State, we also have the firm determination to make our position be respected. That the ethical and legal basis of our claim to obtain reparation for the outrage of which we were victims by the action of the colonial empires be respected. And that the commitment made by Venezuela, Guyana and Great Britain in 1966 to find satisfactory solutions for a practical settlement of the dispute be equally respected.

The possibilities of making the procedures of the Geneva Agreement work positively increase to the extent that there is greater unity in the country around these issues. This unity will be equally necessary to make Guyana and the International Community understand that for Venezuela it is unacceptable, pending a satisfactory solution to the controversy, that by unilateral decision, acts of disposition on the claimed territory are produced, which could seriously affect it and which would pretend to disregard our rights. In the specific case of the Alto Mazaruni dam, it must be clear, in the international arena, that its construction under the current conditions is inadmissible for Venezuela and that, consequently, we are not willing to recognize any right that could be invoked from the hypothetical execution of such project.

The strength of Venezuelan position demands a willingness to look the matter into the future and not to waste our intellectual and political work in fruitless debates. The National Government intends to make a great effort to unite the will and action of the Nation and its representative sectors in this purpose, and hopes that the tone of the debate will be in accordance with what History demands from all of us at this moment.

26. COMMUNIQUÉ OF VENEZUELAN CHANCELLERY REGARDING THE PROVISIONS OF ARTICLE IV OF THE GENEVA AGREEMENT, DATED 11 DECEMBER 1981.[1362]

Minister's Office

The President of the Republic, several months ago, announced the decision not to continue applying the Port of Spain Protocol beyond the expiration of its initial term, which is 18 June 1982. In execution of that decision and in accordance with the provisions of Article V of that same Protocol, the respective formal notifications were made today to the Governments of Guyana and the United Kingdom of Great Britain and Northern Ireland.

Thus begins another stage in our old territorial claim, in search for a just reparation for the dispossession of which we were victims of British colonial imperialism.

In 1966, as a result of the tenacious position of Venezuelan Ministry of Foreign Relations, the United Kingdom, on the eve of Guyana's independence, admitted the existence of a controversy and the need to resolve it.

The Geneva Agreement, to which Venezuela, the United Kingdom and Guyana are parties, was signed on February 17th of that same year. On 13 April 1966, with the almost unanimous support of the parliamentary groups, the National Congress approved the Agreement, which two days later was ratified by the Head of State. It is, therefore, an instrument that has the force of Law of the Republic and recognizes and channels our claim.

The said Treaty, based on the conviction that any pending controversy between the parties should be amicably settled in a manner acceptable to both (Preamble), established, in its Article I, a Mixed Commission with the task of seeking satisfactory solutions for the practical settlement of the controversy, which arose as a consequence of Venezuelan contention that the Arbitration Award of 1899 is null and void.

Should the negotiation at the level of the Mixed Commission be unsuccessful, a procedure was foreseen to submit the matter to the means of peaceful settlement provided for in Article 33 of the United Nations Charter (Art. IV). That same Article assigned a role to the UN Secretary-General, to collaborate with the Parties in the choice of means of settlement of the dispute.

[1362] "Communiqué of the Venezuelan Chancellery regarding the Provisions of Article IV of the Geneva Agreement" (Caracas, 11 December 1981)" at Web Portal "El Esequibo en nuestro" ("The Essequibo is Ours"). Available at: http://esequibonuestro.blogspot.com/2012/06/comunicado-de-la-cancilleria-de.html.

This function was accepted by the UN Secretary-General by communication dated 4 April 1966. This ratified the recognition of the existence of the dispute by the States concerned and by the international community itself, through the organ of the UN Secretary-General.

During the four years of activity of the Mixed Commission, Guyana maintained an inflexible position, aimed at evading negotiation through which a satisfactory solution could have been found for the practical settlement of the dispute.

As a consequence of Guyana's intransigent non-compliance, the Mixed Commission was unable to fulfil the mandate assigned to it by the Geneva Agreement. By virtue of this, the application of the aforementioned mechanisms established by Article IV of said Agreement was appropriate.

In light of the international situation existing at that time, insofar as it could have repercussions on our aspiration, of the immediate antecedents within the Mixed Commission and of the supreme interests of the country, the National Government at the time came to the conclusion that the moment was not propitious to proceed with the immediate application of Article IV of the Geneva Agreement. By virtue of this, the Port of Spain Protocol was negotiated and signed on 18 June 1970, which left the application of some of the provisions of the Geneva Agreement and, in particular, the provisions of Article IV, in abeyance for twelve years without it preventing the advancement, by other means, of steps aimed at seeking a solution to the controversy.

Article VI of the Port of Spain Protocol provided that the said instrument enter into force from the date of its signature, based on the precedent established in Article VII of the Geneva Agreement.

In 1970, the National Government submitted to the Senate of the Republic the Bill of Law Approving the Port of Spain Protocol, on which there was no parliamentary pronouncement. However, Venezuela has adjusted its practical conduct to the provisions of the Protocol, based on the letter of the instruments that were signed, the general principles of International Law, and international legal custom on the matter.

After over eleven years of application of the Protocol of Port of Spain, President Luis Herrera Campíns, interpreting a broad national consensus, and in the full conviction that such determination is the most adequate for the interest of the country and for the guarantee of international peace and security, has decided to put an end to the application of that Treaty as of 18 June 1982.

As a consequence of that decision, as of the aforementioned date, our claim will be governed by the Geneva Agreement and, specifically, by the

provisions of its Article IV, which refers to the means of peaceful settlement set forth in Article 33 of the United Nations Charter, which are: 1) Negotiation; 2) Investigation; 3) Mediation; 4) Conciliation; 5) Arbitration; 6) Judicial Settlement; 7) Recourse to Regional Organizations or Agreements; 8) Other peaceful means.

The decision of the Venezuelan Government not to extend the Port of Spain Protocol entails the firm determination to comply with and demand compliance with the Geneva Agreement. This Treaty establishes an obligation to negotiate a satisfactory solution for the practical settlement of the dispute, so that it is resolved in a manner acceptable to both parties. We have repeatedly complained that Guyana has failed to comply with this obligation to negotiate in good faith. At this moment, when a new turn is being taken on the issue, Venezuela renews the hope that Guyana will rectify this conduct and that genuine negotiations will be undertaken, aimed at resolving the dispute.

The strength of Venezuela's position lies not only in that it is right in face of the injustice committed, but also, and inseparably, in its traditional respect for the international commitments it has undertaken and its willingness to implement the Geneva Agreement.

The next step to be taken by the country in dealing with our claim is decisive. We must proceed, through this international treaty, to seek a solution that, without losing sight of all the historical, geographical, political, social, and legal factors present in the matter, aims at obtaining the fundamental objective for Venezuela, which is the achievement of a practical settlement that rectifies the injustice committed with the abusive dispossession of which we were victims in Guayana Essequibo. It is this desire for justice that invariably guides the conduct of the people and the Government of Venezuela, and which clearly expresses our purpose before the international community.

In order for the application of the Geneva Agreement to produce positive results and to ensure a rational and effective management of our claim, the contribution of the maturity and unity of the country is essential. Maturity requires us to adopt, at every opportunity, decisions that are the product of a sense of balance, seriousness, and good judgment on all the elements that must be taken into account, in order to obtain all the potentialities that the Geneva Agreement can offer in terms of national interest.

Unity imposes us to place this matter, which is of equal interest to all Venezuelans, beyond daily controversies and beyond any temptation to obtain circumstantial advantages. The patriotic cooperation of all is required, especially of those to whom the country has entrusted responsibilities in the different branches of Public Power, so that Venezuelan position may be

characterized by political and legal solidity and coherence, as required by the historic objective that the country has set itself with the Geneva Agreement.

The country can be confident that the national management that will be undertaken will ensure, to the satisfaction of all, the generous support, without distinctions, of all the sectors in which Venezuelan people are organized.

27. APPLICATION FOR INSTITUTING PROCEEDINGS OF GUYANA AGAINST VENEZUELA BEFORE THE INTERNATIONAL COURT OF JUSTICE, 29 MARCH 2018.[1363]

To the Registrar of the International Court of Justice.

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

I. Introduction

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

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

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

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

[1363] International Court of Justice, "Application Instituting Proceedings", 29 de marzo de 2018. Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20180329-APP-01-00-EN.pdf.

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

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

7. Negotiations between the United Kingdom and Venezuela led to an Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed at Geneva on 17 February 1966 ("Geneva Agreement"). It provided recourse to a series of dispute settlement mechanisms to finally resolve the controversy caused by Venezuela's reversal of position on the validity of the 1899 Award, and its refusal to continue its acceptance of the boundary demarcated in 1905. Guyana acceded to the Geneva Agreement following its independence on 26 May 1966.

8. For more than 50 years, since the entry into force of the Geneva Agreement, the Parties have had recourse to the means of settlement specified in the Agreement, but have failed to resolve the controversy. Throughout this period, until the present day, Guyana's sovereignty, security and development have been jeopardized by Venezuela's refusal to recognize the long-settled boundary, and its claim to more than two-thirds of Guyana's land territory, which is home to more than one-quarter of its population.

9. Venezuela has never produced any evidence to justify its belated repudiation of the 1899 Award. Its prolonged acceptance of the Award, from 1899 until 1962, recalls the *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua)*, where the Court rejected Nicaragua's similar contention that a 1906 Award on the boundary between Nicaragua and Honduras was "null and void", because*: "Nicaragua by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award. Nicaragua's failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award*

*had become known to it further con*firms *the conclusion at which the Court has arrived."*

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

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

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

12. On 30 January 2018, nearly 52 years after the signing of the Geneva Agreement, Secretary-General António Guterres determined that the good offices process had failed to achieve a peaceful settlement of the controversy. He then took a forma and binding decision, under Article IV, paragraph 2, of the Agreement, to choose a different means of settlement under Article 33 of the Charter. In identical letters to both Parties, he communicated the terms of his decision that, pursuant to the authority vested in him by the Geneva Agreement, the controversy shall be settled by recourse to the International Court of Justice. A public statement issue on his behalf, on the same date, declared that the Secretary-General *"has chosen the International Court of Justice as the means to be used for the solution of the controversy ..."*.

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

II. Jurisdiction of the Court

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

15. The Geneva Agreement is in force between the Parties, Guyana having acceded to it upon its independence in 1966. Venezuela, too, accepts that the Geneva Agreement is an "international treaty signed by Venezuela and Guyana which governs as law the territorial controversy on the Essequibo".

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

> *"they shall refer the decision as to the means of settlement to an Appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful Settlement there contemplated have been exhausted."*

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

18. Following these consultations, the Secretary-General chose a "good offices process" as the initial means of settlement. Between 1990 and 2016, successive personal representatives were appointed by the Secretary-General

for this purpose, including Alister McIntyre of Grenada (1990-1999, appointed by Secretary-General Javier Pérez de Cuéllar), Oliver Jackman of Barbados (1999-2007, appointed by Secretary-General Kofi Annan), and Norman Girvan of Jamaica (2010-2014, appointed by Secretary-General Ban Ki-moon). Despite a quarter Century of effort, however, the good offices process failed to produce any progress in arriving at a settlement of the controversy.

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

> *"If, by the end of 2017, the Secretary-General concludes that significant progress has not been made toward arriving at a full agreement for the solution of the controversy he will choose the International Court of Justice as the next means of settlement..."*

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

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

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

settlement contemplated in Article 33 of the Charter.*"* The letters then inform the Parties of his decision:

> *"Consistently with the framework set [by] my predecessor, I have carefully analysed the developments in the good offices process during the course of 2017. Consequently, I have fulfilled the responsibility that has fallen to me within the framework set by my predecessor and, significant progress not having been made toward arriving at a full agreement for the solution of the controversy, have chosen the International Court of Justice as the next means that is now to be used for its solution."*

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

> *"Guyana has always held the view that the ICJ is the appropriate forum for the peaceful and definitive settlement of the controversy, and is pleased that that view has prevailed under the process developed by both Secretary-General Ban Ki-moon and Secretary-General António Guterres. Guyana will not allow factors extraneous to the controversy to influence its referral to the Court; but it will continue the advancement of peaceful relations with Venezuela whose people are the brothers and sisters of Guyanese. In this context, Guyana acknowledges the Secretary-General's suggestions for the immediate future. That Guyana has stood firm against Venezuela's attempt to reopen a territorial boundary settled and recognized for half a Century before its independence, and done so despite the manifest unequal strengths between the two countries, is to our national credit. Guyana, as one of the world's small developing countries, is pleased that its reliance on the rule of law internationally has been the underpinning of its national sovereignty."*

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

> *"Venezuela ratifies the full validity of the Geneva Agreement of 17 February 1966, signed and ratified between our country and the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana, an international*

treaty that governs as law the territorial controversy between the parties, validly recognized and registered before the UN, the only way to the final solution of this opprobrious heritage of British colonialism."

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

III. Statement of Facts

A. The 1899 Award

26. During the late nineteenth century, conflicting territorial claims by the United Kingdom and Venezuela led to the brink of war. Each State claimed the entire territory between the mouth of the Essequibo River in the east, and the Orinoco River in the west. The United States of America, in the person of President Grover Cleveland, pressed for settlement of the dispute by means of international arbitration. This led to the signature of the Treaty of Washington by the United Kingdom and Venezuela on 2 February 1897. Its Preamble set out its object and purpose:

"to provide an amicable settlement of the question which has arisen between their respective Governments concerning the boundary between the Colony of British Guiana and the United States of Venezuela, having resolved to submit to arbitration the question involved..."

27. Article I provided that: "An Arbitral Tribunal shall be immediately appointed to determine the boundary line between the Colony of British Guiana and the United States of Venezuela."

28. Article II provided that:

"The Tribunal shall consist of five jurists; two on the part of Great Britain, nominated by the members of the Judicial Committee of Her Majesty's Privy Council, namely, the Right Honourable Baron Herschell, Knight Grand Cross of the Most Honourable Order of Bath, and the Honourable Sir Richard Henn Collins, Knight, one of the Justices of Her Britannic Majesty's Supreme Court of the Judicature; two on the part of Venezuela, nominated, one by the President of the United States of Venezuela, namely, the Honourable Melville Weston Fuller, Chief Justice of the United States of America,

and one nominated by the Justices of the Supreme Court of the United States of America, namely, the Honourable David Josiah Brewer, a Justice of the Supreme Court of the United States of America; and of a fifth jurist to be selected by the four persons so nominated, or in the event of their failure to agree within three months from the exchange of ratification of the present Treaty, to be so selected by His Majesty the King of Sweden and Norway. The jurist so selected shall be the President of the Tribunal."

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

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

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

31. Article XIII provided the binding force of the Arbitral Award "The High Contracting Parties engage to consider the result of the proceeds of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators".

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

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

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

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

> *"The International Commission of Arbitration appointed under the Anglo-Venezuelan Treaty of 1897 rendered an award on 3 October last whereby the boundaries line between Venezuela and British Guiana is determined; thus ending a controversy which had existed for the greater part of the Century. The Award, as to which the arbitrators were unanimous, while not meeting the extreme contention of either party, gives to Great Britain a large share of the interior territory in dispute and to Venezuela the entire mouth of the Orinoco, including Barima Point and the Caribbean littoral for some distance to the eastwards. The decision appears to be equally satisfactory to both parties."*

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

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

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

> *"The honourable task is ended and the delimitation between our Republic and the Colony of British Guiana an accomplished fact. I, satisfied with the part which it has been my lot to play, congratulate*

Venezuela in the person of the patriotic Administrator who rules her destinies and who sees with generous pride the long-standing and irritating dispute that has caused his country so much annoyance settled under his regime."

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

"I have the honour to inform you that the question of the modification of the boundary line ... was laid before Congress ... and that Congress, concurring in the opinion of the Federal Executive ... declared the modification proposed to be unacceptable, principally because it amounts to a veritable cession of territory. The ratification of the Federal Executive is thus limited to the work done by the Mixed Delimitation Commissions in accordance with the Paris Award."

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

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

B. Venezuela's Change of Position

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

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

> *"The Award was the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights. The frontier was demarcated arbitrarily, and no account was taken of the specific rules of the arbitral agreement or of the relevant principles of international law. Venezuela cannot recognize an award made in such circumstances ..."*.

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

> *"President Betancourt [of Venezuela] professes to be greatly concerned about an independent British Guiana with Cheddi Jagan as Prime Minister. He suspects that Jagan is already too committed to communism and that his American wife exercises considerable influence over him ... This alarm may be slightly simulated since Betancourt's solution of the border dispute presupposes a hostile Jagan. His plan: through a series of conferences with the British before Guiana is awarded independence a cordon sanitaire would be set up between the present boundary line and one mutually agreed upon by the two countries (Venezuela and Britain). Sovereignty of this slice of British Guiana would pass to Venezuela ..."*

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

43. With a view to resolving this controversy, the United Kingdom and Venezuela agreed at the United Nations Fourth Committee in November 1962 to examine documentary material relevant to the 1899 Award. A joint press

communiqué of 7 November 1963 reported that British and Venezuelan experts would examine each other's archives and submit reports on their findings to their respective Governments as the basis for further discussions. The representative of the United Kingdom in the Fourth Committee emphasized however that this did not imply any recognition of Venezuela's contentions in regard to changing the boundary determined by the 1899 Award: *"In making this offer, I must make it very clear that it is in no sense an offer to engage in substantive talks about revision of the frontier. That we cannot do; for we consider that there is no justification for it."*

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

C. The 1966 Geneva Agreement

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

46. Article I of the Agreement called for the establishment of a Mixed Commission "with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void". 47. Article IV, paragraph 1, of the Agreement provided that:

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

48. The Mixed Commission's four-year mandate expired on 17 February 1970 without an agreement for the solution of the controversy. The Parties then signed a Protocol to the Geneva Agreement reaffirming their commitment

to it but agreeing to a moratorium on dispute settlement efforts, which lasted for 12 years. At the end of that period, the Parties again attempted to reach agreement *"on the means of peaceful settlement provided for in Article 33 of the Charter",* as required by Article IV, paragraph 1, of the Geneva Agreement, but were unable to do so.

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

D. Violations of Guyana's Sovereignty and Territorial Integrity

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

51. On 26 October 1966, Venezuelan military forces seized the eastern half of Ankoko Island in the Cuyuní River, which is on Guyana side of the Boundary established by the 1899 Award and the 1905 Agreement. Venezuela subsequently built military installations and an airstrip on this Guyanese territory, and, Despite Guyana's clear objections and protests, continues to occupy it unlawfully to the resent day.

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

(a) Repeated overflight of Guyanese territory by Venezuelan F-15 fighter jets,
including on 26 October 1999, on the 100th anniversary of the 1899 Award;

(b) The incursion by Venezuelan soldiers and bombing of two Guyanese pontoons on the Cuyuní River in November 2007;

(c) The landing of Venezuelan soldiers at Eteringbang in August 2013;

(d) The landing of Venezuelan officials at Eteringbang in November 2013 to assert a claim of Venezuelan sovereignty;

(e) The incursion and seizure of property by Venezuelan soldiers at Bruk-Up in June 2014;

(f) The incursion of Venezuelan soldiers near Eteringbang in May 2016, and Their firing of weapons at officials of Guyana Geology and Mines Commission.

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

(a) On 15 June 1968, the notice placed by Venezuela in the London Times expressing strong exception to and warning against any "concessions either granted or to be granted by Guyana Government over the territory stretching to the West of the Essequibo [sic] River ...";

(b) In July 1968, the Decree by President Raúl Leoni asserting Venezuela's sovereignty over the land territory west of the Essequibo River, and its concomitant sovereignty over the territorial waters adjacent to the coast of that territory, between the boundary fixed by the 1899 Award in the west, and the mouth of the Essequibo River in the east, a distance of some 250 km beyond the land Boundary terminus at Punta Playa;

(c) In June 1981, the letter by Venezuela to the President of the World Bank objecting to financing for Guyana's Mazuruni hydroelectric project;

(d) In June 1982, the demarche by Venezuela to the European Economic Community to refrain from participation in Guyana's economic development;

(e) In August 1993, the note from Venezuela's Foreign Ministry protesting Guyana's issuance of concessions in the maritime area directly adjacent to the territory between the boundary fixed by the 1899 Award in the west, and the mouth of the Essequibo River in the east;

(f) In July 2000, the intervention by Venezuela with the People's Republic of China to object to the issuance of a forestry concession by Guyana to Jilin Industries, Ltd., a Chinese company;

(g) In August 2013, the seizure by Venezuelan Navy of the *RV Teknik Perdana* research vessel, which had been contracted by Guyana's United States licensee, Anadarko Petroleum Corporation, while the vessel was conducting transitory seismic activities of Guyana's Essequibo coast. The vessel and its crew were arrested and detained in Venezuela, resulting in the cessation of all further exploration activities in Guyana's waters by the licensee;

(h) In April 2014, the objections from Venezuela against a joint hydroelectric Project planned by Guyana and Brazil:

(i) In September 2014, a diplomatic Note from Venezuela warning Guyana to refrain from all economic activity west of the Essequibo River;

(j) In July 2015, the Decree issued by President Nicolás Maduro asserting Venezuela's sovereignty over the entire Guyanese coast between the boundary established by the 1899 Award and the mouth of the Essequibo River, and the assertion of exclusive jurisdiction in all the waters adjacent to that coast out to a distance beyond 200 nautical miles;

(k) In August 2015, the objection by Venezuela to mining concessions issued by Guyana Geology and Mines Commission;

(l) In February 2018, the objection by Venezuela to Guyana's issuance of Petroleum licenses to Exxon in waters adjacent to the mouth of the Essequibo River, and Venezuela's warning that Guyana and its licensee should not take any actions under that license; and

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

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

> *"The President of Venezuela, Nicolás Maduro Moros, guarantees Venezuelan people that they will continue defending the sovereign rights over the Guayana Esequiba and calls for national unity to protect the most sacred interests of the nation. Venezuela's sun rises in the Essequibo."*

IV. Decision Requested

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

(a) The 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is valid and binding upon Guyana and Venezuela;

(b) Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela enjoys full sovereignty over the territory west of that boundary; Guyana and Venezuela are under an obligation to fully respect each other's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;

(c) Venezuela shall immediately withdraw from and cease its occupation of the eastern half of the Island of Ankoko, and each and every other territory which is recognized as Guyana's sovereign territory in accordance with the 1899 Award and 1905 Agreement;

(d) Venezuela shall refrain from threatening or using force against any person and/or company licensed by Guyana to engage in economic or commercial activity in Guyanese territory as determined by the 1899 Award and 1905 Agreement, or in any maritime areas appurtenant to such territory over which Guyana has sovereignty or exercises sovereign rights, and shall not interfere with any Guyanese or Guyanese-authorized activities in those areas;

(e) Venezuela is internationally responsible for violations of Guyana's sovereignty and sovereign rights, and for all injuries suffered by Guyana as a consequence.

V. Reservation of Rights

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

VI. Appointment of Agent and Co-Agents

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

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

(a) Postal address:

Ministry of Foreign Affairs,
Co-operative Republic of Guyana,
Takuba Lodge,

254 South Road,
Georgetown, Guyana
(b) E-mail addresses:
(i) Agent: carlbg@minfor.gov.gy
(ii) Co-Agent Sir Shridath Ramphal: ssramphal@msn.com
(iii) Co-Agent Ambassador Audrey Waddell: awaddell@minfor.gov.gy
Respectfully,
29 March 2018.

(Signed) Hon. Carl B. Greenidge,
Vice-President and Minister of Foreign Affairs,
Co-operative Republic of Guyana,
Agent.

CERTIFICATION

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

(Signed) Hon. Carl B. Greenidge,
Vice-President and Minister of Foreign Affairs,
Co-operative Republic of Guyana,
Agent.

LIST OF ANNEXES

Annex 1. Treaty of Arbitration between Great Britain and the United States of Venezuela, signed at Washington, 2 February 1897.

Annex 2. Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, decision of 3 October 1899.

Annex 3. Agreement between the British and Venezuelan Boundary Commissioners with regard to the Map of the Boundary, 10 January 1905.

Annex 4. Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed at Geneva, 17 February 1966.

Annex 5. Letters from Secretary-General U Thant to Dr. Ignacio Iribarren, Borges Minister from Foreign Affairs of Venezuela and the Rt. Hon. Lord Caradon, Permanent Representative of the United Kingdom to the United Nations, 4 April 1966.

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

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

28. JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE DATED 18 DECEMBER 2020 REGARDING JURISDICTION, IN THE CASE OF THE ARBITRAL AWARD OF 3 OCTOBER 1899 (CO-OPERATIVE REPUBLIC OF GUYANA v. VENEZUELA)[1364]

INTERNATIONAL COURT OF JUSTICE
REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS
ARBITRAL AWARD OF 3 October 1899
(GUYANA *v.* VENEZUELA)
JURISDICTION OF THE COURT
JUDGMENT OF 18 DECEMBER 2020

ARBITRAL AWARD OF 3 October 1899
(GUYANA *v.* VENEZUELA)
JURISDICTION OF THE COURT
JUDGMENT

Present: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian, Salam, Iwasawa;

Judge ad hoc Charlesworth; *Registrar* Gautier.

In the case concerning the Arbitral Award of 3 October 1899,

between

Guyana,

represented by

Hon. Carl B. Greenidge,

as Agent;

Sir Shridath Ramphal, OE, OCC, SC,

H.E. Ms Audrey Waddell, Ambassador, CCH,

as Co-Agents;

Mr. Paul S. Reichler, Attorney at Law, Foley Hoag LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr. Alain Pellet, Emeritus Professor at the University Paris Nanterre, former Chairman of the International Law Commission, member of the Institut de droit international,

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[1364] International Court of Justice, "Judgment of 18 December 2020: Jurisdiction of the Court", 18 de diciembre de 2020. Disponible en https://www.icj-cij.org/sites/default/files/case-related/171/171_20201218_JUD_01-00-EN.pdf.

Mr. Philippe Sands, QC, Professor of International Law, University College London (UCL) and Barrister, Matrix Chambers, London,

Mr. Payam Akhavan, LLM, SJD (Harvard University), Professor of International Law, McGill University, member of the Bar of the State of New York and the Law Society of Ontario, member of the Permanent Court of Arbitration,

as Counsel and Advocates;

Mr. Pierre d'Argent, *professeur ordinaire*, Catholic University of Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Ms Christina L. Beharry, Attorney at Law, Foley Hoag LLP, member of the Bars of the State of New York and the District of Columbia, member of the Law Society of Ontario,

Mr. Edward Craven, Barrister, Matrix Chambers, London, Mr. Ludovic Legrand, Researcher, Centre de droit international de Nanterre (CEDIN) and Adviser in international law,

Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bars of England and Wales and the State of New York, Twenty Essex Chambers, London,

as Counsel;

H.E. Mr. Rashleigh E. Jackson, OR, former Minister for Foreign Affairs,

Ms Gail Teixeira, Representative, People's Progressive Party/Civic,

H.E. Mr. Cedric Joseph, Ambassador, CCH,

H.E. Ms Elisabeth Harper, Ambassador, AA,

Ms Oneka Archer-Caulder, LLB, LEC, LLM, Legal Officer, Ministry of Foreign Affairs,

Ms Donnette Streete, LLB, LLM, Senior Foreign Service Officer, Ministry of Foreign Affairs,

Ms Dianna Khan, LLM, MA, Legal Officer, Ministry of Foreign Affairs,

Mr. Joshua Benn, LLB, LEC, Nippon Fellow, Legal Officer, Ministry of Foreign Affairs,

as Advisers;

Mr. Raymond McLeod, DOAR Inc.,

as Technical Adviser;

Mr. Oscar Norsworthy, Foley Hoag LLP,

as Assistant,

and

Venezuela,

The Court, composed as above, after deliberation,

delivers the following Judgment:

1. On 29 March 2018, the Government of Guyana (hereinafter "Guyana") filed in the Registry of the Court an Application instituting proceedings against Venezuela (hereinafter "Venezuela") with regard to a dispute concerning "the legal validity and binding effect of the Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899". In its Application, Guyana seeks to found the jurisdiction of the Court, under Article 36, paragraph 1, of the Statute of the Court, on Article IV, paragraph 2, of the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana" signed at Geneva on 17 February 1966 (hereinafter the "Geneva Agreement"). It explains that, pursuant to this latter provision, Guyana and Venezuela "mutually conferred upon the Secretary-General of the United Nations the authority to choose the means of settlement of the controversy and, on 30 January 2018, the Secretary-General exercised his authority by choosing judicial settlement by the Court".

2. In accordance with Article 40, paragraph 2, of the Statute, the Registrar immediately communicated the Application to the Government of Venezuela. He also notified the Secretary-General of the United Nations of the filing of the Application by Guyana.

3. In addition, by letter dated 3 July 2018, the Registrar informed all Member States of the United Nations of the filing of the Application.

4. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text of that document.

5. On 18 June 2018, at a meeting held, pursuant to Article 31 of the Rules of Court, by the President of the Court to ascertain the views of the Parties with regard to questions of procedure, the Vice-President of Venezuela, H.E. Ms Delcy Rodríguez Gómez, stated that her Government considered that the Court manifestly lacked jurisdiction to hear the case and that Venezuela had decided not to participate in the proceedings. She also handed to the President of the Court a letter dated 18 June 2018 from the President of Venezuela, H.E. Mr. Nicolás Maduro Moros, in which he stated, *inter alia*, that his country had "never accepted the jurisdiction of [the] Court ... due to its historical tradition and fundamental institutions [and still less] would it accept the unilateral presentation of the request made by Guyana nor the form and content of the claims expressed therein". He further noted in the letter that not only had

Venezuela not accepted the Court's jurisdiction "in relation with the controversy referred to in the so-called 'application' presented by Guyana", it also had not "accept[ed] the unilateral presentation of the mentioned dispute", adding that "there exists no basis that could establish ... the Court's Jurisdiction to consider Guyana's claims". The President of Venezuela continued as follows:

> *"In the absence of any disposition in Article IV, paragraph 2, of the Geneva Agreement of 1966 (or in Article 33 of the UN Charter, to which the said disposition makes reference) on (i) the Court's jurisdiction and (ii) the modalities for resorting to the Court, the establishment of the Jurisdiction of the Court requires, according to a well-established practice, both the express consent granted by both Parties to the controversy in order to subject themselves to the jurisdiction of the Court, as well as joint agreement of the Parties notifying the submission of the said dispute to the Court. The only object, purpose, and legal effect of the decision of 30 January 2018 of the United Nations Secretary-General, in accordance with paragraph 2, Article IV of the Geneva Agreement, is to 'choose' a specific means for the friendly resolution of the controversy.*
>
> *On the other hand, the Court's jurisdiction in virtue of Article 36 of the Statute and the modalities to resort to it in accordance with Article 40 of the Statute, are not regulated by the Geneva Agreement. In the absence of an agreement of the Parties expressing their consent to the jurisdiction of the Court under Article 36, and in the absence of an agreement by the Parties accepting that the dispute can be raised unilaterally, and not jointly, before the Court, as established by Article 40, there is no basis for the jurisdiction of the Court with regard to the so-called 'Guyana application'. Under these circumstances, and taking into account the aforementioned considerations, Venezuela will not participate in the proceedings that Guyana intends to initiate through a unilateral action."*

During the same meeting, Guyana expressed its wish for the Court to continue its consideration of the case.

6. By an Order of 19 June 2018, the Court held, pursuant to Article 79, paragraph 2, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, that in the circumstances of the case, it was necessary first of all to resolve the question of its jurisdiction, and that this question should accordingly be separately determined before any proceedings on the merits. To that end, the Court decided that the written pleadings should first address the question of jurisdiction, and fixed 19 November 2018 and 18 April 2019

as the respective time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela. Guyana filed its Memorial within the time-limit prescribed.

7. The Court did not include upon the Bench a judge of the nationality of either of the Parties. Guyana proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Ms Hilary Charlesworth. Following its decision not to participate in the proceedings (see paragraph 5 above), Venezuela, for its part, did not, at this stage, exercise its right to choose a judge *ad hoc* to sit in the case.

8. By a letter of 12 April 2019, the Minister of People's Power for Foreign Affairs of Venezuela, H.E. Mr. Jorge Alberto Arreaza Montserrat, confirmed the decision of his Government "not to participate in the written procedure". He recalled that, in a letter dated 18 June 2018 (see paragraph 5 above), the President of Venezuela, H.E. Mr. Nicolás Maduro Moros, had expressly informed the Court that Venezuela "would not participate in the proceedings initiated by ... Guyana's suit, due to the manifest lack of a jurisdictional basis of the Court on [this] claim". He added, however, that "out of respect for the Court", Venezuela would provide the Court, "in a later timely moment, with information in order to assist [it] in the fulfilment of its [duty] as indicated in Article 53.2 of its Statute".

9. By a letter of 24 April 2019, Guyana indicated that it was of the opinion that, in the absence of a Counter-Memorial by Venezuela, the written phase of the proceedings should "be considered closed" and oral proceedings "should be scheduled as soon as possible".

10. By letters of 23 September 2019, the Parties were informed that the hearings on the question of the Court's jurisdiction would take place from 23 to 27 March of 2020.

11. By a letter of 15 October 2019, the Registrar, referring to Venezuela's letter of 12 April 2019, informed the latter that, should it still intend to provide information to assist the Court, it should do so by 28 November 2019 at the latest.

12. On 28 November 2019, Venezuela submitted to the Court a document entitled *"Memorandum of Venezuela on the Application filed before the International Court of Justice by Guyana on 29 March 2018"* (hereinafter the "Memorandum"). This document was immediately communicated to Guyana by the Registry of the Court.

13. By a letter of 10 February 2020, H.E. Mr. Jorge Alberto Arreaza Monserrat, Minister of People's Power for Foreign Affairs of Venezuela,

indicated that his Government did not intend to attend the hearings scheduled for March 2020.

14. By letters of 16 March 2020, the Parties were informed that, owing to the COVID-19 pandemic, the Court had decided to postpone the oral proceedings to a later date. On 19 May 2020, the Parties were further informed that the oral proceedings would take place by video link on 30 June 2020.

15. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the Memorial of Guyana and documents annexed thereto would be made accessible to the public on the opening of the oral proceedings. It also decided, in light of the absence of objection by the Parties, that the Memorandum submitted on 28 November 2019 by Venezuela would be made public at the same time.

16. A public hearing on the question of the jurisdiction of the Court was held by video link on 30 June 2020, at which the Court heard the oral arguments of: *For Guyana:* Sir Shridath Ramphal, Mr. Payam Akhavan, Mr. Paul Reichler, Mr. Philippe Sands, Mr. Alain Pellet.

17. At the hearing, a question was put to Guyana by a Member of the Court, to which a reply was given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Venezuela was invited to submit any comments that it might wish to make on Guyana's reply, but no such submission was made.

18. By a letter of 24 July 2020, Venezuela transmitted written comments on the arguments presented by Guyana at the hearing of 30 June 2020, indicating that the comments were submitted "[i]n the framework of the assistance that Venezuela has offered to provide to the Court in the performance of its duty set forth in Article 53.2 of its Statute*"*. By a letter of 3 August 2020, Guyana provided its views on this communication from Venezuela.

19. In the Application, the following claims were presented by Guyana:

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

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

20. In the written proceedings, the following submissions were presented on behalf of the Government of Guyana in its Memorial on the question of the jurisdiction of the Court:

"For these reasons, Guyana respectfully requests the Court: 1. to find that it has jurisdiction to hear the claims presented by Guyana, and that these claims are admissible; and 2. to proceed to the merits of the case."

21. At the oral proceedings, the following submissions were presented on behalf of the Government of Guyana at the hearing of 30 June 2020: "On the basis of its Application of 29 March 2018, its Memorial of 19 November 2018, and its oral pleadings, Guyana respectfully requests the Court: 1. To find that it has jurisdiction to hear the claims presented by Guyana, and that these claims are admissible; and 2. To proceed to the merits of the case*."*

22. Since the Government of Venezuela filed no pleadings and did not appear at the oral proceedings, no formal submissions were presented by that Government. However, it is clear from the correspondence and the Memorandum received from Venezuela that it contends that the Court lacks jurisdiction to entertain the case.

* * *

I. Introduction

23. The present case concerns a dispute between Guyana and Venezuela that has arisen as a result of the latter's contention that the Arbitral Award of 3 October 1899 regarding the boundary between the two Parties (hereinafter the "1899 Award*"* or the "Award*"*) is null and void.

24. The Court wishes first of all to express its regret at the decision taken by Venezuela not to participate in the proceedings before it, as set out in the above-mentioned letters of 18 June 2018, 12 April 2019 and 10 February 2020

(see paragraphs 5, 8 and 13 above). In this regard, it recalls that, under Article 53 of its Statute, "[w]whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim" and that "[t]he Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law".

25. The non-appearance of a party obviously has a negative impact on the sound administration of justice (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 23, para. 27, referring, inter alia, to Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 257, para. 15; Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973, p. 54, para. 13). In particular, the non-appearing party forfeits the opportunity to submit evidence and arguments in support of its own case and to counter the allegations of its opponent. For this reason, the Court does not have the assistance it might have derived from this information, yet it must nevertheless proceed and make any necessary findings in the case.

26. The Court emphasizes that the non-participation of a party in the proceedings at any stage of the case cannot, in any circumstances, affect the validity of its judgment (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 23, para. 27). A judgment on jurisdiction, as on the merits, is final and binding on the parties under Articles 59 and 60 of the Statute (*ibid.*, p. 24, para. 27; *Corfu Channel (the United Kingdom* v. *Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 248). Should the examination of the present case extend beyond the current phase, Venezuela, which remains a Party to the proceedings, will be able, if it so wishes, to appear before the Court to present its arguments (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 142-143, para. 284).

27. The intention of Article 53 of the Statute is that in a case of non-appearance neither party should be placed at a disadvantage (*ibid.*, p. 26, para. 31). While there is no question of a judgment automatically in favour of the party appearing (*ibid.*, p. 24, para. 28), the party which declines to appear cannot be permitted to profit from its absence (*ibid.*, p. 26, para. 31).

28. Though formally absent from the proceedings, non-appearing parties sometimes submit to the Court letters and documents in ways and by means not contemplated by its Rules (*ibid.*, p. 25, para. 31). In this instance, Venezuela

sent a Memorandum to the Court (see paragraph 12 above). It is valuable for the Court to know the views of both parties in whatever form those views may have been expressed (*ibid.*, p. 25, para. 31). The Court will therefore take account of Venezuela's Memorandum to the extent that it finds it appropriate in discharging its duty, under Article 53 of the Statute, to satisfy itself as to its jurisdiction to entertain the Application (*Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 7, para. 14).

II. Historical and Factual Background

29. Located in the north-east of South America, Guyana is bordered by Venezuela to the west. At the time the present dispute arose, Guyana was still a British colony, known as British Guiana. It gained independence from the United Kingdom on 26 May 1966. The dispute between Guyana and Venezuela dates back to a series of events that took place during the second half of the nineteenth century.

30. The Court will begin by relating in chronological order the relevant events pertaining to the dispute between the two States.

A. The Treaty of Washington and the 1899 Award

31. In the nineteenth century, the United Kingdom and Venezuela both claimed the territory comprising the area between the mouth of the Essequibo River in the east and the Orinoco River in the west.

32. In the 1890s, the United States of America encouraged both parties to submit their territorial claims to binding arbitration. The exchanges between the United Kingdom and Venezuela eventually led to the signing in Washington of a treaty of arbitration entitled the *"Treaty between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary between the Colony of British Guiana and the United States of Venezuela"* (hereinafter the "Treaty of Washington*"*) on 2 February 1897.

33. According to its preamble, the purpose of the Treaty of Washington was to "provide an amicable settlement of the question ... concerning the boundary*"*. Article I provided as follows: "An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela*."* Other provisions set out the arrangements for the arbitration, including the constitution of the tribunal, the place of arbitration and the applicable rules. Finally, according to Article XIII of the Treaty of Washington, "[t]he High Contracting Parties engage[d] to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators*"*.

34. The arbitral tribunal established under this Treaty rendered its Award on 3 October 1899. The 1899 Award granted the entire mouth of the Orinoco River and the land on either side to Venezuela; it granted to the United Kingdom the land to the east extending to the Essequibo River. The following year, a joint Anglo-Venezuelan commission was charged with demarcating the boundary established by the 1899 Award. The commission carried out that task between November 1900 and June 1904. On 10 January 1905, after the boundary had been demarcated, the British and Venezuelan commissioners produced an official boundary map and signed an agreement accepting, *inter alia*, that the co-ordinates of the points listed were correct.

B. Venezuela's Repudiation of the 1899 Award and the Search for a Settlement of the Dispute

35. On 14 February 1962, Venezuela, through its Permanent Representative, informed the Secretary-General of the United Nations that it considered there to be a dispute between itself and the United Kingdom "concerning the demarcation of the frontier between Venezuela and British Guiana". In its letter to the Secretary-General, Venezuela stated as follows: "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." In a statement before the Fourth Committee of the United Nations General Assembly delivered shortly thereafter, on 22 February 1962, Venezuela reiterated its position.

36. The Government of the United Kingdom, for its part, asserted on 13 November 1962, in a statement before the Fourth Committee, that "the Western boundary of British Guiana with Venezuela [had been] finally settled by the award which the arbitral tribunal announced on 3 October 1899", and that it could not "agree that there [could] be any dispute over the question settled by the award". The United Kingdom also stated that it was prepared to discuss with Venezuela, through diplomatic channels, arrangements for a tripartite examination of the documentary material relevant to the 1899 Award.

37. On 16 November 1962, with the authorization of the representatives of the United Kingdom and Venezuela, the Chairman of the Fourth Committee declared that the Governments of the two States (the Government of the United Kingdom acting with the full concurrence of the Government of British Guiana) would examine the "documentary material" relating to the 1899 Award (hereinafter the "Tripartite Examination"). Experts appointed by

the two Governments thus examined the archives of the United Kingdom in London and Venezuelan archives in Caracas, searching for evidence relating to Venezuela's contention of nullity of the 1899 Award.

38. The Tripartite Examination took place from 1963 to 1965. It was completed on 3 August 1965 with the exchange of the experts' reports. While Venezuela's experts continued to consider the Award to be null and void, the experts of the United Kingdom were of the view that there was no evidence to support that position.

39. On 9 and 10 December 1965, the Ministers for Foreign Affairs of the United Kingdom and Venezuela and the new Prime Minister of British Guiana met in London to discuss a settlement of the dispute. However, at the close of the meeting, each party maintained its position on the matter. While the representative of Venezuela asserted that any proposal "which did not recognise that Venezuela extended to the River Essequibo would be unacceptable", the representative of British Guiana rejected any proposal that would "concern itself with the substantive issues".

C. The Signing of the 1966 Geneva Agreement

40. Following the failure of the talks in London, the three delegations agreed to meet again in Geneva in February 1966. After two days of negotiations, they signed, on 17 February 1966, the Geneva Agreement, the English and Spanish texts of which are authoritative. In accordance with its Article VII, the Geneva Agreement entered into force on the same day that it was signed.

41. The Geneva Agreement was approved by Venezuelan National Congress on 13 April 1966. It was published as a White Paper in the United Kingdom, i.e. as a policy position paper presented by the Government, and approved by the House of Assembly of British Guiana. It was officially transmitted to the Secretary-General of the United Nations on 2 May 1966 and registered with the United Nations Secretariat on 5 May 1966 (United Nations, *Treaty Series*, Vol. 561, No. 8192, p. 322).

42. On 26 May 1966, Guyana, having attained independence, became a party to the Geneva Agreement, alongside the Governments of the United Kingdom and Venezuela, in accordance with the provisions of Article VIII thereof.

43. The Geneva Agreement provides, first, for the establishment of a Mixed Commission to seek a settlement of the controversy between the parties (Arts. I and II). Article I reads as follows: "A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the

controversy between Venezuela and the United Kingdom which has arisen as the result of Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void.*"* In addition, Article IV, paragraph 1, states that, should this Commission fail in its task, the Governments of Guyana and Venezuela shall choose one of the means of peaceful settlement provided for in Article 33 of the United Nations Charter. In accordance with Article IV, paragraph 2, should those Governments fail to reach agreement, the decision as to the means of settlement shall be made by an appropriate international organ upon which they both agree, or, failing that, by the Secretary-General of the United Nations.

44. On 4 April 1966, by letters to the Ministers for Foreign Affairs of the United Kingdom and Venezuela, the Secretary-General of the United Nations, U Thant, acknowledged receipt of the Geneva Agreement and stated as follows: 17 "I have taken note of the responsibilities which may fall to be dis charged by the Secretary-General of the United Nations under Article IV (2) of the Agreement, and wish to inform you that I consider those responsibilities to be of a nature which may appropriately be discharged by the Secretary-General of the United Nations.*"*

D. The Implementation of the Geneva Agreement 1. The Mixed Commission (1966-1970)

45. The Mixed Commission was established in 1966, pursuant to Articles I and II of the Geneva Agreement. During the Commission's mandate, representatives from Guyana and Venezuela met on several occasions.

46. A difference of interpretation regarding the Commission's mandate came to light from the time its work began. In Guyana's view, the task of the Mixed Commission was to find a practical solution to the legal question raised by Venezuela's contention of the nullity of the Award. According to Venezuela, however, the Commission was tasked with seeking practical solutions to the territorial controversy.

47. The discussions within the Mixed Commission took place against a backdrop of hostile actions which aggravated the controversy. Indeed, since the signature of the Geneva Agreement, both Parties have alleged multiple violations of their territorial sovereignty in the Essequibo region. The Mixed Commission reached the end of its mandate in 1970 without having arrived at a solution.

2.The 1970 Protocol of Port of Spain and the moratorium put in place

48. Since no solution was identified through the Mixed Commission, it fell to Venezuela and Guyana, under Article IV of the Geneva Agreement, to

choose one of the means of peaceful settlement provided for in Article 33 of the United Nations Charter. However, in view of the dis agreements between the Parties, a moratorium on the dispute settlement process was adopted in a protocol to the Geneva Agreement (hereinafter the "Protocol of Port of Spain*"* or the "Protocol*"*), signed on 18 June 1970, the same day that the Mixed Commission delivered its final report. Article III of the Protocol provided the operation of Article IV of the Geneva Agreement to be suspended so long as the Protocol remained in force. The Protocol was, pursuant to its Article V, to remain in force for an initial period of 12 years, which could be renewed thereafter. According to Article I of the Protocol, both States agreed to promote mutual trust and to improve understanding between themselves.

49. In December 1981, Venezuela announced its intention to terminate the Protocol of Port of Spain. Consequently, the application of Article IV of the Geneva Agreement was resumed from 18 June 1982 in accordance with Article V, paragraph 3, of the Protocol.

50. Pursuant to Article IV, paragraph 1, of the Geneva Agreement, the Parties attempted to reach an agreement on the choice of one of the means of peaceful settlement provided for in Article 33 of the Charter. However, they failed to do so within the three-month time-limit set out in Article IV, paragraph 2. They also failed to agree on the choice of an appropriate international organ to decide on the means of settlement, as provided for in Article IV, paragraph 2, of the Geneva Agreement.

51. The Parties therefore proceeded to the next step, referring the decision on the means of settlement to the Secretary-General of the United Nations. In a letter dated 15 October 1982 to his Guyanese counterpart, the Minister for Foreign Affairs of Venezuela stated as follows:

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

Later, in a letter dated 28 March 1983 to his Venezuelan counterpart, the Minister for Foreign Affairs of Guyana stated that, "proceeding regretfully

on the basis that [Venezuela] is unwilling to seriously endeavour to reach agreement on any appropriate international organ whatsoever to choose the means of settlement, [Guyana] hereby agrees to proceed to the next stage and, accordingly, to refer the decision as to the means of settlement to [the] Secretary-General of the United Nations".

52. After the matter was referred to him by the Parties, the Secretary-General, Mr. Javier Pérez de Cuéllar, agreed by a letter of 31 March 1983 to undertake the responsibility conferred upon him under Article IV, paragraph 2, of the Geneva Agreement. Five months later, he sent the Under-Secretary-General for Special Political Affairs, Mr. Diego Cordovez, to Caracas and Georgetown in order to ascertain the positions of the Parties on the choice of the means of settlement of the controversy.

53. Between 1984 and 1989, the Parties held regular meetings and discussions at the diplomatic and ministerial levels. In view of the information provided by Mr. Cordovez, in early 1990 the Secretary-General chose the good offices process as the appropriate means of settlement.

3. From the good offices process (1990-2014 and 2017) to the seisin of the Court

54. Between 1990 and 2014, the good offices process was led by three Personal Representatives appointed by successive Secretaries-General: Mr. Alister McIntyre (1990-1999), Mr. Oliver Jackman (1999-2007) and Mr. Norman Girvan (2010-2014). The Parties, for their part, appointed facilitators to assist the different Personal Representatives in their work and to serve as a focal point with them. Regular meetings were held during this period between the representatives of both States and the Secretary-General, particularly in the margins of the annual session of the General Assembly.

55. In a letter to her Venezuelan counterpart dated 2 December 2014, the Minister for Foreign Affairs of Guyana observed that, after 25 years, the good offices process had not brought the Parties any closer to a resolution of the controversy. She stated that her Government was "reviewing the other options under Article 33 of the United Nations Charter, as provided by the 1966 Geneva Agreement, that could serve to bring to an end the controversy". In response to that statement, on 29 December 2014, Venezuela invited the Government of Guyana to "agree, as soon as possible, [to] the designation of the Good Officer". On 8 June 2015, the Vice-President of Guyana asked the Secretary-General, 19 "within the context of [his] responsibility ... and more specifically, [his] mandate under the Geneva Agreement of 1966, to determine a means of ... settlement which[,] in [his] judgement, w[ould] bring

a definitive and conclusive end ... to the controversy". In a letter dated 9 July 2015, the President of Venezuela asked the Secretary-General "to commence the process of appointing a Good Officer".

56. In September 2015, during the 70th Session of the United Nations General Assembly, the Secretary-General, Mr. Ban Ki-moon, held a meeting with the Heads of State of Guyana and Venezuela. Thereafter, on 12 November 2015, the Secretary-General issued a document entitled *"The Way Forward",* in which he informed the Parties that "[i]f a practical solution to the controversy [were] not found before the end of his tenure, [he] intend[ed] to initiate the process to obtain a final and binding decision from the International Court of Justice".

57. In his statement of 16 December 2016, the Secretary-General said that he had decided to continue the good offices process for a further year, with a new Personal Representative with a strengthened mandate of mediation. He also announced that 20 "[i]f, by the end of 2017, the Secretary-General concludes that significant progress has not been made toward arriving at a full agreement for the solution of the controversy, he will choose the International Court of Justice as the next means of settlement, unless both parties jointly request that he refrain from doing so".

58. The President of Venezuela, H.E. Mr. Nicolás Maduro Moros, replied to the Secretary-General in a letter of 17 December 2016, in which he underlined Venezuela's objection to "the intention ... to recommend to the Parties that they resort to the Court", while at the same time stating its commitment to reaching a negotiated solution within the strict framework of the Geneva Agreement. In a letter dated 21 December 2016, the President of Guyana, H.E. Mr. David A. Granger, for his part, assured the President of Venezuela of his country's commitment "to fulfilling the highest expectations of the 'Good Office' process in the coming twelve-month period in accordance with the decision of the Secretary-General, to conclude a full settlement of the controversy and, should it become necessary, to thereafter resolve it by recourse to the International Court of Justice". He reaffirmed this position in a letter to the Secretary-General on 22 December 2016.

59. After taking office on 1 January 2017, the new Secretary-General, Mr. António Guterres, continued the good offices process for a final year, in conformity with his predecessor's decision. In this context, on 23 February 2017, he appointed Mr. Dag Nylander as his Personal Representative and gave him a strengthened mandate of mediation. Mr. Dag Nylander held several meetings and had a number of exchanges with the Parties. In letters dated 30

January 2018 to both Parties, the Secretary-General stated that he had "carefully analysed the developments in the good offices process during the course of 2017*"* and announced: "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.*"*

60. On 29 March 2018, Guyana filed its Application in the Registry of the Court (see paragraph 1 above). 21 III. Interpretation of the Geneva Agreement

61. As described in paragraph 43 above, the Geneva Agreement establishes a three-stage process for settling the controversy between the Parties. The first step, set out in Article I, consists in establishing a Mixed Commission "with the task of seeking satisfactory solutions for the practical settlement of the controversy*"* arising from Venezuela's contention that the 1899 Award is null and void. Should the Mixed Commission fail to secure a full agreement on the resolution of the controversy within four years of the conclusion of the Geneva Agreement, Article IV provides for two additional steps in the dispute settlement process. That provision reads as follows:

> *"(1) If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions. Those Governments shall without delay choose one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations.*
>
> *(2) If, within three months of receiving the final report, the Government of Guyana and the Government of Venezuela should not have reached agreement regarding the choice of one of the means of settlement provided for in Article 33 of the Charter of the United Nations, they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted."*

62. According to Article 33 of the United Nations Charter:

"1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

63. As already noted (see paragraph 50 above), the Parties failed to reach agreement on the choice of one of the means of peaceful settlement set out in Article 33 of the Charter, as provided by Article IV, paragraph 1, of the Geneva Agreement. They then proceeded to the next step and referred this decision to the Secretary-General of the United Nations (see paragraph 51 above), pursuant to Article IV, paragraph 2, of the Agreement. The Court will interpret this provision in order to determine whether, in entrusting the decision as to the choice of one of the means of settlement provided for in Article 33 of the Charter to the Secretary-General, the Parties consented to settle their controversy by, *inter alia*, judicial means. If it finds that they did, the Court will have to determine whether this consent is subject to any conditions. As part of the interpretation of Article IV, paragraph 2, of the Geneva Agreement, the Court will first examine the use of the term "controversy*"* in this provision.

A. The "Controversy" under the Geneva Agreement

64. For the purpose of identifying the "controversy*"* for the resolution of which the Geneva Agreement was concluded, the Court will examine the use of this term in this instrument. The Court observes that the Geneva Agreement uses the term "controversy*"* as a synonym for the word "dispute*"*. According to the established case law of the Court, a dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons*"* (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In this regard, the Court notes that Article IV of the Treaty of Washington used the term "controversy*"* when referring to the original dispute that was submitted to the arbitral tribunal established under the Treaty to determine the boundary line between the colony of British Guiana and the United States of Venezuela. The Court further notes that, in the conclusion and implementation of the Geneva Agreement, the parties have expressed divergent views as to the validity of the 1899 Award rendered by the tribunal and the implications of this question for their frontier. Thus, Article I of the Geneva Agreement defines the mandate of the Mixed Commission as seeking satisfactory solutions for the practical settlement of "the controversy

between Venezuela and the United Kingdom which has arisen as the result of Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void". That contention by Venezuela was consistently opposed by the United Kingdom in the period from 1962 until the adoption of the Geneva Agreement on 17 February 1966, and subsequently by Guyana after it became a party to the Geneva Agreement upon its independence, in accordance with Article VIII thereof.

65. It follows, in the view of the Court, that the object of the Geneva Agreement was to seek a solution to the frontier dispute between the par ties that originated from their opposing views as to the validity of the 1899 Award. This is also indicated in the title of the Geneva Agreement, which is the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana", and from the wording of the last paragraph of its preamble. The same idea is implicit in Article V, paragraph 1, of the Geneva Agreement which provides that "nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty, or as prejudicing their position as regards their recognition or non-recognition of a right of, claim or basis of claim by any of them to such territorial sovereignty". By referring to the preservation of their respective rights and claims to such territorial sovereignty, the parties appear to have placed particular emphasis on the fact that the "controversy" referred to in the Geneva Agreement primarily relates to the dispute that has arisen as a result of Venezuela's contention that the 1899 Award is null and void and its implications for the boundary line between Guyana and Venezuela.

66. Consequently, the Court is of the opinion 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.

B. Whether the Parties Gave Their Consent to the Judicial Settlement of the Controversy under Article IV, Paragraph 2, of the Geneva Agreement

67. The Court notes that, unlike other provisions in treaties which refer directly to judicial settlement by the Court, Article IV, paragraph 2, of the Geneva Agreement refers to a decision by a third party with regard to the choice of the means of settlement. The Court must first ascertain whether the Parties conferred on that third party, in this instance the Secretary-General, the authority to choose, by a decision which is binding on them, the means of

settlement of their controversy. To this end, it will interpret the first sentence of Article IV, paragraph 2, of the Geneva Agreement, which provides that "[the parties] shall refer the decision ... to the Secretary-General". If it finds that this was their intention, the Court will then determine whether the Parties consented to the choice by the Secretary-General of judicial settlement. It will do so by interpreting the last sentence of this provision, which provides that the Secretary-General "shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted".

1. Whether the decision of the Secretary-General has a binding character

68. Guyana considers that the decision of the Secretary-General cannot be regarded as a mere recommendation. It argues that it is clear from the use of the term "shall" in the English text of Article IV, paragraph 2, of the Geneva Agreement ("shall refer the decision") that there is an ensuing obligation. It adds that the use of the term "decision" in English shows that the Secretary-General's authority to choose the means of settlement was intended to produce a legally binding effect.

69. In its Memorandum, Venezuela contends that the Secretary-General's decision can only be taken as a recommendation. It relies on the preamble to the Geneva Agreement to argue that Guyana's proposed interpretation is inconsistent with the object and purpose of this instrument because "[i]t is not just a question of settling the dispute, but of doing it by means of a practical, acceptable and satisfactory settlement agreed by the Parties". Venezuela further argues that a choice on the means of settlement to be used by the Parties is not in itself sufficient to "materialize the recourse to a specific means of settlement".

* *

70. To interpret the Geneva Agreement, the Court will apply the rules on treaty interpretation to be found in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention") (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 237, para. 47). Although that convention is not in force between the Parties and is not, in any event, applicable to instruments concluded before it entered into force, such as the Geneva Agreement, it is well established that these articles reflect rules of customary international law (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from*

the Nicaraguan Coast (Nicaragua v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 116, para. 33).

71. In accordance with the rule of interpretation enshrined in Article 31, paragraph 1, of the Vienna Convention, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. These elements of interpretation are to be considered as a whole (*Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 29, para. 64).

72. The first sentence of Article IV, paragraph 2, of the Geneva Agreement provides that the Parties "shall refer the decision ... to the Secretary-General*"*. The Court previously observed in its Judgment on the preliminary objections in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)* that the use of the word "shall*"* in the provisions of a convention should be interpreted as imposing an obligation on State-Parties to that convention (*I.C.J. Reports 2018 (I)*, p. 321, para. 92). The same applies to the paragraph of the Geneva Agreement cited above. The verb "refer*"* in the provision at hand conveys the idea of entrusting a matter to a third party. As regards the word "decision*"*, it is not synonymous with "recommendation*"* and suggests the binding "b of the action taken by the Secretary-General as to his choice of the means of settlement. These terms, taken together, indicate that the Parties made a legal commitment to comply with the decision of the third party on whom they conferred such authority, in this instance the Secretary-General of the United Nations.

73. As the Court has noted in a number of cases, the purpose of a treaty may be indicated in its title and preamble (see, for example, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 118, para. 39; *Certain Norwegian Loans (France* v. *Norway), Judgment, I.C.J. Reports 1957*, p. 24). In the present case, the Agreement is entitled *"Agreement to Resolve the Controversy ... over the Frontier between Venezuela and British Guiana"* and its preamble states that it was concluded *"to resolve"* that controversy. The Agreement also refers, in Article I, to the task of "seeking satisfactory solutions for the practical settlement of the controversy*"*. This indicates that the object and purpose of the Geneva Agreement is to ensure a definitive resolution of the controversy between the Parties. 74. In view of the foregoing, the Court considers that the Parties conferred on 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.

75. This conclusion is also supported by the position of Venezuela set out in its Exposition of Motives for the Draft Law Ratifying the Protocol of Port of Spain of 22 June 1970, in which it is stated that 25 "the possibility existed that ... an issue of such vital importance ... as the determination of the means of dispute settlement, would have left the hands of the two directly interested Parties, to be decided by an international institution chosen by them, or failing that, by the Secretary-General of the United Nations".

76. In these proceedings, the Court need not, in principle, resort to the supplementary means of interpretation mentioned in Article 32 of the Vienna Convention. However, as in other cases, it may have recourse to these supplementary means, such as the circumstances in which the Geneva Agreement was concluded, in order to seek a possible confirmation of its interpretation of the text of the Geneva Agreement (see, for example, *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 30, para. 66; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 21, para. 40; *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 27, para. 55).

77. In this regard, the Court observes that, in his statement of 17 March 1966 before the National Congress on the occasion of the ratification of the Geneva Agreement, Venezuelan Minister for Foreign Affairs, Mr. Ignacio Iribarren Borges, in describing the discussions that had taken place at the Geneva Conference, asserted that "[t]he only role entrusted to the Secretary-General of the United Nations [was] to indicate to the parties the means of peaceful settlement of disputes ... provided for in Article 33". He went on to state that, having rejected the British proposal to entrust that role to the General Assembly of the United Nations, " Venezuela [had] then suggested giving this role to the Secretary-General".

78. For the Court, the circumstances in which the Geneva Agreement was concluded support the conclusion that the Parties conferred on the Secretary-General the authority to choose, by a decision which is binding on them, the means of settlement of their controversy.

2. Whether the Parties consented to the choice by the Secretary-General of judicial settlement

79. The Court now turns to the interpretation of the last sentence of Article IV, paragraph 2, of the Geneva Agreement, which provides that the

Secretary-General "shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there con templated have been exhausted".

* *

80. According to Guyana, "[t]he unqualified *renvoi* to Article 33 empowers the Secretary-General to decide that the parties shall have recourse to judicial settlement". It adds that an interpretation of Article IV, paragraph 2, of the Geneva Agreement which excludes the possibility of judicial settlement would deprive the treaty of its effectiveness and would lock the Parties "into a never-ending process of diplomatic negotiation, where successful resolution could be permanently foreclosed by either one of them". The Applicant further contends that the circumstances surrounding the conclusion of the Geneva Agreement "confirm that the parties understood and accepted that their deliberate *renvoi* to Article 33 made it possible that the controversy ultimately would be resolved by judicial settlement".

81. In its Memorandum, Venezuela acknowledges that Article 33 of the Charter includes judicial settlement. However, it argues that since Article I of the Geneva Agreement refers to "seeking satisfactory solutions for the practical settlement of the controversy", this excludes judicial settlement unless the Parties consent to resort to it by special agreement.

* *

82. Given that Article IV, paragraph 2, of the Geneva Agreement refers to Article 33 of the Charter of the United Nations, which includes judicial settlement as a means of dispute resolution, the Court considers that the Parties accepted the possibility of the controversy being settled by that means. It is of the opinion that if they had wished to exclude such a possibility, the Parties could have done so during their negotiations. Equally, instead of referring to Article 33 of the Charter, they could have set out the means of settlement envisaged while omitting judicial settlement, which they did not do either.

83. The Court notes that, according to the wording of Article IV, paragraph 2, of the Geneva Agreement, the Parties conferred on the Secretary-General the authority to choose among the means of dispute settlement provided for in Article 33 of the Charter "until the controversy has been resolved". It observes that Article 33 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. The phrase "and so on until

the controversy has been resolved" also suggests that the Parties conferred on the Secretary-General the authority to choose the most appropriate means for a definitive resolution of the controversy. The Court considers that the Secretary-General's choice of a means that leads to the resolution of the controversy fulfils his responsibility under Article IV, paragraph 2, of the Geneva Agreement, in accordance with the object and purpose of that instrument.

84. In light of the above analysis, the Court concludes that the means of dispute settlement at the disposal of the Secretary-General, to which the Parties consented under Article IV, paragraph 2, of the Geneva Agreement, include judicial settlement.

85. It is recalled that, during the oral proceedings (see paragraph 17 above), the following question was put by a Member of the Court: "Article IV, paragraph 2, of the Geneva Agreement of 17 February 1966 concludes with an alternative, according to which either the controversy has been resolved or the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations have been exhausted. My question is the following: is it possible to conceive of a situation where all means of peaceful settlement have been exhausted without the controversy having been resolved?" In its reply to that question, Guyana argued that a situation in which all the means of peaceful settlement had been exhausted without the controversy being resolved was inconceivable. In its view, "[t]he 1966 Geneva Agreement established a procedure to ensure that the controversy would be finally and completely resolved" and "[b]ecause arbitration and judicial settlement are among the means of settlement listed in Article 33, a final and complete resolution of the controversy ... is ensured".

86. The Court notes that its conclusion that the Parties consented to judicial settlement under Article IV of the Geneva Agreement is not called into question by the phrase "or until all the means of peaceful settlement there contemplated have been exhausted" at paragraph 2 of that Article, which might suggest that the Parties had contemplated the possibility that the choice, by the Secretary-General, of the means provided for in Article 33 of the Charter, which include judicial settlement, would not lead to a resolution of the controversy. There are various reasons why a judicial decision, which has the force of *res judicata* and clarifies the rights and obligations of the parties, might not in fact lead to the final settlement of a dispute. It suffices for the Court to observe that, in this case, 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.

87. In this regard, the Court notes that the joint statement on the ministerial conversations held in Geneva on 16 and 17 February 1966 between Venezuelan Minister for Foreign Affairs, his British counterpart and the Prime Minister of British Guiana declares that "[a]s a consequence of the deliberations an agreement was reached whose stipulations will enable a definitive solution for [the] problems [relating to the relations between Venezuela and British Guiana]". Similarly, Venezuelan law ratifying the Geneva Agreement of 13 April 1966 states as follows: "Every single part and all parts of the Agreement signed in Geneva on 17 February 1966 by the Governments of Venezuela and [the] United Kingdom of Great Britain and Northern Ireland in consultation with the Government of British Guiana, in order to solve the issue between Venezuela and [the] United Kingdom over the border line with British Guiana have been approved for any relevant legal purposes."

88. In light of the above, the Court concludes that the Parties consented to the judicial settlement of their controversy.

C. Whether the Consent Given by the Parties to the Judicial Settlement of Their Controversy under Article IV, Paragraph 2, 29 of the Geneva Agreement Is Subject to any Conditions

89. The Court observes that, in treaties whereby parties consent to the judicial settlement of a dispute, it is not unusual for them to subject such consent to conditions which must be regarded as constituting the limits thereon (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, pp. 124-125, paras. 130-131; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Juris diction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 39, para. 88). The Court must therefore now ascertain whether the Parties' consent to the means of judicial settlement, as expressed in Article IV, paragraph 2, of the Geneva Agreement, is subject to certain conditions.

90. The Parties do not dispute that the Secretary-General is required to establish that the means previously chosen have not "le[d] to a solution of the controversy" before "choos[ing] another of the means stipulated in Article 33 of the Charter of the United Nations". The Court will therefore interpret only the terms of the second sentence of this provision, which provides that, if the means chosen do not lead to a resolution of the controversy, "the Secretary-

General ... shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, *and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted"* (emphasis added).

* *

91. Guyana maintains that the Secretary-General's decision to choose the judicial means of settlement of the controversy constitutes a proper exercise of his authority under Article IV, paragraph 2, of the Geneva Agreement. It contends that the use of the definite article "the*"* (one of "the*"* means) is "indicative of comprehensiveness*"* and implies that the Secretary-General can choose any of those means without following a particular order. It adds that "[i]f the means were to be applied mechanically, in the order in which they appear in Article 33, the role of a third party in the decision as to the means' would be unnecessary*"*.

92. While Guyana acknowledges that, in the past, some Secretaries-General have consulted with the Parties during the process of choosing the means of settlement, it emphasizes that consultation with the Parties to ascertain their willingness to participate in such a process in no way detracts from the Secretary-General's authority to decide unilaterally on the means of settlement to be used.

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93. In its Memorandum, Venezuela contends that the Secretary-General's decision is not consistent with his mandate under Article IV, paragraph 2, of the Geneva Agreement. It argues that the proper exercise of those powers consists in following the order in which the means of settlement appear in Article 33 of the Charter. It bases this interpretation on the expression "and so on*"* (in the equally authoritative Spanish text: "y así sucesivamente*"*), which appears in the last sentence of Article IV, paragraph 2, of the Geneva Agreement.

94. Venezuela adds that the practice whereby the Parties are consulted and give their consent to the choice contemplated by the Secretary-General must not be ignored.

* *

95. The Court must determine whether, under Article IV, paragraph 2, of the Geneva Agreement, the Parties' consent to the settlement of their controversy by judicial means is subject to the condition that the Secretary-General follow the order in which the means of settlement are listed in Article 33 of the United Nations Charter.

96. The Court observes that the use of the verb "choose*"* in Article IV, paragraph 2, of the Geneva Agreement, which denotes the action of deciding

between a number of solutions, excludes the idea that it is necessary to follow the order in which the means of settlement appear in Article 33 of the Charter. In its view, the Parties understood the reference to a choice of "the*"* means and, should the first fail, of "another*"* of those means as signifying that any of those means could be chosen. The expression "and so on*"*, on which Venezuela bases its argument ("y así sucesivamente*"* in the Spanish text), refers to a series of actions or events occurring in the same manner, and merely conveys the idea of decision-making continuing until the controversy is resolved or all the means of settlement are exhausted. Therefore, the ordinary meaning of this provision indicates that the Secretary-General is called upon to choose any of the means listed in Article 33 of the Charter but is not required to follow a particular order in doing so.

97. In the view of the Court, an interpretation of Article IV, paragraph 2, of the Geneva Agreement whereby the means of settlement should be applied successively, in the order in which they are listed in Article 33 of the Charter, could prove contradictory to the object and purpose of the Geneva Agreement for a number of reasons. First, the exhaustion of some means would render recourse to other means pointless. Moreover, such an interpretation would delay resolution of the controversy, since some means may be more effective than others in light of the circumstances surrounding the controversy between the Parties. In contrast, the flexibility and latitude afforded to the Secretary-General in the exercise of the decision-making authority conferred on him contribute to the aim of finding a practical, effective and definitive resolution of the controversy.

98. The Court also recalls that the Charter of the United Nations does not require the exhaustion of diplomatic negotiations as a precondition for the decision to resort to judicial settlement (see, for example, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 303, para. 56).

99. Furthermore, regarding the Parties' subsequent practice, the Court observes that both Guyana and Venezuela accepted that good offices were covered by the phrase "other peaceful means of their own choice*"*, which appears at the end of the list of means set out in Article 33, paragraph 1, of the Charter. Yet both Parties welcomed the Secretary-General's decision to choose that means of settlement rather than begin with negotiation, enquiry or conciliation. In so doing, they acknowledged that the Secretary-General was not required to follow the order in which the means of settlement are listed in Article 33 of the Charter but instead had the authority to give preference to one means over another.

100. Regarding the question of consultation, the Court is of the view that nothing in Article IV, paragraph 2, of the Geneva Agreement requires the Secretary-General to consult with the Parties before choosing a means of settlement. It also observes that, although the successive Secretaries-General consulted with the Parties, it is clear from the various communications of the Secretaries-General (in particular the telegram of 31 August 1983 from the Secretary-General, Mr. Javier Pérez de Cuéllar, to the Minister for Foreign Affairs of Guyana) that the sole aim of such consultation was to gather information from the Parties in order to choose the most appropriate means of settlement.

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101. The Court concludes that, having failed to reach an agreement, the Parties entrusted to the Secretary-General, pursuant to Article IV, paragraph 2, of the Geneva Agreement, the role of choosing any of the means of settlement set out in Article 33 of the Charter. In choosing the means of settlement, the Secretary-General is not required, under Article IV, paragraph 2, to follow a particular order or to consult with the Parties on that choice. Finally, the Parties also agreed to give effect to the decision of the Secretary-General. IV. Jurisdiction of the Court

102. As the Court has established above (see paragraphs 82 to 88), by virtue of Article IV, paragraph 2, of the Geneva Agreement, the Parties accepted the possibility of the controversy being resolved by means of judicial settlement. The Court will therefore now examine whether, by choosing the International Court of Justice as the means of judicial settlement for the controversy between Guyana and Venezuela, the Secretary-General acted in accordance with Article IV, paragraph 2, of the Geneva Agreement. If it finds that he did, the Court will have to determine the legal effect of the decision of the Secretary-General of 30 January 2018 on the jurisdiction of the Court under Article 36, paragraph 1, of its Statute.

A. The Conformity of the Decision of the Secretary-General of 30 January 2018 with Article IV, Paragraph 2, of the Geneva Agreement

103. The Court recalls that on 30 January 2018, the Secretary-General sent two identical letters to the Presidents of Guyana and Venezuela regarding the settlement of the controversy. The letter sent to the President of Guyana reads as follows:

> *"I have the honour to write to you regarding the controversy between Guyana and Venezuela which has arisen as the result of Venezuelan contention that the Arbitral Award of 1899 about the frontier between*

British Guiana and Venezuela is null and void ('the controversy'). As you will be aware, Article IV, paragraph 2 of the Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed at Geneva on 17 February 1966 (the 'Geneva Agreement'), confers upon the Secretary-General of the United Nations the power and the responsibility to choose from among those means of peaceful settlement contemplated in Article 33 of the Charter of the United Nations, the means of settlement to be used for the resolution of the controversy. If the means so chosen does not lead to a solution of the controversy, Article IV, paragraph 2 of the Geneva Agreement goes on to confer upon the Secretary-General the responsibility to choose another means of peaceful settlement contemplated in Article 33 of the Charter. As you will also be aware, former Secretary-General Ban Ki-moon communicated to you and to the President of Venezuela a framework for the resolution of the border controversy based on his conclusions on what would constitute the most appropriate next steps. Notably, he concluded that the Good Offices Process, which had been conducted since 1990, would continue for one final year, until the end of 2017, with a strengthened mandate of mediation. He also reached the conclusion that if, by the end of 2017, I, as his successor, concluded that significant progress had not been made toward arriving at a full agreement for the solution of the controversy, I would choose the International Court of Justice as the next means of settlement, unless the Governments of Guyana and Venezuela jointly requested that I refrain from doing so. In early 2017, I appointed a Personal Representative, Mr. Dag Hal vor Nylander, who engaged in intensive high-level efforts to seek a negotiated settlement. Consistently with the framework set by my predecessor, I have carefully analysed the developments in the good offices process during the course of 2017. Consequently, I have fulfilled the responsibility that has fallen to me within the framework set by my predecessor and, significant progress not having been made toward arriving at a full agreement for the solution of the controversy, have chosen the International Court of Justice as the means that is now to be used for its solution. At the same time, it is my considered view that your Government and that of Venezuela could benefit from the continued good offices of the United Nations through a complementary process established on the

basis of my power under the Charter. A good offices process could be supportive in at least the different ways set out below. Firstly, should both Governments accept the offer of a complementary good offices process, I believe this process could contribute to the use of the selected means of peaceful settlement. In addition, should both Governments wish to attempt to resolve the controversy through direct negotiations, in parallel to a judicial process, a good offices process could contribute to such negotiations. Thirdly, as the bilateral relationship between your Government and that of Venezuela is broader than the controversy, both Governments may wish to address through a good offices process any other important pending issues that would benefit from third-party facilitation. I trust that a complementary good offices process would also con tribute to the continuation of the friendly and good-neighbourly relations that have characterized exchanges between the two countries. In closing, I should like to inform you that I will be making this way forward public. I have sent an identical letter to the President of Venezuela, and I enclose a copy of that letter."

104. The Court first notes that, in taking his decision, the Secretary-General expressly relied upon Article IV, paragraph 2, of the Geneva Agreement. The Court further notes that, if the means of settlement previously chosen does not lead to a solution of the controversy, this provision calls upon the Secretary-General to choose another of the means of settlement provided for in Article 33 of the Charter of the United Nations, without requiring him to follow any particular sequence (see paragraph 101 above).

105. The Court is of the view that the means previously chosen by the Secretary-General "d[id] not lead to a solution of the controversy" within the terms of Article IV, paragraph 2. By 2014, the Parties had already been engaged in the good offices process within the framework of the Geneva Agreement for over twenty years, under the supervision of three Personal Representatives appointed by successive Secretaries-General, in order to find a solution to the controversy (see paragraph 54 above). As a result, in his decision of 30 January 2018, the Secretary-General stated that, no significant progress having been made towards arriving at a full agreement for the solution of the controversy in the good offices process, he had "chosen the International Court of Justice as the means that is now to be used for its solution", thereby fulfilling his responsibility to choose another means of settlement among those set out in Article 33 of the Charter of the United Nations.

106. Neither Article IV, paragraph 2, of the Geneva Agreement nor Article 33 of the Charter of the United Nations expressly mentions the International Court of Justice. However, the Court, being the "principal judicial organ of the United Nations*"* (Article 92 of the Charter of the United Nations), constitutes a means of "judicial settlement*"* within the meaning of Article 33 of the Charter. The Secretary-General could therefore choose the Court, on the basis of Article IV, paragraph 2, of the Geneva Agreement, as the judicial means of settlement of the controversy between the Parties.

107. Moreover, the circumstances surrounding the conclusion of the Geneva Agreement, which include ministerial statements and parliamentary debates (see *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 454, para. 49, and p. 457, para. 60; *Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 29, para. 69), indicate that recourse to the International Court of Justice was contemplated by the parties during their negotiations. In particular, the Court notes that, on the occasion of the ratification of the Agreement, the Minister for Foreign Affairs of Venezuela stated the following before Venezuelan National Congress: 34 "After some informal discussions, our Delegation chose to leave a proposal on the table similar to that third formula which had been rejected in London, adding to it recourse to the International Court of Justice. The Delegations of Great Britain and British Guiana, after studying in detail the proposal, and even though they were receptive to it by the end, objected to the specific mention of recourse to arbitration and to the International Court of Justice. *The objection was bypassed by replacing that specific mention by referring to Article 33 of the United Nations Charter which includes those two procedures, that is arbitration and recourse to the International Court of Justice*, and the possibility of achieving an agreement was again on the table. It was on the basis of this Venezuelan proposal that the Geneva Agreement was reached. Far from this being an imposition, as has been maliciously said, or a British ploy which surprised the naivety of Venezuelan Delegation, it is based on a Venezuelan proposal which was once rejected in London and has now been accepted in Geneva.*"* (Emphasis added.) The Court considers that the words of Venezuelan Minister for Foreign Affairs demonstrate that the parties to the Geneva Agreement intended to include the possibility of recourse to the International Court of Justice when they agreed to the Secretary-General choosing among the means set out in Article 33 of the Charter of the United Nations.

108. In light of the foregoing, the Court is of the view that, by concluding the Geneva Agreement, both Parties accepted the possibility that, under

Article IV, paragraph 2, of that instrument, the Secretary-General could choose judicial settlement by the International Court of Justice as one of the means listed in Article 33 of the Charter of the United Nations for the resolution of the controversy. The decision of the Secretary-General of 30 January 2018 was therefore taken in conformity with the terms of Article IV, paragraph 2, of the Geneva Agreement.

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109. The Court observes that the fact that the Secretary-General invited Guyana and Venezuela, if they so wished, "to attempt to resolve the controversy through direct negotiations, in parallel to a judicial process" and his offer of good offices to that end do not affect the conformity of the decision with Article IV, paragraph 2, of the Geneva Agreement. The Court has already explained in the past that parallel attempts at settlement of a dispute by diplomatic means do not prevent it from being dealt with by the Court (see, for example, *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 20, para. 35). In the present case, the Secretary-General simply reminded the Parties that negotiations were a means of settlement that remained available to them while the dispute was pending before the Court.

B. The Legal Effect of the Decision of the Secretary-General of 30 January 2018

110. The Court now turns to the legal effect of the decision of the Secretary-General on its jurisdiction under Article 36, paragraph 1, of its Statute, which provides that "[t]he jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided in the Charter of the United Nations or in treaties and conventions in force".

111. The Court recalls that "its jurisdiction is based on the consent of the parties and is confined to the extent accepted by them" (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 39, para. 88).

112. Both this Court and its predecessor have previously observed in a number of cases that the parties are not bound to express their consent to the Court's jurisdiction in any particular form (*ibid.*, p. 18, para. 21; see also *Corfu Channel (the United Kingdom* v. *Albania), Preliminary Objection, Judgment, 1948, I.C.J. Reports 1947-1948*, p. 27; *Rights of Minorities in Upper Silesia (Minority Schools), Judgment No. 12, 1928, P.C.I.J., Series A, No. 15*, pp. 23-24). Consequently, there is nothing in the Court's Statute to prevent the

Parties from expressing their consent through the mechanism established under Article IV, paragraph 2, of the Geneva Agreement.

113. The Court must however satisfy itself that there is an unequivocal indication of the desire of the parties to a dispute to accept the jurisdiction of the Court in a voluntary and indisputable manner (*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 204, para. 62).

114. The Court recalls that Venezuela has argued that the Geneva Agreement is not sufficient in itself to found the jurisdiction of the Court and that the subsequent consent of the Parties is required even after the decision of the Secretary-General to choose the International Court of Justice as the means of judicial settlement. However, the decision taken by the Secretary-General in accordance with the authority conferred upon him under Article IV, paragraph 2, of the Geneva Agreement would not be effective (see paragraphs 74 to 78 above) if it were subject to the further consent of the Parties for its implementation. Moreover, an interpretation of Article IV, paragraph 2, that would subject the implementation of the decision of the Secretary-General to further consent by the Parties would be contrary to this provision and to the object and purpose of the Geneva Agreement, which is to ensure a definitive resolution of the controversy, since it would give either Party the power to delay indefinitely the resolution of the controversy by withholding such consent.

115. For all these reasons, the Court concludes that, by conferring on the Secretary-General the authority to choose the appropriate means of settlement of their controversy, including the possibility of recourse to judicial settlement by the International Court of Justice, Guyana and Venezuela consented to its jurisdiction. The text, the object and purpose of the Geneva Agreement, as well as the circumstances surrounding its conclusion, support this finding (see paragraph 108 above). It follows that the consent of the Parties to the jurisdiction of the Court is established in the circumstances of this case.

V. Seisin of the Court

116. The Court now turns to the question whether it has been validly seized by Guyana.

117. The seisin of the Court is, as observed in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bah rain (Qatar* v. *Bahrain)*, "a procedural step independent of the basis of jurisdiction invoked and, as such, is governed by the Statute and the Rules of Court*"* (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 23, para. 43). Thus, for

the Court to be able to entertain a case, the relevant basis of jurisdiction needs to be supplemented by the necessary act of seisin *(ibid.)*.

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118. Guyana submits that "[t]he decision of the Secretary-General is ... a legal act materialising the parties' *a priori* consent to judicial settlement", therefore allowing the unilateral seisin of the Court by either Party to the dispute. The Applicant contends in particular that the seisin of the Court is independent of the basis of jurisdiction, and that Venezuela, having consented to the Court's jurisdiction, cannot object to Guyana's unilateral seisin of the Court.

119. In its Memorandum, Venezuela insists on the difference between Article IV of the Geneva Agreement and a compromissory clause. In Venezuela's view, in the absence of an explicit provision in the Geneva Agreement allowing the Court to be seized unilaterally, it must be presumed that the Court can only be validly seized by a "joint agreement" of the Parties.

* *

120. In the view of the Court, an agreement of the Parties to seize the Court jointly would only be necessary if they had not already consented to its jurisdiction. However, having concluded above that the consent of the Parties to the jurisdiction of the Court is established in the circumstances of this case, either Party could institute proceedings by way of a unilateral application under Article 40 of the Statute of the Court.

121. In light of the foregoing, the Court concludes that it has been validly seized of the dispute between the Parties by way of the Application of Guyana.

VI. Scope of the Jurisdiction of the Court

122. Having concluded that it has jurisdiction to entertain Guyana's Application and that it is validly seized of this case, the Court must now ascertain whether all the claims advanced by Guyana fall within the scope of its jurisdiction.

* *

123. Guyana contends that the Court's jurisdiction *ratione materiae* extends to all the claims submitted in its Application, on the grounds that the Court's jurisdiction is determined by the text of the Geneva Agreement in light of its object and purpose and the Parties' practice thereunder.

124. Relying on the title and preamble of the Geneva Agreement, and its Article I, Guyana argues that the controversy encompasses the dispute between the Parties regarding the validity of the 1899 Award as well as "any dispute 'which has arisen *as a result of* Venezuelan contention'" (emphasis added by Guyana) that the 1899 Award is "null and void". In Guyana's view,

this comprises any territorial or maritime dispute between the Parties resulting from Venezuelan contention of the nullity of the Award, including any claims concerning the responsibility of Venezuela for violations of Guyana's sovereignty.

125. Specifically, Guyana argues that the wording of the Geneva Agreement, notably Article I, presents the controversy as being the "result" of Venezuela's contention that the 1899 Award about the frontier between British Guiana and Venezuela is null and void. According to Guyana, since the 1899 Award delimited the boundary between Venezuela and the colony of British Guiana, the controversy between the Parties is territorial and the Court must therefore necessarily determine the boundary between Venezuela and Guyana, which implies first deciding whether the Award is valid. Guyana further argues that the Court would not be in a position to reach "a full agreement for the solution" of this dispute by addressing "*any* outstanding questions" (emphasis added by Guyana), which is the objective set forth under Article IV of the Geneva Agreement, without first ruling on the validity of the Award.

*

126. 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. According to Venezuela, the Geneva Agreement was adopted on the basis that the merits of the contention of nullity of the Award could not be discussed between the Parties as the "validity or nullity of an arbitral award is non-negotiable". Venezuela considers that "the subject-matter of the Geneva Agreement is the territorial dispute, not the validity or nullity of the 1899 Award".

127. Venezuela adds that a legal dispute such as one regarding the validity of the 1899 Award is not susceptible to a "practical" settlement. In its view, the "countless references to a practical, acceptable and satisfactory settlement" in the Geneva Agreement would be deprived of legal effect if the controversy contemplated thereunder were considered as including the question of the validity of the 1899 Award.

* *

128. The Court notes that, in its Application, Guyana has made certain claims concerning the validity of the 1899 Award and other claims arising from events that occurred after the conclusion of the Geneva Agreement (see paragraph 19 above). Consequently, the Court will first ascertain whether Guyana's claims regarding the validity of the 1899 Award about the frontier between British Guiana and Venezuela fall within 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, and whether, as a consequence, the Court has jurisdiction *ratione materiae* to entertain them. Secondly, the Court will have to deter mine whether Guyana's claims arising from events that occurred after the conclusion of the Geneva Agreement fall within the scope of the Court's jurisdiction *ratione temporis*.

129. With regard to its jurisdiction *ratione materiae*, the Court recalls that Article I of the Geneva Agreement refers to the controversy that has arisen between the parties to the Geneva Agreement as a result of Venezuela's contention that the 1899 Award about the frontier between British Guiana and Venezuela is null and void (see paragraphs 64 to 66 above). As stated in paragraph 66 above, the subject-matter of the controversy which the parties agreed to settle under the Geneva Agreement relates to the validity of the 1899 Award and its implications for the land boundary between Guyana and Venezuela. The opposing views held by the parties to the Geneva Agreement on the validity of the 1899 Award is demonstrated by the use of the words "Venezuelan contention*"* in Article I of the Geneva Agreement. The word "contention*"*, in accordance with the ordinary meaning to be given to it in the context of this provision, indicates that the alleged nullity of the 1899 Award was a point of disagreement between the parties to the Geneva Agreement for which solutions were to be sought. This in no way implies that the United Kingdom or Guyana accepted that contention before or after the conclusion of the Geneva Agreement. The Court therefore considers that, contrary to Venezuela's argument, the use of the word "contention*"* points to the opposing views between the parties to the Geneva Agreement regarding the validity of the 1899 Award.

130. This interpretation is consistent with the object and purpose of the Geneva Agreement, which was to ensure a definitive resolution of the dispute between Venezuela and the United Kingdom over the frontier between Venezuela and British Guiana, as indicated by its title and pre amble (see paragraphs 64 to 66, and 73 above). Indeed, 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.

131. This interpretation is also confirmed by the circumstances sur rounding the conclusion of the Geneva Agreement. It may be recalled that the discussions between the parties as to the validity of the 1899 Award commenced with a Tripartite Examination of the documentary material relating to the Award, with the objective of assessing Venezuelan claim with respect to its nullity. This was initiated by the Government of the United Kingdom, which

asserted numerous times that it considered the Award to be valid and binding on the parties. As the Minister for Foreign Affairs of Venezuela reported, only two days before the Tripartite Examination concluded its work, the United Kingdom reaffirmed its position that the Award had settled the question of sovereignty in a valid and final manner.

132. In the discussions held on 9 and 10 December 1965 between British Guiana, the United Kingdom and Venezuela, which preceded the conclusion of the Geneva Agreement, the first item on the agenda was to "exchange [their] views on the experts' report on the examination of documents and discuss[ ] the consequences resulting therefrom", whereas the second item was "[t]o seek satisfactory solutions for the practical settlement of the controversy which has arisen as a result of Venezuelan contention that the 1899 Award is null and void". During these discussions, Venezuela reasserted its conviction that "the only satisfactory solution of the frontier problem with British Guiana lay in the return of the territory which by right belonged to her", while the United Kingdom and British Guiana rejected Venezuelan proposal on the basis that it implied that the 1899 Award was null and void and that there was no justification for that allegation. British Guiana reiterated in the discussions that "the first question under discussion was the validity of the 1899 Award" and that it "could not accept Venezuelan contention that the 1899 Award was invalid". The United Kingdom recalled that "the two sides had been unable to agree on the question of the 1899 Award's validity". Finally, the representative of British Guiana said that "it had never been his understanding that the territorial claim would be discussed unless the invalidity of the 1899 Award had first been established".

133. It is on that basis that the subsequent meetings took place in Geneva in February 1966, culminating in the adoption of the Geneva Agreement. In a Note Verbale dated 25 February 1966, the United Kingdom Foreign Secretary stated to the British Ambassador to Venezuela that 40 "[t]he Venezuelans also tried hard to get the preamble to the Agreement to reflect their fundamental position: first, that we were discussing the substantive issue of the frontier and not merely the validity of the 1899 Award and secondly, that this had been the basis for our talks both in London and in Geneva. With some difficulty I persuaded Venezuelan Minister of Foreign Relations to accept a compromise wording which reflected the known positions of both sides."

134. The Court further notes that Venezuela's argument that the Geneva Agreement does not cover the question of the validity of the 1899 Award is contradicted by the statement of the Minister for Foreign Affairs of Venezuela before 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". 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. 135. The Court therefore concludes that 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 land boundary dispute between Guyana and Venezuela fall within 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, thereof, and that, as a consequence, the Court has jurisdiction *ratione materiae* to entertain these claims.

136. With respect to its jurisdiction *ratione temporis*, the Court notes that the scope of the dispute that the Parties agreed to settle through the mechanism set out in Articles I to IV of the Geneva Agreement is circumscribed by Article I thereof, which refers to "the controversy ... which has arisen as the result of Venezuelan contention that the Arbitral Award of 1899 ... is null and void". The use of the present perfect tense in Article I indicates that the parties understood the controversy to mean the dispute which had crystallized between them at the time of the conclusion of the Geneva Agreement. This interpretation is not contradicted by the equally authoritative Spanish text of Article I of the Geneva Agreement, which refers to *"the dispute between Venezuela and the United Kingdom arising out of the Venezuelan contention that the 1899 Arbitral Award on the Venezuela-British Guiana boundary is null and void and invalid"*. It is reinforced by the use of the definite article in the title of the Agreement ("Agreement to resolve *the* controversy"; in Spanish, "Acuerdo para resolver *la* controversia"), the reference in the preamble to the resolution of "any *outstanding* controversy" (in Spanish, "cualquier controversia *pendiente*"), as well as the reference to the Agreement being reached "to resolve the *present* controversy" (in Spanish, "para resolver la *presente* controversia") (emphases added). The Court's jurisdiction is therefore limited *ratione temporis* to 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*.

137. In light of the foregoing, the Court concludes that it has 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. 42 138. For these reasons, The Court,

* * *

(1) By twelve votes to four, *Finds* that it has 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; in favour: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Cançado Trindade, Donoghue, Sebutinde, Bhandari, Robinson, Crawford, Salam, Iwasawa; *Judge ad hoc* Charlesworth; against: *Judges* Abraham, Bennouna, Gaja, Gevorgian; (2) Unanimously, *Finds* that it does not have jurisdiction to entertain the claims of Guyana arising from events that occurred after the signature of the Geneva Agreement. Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighteenth day of December, two thou- sand and twenty, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Guyana and the Government of Venezuela, respectively. *(Signed)* Abdulqawi Ahmed Yusuf, President. *(Signed)* Philippe Gautier, Registrar.

Judge Tomka appends a declaration to the Judgment of the Court; Judges Abraham and Bennouna append dissenting opinions to the Judgment of the Court; Judges Gaja and Robinson append declarations to the Judgment of the Court; Judge Gevorgian appends a dissenting opinion to the Judgment of the Court. *(Initialled)* A.A.Y. *(Initialled)* Ph.G.

29. JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE DATED 6 APRIL 2023, DECLARING THE PRELIMINARY OBJECTIONS FILED BY THE BOLIVARIAN REPUBLIC OF VENEZUELA REGARDING THE ADMISSIBILITY OF THE CLAIM OF THE COOPERATIVE REPUBLIC OF GUYANA TO BE INADMISSIBLE.[1365]

INTERNATIONAL COURT OF JUSTICE

YEAR 2023 6 April 2023

General List No. 171

ARBITRAL AWARD OF 3 OCTOBER 1899
(GUYANA v. VENEZUELA) PRELIMINARY OBJECTION

JUDGMENT

Present: President DONOGHUE; Vice-President GEVORGIAN; Judges TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE; Judges ad hoc WOLFRUM, COUVREUR; Registrar GAUTIER.

In the case concerning the Arbitral Award of 3 October 1899 between the Co-operative Republic of Guyana, represented by:

Hon. Carl B. Greenidge, as Agent;

H.E. Ms Elisabeth Harper, as Co-Agent;

Mr. Paul S. Reichler, Attorney at Law, 11 King's Bench Walk, London, member of the Bars of the Supreme Court of the United States and of the District of Columbia;

Mr. Philippe Sands, KC, Professor of International Law, University College London, 11 King's Bench Walk, London;

Mr. Pierre d'Argent, professeur ordinaire, Catholic University of Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels;

Ms Christina L. Beharry, Foley Hoag LLP, member of the Bars of the District of Columbia, the State of New York, the Law Society of Ontario, and England and Wales, as Advocates;

Mr. Edward Craven, Matrix Chambers, London;

[1365] Disponible en https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-00-EN.pdf.

Mr. Juan Pablo Hugues Arthur, Foley Hoag LLP, member of the Bar of the State of New York;
Ms Isabella F. Uría, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia, as Counsel;
Hon. Mohabir Anil Nandlall, Member of Parliament, Attorney General and Minister of Legal Affairs;
Hon. Gail Teixeira, Member of Parliament, Minister of Parliamentary Affairs and Governance;
Mr. Ronald Austin, Ambassador, Adviser to the Leader of the Opposition on Frontier Matters;
Ms Donnette Streete, Director, Frontiers Department, Ministry of Foreign Affairs;
Mr. Lloyd Gunraj, First Secretary, chargé d'affaires, Embassy of the Co-operative Republic of Guyana to the Kingdom of Belgium and the European Union, as Advisers;
Ms Nancy Lopez, Foley Hoag LLP, as Assistant;
And the Bolivarian Republic of Venezuela, represented by:
H.E. Ms Delcy Rodríguez, Executive Vice-President of the Bolivarian Republic of Venezuela;
H.E. Mr. Samuel Reinaldo Moncada Acosta, PhD, University of Oxford, Ambassador, Permanent Representative of the Bolivarian Republic of Venezuela to the United Nations,
as Agent;
Ms Elsie Rosales García, PhD, Professor of Criminal Law, Universidad Central de Venezuela, as Co-Agent;
H.E. Mr. Reinaldo Muñoz, Attorney General of the Bolivarian Republic of Venezuela;
H.E. Mr. Calixto Ortega, Ambassador, Permanent Mission of the Bolivarian Republic of Venezuela to the Organisation for the Prohibition of Chemical Weapons, International Criminal Court and other international organizations, as Senior National Authorities.
Mr. Antonio Remiro Brotóns, PhD, Professor Emeritus of Public International Law, Universidad Autónoma de Madrid,
Mr. Carlos Espósito, Professor of Public International Law, Universidad Autónoma de Madrid,
Ms Esperanza Orihuela, PhD, Professor of Public International Law, Universidad de Murcia,

Mr. Alfredo De Jesús O., PhD, Paris 2 Panthéon-Assas University, Member of the Bars of Paris and the Bolivarian Republic of Venezuela, Member of the Permanent Court of Arbitration,
Mr. Paolo Palchetti, PhD, Professor, Paris 1 Panthéon-Sorbonne University,
Mr. Christian Tams, PhD, Professor of International Law, University of Glasgow, academic member of Matrix Chambers, London,
Mr. Andreas Zimmermann, LLM, Harvard, Professor of International Law, University of Potsdam, Member of the Permanent Court of Arbitration,
as Counsel and Advocates;
Mr. Carmelo Borrego, PhD, Universitat de Barcelona, Professor of Procedural Law, Universidad Central de Venezuela,
Mr. Eugenio Hernández-Bretón, PhD, University of Heidelberg, Professor of Private International Law, Universidad Central de Venezuela, Dean, Universidad Monteávila, member and former president of the Academy of Political and Social Sciences,
Mr. Julio César Pineda, PhD, International Law and International Relations, former ambassador,
Mr. Edgardo Sobenes, Consultant in International Law, LLM, Leiden University, Master, ISDE/Universitat de Barcelona,
as Counsel;
Mr. Jorge Reyes, Minister Counsellor, Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations,
Ms Anne Coulon, Attorney at Law, member of the Bar of the State of New York, Temple Garden Chambers,
Ms Gimena González, DEA, International Law and International Relations,
Ms Arianny Seijo Noguera, PhD, University of Westminster,
Mr. John Schabedoth, LLM, assistant, University of Potsdam,
Mr. Valentín Martín, LLM, PhD student in International Law, Paris 1 Panthéon-Sorbonne University,
as Assistant Counsel;
Mr. Henry Franceschi, Director General of Litigation, Office of the Attorney General of the Republic,
Ms María Josefina Quijada, LLM, BA, Modern Languages,
Mr. Néstor López, LLM, BA, Modern Languages, Consul General of the Bolivarian Republic of Venezuela, Venezuelan Consulate in Barcelona,
Mr. Manuel Jiménez, LLM, Private Secretary and Personal Assistant to the Vice-President of the Republic,
Mr. Kenny Díaz, LLM, Director, Office of the Vice-President of the Republic,

Mr. Larry Davoe, LLM, Director of Legal Consultancy, Office of the Vice-President of the Republic,
Mr. Euclides Sánchez, Director of Security, Office of the Vice-President of the Republic,
Ms Alejandra Carolina Bastidas, Head of Protocol, Office of the Vice-President of the Republic,
Mr. Héctor José Castillo Riera, Security of the Vice-President of the Republic,
Mr. Daniel Alexander Quintero, Assistant to the Vice-President of the Republic, as Members of the Delegation,

THE COURT,
composed as above,
after deliberation,
delivers the following Judgment:

1. On 29 March 2018, the Government of the Co-operative Republic of Guyana (hereinafter "Guyana") filed in the Registry of the Court an Application instituting proceedings against the Bolivarian Republic of Venezuela (hereinafter "Venezuela") with respect to a dispute concerning "the legal validity and binding effect of the Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899".

2. In its Application, Guyana sought to found the jurisdiction of the Court, under Article 36, paragraph 1, of the Statute of the Court, on Article IV, paragraph 2, of the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana" signed at Geneva on 17 February 1966 (hereinafter the "Geneva Agreement" or the "Agreement"). It explained that, pursuant to this latter provision, Guyana and Venezuela *"mutually conferred upon the Secretary-General of the United Nations the authority to choose the means of settlement of the controversy and, on 30 January 2018, the Secretary-General exercised his authority by choosing judicial settlement by the Court"*.

3. In accordance with Article 40, paragraph 2, of the Statute, the Registrar immediately communicated the Application to the Government of Venezuela. He also notified the Secretary-General of the United Nations of the filing of the Application by Guyana.

4. In addition, by a letter dated 3 July 2018, the Registrar informed all Member States of the United Nations of the filing of the Application.

5. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar notified the Member States of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text.

6. On 18 June 2018, at a meeting held pursuant to Article 31 of the Rules of Court by the President of the Court to ascertain the views of the Parties with regard to questions of procedure, the Executive Vice-President of Venezuela, H.E. Ms Delcy Rodríguez, stated that her Government considered that the Court manifestly lacked jurisdiction to hear the case and that Venezuela had decided not to participate in the proceedings. During the same meeting, Guyana expressed its wish for the Court to continue its consideration of the case.

7. By an Order of 19 June 2018, the Court held, pursuant to Article 79, paragraph 2, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, that, in the circumstances of the case, it was necessary first of all to resolve the question of its jurisdiction, and that this question should accordingly be separately determined before any proceedings on the merits. The Court thus fixed 19 November 2018 and 18 April 2019 as the respective time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela addressed to the question of the jurisdiction of the Court. Guyana filed its Memorial on the question of the jurisdiction of the Court within the time-limit thus fixed.

8. Since the Court included upon the Bench no judge of the nationality of either Party, Guyana proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute of the Court to choose a judge ad hoc to sit in the case. By a letter dated 13 July 2018, Guyana informed the Court that it had chosen Ms Hilary Charlesworth. Venezuela, for its part, did not, at that stage, exercise its right to choose a judge ad hoc to sit in the case.

9. While Venezuela did not file a Counter-Memorial on the question of the jurisdiction of the Court within the time-limit fixed for that purpose, it submitted to the Court on 28 November 2019 a document entitled *"Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana on March 29th, 2018"* (hereinafter the "Memorandum"). This document was immediately communicated to Guyana by the Registry of the Court.

10. A public hearing on the question of the jurisdiction of the Court was held by video link on 30 June 2020, at which Venezuela did not participate.

By a letter dated 24 July 2020, Venezuela transmitted written comments on the arguments presented by Guyana at the hearing of 30 June 2020. By a letter dated 3 August 2020, Guyana provided its views on this communication from Venezuela.

11. In its Judgment of 18 December 2020 (hereinafter the "2020 Judgment"), 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.

12. By an Order of 8 March 2021, the Court fixed 8 March 2022 and 8 March 2023 as the respective time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela on the merits. Guyana filed its Memorial within the time-limit thus fixed.

13. Following the election of Ms Charlesworth as a Member of the Court, Guyana chose Mr. Rüdiger Wolfrum to replace her as judge ad hoc in the case. Judge Charlesworth informed the President of the Court that, in the circumstances, she had decided no longer to take part in the decision of the case. By letters dated 25 January 2022, the Registrar informed the Parties accordingly.

14. By a letter dated 6 June 2022, H.E. Ms Delcy Rodríguez, Executive Vice-President of Venezuela, informed the Court that the Venezuelan Government had appointed H.E. Mr. Samuel Reinaldo Moncada Acosta, Permanent Representative of Venezuela to the United Nations, as Agent and H.E. Mr. Félix Plasencia González, Former People's Power Minister for Foreign Affairs of Venezuela, and Ms Elsie Rosales García, Professor at the Universidad Central de Venezuela, as Co-Agents for the purposes of the case.

15, On 7 June 2022, within the time-limit prescribed by Article 79bis, paragraph 1, of the Rules of Court, Venezuela raised preliminary objections which it characterized as objections to the admissibility of the Application. Consequently, by an Order of 13 June 2022, the Court, noting that, by virtue of Article 79bis, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, and taking account of Practice Direction V, fixed 7 October 2022 as the time-limit within which Guyana could present a written statement of its observations and submissions on the preliminary objections raised by Venezuela. Guyana filed its written observations on 22 July 2022.

16. By a letter dated 25 July 2022, Venezuela informed the Court that it had chosen Mr. Philippe Couvreur to sit as a judge ad hoc in the case.

17. By a letter dated 28 July 2022, Venezuela commented on Guyana's written observations on the preliminary objections raised by Venezuela and requested the Court to provide the Partie with the opportunity to submit supplementary written pleadings on the admissibility of the Application, within a time-limit to be determined by the Court. By a letter dated 3 August 2022, Guyana opposed the request for further written pleadings.

18. By letters dated 8 August 2022, the Parties were informed that hearings on the preliminary objections raised by Venezuela would be held from 17 to 20 October 2022. Following a request from Guyana, and after having considered the comments of Venezuela thereon, the Court postponed the opening of the hearings until 17 November 2022. The Parties were informed of the Court's decision by letters dated 23 August 2022.

19. By a letter dated 8 November 2022, the Agent of Venezuela, referring to Article 56 of the Rules of Court and Practice Direction IX, expressed the wish of his Government to produce new documents. By a letter dated 14 November 2022, the Agent of Guyana informed the Court that his Government had decided not to object to the submission of the said documents. Accordingly, the documents were added to the case file.

20. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the written pleadings and documents annexed would be made accessible to the public at the opening of the oral proceedings.

21. Public hearings on the preliminary objections raised by Venezuela were held on 17, 18, 21 and 22 November 2022, at which the Court heard the oral arguments and replies of:

For Venezuela: H.E. Ms Delcy Rodríguez,
Mr. Andreas Zimmermann,
Ms Esperanza Orihuela,
Mr. Carlos Espósito,
Mr. Christian Tams,
Mr. Paolo Palchetti,
Mr. Antonio Remiro Brotóns.
For Guyana: Hon. Carl B. Greenidge,
Mr. Pierre d'Argent,
Ms Christina L. Beharry,
Mr. Paul S. Reichler,
Mr. Philippe Sands.

22. n the Application, the following claims were made by Guyana:

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

(a) The 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is valid and binding upon Guyana and Venezuela;

(b) Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela enjoys full sovereignty over the territory west of that boundary; Guyana and Venezuela are under an obligation to fully respect each other's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;

(c) Venezuela shall immediately withdraw from and cease its occupation of the eastern half of the Island of Ankoko, and each and every other territory which is recognized as Guyana's sovereign territory in accordance with the 1899 Award and 1905 Agreement;

(d) Venezuela shall refrain from threatening or using force against any person and/or company licensed by Guyana to engage in economic or commercial activity in Guyanese territory as determined by the 1899 Award and 1905 Agreement, or in any maritime areas appurtenant to such territory over which Guyana has sovereignty or exercises sovereign rights, and shall not interfere with any Guyanese or Guyanese-authorized activities in those areas;

(e) Venezuela is internationally responsible for violations of Guyana's sovereignty and sovereign rights, and for all injuries suffered by Guyana as a consequence".

23. n the written proceedings on the merits, the following submissions were presented on behalf of the Government of Guyana in its Memorial:

"For the reasons given in this Memorial, and reserving the right to supplement, amplify or amend the present Submissions, the Co-operative Republic of Guyana respectfully requests the International Court of Justice:

[t]o adjudge and declare that:

(1) The 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is the Boundary between Guyana and Venezuela; and that

(2) Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award

and the 1905 Agreement, and Venezuela is under an obligation to fully respect Guyana's sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement."

24. In the preliminary objections, the following submission was presented on behalf of the Government of Venezuela: "It is requested that the Court admits the preliminary objections to the admissibility of the application filed by the Co-operative Republic of Guyana and that it terminates the on-going proceeding".

25. In the written observations on the preliminary objections, the following submissions were presented on behalf of the Government of Guyana:

"For the foregoing reasons, Guyana respectfully submits that:

(1) Pursuant to Article 79ter, paragraph 2, of the Rules, the Court should dismiss forthwith Venezuela's preliminary objection as inadmissible or reject it on the basis of the Parties' written submissions without the need for oral hearings; or, alternatively

(2) Schedule oral hearings at the earliest possible date, to avoid needless delay in reaching a final Judgment on the Merits, and reject Venezuela's preliminary objection as early as possible after the conclusion of the hearings; and

(3) Fix a date for the submission of Venezuela's Counter-Memorial on the Merits no later than nine months from the date of the Court's ruling on Venezuela's preliminary objection."

26. At the oral proceedings on the preliminary objections, the following final submissions were presented by the Parties:

On behalf of the Government of Venezuela,

at the hearing of 21 November 2022:

"In the case concerning the Arbitral Award of 3 October 1899 (Guyana v Venezuela), for the reasons set forth in its written and oral pleadings on preliminary objections, the Bolivarian Republic of Venezuela requests the Court to adjudge and declare that Guyana's claims are inadmissible."

On behalf of the Government of Guyana,

at the hearing of 22 November 2022:

"In accordance with Article 60 of the Rules of Court, for the reasons explained in our Written Observations of 22 July 2022 and during these hearings, the Co-Operative Republic of Guyana respectfully asks the Court:

(a) Pursuant to Article 79ter, paragraph 4, of the Rules, to reject Venezuela's preliminary objections as inadmissible or reject them on the basis of the Parties' submissions; and

(b) To fix a date for the submission of Venezuela's Counter-Memorial on the Merits no later than nine months from the date of the Court's ruling on Venezuela's preliminary objections."

*

27. The Court notes that in the preliminary objections submitted on June 7, 2022, Venezuela referred to Guyana's possible lack of standing, and that Venezuela's final submissions include references to its "preliminary objections" in the plural. However, the Court understands Venezuela to be making only a single preliminary objection based on the argument that the United Kingdom is an indispensable third party without whose consent the Court cannot adjudicate the dispute. The Court will address the parties' arguments concerning Venezuela's preliminary objection on this basis.

I. HISTORICAL AND FACTUAL BACKGROUND

28. Guyana is located in the northeast of South America and bordered by Venezuela to the west. At the time the present dispute arose, Guyana was still a British colony known as British Guiana. It gained independence from the United Kingdom on May 26, 1966. The dispute between Guyana and Venezuela dates back to a series of events that took place during the second half of the nineteenth century.

29. The Court will begin by briefly recalling the historical and factual background to the present case, as set out in its Judgment of December 18, 2020 (see Arbitral Award of October 3, 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020, pp. 464-471, paras. 29-60).

A. The 1897 Washington Treaty and the 1899 Award

30 In the nineteenth century, both the United Kingdom and Venezuela claimed the territory located between the mouth of the Essequibo River in the east and the Orinoco River in the west.

31. In the 1890s, the United States of America encouraged both parties to submit their territorial claims to arbitration. A treaty of arbitration entitled the *"Treaty between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary between the Colony of British Guiana and the United States of Venezuela"* (hereinafter the "Washington Treaty") was signed in Washington on February 2, 1897.

32. According to its preamble, the purpose of the Washington Treaty was to "provide for an amicable settlement of the question... concerning the boundary". Article I provided as follows: "An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the Colony of

British Guiana and the United States of Venezuela." Other provisions set out the arrangements for the arbitration, including the constitution of the tribunal, the place of arbitration, and the applicable rules. Finally, according to Article XIII of the Washington Treaty, "[t]he High Contracting Parties engage[d] to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators".

33. The arbitral tribunal established under the Washington Treaty rendered its Award on October 3, 1899 (hereinafter the "1899 Award" or the "Award"). The 1899 Award granted the entire mouth of the Orinoco River and the land on either side to Venezuela; it granted to the United Kingdom the land to the east extending to the Essequibo River. The following year, a joint Anglo-Venezuelan commission was charged with demarcating the boundary established by the 1899 Award. The commission carried out that task between November 1900 and June 1904. On January 10, 1905, after the boundary had been demarcated, the British and Venezuelan commissioners produced an official boundary map and signed an agreement accepting, inter alia, that the coordinates of the listed points were correct.

B. Venezuela's Repudiation of the 1899 Award and the Search for a Settlement of the Dispute

34. On 14 February 1962, Venezuela, through its Permanent Representative, informed the Secretary-General of the United Nations that it considered there to be a dispute between itself and the United Kingdom "concerning the demarcation of the frontier between Venezuela and British Guiana". In its letter to the Secretary-General, Venezuela stated as follows: "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." In a statement before the Fourth Committee of the United Nations General Assembly delivered shortly thereafter, on 22 February 1962, Venezuela reiterated its position.

35. The Government of the United Kingdom, for its part, asserted on 13 November 1962, in a statement before the Fourth Committee, that "the Western boundary of British Guiana with Venezuela [had been] finally settled by the award which the arbitral tribunal announced on 3 October 1899", and that it could not "agree that there [could] be any dispute over the question settled by the award". The United Kingdom also stated that it was prepared to discuss

with Venezuela, through diplomatic channels, arrangements for a tripartite examination of the documentary material relevant to the 1899 Award. -14-

36. On 16 November 1962, with the authorization of the representatives of the United Kingdom and Venezuela, the Chairman of the Fourth Committee declared that the Governments of the two States (the Government of the United Kingdom acting with the full concurrence of the Government of British Guiana) would examine the "documentary material" relating to the 1899 Award (hereinafter the "Tripartite Examination"). Experts appointed by Venezuela and an expert appointed by the United Kingdom, who also acted on British Guiana's behalf at the latter's request, examined the archives of the United Kingdom in London and the Venezuelan archives in Caracas, searching for evidence relating to Venezuela's contention of nullity of the 1899 Award.

37. The Tripartite Examination took place from 1963 to 1965. It was completed on 3 August 1965 with the exchange of the experts' reports. While Venezuela's experts continued to consider the Award to be null and void, the expert of the United Kingdom was of the view that there was no evidence to support that position.

38. On 9 and 10 December 1965, the Ministers for Foreign Affairs of the United Kingdom and Venezuela and the new Prime Minister of British Guiana met in London to discuss a settlement of the dispute. However, at the close of the meeting, each party maintained its position on the matter. While the representative of Venezuela asserted that any proposal "which did not recognise that Venezuela extended to the River Essequibo would be unacceptable", the representative of British Guiana rejected any proposal that would "concern itself with the substantive issues".

C. The signing of the Geneva Agreement

39. Following the failure of the talks in London, the three delegations agreed to meet again in Geneva in February 1966. After two days of negotiations, they signed, on 17 February 1966, the Geneva Agreement, the English and Spanish texts of which are authoritative. In accordance with its Article VII, the Geneva Agreement entered into force on the same day that it was signed.

40. The Geneva Agreement was approved by the Venezuelan National Congress on 13 April 1966. It was published in the United Kingdom as a White Paper, i.e., as a policy position paper presented by the Government, and approved by the House of Assembly of British Guiana. It was officially transmitted to the Secretary-General of the United Nations on 2 May 1966

and registered with the United Nations Secretariat on 5 May 1966 (United Nations, Treaty Series, Vol. 561, No. 8192, p. 322).

41. On 26 May 1966, Guyana, having attained independence, became a party to the Geneva Agreement, alongside the Governments of the United Kingdom and Venezuela, in accordance with the provisions of Article VIII thereof.

42. The Geneva Agreement provides, first, for the establishment of a Mixed Commission, comprised of representatives appointed by the Government of British Guiana and the Government of Venezuela, to seek a settlement of the controversy between the parties (Arts. I and II). Article I reads as follows:

"A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void."

In addition, Article IV, paragraph 1, states that, should this Commission fail in its task, the Governments of Guyana and Venezuela shall choose one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations. In accordance with Article IV, paragraph 2, should those Governments fail to reach agreement, the decision as to the means of settlement shall be made by an appropriate international organ upon which they both agree, or, failing that, by the Secretary-General of the United Nations.

43. On 4 April 1966, by letters to the Ministers for Foreign Affairs of the United Kingdom and Venezuela, the Secretary-General of the United Nations, U Thant, acknowledged receipt of the Geneva Agreement and stated as follows:

"I have taken note of the responsibilities which may fall to be discharged by the Secretary-General of the United Nations under Article IV (2) of the Agreement, and wish to inform you that I consider those responsibilities to be of a nature which may appropriately be discharged by the Secretary-General of the United Nations."

D. The implementation of the Geneva Agreement

44. The Mixed Commission was established in 1966, pursuant to Articles I and II of the Geneva Agreement, and reached the end of its mandate in 1970 without having arrived at a solution.

45. Since no solution was identified through the Mixed Commission, it fell to Venezuela and Guyana, under Article IV of the Geneva Agreement, to choose one of the means of peaceful settlement provided for in Article

33 of the Charter of the United Nations. Pursuant to a moratorium on the dispute settlement process adopted in a protocol to the Geneva Agreement and signed on 18 June 1970 (hereinafter the "Protocol of Port of Spain" or the "Protocol"), the operation of Article IV of the Geneva Agreement was suspended for a period of 12 years. In December 1981, Venezuela announced its intention to terminate the Protocol of Port of Spain. Consequently, the application of Article IV of the Geneva Agreement was resumed from 18 June 1982 in accordance with Article V, paragraph 3, of the Protocol.

46. Pursuant to Article IV, paragraph 1, of the Geneva Agreement, the Parties attempted to reach an agreement on the choice of one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations. However, they failed to do so within the three-month time-limit set out in Article IV, paragraph 2. They also failed to agree on the choice of an Appropriate international organ to decide on the means of settlement, as provided for in Article IV, paragraph 2, of the Geneva Agreement.

47. The Parties therefore proceeded to the next step, referring the decision on the means of settlement to the Secretary-General of the United Nations. After the matter was referred to him by the Parties, the Secretary-General, Mr. Javier Pérez de Cuéllar, agreed by a letter of 31 March 1983 to undertake the responsibility conferred upon him under Article IV, paragraph 2, of the Geneva Agreement. In early 1990, the Secretary-General chose the good offices process as the Appropriate means of settlement.

48. Between 1990 and 2014, the good offices process was led by the following three Personal Representatives, appointed by successive Secretaries-General: Mr. Alister McIntyre (1990-1999), Mr. Oliver Jackman (1999-2007) and Mr. Norman Girvan (2010-2014).

49. In September 2015, during the 70th Session of the United Nations General Assembly, the Secretary-General, Mr. Ban Ki-moon, held a meeting with the Heads of State of Guyana and Venezuela. Thereafter, on 12 November 2015, the Secretary-General issued a document entitled *"The Way Forward",* in which he informed the Parties that "[i]f a practical solution to the controversy [were] not found before the end of his tenure, [he] intend[ed] to initiate the process to obtain a final and binding decision from the International Court of Justice".

50. In his statement of 16 December 2016, the Secretary-General said that he had decided to continue for a further year the good offices process, to be led by a new Personal Representative with a strengthened mandate of mediation.

51. After taking office on 1 January 2017, the new Secretary-General, Mr. António Guterres, continued the good offices process for a final year, in

conformity with his predecessor's decision. In this context, on 23 February 2017, he appointed Mr. Dag Nylander as his Personal Representative and entrusted him with a strengthened mandate of mediation. Mr. Nylander held several meetings and had a number of exchanges with the Parties. In letters dated 30 January 2018 to both Parties, the Secretary-General stated that he had "carefully analysed the developments in the good offices process during the course of 2017" and announced: "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."

52. On 29 March 2018, Guyana filed its Application in the Registry of the Court.

II. THE ADMISSIBILITY OF VENEZUELA'S PRELIMINARY OBJECTION

53. Guyana argues that Venezuela's preliminary objection concerns the exercise of the Court's jurisdiction and should be rejected as inadmissible, because it is jurisdictional in nature and not an objection to admissibility. Guyana contends that the Court's Order of 19 June 2018, in which the Court decided that the written pleadings were first to be addressed to the question of its jurisdiction, required the Parties to plead "all of the legal and factual grounds on which the Parties rely in the matter of its jurisdiction". According to Guyana, the phrase "in the matter of its jurisdiction" covers not only the existence, but also the exercise of jurisdiction.

54. Guyana maintains that the "question of the jurisdiction of the Court", within the meaning of the Court's Order of 19 June 2018 necessarily encompasses the question whether the United Kingdom consented to the Court's jurisdiction to settle the dispute regarding the validity of the Award. According to Guyana, this question lies at the heart of Venezuela's preliminary objection based on the Court's Judgment in the case concerning Monetary Gold Removed from Rome in 1943 (Italy v. France, the United Kingdom of Great Britain and Northern Ireland, and United States of America) and its subsequent jurisprudence.

55. Guyana contends that, in accordance with Article 79bis of the Rules of Court, Venezuela is no longer entitled to raise a preliminary objection which in substance concerns questions of jurisdiction that the Court raised proprio motu and decided in a binding judgment. Guyana asserts that it follows from the 2020 Judgment, in which the Court found that it had jurisdiction over part

of Guyana's claims, that the Court may not entertain Venezuela's preliminary objection without violating the principle of res judicata.

56. Guyana argues that Venezuela's preliminary objection is, in any event, time-barred because Venezuela could and should have raised its objection within the time-limit fixed by the Court's Order of 19 June 2018.

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57. According to Venezuela, its preliminary objection is admissible. Venezuela accepts the res judicata effect of the Court's 2020 Judgment, but states that its preliminary objection concerns the exercise of jurisdiction and is thus an objection to the admissibility of the Application rather than to the Court's jurisdiction.

58. Venezuela argues that the Court, in its 2020 Judgment, only decided questions of jurisdiction and did not dispose, explicitly or implicitly, of questions of admissibility. Venezuela states that the 2020 Judgment consequently does not have the effect of rendering its preliminary objection inadmissible.

59. Venezuela further submits that its preliminary objection is not time-barred, because the Court's Order of 19 June 2018 only fixed time-limits for pleadings on the question of the Court's jurisdiction, referring, in Venezuela's view, to the question of the existence of the Court's jurisdiction and not its exercise. Venezuela therefore remained entitled, it argues, to raise any preliminary objection to admissibility within the time-limits set out in Article 79bis (1) of the Rules of Court.

* *

60. The Court recalls that it has, on a number of occasions, considered whether a State that is not party to the proceedings before it should be deemed to be an indispensable third party without the consent of which the Court cannot adjudicate.

61. In the operative paragraph of its Judgment in the case concerning Monetary Gold Removed from Rome in 1943 (Italy v. France, the United Kingdom of Great Britain and Northern Ireland, and United States of America), the Court found "that the jurisdiction conferred upon it by the common agreement of France, the United Kingdom, the United States of America and Italy does not, in the absence of the consent of Albania, authorize it to adjudicate upon the first Submission in the Application of the Italian Government" (Preliminary Question, Judgment, I.C.J. Reports 1954, p. 34).

62. Similarly, in the case concerning East Timor (Portugal v. Australia), the Court concluded "that it cannot, in this case, exercise the jurisdiction it has by virtue of the declarations made by the Parties under Article 36, paragraph 2, of its Statute because, in order to decide the claims of Portugal, it would

have to rule, as a prerequisite, on the lawfulness of Indonesia's conduct in the absence of that State's consent" (Judgment, I.C.J. Report 1995, p. 105, para. 35).

63. When rejecting an objection that a third State is an indispensable party without the consent of which the Court cannot adjudicate in a given case, the Court has proceeded on the basis that the objection concerned the exercise of jurisdiction rather than the existence of jurisdiction (see, inter alia, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 (I), p. 57, para. 116; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 431, para. 88). For example, in the case concerning Certain Phosphate Lands in Nauru (Nauru v. Australia), the Court concluded that "the Court [could] decline to exercise its jurisdiction" on the basis of the principle referred to as "Monetary Gold" (hereinafter the "Monetary Gold principle") (Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 262, para. 55).

64. The above-cited jurisprudence is thus premised on a distinction between two different concepts: on the one hand, the existence of the Court's jurisdiction and, on the other, the exercise of its jurisdiction where that jurisdiction is established. Only an objection concerning the existence of the Court's jurisdiction can be characterized as an objection to jurisdiction. The Court concludes that Venezuela's objection on the basis of the Monetary Gold principle is an objection to the exercise of the Court's jurisdiction and thus does not constitute an objection to jurisdiction.

65. The Court now turns to the principle of res judicata, which is reflected in Articles 59 and 60 of the Statute of the Court. As the Court has stated, that principle "establishes the finality of the decision adopted in a particular case" (Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 125, para. 58).

66. The force of res judicata attaches not only to a judgment on the merits, but also to a judgment determining the Court's jurisdiction, such as the Court's 2020 Judgment (see Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I), p. 91, para. 117).

67. Specifically, the operative part of a judgment of the Court possesses the force of res judicata (ibid., p. 94, para. 123). In order to determine what has been decided with the force of res judicata, "it is also necessary to ascertain

the content of the decision, the finality of which is to be guaranteed", and it "may be necessary to determine the meaning of the operative clause by reference to the reasoning set out in the judgment in question" (Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 126, paras. 59 and 61; see also Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018 (I), p. 166, para. 68). If a matter "has not in fact been determined, expressly or by necessary implication, then no force of res judicata attaches to it" (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I), p. 95, para. 126).

68. In the operative paragraph of its 2020 Judgment, the Court found "(1) that it has 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; [and] (2) that it does not have jurisdiction to entertain Guyana's arising from events that occurred after the signature of the Geneva Agreement" (Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020, p. 493, para. 138).

69. The operative paragraph of the 2020 Judgment and the reasoning underlying it only address questions concerning the existence of the Court's jurisdiction. Moreover, that Judgment does not address, even implicitly, the issue of the exercise of jurisdiction by the Court. In particular, the question whether the United Kingdom is an indispensable third party without the consent of which the Court could not exercise its jurisdiction was not determined by necessary implication in the 2020 Judgment.

70. It follows that the force of res judicata attaching to the 2020 Judgment extends only to the question of the existence of the Court's jurisdiction and does not bar the admissibility of Venezuela's preliminary objection.

71. The Court also notes that, by using the phrases "in the matter of its jurisdiction" and "the question of the jurisdiction of the Court" in its Order of 19 June 2018, it was referring only to the existence and not to the exercise of jurisdiction. As the Order records, during the meeting between the President of the Court and the representatives of the Parties on 18 June 2018, Venezuela stated only that it contested the Court's jurisdiction.

72. As to Guyana's argument that Venezuela's preliminary objection is time-barred, the Court recalls that, in its Order of 19 June 2018, it considered that it was "necessary for the Court to be informed of all of the legal and factual grounds on which the Parties rely in the matter of its jurisdiction" (Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Order of 19 June 2018, I.C.J. Reports 2018 (I), p. 403). Accordingly, the Court decided "that the written pleadings shall first be addressed to the question of the jurisdiction of the Court" and fixed time-limits for pleadings on that question (ibid.). The Court further recalls that, in other instances, it has expressly directed parties to address both questions of jurisdiction and admissibility in pleadings (see e.g., Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America), Order of 15 November 2018, I.C.J. Reports 2018 (II), p. 710). The time-limits that the Court fixed in its Order of 19 June 2018 thus only concerned pleadings with respect to the question of the existence of the Court's jurisdiction.

73. In light of the Court's finding above that Venezuela's preliminary objection is not an objection to the Court's jurisdiction, the time-limits that the Court set out in the Order of 19 June 2018 did not apply to pleadings with respect to such objection. Venezuela thus remained entitled to raise that objection within the time-limit set out in Article 79bis, paragraph 1, of the Rules of Court.

74. For these reasons, the Court concludes that Venezuela's preliminary objection is admissible. The Court will now proceed to the examination of this preliminary objection.

III. EXAMINATION OF VENEZUELA'S PRELIMINARY OBJECTION

75. In its preliminary objection, Venezuela submits that the United Kingdom is an indispensable third party to the proceedings and that the Court cannot decide the question of the validity of the 1899 Award in the United Kingdom's absence. Venezuela argues that a judgment of the Court on the merits in this case would necessarily involve, as a prerequisite, an evaluation of the lawfulness of certain "fraudulent conduct" allegedly attributable to the United Kingdom in respect of the 1899 Award. Venezuela explains that since the United Kingdom was a party to the Washington Treaty and to the arbitration that resulted in the 1899 Award, and is a party to the Geneva Agreement, an evaluation of the allegedly fraudulent conduct would involve an examination of the United Kingdom's "commitments and responsibilities".

76. Venezuela alleges that it had been coerced and deceived by the United Kingdom to enter into the Washington Treaty. It also alleges that, during the

arbitral proceedings, there were certain improper communications between the legal counsel of the United Kingdom and the arbitrators that it had appointed, and that the United Kingdom knowingly submitted "doctored" and "falsified" maps to the arbitral tribunal, which rendered the 1899 Award "null and void". According to Venezuela, each of these acts, independently, operates to invalidate the 1899 Award and to engage the international responsibility of the United Kingdom. Venezuela submits that the United Kingdom's participation is required in order for Venezuela's rights to be "duly protected" in the proceedings, and adds that it is not able to dispute the rights and obligations arising from the conduct of a State that is absent from these proceedings and whose participation cannot be enjoined by this Court.

77. Relying, inter alia, on the Court's jurisprudence in the cases concerning Monetary Gold Removed from Rome in 1943 (Italy v. France, the United Kingdom of Great Britain and Northern Ireland, and United States of America), East Timor (Portugal v. Australia) and Certain Phosphate Lands in Nauru (Nauru v. Australia), Venezuela asserts that an application is inadmissible if the legal interests of a third State would constitute the very subject-matter of the decision that is applied for, and that State has not consented to adjudication by the Court. Venezuela submits that the commitments and responsibilities of the United Kingdom would constitute "the very object" and the "very essence" of the decision to be rendered in the present case because the invalidity of the 1899 Award arises from the allegedly fraudulent conduct of the United Kingdom in respect of the arbitration which resulted in the Award. In this regard, Venezuela maintains that the United Kingdom has not transferred its commitments and obligations in respect of the 1899 Award to Guyana.

78. Venezuela adds that if the Court determines that the United Kingdom is responsible for fraudulent conduct, the consequence would be not only that the 1899 Award would cease to have legal effect, as Guyana claims, but also that Venezuela would be entitled to rely on the consequences of the invalidity of a treaty, as set out in Article 69 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention").

79. Venezuela further submits that the Geneva Agreement does not operate to make Guyana a successor in respect of all the rights and obligations relating to the dispute between Venezuela and the United Kingdom. It points out that Article VIII of the Geneva Agreement provides that, upon attaining independence, Guyana shall become a party to the Agreement, not in substitution of, but alongside the United Kingdom. Therefore, in the view of Venezuela, "[t]he Agreement does not exempt the United Kingdom from its obligations and responsibilities ... The United Kingdom thus remains an active

party to this dispute ... [and] its position has not changed in the years after the Agreement."

80. Venezuela argues that neither the United Kingdom's status as a party to the Geneva Agreement nor any conduct of that State subsequent to the conclusion of the Agreement can be regarded as consent to adjudication by the Court. It adds that, even if it is assumed that the United Kingdom gave its consent, the Court can only rule on its rights and obligations if that State accepts the Court's jurisdiction and becomes a party to the case.

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81. Guyana submits that the Court should reject Venezuela's preliminary objection that, in these proceedings, the United Kingdom is an indispensable third party in the absence of which the Court cannot decide the question of the validity of the 1899 Award. Guyana argues that the United Kingdom does not have legal interests that could be affected by the Court's determination the validity of the 1899 Award, let alone interests that "constitute the very subject-matter" of the decision. Guyana maintains that the United Kingdom has no current legal interest in, or claim to, the territory in question, having relinquished all territorial claims in relation to this dispute when the United Kingdom granted independence to Guyana in 1966. It follows, therefore, that since the dispute concerns claims to territory contested between Guyana and Venezuela, the United Kingdom has no legal interests that could constitute the very subject-matter of this dispute, and there is no basis for the Court to decline to exercise its jurisdiction on account of the absence of the United Kingdom.

82. In support of its argument that the United Kingdom is not an indispensable third party in these proceedings, Guyana submits that it is not the lawfulness of any conduct by the United Kingdom that would be evaluated by the Court in determining the validity of the 1899 Award, but rather the conduct of the arbitral tribunal. Guyana submits that the conduct which the Court must address in this case is that of the arbitrators and not that of the United Kingdom, and even though a finding of misconduct by the arbitrators may require factual findings in relation to acts attributable to the United Kingdom, it would not require any legal findings in relation to the responsibility of the United Kingdom.

83. Guyana also submits that the United Kingdom consented to the Court's exercise of jurisdiction in this case by virtue of negotiating, and becoming a party to, the Geneva Agreement. It asserts that the United Kingdom has given its consent for the Court to resolve this dispute between Guyana and Venezuela, by virtue of Article IV, paragraph 1, of the Geneva Agreement (reproduced

in paragraph 92 below), which accorded to Guyana and Venezuela the sole right to refer the dispute to the Court, without any involvement on the United Kingdom's part. Guyana maintains that the United Kingdom gave its consent, knowing full well that any resolution of the controversy would require the examination of Venezuela's allegations of wrongdoing by the United Kingdom in the nineteenth century.

84. Guyana adds that it matters not whether the effect of the Geneva Agreement "is characterized as an expression of consent [by the United Kingdom] to the procedure being followed without its involvement, or as a waiver of any rights it may normally have in the conduct of those processes - including judicial processes". According to Guyana, the existence of consent on the part of the United Kingdom renders Venezuela's objection based on the Court's Judgment in the case concerning Monetary Gold Removed from Rome in 1943 and subsequent jurisprudence inapplicable.

85. Finally, Guyana cites certain statements made jointly by the United Kingdom and other States in multilateral fora, whereby they welcomed the 2020 Judgment of the Court and expressed their support for the ongoing judicial settlement of the dispute between Venezuela and Guyana. According to Guyana, these statements demonstrate that the United Kingdom itself considers that it has no legal interests that might be affected by a judgment on the merits in this case. In this respect, Guyana also refers to other conduct by the United Kingdom since Guyana attained independence. It adds that Venezuela's own conduct in that same period contradicts any contention that the United Kingdom has any legal interest in the issue of the validity of the 1899 Award.

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86. The Court recalls that Venezuela, invoking the Monetary Gold principle, maintains that the legal interests of the United Kingdom would be the very subject-matter of the Court's decision in the present case. Nonetheless, the Court notes that the two Parties to these proceedings, as well as the United Kingdom, are parties to the Geneva Agreement, on which the Court's jurisdiction is based. It is therefore appropriate for the Court to consider the legal implications of the United Kingdom being a party to the Geneva Agreement, which calls for an interpretation of the relevant provisions of the Agreement.

87. To interpret the Geneva Agreement, the Court will apply the rules of treaty Interpretation to be found in Articles 31 to 33 of the Vienna Convention (Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua

v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 116, para. 33). Although that Convention is not in force between the Parties and is not, in any event, applicable to instruments concluded before it entered into force, such as the Geneva Agreement, it is well established that these Articles reflect rules of customary international law (ibid.).

88. In accordance with the rule of interpretation enshrined in Article 31, paragraph 1, of the Vienna Convention, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. These elements of interpretation are to be considered as a whole (Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 29, para. 64).

89. The Court notes that the emphasis placed by the parties on British Guiana becoming independent is an important part of the context for purposes of interpreting Article IV of the Agreement. Indeed, the preamble makes clear that the United Kingdom participated in the elaboration of the Agreement in consultation with the Government of British Guiana. The preamble further indicates that, in elaborating the Agreement, the parties took into account the "forthcoming independence of British Guiana". The Court also observes that the references to "Guyana" in paragraphs 1 and 2 of Article IV presuppose the attainment of independence by British Guiana. This independence was attained on 26 May 1966, some three months after the conclusion of the Agreement; on that date, Guyana became a party to the Geneva Agreement in accordance with Article VIII thereof.

90. Articles I and II of the Geneva Agreement address the initial stage of the process for the settlement of the dispute between the Parties and identify the role of Venezuela and British Guiana in that process. Article I of the Agreement reads as follows: "A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void." Paragraph 1 of Article II reads as follows: "Within two months of the entry into force of this Agreement, two representatives shall be appointed to the Mixed Commission by the Government of British Guiana and two by the Government of Venezuela."

91. The Court observes that, while Article I of the Agreement describes the dispute as one existing between the United Kingdom and Venezuela, Article II provides no role for the United Kingdom in the initial stage of the

dispute settlement process. Rather, it places the responsibility for appointment of the representatives to the Mixed Commission on British Guiana and Venezuela. The Court notes that the reference to "British Guiana" contained in Article II, which can be distinguished from references to the "United Kingdom" contained elsewhere in the treaty and particularly in Article I, supports the interpretation that the parties to the Geneva Agreement intended for Venezuela and British Guiana to have the sole role in the settlement of the dispute through the mechanism of the Mixed Commission. It is noteworthy that such an understanding was arrived at notwithstanding that British Guiana was a colony which had not yet attained independence and was not yet a party to the treaty.

92. The Court notes that neither paragraph 1 nor paragraph 2 of Article IV of the Geneva Agreement contains any reference to the United Kingdom. These provisions read as follows:

> "(1) If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions. Those Governments shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations.
>
> (2) If, within three months of receiving the final report, the Government of Guyana and the Government of Venezuela should not have reached agreement regarding the choice of one of the means of settlement provided in Article 33 of the Charter of the United Nations, they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted."

93. Paragraphs 1 and 2 of Article IV, which set out the final stages of the process for the settlement of the dispute, refer only to the "Government of Guyana and the Government of Venezuela", and place upon them the responsibility to choose a means of peaceful Settlement provided in Article 33 of the Charter of the United Nations or, failing agreement on such means, the

responsibility to refer the decision on the means to an appropriate international organ upon which they both agree. Failing agreement on that point, the Parties would refer the matter to the Secretary-General of the United Nations who would choose one of the means of settlement provided in Article 33 of the Charter of the United Nations.

94. In the view of the Court, this examination of the relevant provisions of the Geneva Agreement, in particular the detailed provisions of Article IV, shows the importance that the parties to the Agreement attached to the conclusive resolution of the dispute. In that regard, the Court recalls that, in its 2020 Judgment, it determined that the object and purpose of the Agreement is to ensure a definitive resolution of the controversy between the Parties (I.C.J. Reports 2020, p. 476, para. 73).

95. Interpreting paragraphs 1 and 2 of Article IV in accordance with the ordinary meaning to be given to the terms in their context, and in the light of the Agreement's object and purpose, the Court concludes that the Geneva Agreement specifies particular roles for Guyana and Venezuela and that its provisions, including Article VIII, do not provide a role for the United Kingdom in choosing, or in participating in, the means of settlement of the dispute pursuant to Article IV.

96. Therefore, the Court considers that the scheme established by Articles II and IV of the Geneva Agreement reflects a common understanding of all parties to that Agreement that the controversy which existed between the United Kingdom and Venezuela on 17 February 1966 would be settled by Guyana and Venezuela through one of the dispute settlement procedures envisaged in the Agreement.

97. The Court further notes that when the United Kingdom accepted, through the Geneva Agreement, the scheme for the settlement of the dispute between Guyana and Venezuela without its involvement, it was aware that such a settlement could involve the examination of certain allegations by Venezuela of wrongdoing by the authorities of the United Kingdom at the time of the disputed arbitration.

98. In that respect, the Court recalls that, on 14 February 1962, Venezuela, through its Permanent Representative to the United Nations, informed the Secretary-General that it considered there to be a dispute between the United Kingdom and itself "concerning the demarcation of the frontier between Venezuela and British Guiana". In its letter to the Secretary-General, Venezuela stated as follows:

"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."

Venezuela reiterated its position in a statement before the Fourth Committee of the United Nations General Assembly delivered shortly thereafter, on 22 February 1962.

99. In a statement to the Fourth Committee of the United Nations General Assembly delivered on 12 November 1962, the Minister for External Relations of Venezuela, Mr. Marcos Falcón Briceño, said that the 1899 Award "arose in circumstances which were clearly prejudicial to the rights of Venezuela". He added further that, "[v]iewing it in retrospect, there was no arbitral award, properly speaking. There was a settlement. There was a political compromise. And by means of this decision, the three judges who held a majority disposed of Venezuelan territory; for the two British judges were not ... acting as judges. They were acting as government representatives, as advocates rather than as judges".

100. On 13 November 1962, the Government of the United Kingdom responded to Venezuela's statement at the Fourth Committee of the General Assembly. The United Kingdom "emphatically rejected" the "most serious allegation" of the Venezuelan Minister for External Relations that the members of the arbitral tribunal which rendered the 1899 Award "came to their decisions without reference to the rules of international law and to the other rules which the Tribunal under the terms of the Treaty ought to have applied". The United Kingdom also rejected the allegations that the 1899 Award was an "improper compromise" or a "diplomatic compromise", and stated that it could not "agree that there [could] be any dispute over the question settled by the award".

101. In the same statement, the United Kingdom offered to discuss with Venezuela, through diplomatic channels, arrangements for a tripartite examination of the documentary material relevant to the validity of the 1899 Award. Following the Tripartite Examination, on 9 and 10 December 1965, the Foreign Ministers of the United Kingdom and Venezuela and the Prime Minister of British Guiana met in London to discuss a settlement of the dispute. As the Court noted in its 2020 Judgment, in the discussion held on 9 and 10 December 1965, the United Kingdom and British Guiana rejected the Venezuelan proposal that the only solution to the frontier dispute lay in the return of the disputed territory to Venezuela, on the basis that it implied that the 1899 Award was null and void and that there was no justification for that allegation.

102. After the failure of these talks, the United Kingdom participated in the negotiation and conclusion of the Geneva Agreement. The Court is of the view that the United Kingdom was aware of the scope of the dispute concerning the validity of the 1899 Award, which included allegations of its wrongdoing and recourse to unlawful procedures, but nonetheless accepted the scheme set out in Article IV, whereby Guyana and Venezuela could submit the dispute to one of the means of settlement set out in Article 33 of the Charter of the United Nations, without the involvement of the United Kingdom. The Court considers that the ordinary meaning of the terms of Article IV read in their context and in light of the object and purpose of the Geneva Agreement, as well as the circumstances surrounding its adoption, support this conclusion.

103. Article 31, paragraph 3, of the Vienna Convention provides that, in the interpretation of a treaty, there shall be taken into account, together with the context, any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. Accordingly, the Court will now examine the subsequent practice of the parties to the Geneva Agreement to ascertain whether it establishes their agreement on the lack of involvement of the United Kingdom in the settlement of the dispute between Guyana and Venezuela.

104. The Court observes that, at the 11th meeting of the Mixed Commission held in Caracas on 28 and 29 December 1968, the Venezuelan commissioners issued an extensive statement in which they noted the following:

"[I]f the representatives from Guyana were willing to search in good faith satisfactory solutions for the practical settlement of the controversy, Venezuela would be willing to give reasonable time so that the Mixed Commission accomplished the mission and thus, will consent to extend the existence of that body for such periods as it deems appropriate for that purpose. Here is a proposal of practical content which we formally presented. If Guyana does not modify its behaviour and continues to be intransigently locked up in its speculative position, it will corroborate with such attitude its reiterated determination to disregard the Geneva Agreement, and particularly, Article I."

The United Kingdom did not seek to participate in the above-mentioned Mixed Commission procedure; nor did Venezuela and Guyana request the United Kingdom's participation. Venezuela's exclusive engagement with the Government of Guyana at the Mixed Commission indicates that there was a common understanding among the parties that Article II did not provide a role for the United Kingdom in the dispute settlement process.

105. The Court notes that Venezuela engaged exclusively with the Government of Guyana when implementing Article IV of the Geneva Agreement.

In its Memorandum, Venezuela described the Parties' disagreements over the implementation of Article IV as follows:

"Venezuela and Guyana failed to agree on the choice of a means of settlement and to designate an 'appropriate international organ' to proceed to do it, as provided for in the first subparagraph of Article IV.2 of the Agreement. Venezuela insisted on direct negotiations and Guyana insisted on submitting it to the International Court of Justice. Later, Venezuela proposed to entrust the UN Secretary-General with the choice of the means; Guyana committed it to the General Assembly, the Security Council or the International Court of Justice."

In respect of the good offices process conducted by the Secretary-General of the United Nations, Venezuela stated that "[i]t is worth highlighting that the designation of the good officers always took place upon acceptance by both Parties". Again, the Court observes that the United Kingdom did not seek to participate in the procedure set out in Article IV to resolve the dispute; nor did the Parties request such participation. Venezuela's exclusive engagement with the Government of Guyana during the good offices process indicates that there was agreement among the parties that the United Kingdom had no role in the dispute settlement process.

106. In view of the above, the practice of the parties to the Geneva Agreement further demonstrates their agreement that the dispute could be settled without the involvement of the United Kingdom.

107. In light of the foregoing, the Court concludes that, by virtue of being a party to the Geneva Agreement, the United Kingdom accepted that the dispute between Guyana and Venezuela could be settled by one of the means set out in Article 33 of the Charter of the United Nations, and that it would have no role in that procedure. Under these circumstances, the Court considers that the Monetary Gold principle does not come into play in this case. It follows that even if the Court, in its Judgment on the merits, were called to pronounce on certain conduct attributable to the United Kingdom, which cannot be determined at present, this would not preclude the Court from exercising its jurisdiction, which is based on the application of the Geneva Agreement. The preliminary objection raised by Venezuela must therefore be rejected.

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108. For these reasons,
THE COURT,
(1) Unanimously,
Finds that the preliminary objection raised by the Bolivarian Republic of Venezuela is admissible;
(2) By fourteen votes to one,
Rejects the preliminary objection raised by the Bolivarian Republic of Venezuela;

IN FAVOUR: President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; Judge ad hoc Wolfrum;

AGAINST: Judge ad hoc Couvreur;
(3) By fourteen votes to one,
Finds that it can adjudicate upon the merits of the claims of the Co-operative Republic of Guyana, in so far as they fall within the scope of paragraph 138, subparagraph 1, of the Judgment of 18 December 2020.

IN FAVOUR: President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; Judge ad hoc Wolfrum;

AGAINST: Judge ad hoc Couvreur.
Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this sixth day of April, two thousand and twenty-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Co-operative Republic of Guyana and the Government of the Bolivarian Republic of Venezuela, respectively.
(Signed) Joan E. DONOGHUE,
President.
(Signed) Philippe GAUTIER,
Registrar.
Judge BHANDARI appends a declaration to the Judgment of the Court; Judge ROBINSON appends a separate opinion to the Judgment of the Court; Judge IWASAWA appends a declaration to the Judgment of the Court; Judge ad hoc WOLFRUM appends a declaration to the Judgment of the Court; Judge ad hoc COUVREUR appends a partially separate and partially dissenting opinion to the Judgment of the Court.
(Initialled) J.E.D.
(Initialled) Ph.G.

XIII. BIBLIOGRAPHY

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In 1822, in the Dominions of Venezuela, which was then part of the Republic of Colombia, the presence of English settlers was detected, who occupied Demerara and Berbice near the Essequibo River, beyond the territories that belonged to the United Kingdom under the provisions of the Treaty of London of 13 August 1814.

From then on, the United Kingdom began to expand into the territory of the Essequibo. Efforts were made to get the British to agree to the establishment of a demarcation line between British Guiana and Colombia. As a result of pressure from the United States, the United Kingdom finally agreed to submit the controversy to arbitration, which took place on 3 October 1899, when the Paris Award was issued, whereby 159,500 square kilometres were awarded to the United Kingdom.

The Paris Award was the product of a procedural farce. It is null and void because of the multiple direct violations of the Washington Treaty of 1897 and the international law in force at the time it was rendered, and also because it violated due process; had the flaw of arbitrators exceeding their powers, decided beyond what was required of the arbitral tribunal and, consequently, ruled ultra petita; lacked the required reasoning, and, furthermore, the arbitrators did not comply with their duty of impartiality.

Throughout the 20th Century Venezuela's claim to the Essequibo territory was always present. All these diplomatic steps constituted an important antecedent to the Geneva Agreement that was signed on 17 February 1966 to seek satisfactory solutions for the practical settlement of the controversy. The Paris Award could not solve the dispute that now, more than one hundred and twenty years later, is in the jurisdiction of the International Court of Justice, after Guyana had filed a lawsuit against Venezuela on 29 March 2018.

Venezuela's claim over the Essequibo territory first attracted my attention forty years ago, when I started teaching Public International Law at the Andrés Bello Catholic University in 1982, a few months after the Port of Spain Protocol ceased to be in force and the Geneva Agreement was once again applied. Now, it seems pertinent to me to make these comments on the subject. I am going to try to do it in three ways.

First, I will refer to the most important legal events that have occurred in these two hundred years, among them, the Status Quo Treaty of 1850; the Treaty of Washington of 1897; the Paris Award of 1899; the Geneva Agreement of 1966; and the Protocol of Port of Spain of 1970. I will also make some considerations on the International Court of Justice, its substantive and procedural legal regime, the aspects that have already been developed in that judicial instance and those that are yet to occur. A second way of approaching the subject is through the personalities that have been protagonists. Thirdly, I will present the matter through the most relevant dates of the claim.

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