Edited by **ALLAN R. BREWER-CARÍAS**
and LEÓN HENRIQUE COTTIN

GUYANA *v.* VENEZUELA

Arbitral Award of 3 October 1899

International Court of Justice, Case 171.
Documents on the Merits.

BOOK THREE: COUNTER-MEMORIAL OF VENEZUELA

8 April 2024, Vols I and II (of four)

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GUYANA v. VENEZUELA. Arbitral Award of 3 October 1899

Documents on the Merits filed before the International Court of Justice, Case 171

BOOK THREE

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GUYANA v. VENEZUELA.
Arbitral Award of 3 October 1899
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BOOK ONE: **MEMORIAL OF GUYANA**, 8 March 2022, **Vols I, II and III** (of four)

BOOK TWO: MEMORIAL OF GUYANA, 8 March 2022, **Vols IV** (of four)

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COUNTER-MEMORIAL OF VENEZUELA

VOLUMEN I

INTERNATIONAL COURT OF JUSTICE

ARBITRAL AWARD OF 3 OCTOBER 1899

(GUYANA *V.* VENEZUELA)

THE TRUTH OF THE BOLIVARIAN REPUBLIC OF VENEZUELA ON THE GUAYANA ESEQUIBA HISTORIC POSITION

Counter-Memorial of the Bolivarian Republic of Venezuela

VOLUME I

8 April 2024

Courtesy Translation

No. 00395

05 July 2024

His Excellency
Mr. Philippe Gautier
Registrar
International Court of Justice
Peace Palace
The Hague.-

Excellency,

On behalf of the Bolivarian Republic of Venezuela, I have the honor to enclose herewith a list of editorial changes corresponding to the document "The Truth of the Bolivarian Republic of Venezuela on the Guayana Esequiba. Historic Position (Counter-Memorial of the Bolivarian Republic of Venezuela)", submitted before the Court by the Bolivarian Republic of Venezuela on 08 April 2024, with reference to the Arbitral Award of 03 October 1899 (Guyana v. Venezuela), without prejudice to the historical position of not recognising or consenting to the jurisdiction of the Court in the territorial dispute over the Guayana Esequiba.

The Bolivarian Republic of Venezuela respectfully requests the Court to include the list in question in the case file.

Please accept, Excellency, the assurances of my highest consideration.

REPÚBLICA BOLIVARIANA DE VENEZUELA · MISIÓN ANTE LAS NACIONES UNIDAS · NEW YORK

Samuel Reinaldo Moncada Acosta
Ambassador, Permanent Representative of the
Bolivarian Republic of Venezuela to the United Nations
Agent of the Bolivarian Republic of Venezuela to the ICJ

INTERNATIONAL COURT OF JUSTICE

ARBITRAL AWARD OF 3 OCTOBRE 1899

(GUYANA *V.* VENEZUELA)

"THE TRUTH OF THE BOLIVARIAN REPUBLIC OF VENEZUELA ON THE GUAYANA ESEQUIBA HISTORIC POSITION"

Counter-Memorial of the Bolivarian Republic of Venezuela

TEXT			
Page	**Number**	**Original**	**Editorial Changes**
22	2.19	Chapter 7	Chapter 6
30	3.1		should be "following Chapters", and not preceding.
32	3.9	controversy	Controversy (iii).
41	Fn. 95		Correspond to "(annex 85)"
103	4.11	(Map 1)	(map 27)
104	4.13	(map no. 2)	(map no. 28)
105	4.13	(Map no. 3)	(map no. 29)
106	4.16	(map no. 3)	(map no. 29)
122	4.54	(map 5)	(map no. 37)
		(maps 6-12)	(maps no. 30-36)
138	4.71	(map 13)	(map no. 19)
152	4.108	(map 16)	(map no. 26)
167	Fn. 370 and 371		Both footnotes refer to fn. 365
189	5.9	Chapter 6	Chapter 4

TEXT			
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200	5.33	Chapter 7	Chapter 4
206	5.51	1987	1897
223	5.98	Chapter 6	Chapter 4
241	6.1	Chapter 6	Chapter 5
250	Fn. 562	Chapter 7, paras. 64-72.	Chapter 5, paras. 5.68 - 5.76
256	6.47	Chapter 5	Chapter 4
257	6.50	Chapter 7	Chapter 5
258	Fn. 567		Correspond to "(annex 175)"
268	6.80	1914	1814
270	6.86	Chapter 7	Chapter 5
285	6.123	Chapter 7	Chapter 5
286	6.127	Chapter 7	Chapter 5
298	6.155	Chapter 7	Chapter 5
299	6.157	chapter 7	Chapter 5
302	6.167	Chapter 7	Chapter 5
305	Fn. 693	Chapter 7, paras. 119-143.	Chapter 5, paras. 5.111-5.131
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PRELIMINARY CONSIDERATIONS

1. As the Court has been repeatedly informed, following the fraud committed with the 1899 arbitral award, the Bolivarian Republic of Venezuela has maintained a historic position of not submitting to third-party dispute settlement mechanisms (including the International Court of Justice) matters relating to its vital interests, such as its independence and territorial integrity. This position seeks to protect the most sacred interests of our Nation in all international spaces and mechanisms.

2. For that reason, Venezuela has not made the declaration provided for in article 36(2) of the Statute of the International Court of Justice, which *ipso facto* recognizes the binding jurisdiction of the Court to settle disputes relating to the interpretation of a treaty and any question of international law, among other matters.

3. In other words, although Venezuela is a State party to the Statute of the International Court of Justice, it is one of the 119 States that do not recognize the compulsory jurisdiction of the Court, provided for in Article 36(2) of the Statute, as does the Cooperative Republic of Guyana itself.

4. In fact, in 1945, on the eve of the entry into force of the Statute of the Court, Venezuela submitted a draft article 36, which excluded compulsory jurisdiction in cases of disputes already submitted to other peaceful means of dispute settlement and in cases of disputes resulting from actions which had occurred prior to the signing of the Statute (1945). Both premises excluded the Court's jurisdiction for the boundary case between Venezuela and Guyana.

5. In the same vein, within the United Nations, Venezuela has made twelve specific statements against the compulsory jurisdiction of the Court, demonstrating a consistent position in this regard.

6. In addition, Venezuela has refrained from ratifying treaties at the Inter-American level that *ipso facto* recognises the compulsory jurisdiction of the International Court of

Justice to resolve legal disputes that arise between States in this region, as is the case with the American Treaty on Pacific Settlement or "Pact of Bogotá" of 1948.

7. Venezuela has also made express reservations to international treaties that confer jurisdiction on the International Court of Justice. For example, at the time of ratification of the United Nations Convention against Transnational Organized Crime, it made a reservation to article 35, paragraph 21, in the following terms:

> "Pursuant to article 35, paragraph 3, the Bolivarian Republic of Venezuela declares that it enters an express reservation concerning the provisions of paragraph 2 of this article. Consequently, it does not consider itself bound to submit to arbitration as a means of settling disputes, nor does it recognize the compulsory jurisdiction of the International Court of Justice."[1]

8. Also, when it has signed bilateral treaties providing for third-party dispute settlement mechanisms, Venezuela has expressly indicated that such mechanisms are not applicable to issues related to its independence and territory. For example, article II of the Treaty of Non-Aggression, Conciliation, Arbitration and Judicial Settlement between Colombia and Venezuela (Bogotá, 17 December 1939) states the following:

> "Article II. The two High Contracting Parties undertake to submit, in accordance with the provisions of this Treaty, to the procedures for peaceful settlement established herein, disputes of any nature or arising for any reason whatsoever between them which have not been possible to settle amicably by ordinary diplomatic means, with the exception only of those which concern the vital interests, independence or territorial integrity of the Contracting States."[2]

9. Venezuela's historical position is expressly contained in the Geneva Agreement of 1966, which does not recognize the jurisdictional *fora* as the friendly way to achieve a practical and satisfactory solution for both parties, as Venezuela ratified to the UN

---

[1] United Nations, Convention against Transnational Organized Crime, 2000, UNTS, Vol. 2225, p. 209.

[2] Treaty of Non-Aggression, Conciliation, Arbitration and Judicial Settlement between Colombia and Venezuela, Bogotá, 17 December 1939, UNTS, Vol. 1257.

Secretary-General before his decision to choose the International Court of Justice as a means of settling the dispute.

10. By virtue of the above, since 2018 Venezuela formally opposed the alleged jurisdiction of the Court to hear the unilateral claim filed by Guyana, additionally considering that it has not consented in any way to its jurisdiction for said dispute, under Article 36(1) of the Statute.

11. Indeed, there is no basis on which to establish, even *prima facie*, the jurisdiction of the Court to hear Guyana's unilateral claim. In the absence of recognition of compulsory jurisdiction, the express consent of both parties is indispensable in order to bring the matter before the Court. Venezuela has never given such consent, nor can it be inferred from the content of Article IV of the Agreement to Resolve the Controversy over the Frontier between Venezuela and British Guiana (Geneva Agreement).[3]

12. Notwithstanding the above, in its questionable 2020 judgment, the Court claimed jurisdiction to hear Guyana's unilateral claim by interpreting Article IV of the Geneva Agreement in isolation and contrary to the spirit of the Agreement. In doing so, it overlooked the fact that the purpose of the Geneva Agreement, as stated in its preambular part, is to settle the dispute amicably "in a manner acceptable to both parties."

13. This decision seeks to take away from the State an essential element of its existence, such as its sovereignty, artificially constructing a consent to the jurisdiction of the Court that has never been granted. In practice, the jurisdictional immunity of the Venezuelan State has been violated and, therefore, its right not to be subjected to a trial without a legal or legally rational basis.

14. Venezuela's historic position in relation to the jurisdiction of the Court has recently been ratified by the Venezuelan people in the consultative referendum held on 3 December

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[3] Venezuela and United Kingdom of Great and Northern Ireland, Agreement to Resolve the Controversy over the Frontier between Venezuela and British Guiana, Geneva, 17 February 1966 (Geneva Agreement) (**Annex 6**).

2023, which voted in favour of not recognizing the jurisdiction of the International Court of Justice to resolve the territorial controversy over Guayana Esequiba.

15. Likewise, in accordance with Article 6 of the Organic Law for the Defence of Guayana Esequiba, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 6.798, dated 3 April 2024:

> "Article 6. The Bolivarian Republic of Venezuela shall not submit to third-party dispute resolution mechanisms, including arbitration and the jurisdiction of the International Court of Justice, matters relating to its independence and territorial integrity.
>
> The National Executive shall expressly reserve in any international treaty that provides for mechanisms for the resolution of disputes by third parties, excluding from the application of such mechanisms all matters related to its vital interests, such as its independence and territorial integrity.
>
> The Bolivarian Republic of Venezuela shall use the procedural means available to it to reject the claims of any tribunal or Court, including arbitral tribunals and the International Court of Justice, to grant itself jurisdiction to hear or resolve matters relating to its independence and territorial integrity.
>
> Public officials, authorities and representatives of the public authorities, as well as citizens, shall refrain from enforcing, causing to be enforced or collaborating in the enforcement of awards, judgments, orders or any type of decision, interlocutory or final, issued by any court or tribunal whose jurisdiction is not recognized by the Republic, except that such decisions consist in the rejection of the jurisdiction or the recognition of the lack of jurisdiction of the aforementioned courts or tribunals to hear or resolve matters relating to their independence and territorial integrity."

16. Notwithstanding all of the above, the Bolivarian Republic of Venezuela, in order not to leave any room for inertia and the vacuum implied by the defence of the historical truth and its legitimate rights through peaceful mechanisms, has decided to present its Counter-Memorial to expose to the world the violation of its

right to due process and the claim of confiscation of the rights that historically correspond to it over the territory of Guayana Esequiba, concocted through the instrumentalization of the International Court of Justice in a fabricated case that clearly violates international law.

17. In view of the foregoing, this document in no way implies recognition of the jurisdiction and competence of the Court over the territorial controversy over Guayana Esequiba, nor of the decision it may adopt on this matter, whatever it may be.

CHAPTER 1: INTRODUCTION

I. THE ORIGIN OF THE CONTROVERSY

1.1. As will be shown in this Counter-Memorial, the territorial controversy between Venezuela and Guyana is the outcome of an outrageous succession of lies, manipulations, forgeries, frauds, abuses, and other wrongdoings, to the systematic detriment of Venezuela.

1.2. The evidence confirms that the territorial controversy between Venezuela and Guyana is thus the outcome of a blatant policy of progressive usurpation of Venezuelan territory, carried out by the British Empire after Venezuela's independence by forging a non-existent territorial controversy, falsifying maps, establishing gold mining camps through furtive incursions, simulating a non-existent territorial occupation and, finally, depriving Venezuela of its territory through the fraudulent Paris Arbitral Award of 1899.

1.3. The United Kingdom burned "thousands of documents detailing some of the most shameful acts and crimes" committed during the era of the British Empire.[4] Not only did the United Kingdom never recognise the wrongfulness of its past conduct *vis-à-vis* Venezuela, as duly explained in the following Chapters, but it also maintains "classified" archives related to the "Sovereignty dispute over borders between British Guiana and Venezuela".[5] Moreover, even if the UK disclosed the current "classified" documents, the most embarrassing ones for it will never come to light because they were submitted to "the purge". Indeed, before granting independence to its colonies, the UK, fully aware of its systematic wrongdoings, implemented an instruction codenamed "Operation Legacy",

[4] "Britain destroyed records of colonial crimes", *The Guardian*, 18 April 2012 (available at: https://www.theguardian.com/uk/2012/apr/18/britain-destroyed-records-colonial-crimes).

[5] Sovereignty dispute over borders between British Guiana and Venezuela, *The National Archives* (available at: https://discovery.nationalarchives.gov.uk/details/r/C342332).

ordering a vast destruction of all colonial archives that "might embarrass Her Majesty's government".[6] This policy was systematically implemented in British Guiana.[7]

1.4. Venezuela is compelled to add that, far from acknowledging its shameful conduct that led to the terrible outrage culminating in the 1899 Arbitral Award, the United Kingdom has continued to interfere in the relation between Venezuela and Guyana, sending its military ships to try to force, by threat, Venezuela to renounce to its historic claim, while further meddling in Venezuela's internal matters, seeking to attract followers to abandon the legitimate claim of Venezuelans to their territory, through the support political opponents under the condition that they drop Venezuela's legitimate claim to its territory.[8]

1.5. What motivates UK's policy, as in colonial times, has nothing to do with international law. During colonial times, its motivation was lust for gold and the domination of the Orinoco to guarantee geo-strategic control of South America.[9] Today it is its greed for black gold.

II. THE 1966 GENEVA AGREEMENT

1.6. It was precisely in order to set aside this lamentable past that the Geneva Agreement was concluded in 1966, in the context of Guyana's decolonization process. The Agreement represents the affirmation of the unacceptable nature of the territorial situation resulting from the deplorable British expansionist history just evoked, culminating in the shameful 1899 Arbitral Award, and sought to lay the foundations for an amicable resolution

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[6] UK Government, Cary report on release of the colonial administration files, Independent report, 24 February 2011, p. 1 (available at: https://assets.publishing.service.gov.uk/media/5a824499e5274a2e87dc2089/cary-report-release-colonial-administration-files.pdf).

[7] "Revealed: the bonfire of papers at the end of Empire", *The Guardian*, 29 November 2013 (available at: https://www.theguardian.com/uk-news/2013/nov/29/revealed-bonfire-papers-empire).

[8] "Revealed: Secretive British unit planning for 'reconstruction' of Venezuela", *Canary*, 13 May 2020 (available at: https://www.thecanary.co/uk/2020/05/13/revealed-secretive-british-unit-planning-for-reconstruction-of-venezuela/).

[9] "UK business mission to Guyana seeks expansive investment opportunities", *Oil Now*, 27 November 2023 (available at: https://oilnow.gy/featured/uk-business-mission-to-guyana-seeks-expansive-investment-opportunities/).

of the territorial controversy in a practicable and equitable manner that is acceptable to both Parties.

1.7. As will be shown below, contrary to what Guyana contends, the Geneva Agreement of 1966 has not been concluded to determining the invalidity of the 1899 Award, an issue that had been frankly overcome. Instead, the Agreement has been concluded to commit the Parties to resolve the controversy in seeking a practicable and equitable solution that is duly acceptable to both. To assist them in this endeavour, the Geneva Agreement establishes a mechanism that requires the Parties' substantial engagement in undoing a grotesque territorial dispossession, in a way that will lead to a balanced and acceptable solutions for both Venezuela and Guyana.

1.8. The Parties' efforts to reach a mutually acceptable solution is reflected, as this Counter-Memorial demonstrates, in the work of the Joint Commission, the Port of Spain Protocol, and the negotiations under the good offices of the Secretary-General of the United Nations. As will be shown below, the Co-operative Republic of Guyana was committed to finding a mutually acceptable solution until 2015, when the "world class oil discovery" was made and its alliance with Exxon Mobil was sealed. Nevertheless, and contrary to what Guyana is claiming today through an unprecedented campaign of misinformation, Guyana was and is legally bound to find a mutually acceptable solution in accordance with the Geneva Agreement, as will be demonstrated below.

III. GUYANA'S BREACH OF THE GENEVA AGREEMENT

1.9. Unfortunately, Guyana did not stick to its own word, and, under the perverse influence of transnational companies, reproduced the outrageous practice of its ancient colonial power. Advised by lawyers paid with funds provided by Exxon Mobil and with the support of the United States State Department machine, Guyana transgressed the 1966 Geneva Agreement and pushed the United Nations Secretary-General, normally bound to act as a neutral third-party, to take sides with its cause, espouse its thesis, and refer a truncated version of the territorial controversy to the Court. Venezuela will never accept such a farce.

1.10. Indeed, it is now known for a fact, as will be fully demonstrated below, that in 2015, while a process of good offices under the auspices of the United Nations Secretary-General was in full swing, Guyana, together with the American firm Exxon Mobil, anxious to secure access to and exploit a "world-class oil discovery" in the maritime area off the coast of Guayana Esequiba,[10] took the *final decision* that the controversy will be adjudicated by the International Court of Justice.[11] This decision was then followed by a campaign of pressure on the United Nations, in particular on the United Nations Secretary-General, aiming at influencing him so that he would side with Guyana and endorse this unilateral decision.

1.11. In the meantime, Guyana adopted an aggressive strategy of blocking the process carried out under the Geneva Agreement. And although an extension of the time devoted to searching a solution to the territorial controversy through good offices with mediation "elements" had been decided *and formally agreed by Guyana*, Guyana had no intention at all to act in good faith, as it committed to under the Geneva Agreement. Having already its definitive plan in place since 2015, Guyana sat back and waited for time to pass during meetings with the Good Officer, while, at the same time, "intensif[ying] its bilateral activism with other countries" to pressure the United Nations Secretary-General, as openly admitted in 2017 by the Guyanese Minister of Foreign Affairs, who is now Guyana's agent before the ICJ.[12]

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[10] "ExxonMobil: Well Offshore Guyana Confirms 'World-Class' Oil Discovery", *Hartenergy*, 30 June 2016 (available at: https://www.hartenergy.com/exclusives/exxonmobil-well-offshore-guyana-confirms-world-class-oil-discovery-28873). See also "Exxon Mobil announces significant oil discovery offshore Guyana", *Exxon Mobil's website*, 20 May 2015. (available at: https://corporate.exxonmobil.com/locations/guyana/news-releases/exxonmobil-announces-significant-oil-discovery-offshore-guyana).

[11] Raphael G Trotman, *From Destiny to Prosperity*, Mr Trotman was the Guyanese Minister of Governance and of Natural Resources of Guyana, during the period 2015-2020.

[12] "Guyana preparing to litigate 1899 Arbitral Award- Greenidge". *iNews* Guyana, 5 December 2017 (available at: https://www.inewsguyana.com/guyana-preparing-to-litigate-1899-arbitral-award-greenidge/).

1.12. Such inacceptable strategy is at odds with the spirit and letter of the Geneva Agreement. Furthermore, and at odds with all basic rules of diplomacy, Guyana lied. It lied to the United Nations. It lied to Venezuela. It lied to everybody.

IV. GUYANA'S LIE

1.13. On 12 November 2015, the Secretary-General of the United Nations proposed to Guyana a course of action – the "Way Forward" – whereby his "|p|ersonal Representative will engage intensively with both parties and offer his or her active assistance in search of a practical solution". He further requested that "[t]he parties will in good faith provide their full cooperation to the Secretary-General and his Personal Representative" (point 3), further asking the parties to "invite the Secretary-General, acting personally or through his Personal Representative, to make confidential non-binding suggestions on any relevant aspects of their bilateral relationship, including its maritime aspects; environmental aspects; their practical cooperation; and shared principles of good neighbourliness" (point 4), and specifying that "|t|he parties aim to have reached a mutually acceptable agreement by |November 2016|" (point 8).[13]

1.14. Guyana's response was given weight by the Court at paragraph 58 of the 2020 Judgment:

> "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."

[13] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*. Memorial of Guyana on Questions of jurisdiction and/or admissibility, Vol. IV, 19 November 2018, Annex 100.

1.15. This was a pure and simple lie. Guyana had no intention whatsoever to participate in good faith in any good office process. It had decided in 2015 that its claim will be referred to the International Court of Justice,[14] and it lied from this date onward. Guyana even pushed the hypocrisy at its extreme, authorising itself to complain before the United Nations Secretary-General in April 2016 that although "Guyana has expressed its willingness to accept the Way Forward in a spirit of utmost cooperation and compromise", it was Venezuela which "evidently, is unwilling to accept any effective procedure for settlement of the controversy."[15]

V. GUYANA'S 2015 DECISION AND ITS IMPLEMENTATION

1.16. Guyana's strategy has been clarified recently in the book entitled "*From Destiny to Prosperity*" published by Mr. Raphael G. Trotman, Minister of Governance and of Natural Resources of Guyana during the period 2015-2020, and as such a direct witness of the facts. Mr. Trotman revealed that Guyana has concluded in 2015 an alliance with the U.S. petroleum company ExxonMobil, then presided by Mr. Rex Tillerson, who was soon to be appointed Secretary of State by President Trump. Mr. Trotman explained the alliance as follows:

> "Guyana's decision to solidify relations with ExxonMobil, Hess and CNOOC, and to press the United Nations to bring this matter of Venezuela's claim and constant sabre rattling to an end, was a very costly and risky one, but in the end, the right one, and well worth it."[16]

> "I was informed that in September 2016, in the margins of the UN General Assembly, the leadership of Guyana met with the leadership

[14] See for instance Guyana's president answer to a question put in 2015: "Questioned on whether a formal approach has been made to the United Nations Secretary-General to begin a process for a judicial resolution of the issue, Granger said that this has not yet been done but emphasized that an approach would be made." (available at: https://en.mercopress.com/2015/06/25/guyana-gives-assurances-to-exxon-to-keep-exploring-for-oil-despite-venezuela-s-threats).

[15] Memorial of Guyana on jurisdiction and admissibility, Vol. IV, Annex 103.

[16] R. G. Trotman. *From Destiny to Prosperity*, 2023, p. 34.

of ExxonMobil to discuss the discovery and how it could be developed and protected [...]".[17]

"all engagements between Exxon and the Ministry of the Presidency, the Ministry of Foreign Affairs and the Ministry of Natural Resources became inextricably linked. In furtherance of this new thrust, it is no secret that Guyana signed a new agreement with Exxon and received a 'signature bonus'. The sole objective, and need for this 'bonus', was for it to be put towards Guyana's diplomatic and legal efforts at casting off, from its back, the dark shadow of Venezuela's continuous and mounting threats. A decision was taken to assemble a world-class legal team that would be supported by the best experts on cartography, maps and treaties and to implore the United Nations Secretary-General, Mr. António Guterres, to use his powers under the Geneva Agreement of 1966, to move beyond the 'Good Offices' process and to refer the matter of Venezuela's unfounded claims to the International Court of Justice for a full and final determination. The terms of the 1966 Geneva Agreement gave the Secretary-General the power and responsibility to choose a means of peaceful settlement from amongst those contemplated in Article 33 of the Charter of the United Nations. After much effort, and what seemed like a long wait, Mr. Guterres took the unprecedented step, on January 30, 2018, of referring the matter to the World Court. By then, and in anticipation of this referral, the legal and expert team was in place and Guyana was ready and in a strong position to present its case."[18]

1.17. To solidify their alliance, in a Petroleum Agreement concluded on 27 June 2016, Tillerson's Exxon Mobil and Guyana committed as follows:

"Article 31 – Miscellaneous

The Government assures the Contractor that the Contract Area lies entirely within the territorial limits of Guyana and that Guyana has sovereignty over such area. The Government shall continue to assert its right to the entire Contract Area and seek to resolve current or future claims, if any, by other States that impugn any portion of the

[17] *Ibid.*, p. 51.
[18] *Ibid.*, p. 32.

> Contract Area. The Government shall also use its best efforts to permit due observance of the terms and conditions of this Agreement by both Parties. Both Parties undertake not to take any action inconsistent with the terms and conditions of the Agreement".[19]

1.18. The "Contract Area" covers the entire maritime area off the coasts of the territory in contention between the Parties, where a "world-class oil discovery" has been located in 2015, as publicly announced by ExxonMobil. To respect this Petroleum contract vis-à-vis the oil companies, and in particular to "assure" them that all areas were within its territorial limits, Guyana necessarily breached its commitments *vis-à-vis* Venezuela under the Geneva Agreement. Indeed, abiding by that contract required Guyana to stop all efforts to negotiate a practical solution acceptable to both Parties. In exchange for that commitment, Guyana and Exxon Mobil engaged in a "long-term strategic and economic relationship" aimed at creating and advancing a forged 'controversy' over the alleged validity of the 1899 Arbitral Award, in order to direct it before the Court.

1.19. Fraud, especially of this scale, does not come cheap, and Guyana needed money for pursuing it. It would of course have been inappropriate for ExxonMobil to directly hire the lawyers, but ExxonMobil, as part of its deal with Guyana, did provide money, in 2016, in the form of a so-called "bonus" of USD 18 million, with 15 million being earmarked for the lawyers hired to articulate various actions and pressure the Secretary-General to refer Guyana's claim before the Court. In his book, former Minister Trotman explained that:

> "ExxonMobil, after some discussions, agreed to give Guyana some support [...]. Guyana received the sum of $18 million, which was termed as a signature bonus. But for all intent and purposes, $15 million of that has always been earmarked as the legal fees to be paid for our legal challenge in court |...|."[20]

> "What was received was money to assist with financing Guyana's legal challenge at the International Court of Justice (ICJ). It should be noted that at the time the money was received that Guyana had

[19] Petroleum Agreement between Guyana and Exxon, CNOOC, Hess, 7 October 2016.
[20] *Ibid.*, pp. 96-97.

> not had the controversy referred to the ICJ but had confidence that it would be and needed to start preparations [...]."[21]

1.20. Thus, Guyana adopted a course of conduct between 2015 and January 2018 to drive the United Nations Secretary-General to refer this case to the Court. Former Minister Trotman confirmed:

> "After much effort, and what seemed like a long wait, Mr. Guterres took the unprecedented step, on January 30, 2018, of referring the matter to the World Court".[22]

1.21. The truth is that, since 2015, Guyana made nothing resembling such alleged "effort" to participate in good faith in the Geneva Agreement process. It sat back and waited for the passage of time, consistent with its strategy to fabricate a controversy designed to be heard by the Court.

VI. THE BROADER CONTEXT

1.22. The United States decided in 2015, at the very moment of the discovery of huge oil fields off the coast of Guayana Esequiba, that Venezuela was "an unusual and extraordinary threat to the national security and foreign policy of the United States" and declared "a national emergency to deal with that threat".[23] Rex Tillerson was appointed Secretary of State of the Trump administration two years later, in 2017. Tillerson made clear the United States' underlying intention in bluntly stating: "President Maduro could choose to just leave [...]. If the kitchen gets a little too hot for him, I'm sure that he's got some friends over in Cuba that can give him a nice hacienda on the beach, and he can have a nice life over there."[24] The U.S. Congressional Research Service noted more recently that

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[21] *Ibid.*, pp. 53-54.

[22] *Ibid.*, p. 33.

[23] U.S. President's Executive Order 13692, 8 March 2015, (available at: https://www.federalregister.gov/documents/2015/03/11/2015-05677/blocking-property-and-suspending-entry-of-certain-persons-contributing-to-the-situation-in-venezuela).

[24] K. Atwood, "Tillerson brings up possibility of regime change in Venezuela", *CBS News*, 2 February 2018 (available at: https://www.cbsnews.com/news/tillerson-brings-up-possibility-of-regime-change-in-venezuela/).

"those sanctions and other international pressure failed to dislodge Maduro",[25] confirming the U.S.'s unlawful policy of "regime change." Of course, this pressure supported Guyana (and Tillerson's ExxonMobil), which took advantage of these wrongdoings to advance its unilateral actions.

VII. THE PURPOSE OF THE GENEVA AGREEMENT

1.23. The spirit in which the Geneva Agreement was negotiated and signed was not confrontational, since it establishes in black letters that the solution should be mutually satisfactory. The purpose of the Geneva Agreement is conciliatory, its object and purpose being for the Parties to arrive at a mutually acceptable solution. There is no basis in the Geneva Agreement for any decision that would not allow the Parties to reach such a solution.

VIII. THE STRUCTURE AND CONTENT OF THE COUNTER-MEMORIAL

1.24. Venezuela's Counter-Memorial is structured as follows:

1.25. Chapter 2 determines the true controversy between the Parties, noting that the contours of the controversy submitted by Guyana are totally misleading; that the actual question in this case has been determined by the 1966 Geneva Agreement, and that the court has no role to play for that matter. Chapter 3 delves in the preliminary work of the Agreement, its text and the subsequent practice, aimed to elucidate, not only the subject matter of the territorial dispute, but also the framework of the mutually acceptable and satisfactory settlement enshrined in the Geneva Agreement. Chapter 4 provides evidence of Venezuela historical title to the territory of Guayana Esequiba, which title was baselessly and fraudulently challenged by Great Britain. Chapter 5 reviews the substantial set of exhibits, which prove that the steps leading to the 1899 Arbitral Award was fraudulent, abusive and unfair. Chapter 6 is a conclusion on the manifest, intrinsic nullity of the 1899

[25] Congressional Research Service. "Venezuela: Overview of U.S. Sanctions Policy", 26 January 2024, p. 1 (available at: https://crsreports.congress.gov/product/pdf/IF/IF10715).

Award. Chapter 7 shows that Guyana's argument on the allegedly prolonged acceptance of the Arbitral Award by Venezuela lacks merits.

1.26. The Counter-Memorial ends in Venezuela's conclusions and submissions.

CHAPTER 2: THE REAL CONTROVERSY OVER GUAYANA ESEQUIBA

I. INTRODUCTION

2.1. In its memorial on Preliminary Objections, Venezuela stressed that it:

> "could not be compelled to prove the validity or invalidity of the award, much less bear the burden of proof of its nullity, simply because it never committed to do so, and much less when it signed the Geneva Agreement in 1966. Venezuela has only undertaken to amicably achieve a settlement acceptable for the Parties."[26]

2.2. This chapter elaborates on this point, which is essential for the proper resolution of the territorial controversy. Indeed, as explained in this Chapter, this case has, so far and deplorably, proceeded on the basis of a profound misunderstanding of the Geneva Agreement – a misunderstanding rooted in Guyana's biased, unfair, and one-sided presentation of the matter at hand.

2.3. The controversy as described by Guyana bears only a superficial resemblance to the true "controversy" that the Geneva Agreement was designed to solve. Indeed, Guyana's approach to the case all but eradicates the existence of the Geneva Agreement, in an unfounded bid to set the clock back to 1899, as though the decades of good faith engagement between the parties after 1966 could be brushed off for the sake, if Guyana's machinations were successful, of an asymmetric outcome that gives everything to one party (Guyana), and denies everything to the other (Venezuela).

2.4. After elaborating on the "real issue" in the case (**II**), namely, the way for the Parties to reach an amicable and satisfactory settlement of their controversy, this Chapter concludes by making it clear that the Court has no role to play in this context other than to respect the validity of the Geneva Agreement which mandates the reaching of a practical, mutually acceptable agreement for both parties (**III**).

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[26] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*. Preliminary objections of Venezuela. 7 June 2022, para. 54.

II. THE REAL CONTROVERSY OVER GUAYANA ESEQUIBA DIFFERS SUBSTANTIALLY FROM WHAT GUYANA HAS ASKED THE COURT TO DECIDE

2.5. After establishing that Guyana's description of the controversy is misleading **(A)**, Venezuela will turn to the "real issue" in the case: a practical and mutually satisfactory resolution of the territorial controversy **(B)**.

A. THE CONTOURS OF THE CONTROVERSY AS INTRODUCED BY GUYANA ARE MISLEADING

2.6. In its Memorial, Guyana concluded by requesting the Court:

> "To 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."[27]

2.7. From the outset Venezuela has protested the "unilateral presentation of the mentioned dispute" by Guyana.[28] This protest was justified, in particular, by the fact that Guyana's prayer for relief was exceptionally broad – so broad, in fact, that most of its items have since been dropped. Venezuela was also challenging Guyana's description of the territorial controversy because it repeated its past unwillingness to give full effect to the Geneva Agreement, what it stands for, and what the Parties have agreed thereunder.

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[27] GM, p. 287.

[28] 2020 Judgment, para. 5. See, in this respect, Memorandum of Venezuela, paras. 104 *et seq.*

2.8. This misunderstanding has deep roots. It is apparent in the failure of the Mixed Commission appointed under the Agreement.[29] Yet, Guyana eventually agreed that an amicable settlement was the mandated way forward, as illustrated by its participation in the good offices process over the years, and as will be further shown in Chapter 3. In fact, Guyana changed its attitude and position only in 2015, when it consciously decided to give in and yield to the oil transnationals and to subordinate its relationship with Venezuela to the economic interests of those transnationals, as explained in Chapter 1.

2.9. Since that date, Guyana has falsely represented that the Geneva Agreement was meant to resolve a dispute over the validity or invalidity of the Arbitral Award.[30] In reality, the Agreement was entered into in order to leave behind that particular dispute and allow the Parties to find a practical, mutually satisfactory solution to the territorial controversy. This should be particularly clear, for several reasons.

First, the Geneva Agreement does not, at any point, provide that answering the question of the validity of the Award is a pre-condition for the mutually satisfactory solution the Parties are seeking; this is the only way to read the Agreement's multiple references to such a solution.[31]

Second, the Agreement was negotiated and executed after the Parties unsuccessfully conducted a process to review the validity of the 1899 Award.[32] It is therefore incredible that Guyana now claims that the Parties signed an agreement to eternally continue in the same process without any concrete advantage.

Third, Guyana did not even exist at the time of the Arbitral Award, and, as the Court decided in 2023, this proceeding does not have the United Kingdom as a Party – which was

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[29] GM. Annex 47, para. 3: "In effect, the Venezuelan representatives maintained at all times that, in light of the letter and spirit of Article I, their mandate was only and exclusively to 'seek satisfactory solutions for the practical settlement of the controversy', while the Guyanese representatives maintained the criterion that the determination of the legality of the Award of 1899 was a prior question that had to be dealt with preferably before examining any practical arrangements." This was noted by the Court, in the 2020 Judgment, para. 46.

[30] Preliminary Objections of Venezuela, paras. 17, 20.

[31] *Ibid.*, para. 48.

[32] 2023 Judgment, para. 37.

the original Party to that fraught arbitration that consecrated its usurpation of Guayana Esequiba. The Agreement was adopted in the full knowledge that Guyana would soon reach independence – and would have to reach its own solution with Venezuela,[33] without relying on an invalid award that it never obtained by itself but, somehow, would inherit from the United Kingdom. In other words, what the Geneva Agreement did was to set the Parties (i.e., Venezuela, and the soon-to-be independent Guyana) on the path of reaching a solution that is mutually beneficial and does not repeat the mistakes (and dead-end) of the situation that had prevailed between Venezuela and the United Kingdom.

2.10. As should now be apparent, the "real issue" differs substantially from Guyana's monomaniacal focus on the validity of the 1899 Award – a stale issue that was left behind when the Parties concluded the Geneva Agreement.

B. THE REAL CONTROVERSY BETWEEN THE PARTIES

2.11. Now, what does the controversy between the Parties relate to?

2.12. To have a proper view of that issue, it is necessary to make a brief and preliminary review of the historical background to the Geneva Agreement. This section foreshadows several themes that will be amplified below bearing not only on the injustice and invalidity of the 1899 Award, but also on the British criminal schemes that had predated it. But the following sections have a more circumscribed role: highlighting the overarching theme that has informed the Parties' relationship over the last few decades, which in turn inform the "real issue" existing between them.

a) The territorial question in view of the Spanish discovery and colonisation, and the small "Dutch-British settlements" around the Essequibo region, and the Treaty of Washington of 1897

2.13. As will be detailed in Chapter 4, what was then the territory of Guiana, like many lands in South America, only gradually entered the orbit of the imperial powers – the Spanish colonization being notably predominant. Since their arrival in the 15th century,

[33] Preliminary Objections of Venezuela, para. 40.

and despite the subsequent limited Dutch and British incursions into the territory it is imperative to remember that Spain, as a colonising force, was the first European power to assert territorial sovereignty over the region. While Spanish territorial boundaries have devolved to Venezuela as the successor State upon its independence, the British Empire, in the mid-19th century, when Venezuela had already gained independence from Spain and was a sovereign republic, fabricated what became the territorial controversy, on the basis of illegal incursions into the Essequibo territories, adulterated maps, and a succession of lies.

2.14. This is the background to the Washington Treaty of 1897, which, by all accounts was an unequal treaty deeply disadvantageous to Venezuela. Under that instrument, the British Empire had ultimately agreed to arbitrate this territorial controversy, a path that Venezuela, sure of its rights, had long favoured. The British's change of heart, as explained below was likely prompted by its knowledge that a Commission set up by the United States to investigate this controversy would point to the truth of Venezuela claims.

2.15. Yet, unfortunately, and as recounted in the first section of Chapter 5 in particular, the Washington Treaty was not the right instrument to bring about a fair and just outcome – indeed it had been negotiated behind Venezuela's back with the purpose of committing an injustice, making this early attempt to settle the controversy null and void *ab initio*.

b) The Arbitral Proceedings and the 1899 Award

2.16. As further explained in Chapter 5, whatever the flaws of the Washington Treaty, the arbitral proceedings as they took place only sublimated them in their unfairness towards Venezuela. Whatever trust Venezuela could have had in the justice of these proceedings, or the impartiality of the tribunal, was soon to be betrayed.

2.17. It has been Venezuela's case for decades now that the Award is fraught with both procedural and substantive irregularities that severely impinge upon its legality under international law and would prompt anyone to consider it a nullity. As elaborated in further details below many aspects of the arbitral proceedings evidence this nullity under international law. *Inter alia*: the arbitration panel leaned excessively towards British

interests, with the absence of any Venezuelan nationals among the arbitrators highlighting a glaring procedural anomaly; the lack of any reasoning in the Award was meant to conceal the tribunal's many excesses of powers, such as the tribunal's failure to answer the questions put in the Washington Treaty, and its failure to give a *legal* decision – as was expected of it; and the final demarcation favoured the United Kingdom disproportionately, sanctioning its criminal usurpation of territory. These flaws discredited not only the Award, but also arbitration as a dispute-settlement method under international law, with many participants, on both sides, confessing their disbelief as to what had happened.

2.18. More importantly, for the purpose of this section, is the fact that the Award was bereft of the consensual bedrock that arbitration as a dispute resolution mechanism inherently demands. Both the Washington Treaty and the arbitration were the outcome of manipulations designed to harm Venezuela. Venezuela's hopes that the controversy created from the British motivation could be resolved amicably through a common engagement with international justice, was thus thwarted.

2.19. As such, the 1899 Award, when viewed through the prism of both procedural integrity and substantive justice, cannot be sustained: it was, in essence, an imposition and not an arbitration. As explained in Chapter 7, as soon as the circumstances allowed, Venezuela made its challenge to the Award known to the whole world.[34]

c) The Geneva Agreement and the Port of Spain Protocol

2.20. The Parties concluded the Geneva Agreement of 1966, with the aim of rectifying the historical injustices. Accordingly, the Geneva Agreement was, first and foremost, a way for the Parties to leave the Arbitral Award behind them and, instead, seek a mutually satisfactory solution to the outstanding territorial controversy between the Parties – as further demonstrated in Chapter 3 of this Counter-Memorial.

2.21. There is ample evidence of this object in the Geneva Agreement:

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[34] Memorandum of Venezuela. Annex. pp. 3-5.

a. The goal to amicably resolve the controversy appears from the very title of the Agreement, as well as from its preamble;[35]

b. The Commission to be established under Article I of the Agreement was tasked with "seeking **satisfactory** solutions for the **practical** settlement of the controversy between Venezuela and the United Kingdom". The same terms can be found in the *travaux préparatoires*.[36]

c. The nature of the Commission as a diplomatic endeavour, as opposed to a legal one, underlines that the Parties' purpose was to reach a diplomatic and political solution – and not to review the 1899 Award.

d. The use of negotiations, mediation, and other dispute-settlement approaches, as provided by Article IV, supports this view since they are ill-fit to the binary (validity/invalidity) question of what should be done with the 1899 Award. As stressed by Venezuela in its past submissions,[37] Article IV of the Geneva Agreement embodied the principles of graduality and progressivity: the Parties would, step-by-step, reach a satisfactory outcome.

e. In particular, and crucially, the United Kingdom (and Guyana) *opposed* to any mention of arbitration or recourse to the Court in the Geneva Agreement.[38]

2.22. To pretend, as Guyana does, that the final outcome of this controversy should, instead, be an entirely asymmetrical solution where one party (Guyana) gets everything and the other (Venezuela) nothing, is a manifest violation of the Agreement.

2.23. The records from Venezuela's ratification of the Geneva Agreement[39] notably evidenced the intention of this instrument to provide the impetus for a new approach to the

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[35] 2020 Judgment, para. 73.

[36] Letter of 16 December 1965 to the Secretary-General from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland, and Venezuela before the United Nations, 18 December 1965 (**Annex 43**).

[37] Memorandum of Venezuela, paras. 51, 106.

[38] *Ibid.*, para. 106, and its Annex, p. 31.

[39] Cited by the Court itself: see 2020 Judgment, para. 77.

territorial controversy, for the purpose of achieving a mutually satisfactory solution. For instance, Venezuelan President Raúl Leoni described the Geneva Agreement to the Venezuelan Congress as such:

> "By signing the Geneva Agreement, the National Government has not only defended the intangibility of our territory **by placing our claim in the same situation as the border dispute was when it was submitted to arbitration in 1897**, but has been consistent with Venezuela's traditional international position inspired by the principles enshrined in the Preamble of the Constitution, which order cooperation with other nations, in the aims of the international community, on the basis of reciprocal respect for sovereignty, self-determination of peoples and repudiation of war and conquest as instruments of international policy".[40]

2.24. This is hardly the view of someone that had accepted the "all-or-nothing" reading of Guyana now. Indeed, the entire ratification process supports that the Geneva Agreement leaves aside the question of the Award's validity. For instance, the then Foreign Minister of Venezuela, Iribarren Borges stated that:

> "This admission that there is a "border dispute with British Guiana" is reaffirmed by the admission at the first item of the "need to resolve the dispute." Moreover, in order to dispel any doubt about the nature of the talks... it was stipulated in the second item of the agenda that it would "seek satisfactory solutions for the practical settlement of the controversy that has arisen as a result of the Venezuelan contention that the Award of 1899 is null and void." Reinforcing this interpretation, the "determination of deadlines" for the solutions to be reached is contemplated in the fourth item. To no one can escape the fact that the British position at the beginning of this process in 1962 had already changed significantly. What was agreed on the agenda was far from that first offer made by his representative, Mr. Crowe, in the sense that they were only willing to examine the documents relating to the 1899 Award.
>
> [...]

[40] Memorandum of Venezuela. Annex, p. 25 (emphasis added).

> As a result of the diplomatic dialogue, and not of the monologue of the victors, the Geneva Agreement brings to a new situation the extreme positions of those who demand the return of usurped territory by virtue of a null award, and that of those who claimed that having no doubt about their sovereignty over that territory, were not willing to take the case to court."[41]

2.25. These statements are in line with the *travaux préparatoires*. In particular, the Parties' Joint Statement of 10 December 1965 recorded their intent to find a *practical* settlement of the controversy following the Venezuelan contention over the nullity of the 1899 Award .[42] The same Statement further recorded that, since the Parties could not accept the conclusions of their respective experts as to the 1899 Award, "the issue will not be considered" in the context of subsequent negotiations, which led to the Geneva Agreement.[43] This, again, demonstrates the bad faith that animates Guyana's efforts to relitigate the validity of the 1899 Award on the basis of the Geneva Agreement.

2.26. Further, and as is well-known, under international law subsequent practice by the parties can be taken into account when interpreting a treaty. This practice includes the Port of Spain Protocol, a moratorium agreed upon in 1970 as yet another attempt for the Parties to reach a settlement of this dispute. In other words, once again, the Parties entered into an international instrument designed to draw a line over the fraught 1899 Award. As such, far from abrogating or altering the Geneva Agreement's chief purpose, the Protocol confirmed its underlying approach of favouring a satisfactory solution to the controversy, by providing further breathing space for diplomatic negotiations.

2.27. This is readily apparent from the Statement issued by Venezuelan Minister of Foreign Relations, Dr. José Alberto Zambrano Velasco, on 10 April 1981, through which Venezuela declined to prolong the Port of Spain Protocol. In that Statement, Minister Zambrano Velasco opined "that the commitment made by Venezuela, Guyana and United

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[41] Memorandum of Venezuela, Annex, pp. 29 and 32.

[42] Letter of 16 December 1965 to the Secretary-General from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland, and Venezuela before the United Nations, 18 December 1965, p. 2 (**Annex 43**).

[43] *Ibid.*, p. 3.

Kingdom in 1966 to find satisfactory solutions for a practical settlement of the dispute should also be respected."[44] In a subsequent letter to the Secretary-General, Venezuela demonstrated how Guyana had "consistently refused to negotiate with Venezuela a solution of the type described" in the Geneva Agreement – i.e., and once again, "a satisfactory solution for the practical settlement of the controversy".

2.28. In this context, it bears recalling that Guyana, not Venezuela, had been in favour of prolongating the Protocol[45] – thus evidencing that it had thought, at least at that time, that such direct diplomatic endeavours were the only possible approach to the controversy.

d) The UN-mediated Process until Guyana Filed its Unilateral Application with the Court

2.29. In the following years, up to the expiry of the Port of Spain Protocol, the UN Secretary-General appointed a series of Personal Representatives to facilitate dialogue between the Parties. It is notable that two of the three Good Officers were not lawyers, but diplomats or economists – in line with the Geneva Agreement's goal to reach a "practical" – that is, political and diplomatic – solution to the controversy.[46]

2.30. These negotiations, which are further recounted in Chapter 3, were conducted under the specific understanding – in line with the Geneva Agreement – that diplomatic solutions were the most conducive to resolving this long-standing controversy. Accordingly, the factual record is replete with evidence that the intention of the Parties was to reach an amicable solution acceptable to both sides. For instance:

a. Documentary evidence from the Good Offices process in 1994, which confirmed the Parties' commitment "to try to break with traditional schemes and look for novel formulas

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[44] Memorandum of Venezuela, Annex, p. 54. See also: Declaration of the Minister of Foreign Affairs, Mr. José Alberto Zambrano Velasco, 10 April 1981 in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas, 1981, pp. 141-142 (available at Peace Palace Library).

[45] Memorandum of Venezuela, Annex, pp. 57 *et seq.*

[46] Both Sir Alister McIntyre and Norman Girvan were economists: only Oliver Jackman was a jurist, although he also qualified as a diplomat.

that would allow a solution to the impasse",[47] as well as their "determination to seek a practical settlement of the dispute, in accordance with the provisions of the Geneva Agreement."[48] This is on the back of several meetings with the UN-appointed facilitator, that saw substantial developments from both parties.[49]

b. Guyana's own Ministry of Foreign Affairs stressing in its 1998 Annual Report "the will of [both] countries to continue the search for a peaceful solution within the framework of the United Nations' Good Officer process as provided for in the 1966 Geneva Agreement."[50]

c. A joint communiqué resulting from a visit of President Chavez to President Jagdeo in Georgetown, on 19-20 February 2004, recounted that "a spirit of cordiality had permeated the approach to the dialogue between the two sides under the auspices of the United Nations Good Offices Process in the search for a peaceful and practical settlement of the controversy in accordance with the Geneva Agreement of 1966".[51] Similar statements were made in other later high-level visit between the two countries in 2010.[52]

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[47] Report on the Work of Emilio Figueredo in his capacity as facilitator within the envisaged Good Offices Mechanism aimed at achieving a practical settlement of the dispute between Venezuela and Guyana, 1983 (**Annex 110**).

[48] See Memorandum to the Foreign Minister Miguel Angel Burelli Rivas from Ambassador Emilio Figueredo Planchart, 4 July 1994 (**Annex 131**) and Report on the Work of Emilio Figueredo in his capacity as facilitator within the envisaged Good Offices Mechanism aimed at achieving a practical settlement of the dispute between Venezuela and Guyana, 1983 (**Annex 110**).

[49] Report on the Work of Emilio Figueredo in his capacity as facilitator within the envisaged Good Offices Mechanism aimed at achieving a practical settlement of the dispute between Venezuela and Guyana, 1983 (**Annex 110**): see, in particular, p. 6, which records the opinion of the Guyanese facilitator that it was "necessary to break with the traditional approaches and look for a new formula that would allow to exit the impasse." See also p. 9, where the document recounts that "it is evident that the solution, more than legal, must be political."

[50] Ministry of Foreign Affairs, Service within and Beyond our Borders, Annual Report, 1998, pp. 99 *et seq.* (**Annex 50**).

[51] Joint Communiqué issued at the end of the State visit to Guyana of H. E. Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, 19-20 February 2004, para. 4 (**Annex 51**).

[52] Joint Statement of Presidents Hugo Chávez Frías and Bharrat Jagdeo on the occasion of the official visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela, 21 July 2010 (**Annex 52**).

d. In 2012, a technical workshop took place with Good Officer Girvan, leading to a number of recommendations, such as to "[r]esume inter-institutional meetings to set up expert teams in order to coordinate the actions to be taken with a view to formulating satisfactory solutions for a practical settlement of the territorial controversy and for cooperation in general."[53]

e. During a press briefing in 2013, President Maduro disclosed that both countries were "ready to continue working through the Good Offices of the United Nations organization considering this as the sole and successful mechanism to allow us to channel our differences using international law."[54] In the resulting joint communiqué, both countries reconfirmed their commitment to "the search for a peaceful and practical settlement of the controversy".[55]

2.31. As can be seen from these examples, the spirit of these UN-mediated talks was one of cooperative engagement and bilateralism. This is not the conduct of Parties that disagree over a binary issue, such as the Award's validity or invalidity, but of neighbours seeking to reach a satisfactory solution and a viable *modus vivendi*. While progress took time in these negotiations, both Parties remained engaged, and Venezuela was confident that it would ultimately result in a mutually acceptable solution.

2.32. Instead, as described in Chapter 1, Guyana suddenly decided to unilaterally bring its unjustified case before the Court, insisting on a single aspiration: that of the fraudulent 1899 Award. What has brought forth such a radical change of tack from Guyana, is the "world-famous discovery" of significant reserves of offshore oil in the maritime areas off the coast.

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[53] Second Technical Workshop convened by the Good Officer, Norman Girvan, Personal Representative of the Secretary-General of the United Nations Organization, for the Guyana-Venezuela Territorial Controversy, 28 February 2013, p. 5 (**Annex 137**).

[54] "State visit of Venezuelan President… Maduro, Ramotar recommit to Good Officer process", *Stabroek News*, 1 September 2031 (available at: https://www.stabroeknews.com/2013/09/01/news/guyana/state-visit-of-venezuelan-president-maduro-ramotar-recommit-to-good-officer-process/).

[55] Joint Declaration issued on the conclusion of the State visit to Guyana by H. E. Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 31 August 2013 (**Annex 53**).

2.33. Nevertheless, this departure from a shared commitment to diplomatic resolution cannot allow us to forget that we are dealing with a territorial controversy that is to be resolved through diplomatic mechanisms. Guyana's proposal that the Court should now concentrate on the stale legal issue of the Award's validity would represent an unwarranted break with four decades of negotiations that were much richer, much more conducive to that goal.

III. THE COURT HAS NO ROLE TO PLAY IN THIS CONTEXT

2.34. Having established the subject of the controversy as it arises from the Geneva Agreement, it is evident that the Court has no role to play, without this implying a flagrant violation of the agreement. It is uncontested that the Court's role in any dispute before it is to rule under international law, respecting, in this case the validity of the Geneva Agreement, which mandates a practical and mutually acceptable solution for both parties.

CHAPTER 3: THE MUTUALLY ACCEPTABLE AND SATISFACTORY SOLUTION OF THE CONTROVERSY UNDER THE GENEVA AGREEMENT

I. INTRODUCTION

3.1. The territorial controversy between Venezuela and Guyana is of a unique nature for two reasons. First, it is governed by a legal instrument, that is, the Geneva Agreement, which is particular in its origins, content, object, and purpose, as demonstrated in the preceding Chapters. Second, this Agreement addresses a controversy resulting from the invalidity of a spurious international Award, that can only be resolved *diplomatically*, and by taking into account numerous other aspects of importance to both parties, that is, through an integral approach.

3.2. In its Application and throughout the course of these proceedings, Guyana has misled the Court by asking it to focus solely on the legal claim of the determination on the validity of the Award as if that was the ultimate goal of the Geneva Agreement.

3.3. As has been seen in Chapter 2, and as will be further explained in the present Chapter, the objective of the Geneva Agreement is to place the parties on a path to find a practical, mutually acceptable and satisfactory solution of the territorial controversy. The subject matter of the Agreement was never related to the validity or invalidity of the Award. As Venezuela has demonstrated in Chapter 2, this would lead to an unwarranted asymmetric approach to the dispute. Rather, the "real issue" in this controversy is to give effect to the Geneva Agreement.

3.4. The present Chapter will show to the Court how far the parties were willing and needed to go to achieve this objective, since anything short of a solution which is acceptable and satisfactory to both parties would not meet the terms of the Geneva Agreement.

3.5. For this purpose, this Chapter will focus on the early discussions and negotiations which eventually materialised into the Geneva Agreement, showing that the parties went to great lengths to conceive and give content to this notion of what a practical, mutually acceptable and satisfactory solution of the controversy was all about (**II**). It will also recount the subsequent practice of both States, showing that they always recognised that,

to achieve the ultimate objective of the Geneva Agreement, only a solution which comprised numerous aspects was needed, demonstrating how far the parties were willing to compromise for this purpose **(III)**.

II. THE NEGOTIATION OF THE GENEVA AGREEMENT IS EVIDENCE THAT FINDING A PRACTICAL, MUTUALLY ACCEPTABLE AND SATISFACTORY SOLUTION OF THE CONTROVERSY WAS THE ULTIMATE OBJECTIVE OF THE PARTIES

3.6. The position of Venezuela concerning the settlement of the territorial controversy with Guyana under the Geneva Agreement has been consistent: the only manner to achieve a practicable and long-lasting settlement of the boundary is through a practical arrangement, acceptable and satisfactory to both parties.

3.7. This imperative has been restated throughout the course of these proceedings to the Court,[56] and constitutes a *bona fides* reading of the Geneva Agreement, 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. It is thus in conformity with the customary international law rules on interpretation of treaties.[57] This formulation stems from both the preambular section which states that "any outstanding controversy [...] should therefore be amicably resolved in a manner acceptable to both parties",[58] and the body of the Geneva Agreement wherein the parties agreed that the objective was to find "satisfactory solutions for the practical settlement of the controversy".[59]

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[56] See for example. Note Verbale DM No. 000930 of 24 July 2020 from Venezuela's Minister of Foreign Affairs, Jorge Arreaza, to the then President of the Court, H.E. Abdulqawi Ahmed Yusuf, Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative Republic of Guyana, 29 March 2018 (**Annex 81**).

[57] Vienna Convention on the Law of Treaties, Art. 31(1); *Territorial Dispute (Libya Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994,* pp. 21-22. para. 41; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996,* p. 812. para. 23; *LeGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001,* p. 501. para. 99.

[58] Venezuela and United Kingdom of Great and Northern Ireland, Agreement to Resolve the Controversy over the Frontier between Venezuela and British Guiana, Geneva, 17 February 1966 (Geneva Agreement), preambular paragraph 3 (**Annex 6**).

[59] *Ibid.*, Article I (**Annex 6**).

3.8. This approach to resolving the controversy regarding Guayana Esequiba has been present since the beginning of the negotiations for the Geneva Agreement and constitutes its ultimate objective. The following subsections address some key aspects concerning the origins and negotiation record of the Geneva Agreement that reveal the initial positions of the parties in this regard, given that, to understand what parameters shall enable the parties to reach a mutually acceptable solution, one needs to review the negotiations and realise that the discussions were always about finding such solutions (**III**). Meanwhile, the period after the signature of the Geneva Agreement, evidences the extent to which the parties were willing to reach a diplomatic compromise, thus confirming that the only way to resolve the controversy was to find *mutually* acceptable solutions (**IV**).

III. THE ROAD TOWARDS THE GENEVA AGREEMENT BETWEEN 1962-1966

3.9. Early diplomatic exchanges show Venezuela's willingness to engage with Guyana and find an amicable settlement to the territorial controversy (**i**). These approaches led to meetings in London in 1965 wherein the parties had the opportunity to discuss, among others, what a satisfactory solution entailed (**ii**). Said meetings were followed-up in Geneva in 1966 wherein the parties consigned their agreement to find a practical, mutually acceptable and satisfactory solution of the controversy.

(i) VENEZUELA'S EARLY DIPLOMATIC GESTURES SIGNALED ITS QUEST FOR A DIPLOMATIC SETTLEMENT WITH GUYANA

3.10. Guyana's recount, in its Memorial on questions of jurisdiction and admissibility,[60] of some of the events leading up to the Geneva Agreement in 1966 merit comments, not only to highlight Guyana's inaccuracies, but also to evidence the constant position of Venezuela on the territorial controversy.

3.11. First, Venezuela had no qualms with respect to Guyana's independence, which it continuously supported. Rather, it was the United Kingdom who tried to silence Guyana in

[60] Memorial of Guyana on jurisdiction and admissibility, Ch. II, paras. 2.4-2.14.

its quest to publicise to the world its case for independence. For example, during one debate of the UN General Assembly Fourth Committee on December 18th, 1961, the United Kingdom's representative, Sir Hugh Foot, "expressed his delegation's most formal reservations concerning the hearing of the Premier of British Guiana as a petitioner" claiming that "[s]uch a hearing would have the most serious consequences", and in fact threatened that if allowed to do so the United Kingdom delegation would have to "refrain from taking part in the ensuing discussion".[61]

3.12. After a heated debate, the Chairman of the session allowed the Premier of Guyana, Mr. Jagan, to be heard.[62] It is no wonder that the United Kingdom's representative did not participate in the discussion[63] given that Mr. Jagan eloquently recounted Guyana's path to independence, including how, following the suspension of the 1953's constitution after just "four and a half months", and after "the popularly elected Government had been forcibly removed from office, just as the Gallegos Government in Venezuela, the Mossadegh Government in Iran and the Arbenz Government in Guatemala had been in 1948, 1953 and 1954 respectively",[64] the British Colonial Office had – according to Guyana's Premier own words – "imposed a dictatorial regime in British Guiana, which had amounted to a real reign of terror for the leaders of the national movement."[65]

3.13. By contrast, the records evidence that Venezuela was unequivocal in its support for Guyana's independence process, as shown, for example when Venezuelan President Betancourt stated that "[i]t should be noted that Venezuela's claim over its legitimately owned territory does not hinder the aspirations of the people of British Guiana for independence. The Venezuelan nation sympathises with this cause, as it has a long-standing anti-colonial position dating back to its own struggle for sovereignty and independence."[66]

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[61] *Ibid.*, Annex 14, p. 609, para. 2.

[62] *Ibid.*, p. 611, para. 30.

[63] *Ibid.*, p. 611, para. 34.

[64] *Ibid.*, p. 612, para. 42.

[65] *Ibid.*, p. 612, para. 43.

[66] President Don Rómulo Betancourt and the Venezuelan Claim. VI. Presidential Message, 7 March 1964, in *Claim to Guyana Essequibo – Documents 1962-1981*. Caracas 1981, p. 8 (available at Peace Palace Library). In this same regard see Note from the Minister of Foreign Affairs

The Venezuelan Chamber of Deputies, National Congress and legislative assemblies supported this view.[67]

3.14. Likewise, the official records of the UN General Assembly documented that, Venezuela "had always supported the cause for independence in the United Nations and had collaborated actively in the decolonization process", and even more so "in the present instance, since the country concerned was its immediate neighbour", proving that Venezuela "hoped that British Guiana would become independent as soon as possible and in the best possible circumstances".[68] This was reiterated not only by Venezuela's executive but also its legislative branch who supported "without reservation the total independence of British Guiana and its immediate inclusion into a democratic system."[69] History shows that Venezuela recognized Guyana as sovereign State on the same day of its independence,[70] while expressly reserving, of course, its territorial sovereignty rights over the entire area on the left bank of the Essequibo River.[71]

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of Venezuela Mr. Ignacio Iribarren Borges, to the Ambassador of Great Britain, Sir Anthony H. Lincoln, 18 May 1966, available at *Ibidem*, p. 100, and Statement by the Minister of Labour, Mr. Hens Silva Torres, and by Ambassador Francisco Alvarez Chacin, at the International Labour Organization (ILO), June 1966, at *Ibidem*, p. 112-113.

[67] Agreement of the Chamber of Deputies, 4 April 1962; Agreement of the National Congress, 13 October 1965, and Bolivar Statement of 15 February 1966, in *Claim to Guyana Essequibo – Documents 1962-1981*, Caracas, 1981, pp. 13-15 respectively (available at Peace Palace Library).

[68] United Nations General Assembly, 16th Session, Agenda Item 25: The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 8 October 1962, p. 130, para. 77 (**Annex 146**). See also Memorial of Guyana on questions of jurisdiction and admissibility, Annex 24, p. 1, and Annex 20; Memorandum of Venezuela, p. 7, and Annex, p. 38.

[69] *Ibid.*, Annex 20; Memorandum of Venezuela, p. 7.

[70] Memorandum of Venezuela, Annex, p. 38.

[71] Note of Venezuela's recognition of the new State of Guyana, with the reservation of Venezuelan rights to the territory of Guyana Essequibo, 26 May 1966, in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas 1981, pp. 102-103 (available at Peace Palace Library). On Venezuela's position on the reservation of its rights see also: Declarations by the Venezuelan Minister of Foreign Affairs on the Admission of Guyana into the OAS, published in the press, 6 September 1966 and Statement by Venezuela at the opening meeting of the United Nations General Assembly, 20 September 1966; and, Statement by the Delegate of Venezuela, Mr. Manuel Rafael Rivero, at the first regular working meeting of the second session of the Administrative Council of the United Nations Development Programme (UNDP), June 1966. All documents available at *Ibidem*, pp. 110-111, 114.

3.15. As documented, Venezuela's considerations with respect to the Guyanese independence process were related, rather, to the then perceived possibility that it would prejudice its territorial claim and, as a result, it felt obliged to state its concerns and aspirations, initially in regional forums[72] and then at the United Nations.[73] It is no wonder that, the territorial controversy having not been resolved with the United Kingdom as the colonial power, Venezuela made public its position that it would submit its claims to the independent government of Guyana, having never made its support for the latter's independence contingent upon a solution to the problem.[74]

3.16. The more important point to highlight is the fact that throughout these public interventions, and even long before the Geneva Agreement was foreseen, the initial elements of what Venezuela's constant position has been to this day were laid out, that is, a call for equity and reaching a satisfactory outcome for *both* parties.

3.17. For example, during the meeting of 15 January 1962 between the Minister Counsellor of the Venezuelan Embassy, Mr. Walter Brant, and American officials, the concept of equity was invoked by Venezuela, this time in relation to the 1899 Award which was rightly labelled "inequitable" and "flawed".[75]

3.18. Venezuela of course continued to expand on its position being explicit on the existence of a territorial controversy and detailing the reasons why it could not recognise

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[72] See Declarations of Venezuela made at the Fourth Meeting of Consultation of Foreign Ministers of the American Continent, March 1951, and at the Tenth Inter-American Conference meeting, March 1954, both reproduced at Memorial of Guyana on questions of jurisdiction and admissibility, Annex 19, paras. 51 and 52, p. 11.

[73] Memorial of Guyana on questions of jurisdiction and admissibility, Annex 16, p. 1.

[74] United Nations General Assembly, 16th Session, Agenda Item 25: The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 8 October 1962, p. 130, para. 77 (**Annex 146**). See also Memorandum of Venezuela, Annex, pp. 37-40.

[75] Memorial of Guyana on questions of jurisdiction and admissibility, Annex 16, p. 2.

the 1899 Award.[76] In that context, it identified another element to be taken into account for the resolution of the controversy.

3.19. In the letter from the Permanent Representative of Venezuela to the Secretary-General of the UN dated 14 February 1962 and distributed to all Member States of the organization, Mr. Sosa Rodriguez was clear in stating that,

> "Venezuela hopes that its long-standing dispute with the United Kingdom regarding the boundaries of British Guiana will be solved by negotiations between the interested parties, in accordance with international law and with the Purposes and Principle of the United Nations Charter, taking into account not only Venezuela's rights, but also the legitimate interests of the people of British Guiana under the present circumstances".[77]

3.20. Venezuela restated its position eight days later, on 22 February 1962, when the Venezuelan representative made the following statement at the 1302nd meeting of the 4th Committee of the General Assembly:

> "When the question of the independence of British Guiana [...] through peaceful negotiation with the United Kingdom [...] has come before the United Nations, the Government of Venezuela, while warmly supporting the rightful aspirations, must at the same time, in defence of the rights of its people, request that its just claims also be considered and that the injustice committed equitably rectified. [It] hope[d] to accomplish that through friendly negotiations with the parties concerned, who should consider [...] the present circumstances and to the rightful interests of the people of British Guiana".[78]

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[76] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 466, para. 35; Memorial of Guyana on questions of jurisdiction and admissibility, Annex 17.

[77] Memorial of Guyana on questions of jurisdiction and admissibility, Annex 17, para. 20, pp. 4-5 (emphasis added).

[78] Statement made by the Representative of Venezuela at the 1302nd Meeting of the Fourth Committee, 22 February 1962, para. 53 (**Annex 141**).

3.21. Needless to say, Guyana omitted referencing these passages to the Court[79] even though they are clearly at the root of what eventually became the formula contained in the 1966 Geneva Agreement, which contemplated the parties' search for a practical, mutually acceptable and satisfactory solution of the controversy. These passages highlight Venezuela's position:

- That the controversy is to be resolved by negotiation between the interested parties.

- That such a negotiation should take place in accordance with international law and with the Purpose and Principles of the United Nations Charter – i.e., Articles 1 and 2.

- That *both* States' rights and legitimate interests shall be taken into account.

3.22. Conciliatory conversations subsequently took place, as registered in the records of the United Nations.[80] This was followed, as explained in Chapter 7, by the tripartite examination of certain documentary evidence related to Venezuela's claims concerning the 1899 Award.

3.23. As already described by Venezuela,[81] talks took place in London on 5 and 7 November 1963, between the Minister of Foreign Affairs of Venezuela, Mr. Marcos Falcón Briceño, the Foreign Secretary of the United Kingdom, Mr. R.A. Butler, with Gov. Sir Ralph Gray standing as the representative of British Guyana. A Joint Communiqué was issued at that point.[82]

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[79] See omission at para. 2.6 of the Memorial of Guyana on questions of jurisdiction and admissibility.

[80] Memorial of Guyana on questions of jurisdiction and admissibility, pp. 24-25, paras. 2.9-2.10 and Annexes 24 and 25.

[81] Memorandum of Venezuela, Annex, pp. 8-9.

[82] Memorial of Guyana on questions of jurisdiction and admissibility, p. 25, para. 2.11; Memorandum of Venezuela, Annex, p. 9. Full text of communiqué in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas, 1981, p. 26 (available at Peace Palace Library).

(ii) THE LONDON MEETINGS OF 1965 GAVE DETAILS OF WHAT A PRACTICAL, MUTUALLY ACCEPTABLE AND SATISFACTORY OF THE CONTROVERSY ENTAILS

3.24. On 9 and 10 December 1965 the interested parties held formal meetings in London. The respective delegations were headed by the Minister of Foreign Affairs of Venezuela, Mr. Ignacio Iribarren, the Secretary of State for Foreign Affairs of the United Kingdom, Mr. Michael Stewart, and the Premier of British Guiana and later Prime Minister, Mr. Forbes Burnham.

3.25. In the final communiqué of this 1965 meeting it was indicated that the agenda had been fixed, according to the joint communiqué of 7 November 1963. However, the said 1963 joint communiqué only indicates, in relevant part, that:

> "After the relevant documentation has been examined, the experts will meet to discuss the results of their investigation. The experts will subsequently submit a report to their respective governments. These reports will serve as a basis for further discussions between the Governments."[83]

3.26. This is quite different from the agenda of the 1965 meetings, which records:

> "(i) Exchange of views on the experts' report on the examination of the documents and discussion of the consequences therefrom. Necessity of resolving the dispute.
>
> (ii) To seek satisfactory solutions to the practical settlement of the controversy that has arisen as a result of the Venezuelan contention that the 1899 Award is null and void.
>
> (iii) Concrete plans for collaboration in the development of British Guiana.

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[83] Joint Communiqué on the Ministerial Talks held in London on November 5. 6 and 7,1963 between the minister for foreign affairs of Venezuela, Mr. Marcos Falcon Briceño, and the Foreign Secretary of the United Kingdom, Hon. R. A. Butler, in *Claim to Guayana Esequiba Documents 1962-1981*, Caracas 1981, p. 26 (available at Peace Palace Library).

(iv) Determination of time limits for the fulfilment of whatever may be agreed with reference to points 1, 2 and 3 above.

(v) Joint communiqué on the present talks."[84]

3.27. Clearly, the 1963 Communiqué had contemplated only point (i) of the 1965 meeting, with nothing there relating to points (ii) and (iii). This evidences the new approach then adopted by the United Kingdom, after having understood that it was far safer for it to neutralise the question of the Arbitral Award, as explained in Chapter 7.

3.28. And this is exactly what it did. On the first day of the London meetings, Venezuela, as was probably expected, expressed its complete dissatisfaction of Sir Geoffrey Meade's frivolous "expert" response to the Venezuelan's Expert Report based on newly discovered evidence, to a matter that the United Kingdom had itself offered to discuss seriously, on the basis of evidence. Venezuela's Minister of Foreign affairs noted with some satisfaction the express distance taken by the British Government with Meade's report, underlying "the expression used by Your Excellency in memorandum AV 1081/75, of August 3, 1965, that the said report 'does not necessarily represent the considered view of Her Majesty's Government with regard to any of the points at issue.'" And after forcefully rebutting some of the main substantive deficiencies of the said report, he concluded, that:

"Far from persuading my Government that its claim is without merit, the British expert report has convinced it of the unshakeable strength of its position."[85]

3.29. While the United Kingdom's representative formally maintained the position of its country, the representative of British Guiana manifestly understood that the Venezuelan Expert Report was devastating. Because of this, it sought to bypass by all means the

[84] This agenda is indicated in the Joint Communiqué, 10 December 1965 (**Annex 42**).

[85] Government of the United Kingdom. Record of Discussions between the Foreign Secretary, the Venezuelan Minister for Foreign Affairs and the Premier of British Guiana at the Foreign Office, 9 December 1965, p. 1 (**Annex 84**).

obvious fraud behind the 1899 Arbitral Award, by relying on the 1905 demarcation, as if, a proper boundary delimitation[86] could be independent of the Arbitral Award.

3.30. During the meeting of 10 December 1965, item (i) was considered exhausted by the British representative. Indeed, the British record of discussion indicates that:

> "Mr. Stewart recalled that the two sides had been unable to agree on the question of the 1899 Award's validity. Venezuela had insisted that her position was right, and Her Majesty's Government had stuck to theirs. He wished to look at more constructive ideas under items 2 and 3 of the Agenda".[87]

3.31. Thereafter, upon arriving to the discussion of said point (ii) of the agenda, Mr. Stewart and Mr. Burnham both enquired what was meant by the formula "satisfactory solutions", noting that it had been proposed by Venezuela.[88] Mr. Iribarren stressed that "the first solution as seen by Venezuela |is| the return of the Territory that by law belongs to it. Now, naturally, we are willing to discuss exhaustively, if its necessary, any other solution that could be proposed to achieve the objective expressed in point 2 of the Agenda."[89]

3.32. Mr. Stewart and Mr. Burnham rejected this possibility, and further enquired as to what Venezuela meant by "satisfactory solution",[90] and having restated its position, Mr. Iribarren enquired what would the United Kingdom and Guyana understand as a "satisfactory solution to the problem".[91] To this, Mr. Stewart made the proposal that the matter be relayed back to the United Nations or, as a second alternative, that Venezuela "renounced of its claim", or at least, "withhold it until British Guiana was firmly established as an independent State".[92] He further stressed that: "If you were to ask me, what does the British Government feel to be a 'satisfactory solution', I would recommend

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[86] *Ibid.*, p. 4 (**Annex 84**).

[87] *Ibid.*, p. 5 (**Annex 84**).

[88] Minutes of London Preliminaries to the Geneva Agreement, 9 December 1965, Stewart and Burnham, pp. 14-15, 17 (**Annex 85**).

[89] *Ibid.*, Iribarren, p. 17 (**Annex 85**).

[90] *Ibid.*, Stewart and Burnham, pp. 17-19 (**Annex 85**).

[91] *Ibid.*, Iribarren, p. 19 (**Annex 85**).

[92] *Ibid.*, Stewart, p. 19 (**Annex 85**).

the second alternative. Apart from that, I do not know what we can do, only to go to the United Nations."[93]

3.33. For its part, Mr. Iribarren restated that, despite the parties being entrenched in their positions, he was of the view that "there can be satisfactory solutions for both, that encompass a practical arrangement of the problem that none of them can deny exist", and that such a solution would be one which "contemplates the interests, the problem of both States [...]" – in a context where the settlement of the controversy would result in a triumph for Mr. Burnham – who domestically had to deal with political opposition – as well as benefit Guyana.[94] In sum, what the Minister of Foreign Affairs of Venezuela was proposing as a "satisfactory solution" was one which was a *win-win* for all involved.

3.34. Upon further enquiry by Mr. Burnham of what was Venezuela's understanding of what a satisfactory solution would be,[95] Mr. Iribarren made the following proposal:

> "At the invitation of Mr. Burnham, I shall make a second proposal, which would be as follows: that we agree to a joint administration of the disputed territory for a period to be discussed - let us say ten years - with obligations established for both countries, although perhaps in a greater proportion for my country, to provide the necessary means for this joint development, and also, with the agreement of my country, to cooperate in the development of British Guiana itself. Such an agreement, with such details as may be agreed upon after discussion, Venezuela would naturally be willing to enter into, recognizing the sovereignty of my country over the disputed territory".[96]

3.35. To this proposal Mr. Burnham replied: "The answer is no".[97] For its part, Mr. Stewart restated his two propositions, to return the matter to the UN and for Venezuela to renounce to its claim,[98] both of which, were of course inconceivable for Venezuela. But

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[93] *Ibid.*, Stewart, p. 19 (**Annex 85**).
[94] *Ibid.*, Iribarren, p. 20 (**Annex 85**).
[95] London Minutes, 9 December 1965 (Burnham, pp. 20-21).
[96] *Ibid.*, Iribarren, p. 21 (**Annex 85**).
[97] *Ibid.*, Burnham, p. 21 (**Annex 85**).
[98] *Ibid.*, Stewart, p. 23 (**Annex 85**).

despite the difficulties encountered during the meeting, Mr. Iribarren proceeded to make a third proposal entitled "Creation of a Commission to settle the controversy between Venezuela and the United Kingdom on the territorial question between Venezuela and British Guiana". This proposition was submitted for consideration of Mr. Stewart, Mr. Burnham, and their delegations for their analysis, and would be discussed on the meeting of the following day.[99]

3.36. The Venezuelan proposition for the creation of a joint commission, attempted to continue with the conversations and the finding of solutions to the controversy. It was structured in such a manner that it envisaged several conciliatory stages, a commission that would continue in this task, with the progressive introduction of mediators to try to conciliate and seek solutions. If no agreement could be found, the matter could be submitted to international arbitration – *not the International Court of Justice.*[100]

3.37. As Mr. Iribarren well stressed, "the proposition fully demonstrates the Venezuelan desire to cooperate and collaborate in the development of our neighbour, British Guiana"[101] which would allow for the United Kingdom to intervene in all steps as part of the proposed commission, the choice of the mediator or mediators, as well as in the conclusion or discussion, and decision on the bases, conditions, and rules for the envisaged arbitration. It was "a fair proposal".[102]

3.38. During the meeting other propositions were discussed, including, *inter alia*, an agreement which, similar to the Antarctic Treaty of 1959, would have kept the legal status of the disputed territory *in limbo,*[103] or a possible joint administration of the said area. While such joint administration was, ultimately, not agreed upon, it is important to note that this was one of the options for a possible mutually satisfactory solution.

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[99] *Ibid.*, Iribarren, pp. 26 and SS: Venezuelan Proposition of 9 December 1965 (**Annex 85**).

[100] *Ibid.*, Venezuelan Proposition of 9 December 1965 (**Annex 85**).

[101] *Ibid.*, morning session, Iribarren, pp. 9, 15-16 (**Annex 85**).

[102] *Ibid.*, morning session, Iribarren, p. 9 (**Annex 85**).

[103] Record of Conversations held at the Foreign Office in London on the Border Dispute between Venezuela and British Guiana, 10 December 1965, p. 3 f. (**Annex 86**).

3.39. The meeting continued and the parties agreed to resume conversations at a later date in February 1966 in Geneva, focusing – at the request of the British representative – only on point (ii) of the agenda,[104] that is, the search for satisfactory solutions for the practical settlement of the controversy.[105] Also, a joint communiqué on the results of the two days of meetings in London was agreed, and which stated that:

> "Ideas and propositions for a practical settlement of the dispute were exchanged. It was agreed that some of these should be submitted for further consideration and that the Ministers should continue the present discussions during the week beginning February 13, 1966, in Geneva, in order to consider these propositions, as well as others which might be suggested in accordance with the above Agenda. Since neither party was able to accept the conclusions of the experts appointed by the other party, item one will not be considered. It was further agreed that officials of the governments concerned will shortly begin preparatory talks."[106]

3.40. Various points can be highlighted from the London meetings:

- *First*, an initial approximation to what both parties understood as what a practical settlement of the controversy could be.
- *Second*, Venezuela's insistence to adopt a win-win approach which would be beneficial to all concerned, even considering the interests of the United Kingdom, at the time a colonial power that reigned over Guyana and its people.
- *Third*, a multi-phased pacific settlement mechanism which would evolve from negotiation through a joint commission, then mediation, and arbitration as a last resort.
- *Lastly*, there was a recognition from the parties of the importance of continuing to seek a practical settlement of the controversy.

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[104] Minutes of London Preliminaries to the Geneva Agreement, 10 December 1965, afternoon session, Stewart, p. 1 (**Annex 87**).

[105] *Ibid.*, afternoon session, Iribarren, p. 3 (**Annex 87**).

[106] *Ibid.*, Joint Statement, p. 2 (**Annex 87**).

3.41. Before turning to the discussions in Geneva, it should be highlighted that at no point during the London meetings was there even a remote acknowledgment of the jurisdiction of the International Court of Justice – a historical and *position constante* of Venezuela throughout this controversy.

(iii) THE GENEVA MEETINGS OF 1966 CONCRETISED THE CONSENSUS OF THE PARTIES THAT THE RESOLUTION OF THE CONTROVERSY REQUIRED THEM TO FIND A PRACTICAL, MUTUALLY ACCEPTABLE AND SATISFACTORY SOLUTION OF THE CONTROVERSY

3.42. Following up on the London meetings, the parties met again in Geneva on 16 and 17 February 1966. Although there was an initial concern from Venezuela that the United Kingdom would not keep its word on the subject of the meetings, this was clarified via diplomatic exchanges between the Parties.[107] The delegations met as agreed and were again represented by the Minister of Foreign Affairs of Venezuela, Mr. Ignacio Iribarren, the Secretary of State for Foreign Affairs of the United Kingdom, Mr. Michael Stewart, and the Premier of British Guyana and later Prime Minister, Mr. Forbes Burnham.[108]

3.43. These meetings sought to define the terms of what would be the Geneva Agreement. The meetings advanced upon the preliminary work of the Joint Communiqué of 1963 and of the London Meetings of 1965. The agenda now solely focused on what was then item (ii) of the London Agenda, namely, the search for satisfactory alternatives for the practical settlement of the controversy which had arisen as the result of the Venezuelan well-founded contention that the Arbitral Award of 1899 is null and void.

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[107] Aide-Memoire presented by the Venezuelan Foreign Ministry to the British Embassy in Caracas, Regarding Statements Attributed to British Foreign Office Officials, 4 February 1966; Aide-Memoire presented by the British Embassy in Caracas in response to the aide-memoire of the Venezuelan Foreign Ministry of 4 February 1966, 8 February 1966. See also Press Release of the Venezuelan Foreign Ministry in Relation to the visit of Sir Anthony Lincoln, British Ambassador, to the Minister of Foreign Affairs, Mr. Ignacio Iribarren Borges, Caracas, 8 February 1966. All documents in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas 1981, pp. 66-69 (available at Peace Palace Library).

[108] Meeting at Ministerial level between the Venezuelan and British Foreign Secretaries on the Controversy over the Frontier with British Guiana, United Nations, Geneva, 16 February 1966 (**Annex 88**).

3.44. The formal sessions which opened at the *Palais des Nations* had a focus on restating the importance of moving forward with a formula agreeable to both parties, and, in particular, taking into account the impending independence of Guyana, which would effectively occur in May 1966.

3.45. That impending independence of Guyana is a major consideration, because it could be seen during the negotiations that they were distancing themselves from the stern British negotiating position. On the one hand, Mr. Stewart began the meetings by proposing a mild arrangement wherein the task of the Mixed Commission would be circumscribed to "examine the possibilities of extending the contacts between the two countries, diplomatic, trade, educational contacts, etc.",[109] and with the understanding that "nothing in the Agreement implies the renunciation by either side of any territorial claims and that nothing done under the agreement should become basis for either denying or asserting territorial claims."[110] On the other hand, Mr. Burnham adopted a more conciliatory tone, and was willing to open the agreement beyond co-operation matters, for example, when stating that:

> "It is difficult for us to agree to the yielding of any territory, but are aware that in international relations two positions may appear to be exclusive. However, with good will on both sides we may be able to arrive at a mutually acceptable solution, where honour is preserved."[111]

3.46. Due to the different positions of the parties, a significant portion of the work was done by drafting committees and agreements were concretised in various informal meetings.[112] The text of the Geneva Agreement was approved after being read article-by-article in a formal session and in the presence of the delegations. Before concluding the meetings on 17 February 1966, Mr. Iribarren, Mr. Stewart and Mr. Burnham, all expressed their satisfaction with the agreement reached,[113] which was signed on the same day and a

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[109] *Ibid.*, Stewart, pp. 2-3 (**Annex 88**).
[110] *Ibid.*, Stewart, pp. 2-3 (**Annex 88**).
[111] *Ibid.*, Burnham, p. 4 (emphasis added) (**Annex 88**).
[112] See for example, *ibid.*, Stewart, p. 4, Iribarren, p. 7 (**Annex 88**).
[113] *Ibid.*, Iribarren, Stewart and Burnham, pp. 15-16 (**Annex 88**).

joint communiqué was issued.[114] Venezuela diligently incorporated the Agreement into its domestic legal order[115] and Guyana also expressed that "in accordance with well-established international practice, [it intended] to comply with all the obligations under that Agreement."[116] The international community took note of such commitments.[117]

3.47. As was stressed throughout the entirety of the negotiations, the key points were (i) the recognition of the importance of an amicable resolution to any outstanding controversy in a manner acceptable to both parties which constitutes the ultimate final object of the Agreement; and (ii) the need to establish mechanisms aimed at finding practical and satisfactory solutions for both parties to the controversy.

3.48. At this point, with the Geneva Agreement having been signed by the Parties, it is worth restating some elements corresponding to its object and purpose as was defined in its final form.

3.49. The final object of the Geneva Agreement is explicit in its title: "resolve the controversy over the frontier".[118] Had the Parties intended to put in motion a process for assessing the legal status of the 1899 Arbitral Award, or for agreeing on how to carry out

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[114] Joint Communiqué on the Ministerial Talks held in Geneva on 16 and 17 February 1966, between Dr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela the Hon. Michael Stewart, UK Minister for Foreign Affairs and the Hon. Forbes Burnham, Prime Minister of British Guiana, 17 February 1966 (**Annex 94**).

[115] Venezuelan Law approving the Geneva Agreement, 13 April 1966, in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas 1981, p. 97 (available at Peace Palace Library).

[115] Note of the Government of Guyana in response to the recognition by Venezuela, 19 August 1966, in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas 1981, p. 104-105 (available at Peace Palace Library).

[116] *Ibid.*

[117] Excerpts from statements by representatives of various countries in the United Nations Security Council and full text of the statement by the representative of Venezuela, Mr. Pedro Zuloaga, on the admission of the new State of Guyana to the United Nations, with the reservation of Venezuela on Guayana Esequiba, 21 June 1966, in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas 1981, pp. 106-109 (available at Peace Palace Library).

[118] See *Aide-Memoire presented by Marcos Falcón Briceño to the Hon. R.A. Butler* (5 Nov. 1963), GM, Vol. IV, Annex 73. See also the Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967 (**Annex 150**). See also *Statement Made by Dr Ignacio Iribarren Borges, Venezuelan Foreign Minister, to the Ministerial Conference Held in London* (9 Dec. 1965), GM, Vol. IV, Annex 76.

such assessment, the text would have said so, and the agreement would have had to be titled "Agreement to determine in a definitive and binding manner whether the 1899 Award is valid". This was *not* the Parties' common will.

3.50. To the contrary, the very wording of the Geneva Agreement confirms that the Parties were only concerned with finding practical, satisfactory and mutually acceptable solutions of the territorial controversy between Venezuela and the United Kingdom/British Guiana, regardless of the validity or invalidity of the 1899 Award. This issue had already been superseded during the four years of negotiations between 1962 and the execution of the Geneva Agreement on 17 February 1966.

3.51. In fact, the parties specifically agreed that their controversy should be "amicably resolved in a manner acceptable to both parties" (preamble),[119] in seeking "satisfactory solutions for the practical settlement" of their territorial controversy (Article I). This does not suggest, even remotely, and to the contrary excludes, that the Parties agreed on putting in motion a mechanism to determine who is right with respect to the question of the validity or invalidity of the 1899 Arbitral Award.

3.52. Rather, the parties were aiming to draft an agreement that was meant to provide for a holistic solution to their territorial controversy. This approach is reflected in the drafting of the preamble of the Geneva Agreement. In a Note Verbale dated 25 February 1966,[120] the Foreign Secretary of the United Kingdom stated that:

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[119] The case law confirms that the preamble of an agreement expresses the object and purpose the agreement. See *Rights of Nationals of the United States of America in Morocco (France v. United States of America), Judgment, I.C.J. Reports 1952*, p. 176, 197; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports* 2002, p. 625 para. 51; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment - Preliminary objections, 17 March 2016, para. 39; 2020 Judgment, para. 73; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, 31 January 2024, para. 50.

[120] Mentioned in *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 133.

> "[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 the Venezuelan Foreign Minister to accept a compromise wording which reflected the known positions of both sides."[121]

3.53. Accordingly, when drafting the preamble, the United Kingdom took note of Venezuela's position, and deliberately agreed with it. Put otherwise, the preamble to the Geneva Agreement reflects the position of Venezuela, namely that the Geneva Agreement was meant to address the substantive issue of the territorial controversy between Venezuela and British Guiana. This was clearly not out of any disinterested willingness on the part of the United Kingdom. It was rather a consequence of the reality which the United Kingdom was confronted with. Being aware of the overwhelming evidence presented by the Venezuelan experts, the Jesuits Hermann González Oropeza and Pablo Ojer, the United Kingdom and British Guiana agreed to drop the issue of invalidity, recognise Venezuela's contention, and commit to a common search for a mutually acceptable solution.

3.54. All of this is further solidified when considering the following:

First, and significantly, at no point does the Agreement mentions that the United Kingdom or British Guiana oppose Venezuela's contention that the 1899 Arbitral Award is null and void. The Agreement provides that the controversy arises from Venezuela's contention but does not say that it arises from opposing views on the Arbitral Award. If it had been the case, the text would have mentioned explicitly that the controversy arises from Venezuela's contention that the Arbitral Award is null and void and that such circumstance was rejected by United Kingdom / British Guiana. But this is not what the Agreement says.

Secondly, Article I of the Geneva Agreement entrusted the Mixed Commission "with the task of *seeking*" satisfactory solutions for the territorial controversy. Had the parties wanted to task the Mixed Commission (and hence also the other ensuing mechanisms

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[121] Note Verbale from the Foreign Secretary of the United Kingdom to the U.K. Ambassador to Venezuela, 25 February 1966, p. 7 (**Annex 69**); cf. GM, Annex 32.

contemplated in Article IV of the Geneva Agreement) to *decide* upon the validity or nullity of the 1899 Arbitral Award, it would have been most natural for them to provide for a different formula. As explained above, after the London talks had reached an *impasse* on this issue, it would be contradictory to hold that the Parties provided for more of the same. Notably, the parties would have then entrusted the Mixed Commission with the mandate 'of *finding*' (rather than *seeking*) a solution for the controversy by determining whether the award was valid or rather not. In other words, the Geneva Agreement is a future-oriented, forward-looking instrument, rather than one meant to address what had happened in the past. This is confirmed by the fact that the Mixed Commission was tasked to seek '*satisfactory* solutions' or 'soluciones *satisfactorias*' in Spanish.

Thirdly, this controversy involves "questions", plural (Article IV), which of course excludes the idea that the Parties desired to address a single question, namely the status of the 1899 Award. In fact, this was not an "issue" at all: the Parties had accepted "Venezuela's contention that the Arbitral Award of 1899" is "null and void" as cause of their controversy, not as being "the" controversy. The controversy to be resolved under the Geneva Agreement "has arisen as the result of the Venezuela's contention", as written in Article I.

Fourthly, the object of the Geneva Agreement, which is to commit the parties to a search for *mutually acceptable satisfactory solutions* for the practical settlement of the territorial controversy, and not to put in motion a mechanism to determine who is right and who is not with respect to the 1899 Arbitral Award, is plainly confirmed by Article V(1) of the 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."

3.55. The meaning of this provision is crystal clear: the Geneva Agreement was not intended to enshrine any sort of renunciation by any of the Parties to any claim. Since "nothing" in the agreement can be interpreted as such renunciation, none of the processes referred to in the agreement can have the effect of obliging any of the parties to renounce to anything. The parties, in concluding the Geneva Agreement aimed at reaching a mutually acceptable, satisfactory, and *negotiated* solution, on the basis of the process put in motion by that Agreement. Article V, paragraph 1 assumes by necessary implication that the parties as well as third actors involved in the settlement of the controversy must strive for a solution taking into account the claims to territorial sovereignty by both sides. This excludes that a solution is being sought, much less imposed, that would necessarily involve either side completely giving up their claim to territorial sovereignty over the area in question.

3.56. On its own terms, the Geneva Agreement offers no basis for any of the Parties, or any organ, including judicial organ, to decide that the claim of one Party is rejected, thereby obliging this party to renounce its claim. In particular, nothing in the Agreement, upon its own terms, can lead to a rejection of Venezuela's contention regarding the nullity of the 1899 Arbitral Award. The Agreement commits the Parties to a search for a mutually acceptable and satisfactory solution, which means a solution or solutions that they subsequently both agree with.

3.57. Put otherwise, the wording of the Geneva Agreement throughout its various provisions, and starting with its title and preamble, indicates that *any* of the means of settlement referred to in its Article IV must aim at bringing about mutually satisfactory solutions to the territorial controversy, rather than addressing the issue of the (in)validity of the 1899 Arbitral Award. That issue was never meant to be addressed, the Parties having accepted that Venezuela's contention was there, and it is from this standing point that they committed to find a mutually acceptable and satisfactory solution to the resulting controversy.

3.58. Another point which is worth restating is that the Geneva Agreement, in its final form, although in terms different from those initially proposed by Venezuela during the

London meetings, established a tiered process for the mutually acceptable and satisfactory solution for the viable settlement of the controversy. This is what became Article IV.

3.59. This step-by-step process is clear in its formulation and is very much in line with the general context that an *amicable* solution to the controversy was paramount, and with the object of the Geneva Agreement, namely the finding of a mutually acceptable and satisfactory solution for the practical settlement of the controversy.

3.60. Yet again, there is no express mention whatsoever of the International Court of Justice as a pacific settlement mechanism. Moreover, Great Britain and Guyana did not even accept the formulation a legal means of pacific settlement. Second, the parties envisioned a scenario wherein any settlement between them must be mutually acceptable and satisfactory and lead to the practical settlement of the controversy.

IV. THE DEALINGS OF THE PARTIES AFTER THE SIGNING OF THE GENEVA AGREEMENT ILLUSTRATE WHAT THEY WERE WILLING TO COMPROMISE TO FIND A MUTUALLY ACCEPTABLE AND SATISFACTORY SOLUTION FOR THE PRACTICAL SETTLEMENT OF THE CONTROVERSY

(i) THE WORK OF THE MIXED COMMISSION AND THE PROTOCOL OF PORT OF SPAIN

3.61. As recounted by Venezuela in its Memorandum,[122] after the signature of the Geneva Agreement, the Mixed Commission set-up under Article 1 thereof initiated its work "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."[123]

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[122] Memorandum of Venezuela, Annex, pp. 41-49.

[123] Venezuela and United Kingdom of Great and Northern Ireland, Agreement to Resolve the Controversy over the Frontier between Venezuela and British Guiana, Geneva, 17 February 1966, Art. 1 (**Annex 6**).

3.62. Without the need to restate the detail of said process, it is worth noting that from the outset, Venezuela's commissioners interpreted the role of the Mixed Commission as one which had been entrusted, under the terms of the Geneva Agreement, to search for practical solutions to the territorial controversy.[124] In contrast, the Guyanese commissioners wanted to focus on procedural matters, namely, clarifying the objective of the controversy between the two governments.[125]

3.63. In an attempt to move forward with the implementation of the Geneva Agreement, in the IV Meeting (March 1967), Venezuela brought a broad proposal about the joint development of Guayana Esequiba. Guyana's reply to the proposal came in the VI Meeting (October-November 1967) which led to the creation of a subcommittee of experts to study plans of joint developments.[126] Two rounds of meetings (February and June 1968) resulted in a dead end because Guyana did not accept that the Joint Development Plan included Guayana Esequiba and that Venezuela participate in the administration of the Plan. Ultimately, Guyana used the discussions to exhaust the time allotted to the Mixed Commission, i.e., four years.[127]

3.64. Indeed, in light of the slow progress caused by Guyana's commissioners, Venezuela went as far as to propose the extension of the work of the Mixed Commission provided that Guyana was willing to search in good faith for satisfactory solutions for the practical settlement of the controversy.[128] A restatement of the proposal was presented, the general lines being that: (i) All of Guyana's territory would be eligible for development projects; (ii) planning and execution of the projects would be carried out by a joint administration formula; (iii) funding of the projects would be through national, joint and international funding sources. The proposal was rejected by Guyana.[129]

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[124] Memorandum of Venezuela, Annex, p. 42.
[125] *Ibid.*
[126] *Ibid.*, Annex, pp. 43, 45-47.
[127] *Ibid.*, Annex, p. 43.
[128] *Ibid.*, Annex, p. 48.
[129] *Ibid.*

3.65. Upon the stalemate resultant from the Mixed Commission wherein, "despite Venezuelan efforts, the search for a [satisfactory solution] was not even attempted,"[130] the time was running out to afford the parties the chance to find formulas for the resolution of the controversy, in that the four-year period established in Article I of the Geneva Agreement would lapse in 1970.

3.66. The parties concurred in their interest in making a further attempt at finding a mutually acceptable and satisfactory solution before having to resort to the procedure established in Article IV of the Geneva Agreement. This led to the Protocol of Puerto España (the "Protocol") which was signed on 18 June 1970.[131]

3.67. In the Protocol the parties agreed to a 12-year term, counted from the day of its signature and renewable by agreement between them,[132] during which they undertook not to assert any claims to territorial sovereignty arising from the contention referred to in Article I of the Geneva Agreement[133] and to defer the operation of Article IV of said Agreement.[134]

3.68. Notably, the Port of Spain Protocol reconfirmed that the parties, in line with the Geneva Agreement, continued to seek a mutually acceptable and satisfactory solution to the substance of their boundary controversy, and could not be "interpreted in any way as a waiver or reduction of any of the rights that Venezuela might have on the date of its signature, nor as a recognition of any situation, use or claim that might exist by then."[135]

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[130] *Ibid.*, Annex, p. 49.

[131] Protocol to 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, 801 U.N.T.S. 183 (18 June 1970) ("Protocol of Port of Spain"). GM, Vol. II, Annex 46.

[132] Guyana, United Kingdom of Great Britain and Northern Ireland, and Venezuela. Protocol to 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. Geneva, 17 February 1966 ("Protocol of Port Spain"), Port Spain. 18 June 1970. Art. V (**Annex 7**).

[133] *Ibid.*, Art. II (**Annex 7**).

[134] *Ibid.*, Art. III (**Annex 7**).

[135] Statement of Purpose of the draft law ratifying the Protocol of Port of Spain. 22 June 1970, in *Claim to Guayana Esequiba Documents 1962-1981*, Caracas 1981, pp. 131-135 (available at Peace Palace Library).

3.69. This is further confirmed by the preamble of the Port of Spain Protocol, according to which this instrument sought to promote "[...] mutual confidence and positive and friendly intercourse [...]" between the parties. It goes without saying that only an overall mutually acceptable settlement of the territorial controversy could achieve such an outcome.

3.70. This broad object and purpose of the Port of Spain Protocol, which was aiming to continue the same goal as the Geneva Agreement, is further emphasised by the wording of its Article I, according to which the two governments "shall explore *all* possibilities" of promoting the improvement of their mutual relations with the aim of bringing about a constructive advancement of those relations.

3.71. This 'all possibilities' formula entails that the parties, when concluding the Protocol, which in turn was meant to further implement the Geneva Agreement, were striving for an overall solution to their territorial controversy whilst improving their mutual relations.

3.72. As with many aspects of the situation concerning *Guayana Esequiba*, Guyana barely makes any mention of the Protocol and the significant advances made between 1970 and 1982,[136] which evidence possible criteria to achieve a mutually acceptable and satisfactory solution could be established.

3.73. The first important development within the framework of the Protocol, came about with the signing on 25 June 1974 of a Cultural Exchange Agreement and a commercial agreement to buy sugar. Then, in 1975, Venezuela President Pérez and Guyanese Prime Minister Burnham not only discussed the border controversy at length, but also outlined possible ways of practical solution.[137]

3.74. Upon an improvement of the bilateral relations, on 3 November 1976, Guyana's Prime Minister, Forbes Burnham, proposed to Venezuela President, Carlos Andrés Pérez,

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[136] GM, pp. 47-50, paras. 2.55-2.60.

[137] Annual Report presented by the Ambassador of Venezuela to Guyana, No. G6/D/1515, 3 December 1975, p. 6 (**Annex 102**).

the possibility to achieve a definitive settlement of the territorial controversy, if Venezuela provided assistance in the construction of a hydroelectric project in Guyana in the Alto Mazaruni region in Guayana Esequiba – which Venezuela had initially offered. As stated in a letter from Prime Minister Burnham to his Venezuelan counterpart:

> "(My Dear Carlos Andres)
>
> A few days ago I had communication from your Ambassador who had recently returned from Caracas, concerning an offer from you to assist in the realisation of the Upper Mazaruni Hydro-Electric Project.
>
> [...]
>
> The suggestions which have been conveyed to me by your Ambassador contain interesting features, and I believe we should immediately nominate representatives from both sides to work out the details, alternatives and modalities before we meet for the final agreement.
>
> As the same time, I wish to propose a regime which, proceeding by stages can result in mutually beneficial and material cooperation. That in my view would demonstrate to both our peoples the advantages to be gained by the settlement of outstanding issues, and the growth in friendly economic relations.
>
> We have at hand now the Final Feasibility Study prepared by SWECO. That study offers alternatives of production of power in the first stage of the development of the project, of a range between 750 megawatts and 1200 megawatts.
>
> I would see an advantage in a long term contract for the supply of power to Venezuela, coupled with a political arrangement which would remove from our relation the nagging problem of the border.
>
> In other words, I would propose that simultaneously with the agreements for mutual cooperation with respect to the Upper Mazaruni Hydro-Electric Project and the supply of power to Venezuela, there should be signed, an Accord which would lay at rest the border question.

I am confident that the sense of mutual assurance and security thereby generated in Guyanese and Venezuelans minds by the signing of such an Accord, would make it easy for both our peoples to accept the implications of such a significant example of economic cooperation.

The question of the supply of wood from the area to be flooded, could easily be settled favorably against such a background.

Indeed, Guyana is anxious to have as much of the marketable timber as possible, removed from the area to be flooded, and believes that the supply of lumber therefrom to Venezuela is an obvious first choice. In such circumstances further benefits are sure to accrue to both countries from the development of our timber resources in the Mazaruni area as a whole, with Venezuela as an important market.

On the question of financing, we would of course welcome Venezuelan assistance. We are at present building a road of 180 miles to the dam site, and if you believe that the regime of cooperation I have outlined forms a basis for development of economic relations between our two countries, I would ask you to consider an early discussion at an official level with respect to the funding of that road.

While the proposals I have made, differ somewhat from those which your Ambassador has indicated, I trust that you will find them a basis for a stage development of cooperation between our two countries, which, having regard to the political realities of the present time and the nature and history of the relations between our two states, offers good prospect of being acceptable to both our peoples. I share with you the understanding that economic cooperation holds the best prospect for the development of South America.

[...]

It is for this reason that I would be most grateful if I could have an early indication from you as to your reaction to the matters I have raised in this letter."[138] (Empasis added)

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[138] Letter from Forbes Burnham to Carlos Andrés Pérez, 3 November 1976 (**Annex 72**).

3.75. With this development as a backdrop and with the objective of moving ahead with bilateral agenda, Guyana's Minister of Foreign Affairs, Frederick Rudolph Wills, visited Caracas from 30 November to 3 December 1977. The conversations advanced and, at all times, Venezuela's position was clear that bilateral cooperation with Guyana was contingent on resolving the boundary situation. Ambassador Morales Paúl prepared a report on this period of negotiations with Guyana (the "Morales Paúl Report"). Herein, he recalls the details of these meetings wherein he recounts as follows:

> "|Guyanese Foreign Minister Frederick Rudolph Wills| a regional map of the border area with Venezuela, proposing a correction to the last section of the border lines, specifically at Punta Playa. The rectification consisted of changing the north-west orientation of the current border line and drawing it north-east. This correction would make it possible to modify the negative impact of this sector of the border, particularly in terms of its projection towards the Exclusive Economic Zone in the area bordering Trinidad, and to provide Venezuela with a more adequate maritime projection than the current one |...| Although this proposal was rejected as unsatisfactory, it should be noted that it was the first factual evidence of the Guyanese intention to seek a solution through bilateral negotiations."[139]

3.76. For its part and in relation to the boundary in the territory of Guayana Esequiba, nine hypotheses were envisioned by Venezuela as follows:[140]

> "Hypothesis No. 1:
>
> Starting from the point whose approximate coordinates are Latitude 6°55' N. and Longitude 60°22'30" W., where the Acarabisi River flows into the Cuyuni River, following the course of this river until its mouth into the Essequibo River, whose approximate coordinates are Latitude 6°27' N and Longitude 58°36' W.
>
> Hypothesis No. 2:

[139] Confidential Report by Morales Paúl, Delimitation Guyana-Venezuela, 1979 (emphasis added) (**Annex 108**).
[140] *Ibid.*, pp. 1-4.

Starting from the point whose approximate coordinates are Latitude 6°55' N. and Longitude 60°22'30" W, follow the course of the Cuyuni River until finding the point whose approximate coordinates are of Latitude 6°44' N and Longitude 59°02'05" W, following the fountain easternmost direction towards the North along the divide until you find the source of the Wallaba River, continue along this river until its mouth falls into the Supenaam River following the course until its mouth into the Essequibo River.

Hypothesis No. 3:

Starting from the point whose approximate coordinates are Latitude 6°55' N. and Longitude 60°22'30" W., follow the course of the Cuyuni River until finding the point whose approximate coordinates are Latitude 6°50' N. and Longitude 59°16" W and from there in a straight line heading 46° Northeast to the headwaters of the Arunamai River and along the course of the estuary until its mouth in the Pomeroon River and along the course of this river until reaching the Arapiaco River. We continue along the course of the Arapiaco River in an easterly direction until it meets the Tapakuma Dam and in a straight line towards the east until finding the point with approximate coordinates of Latitude 7°13' N and Longitude 58°24'30" W.

Hypothesis No. 4:

Starting from the point whose approximate coordinates are Latitude 7°6' N and Longitude 60°15' W, continuing in a straight line towards Northeast heading 32° until you find the Barama River. Following the course of this river to the town of Coquerito (Kokerite), from there following the road heading southeast until reaching the Arakabusa River, continuing along this river until its mouth in the Imotai River, from there until its mouth in the Waini River and this until you find the Mariguara River (Mariwaru). You continue along the bed of this river to its sources following a southeasterly direction until you come across the headwaters of the Kaboraina River, from there to its mouth in the Issororo River, continuing its course until its mouth in the Pomeroom River, and from there until you find the town of Charity, take the Cozier Canal to its mouth into the Atlantic Ocean.

Hypothesis No. 5:

Starting from the point whose approximate coordinates are Latitude 7°6' N. and Longitude 60°15' W., continuing in a straight line towards the Northeast heading 32° until finding the Barama River. Following the course of this river to the town of Coquerito (Kokerite), from there following the road heading southeast until you find the Arakabusa River, continuing along this river until its mouth in the Imotai River, from there until its mouth in the Waini River and through it until you find the Mariguara River (Mariwaru). You follow the course of this river to its sources and from there in a straight line heading east of 79° until you meet the headwaters of the Wakapau River.

Following its course until its mouth at the Pomeroom River and from there in a straight line heading northeast of 45° until meeting with the Atlantic Ocean.

Hypothesis No. 6:

Starting from the point whose approximate coordinates are Latitude 7°6' N and Longitude 60°15' W. continuing in a straight line towards the Northeast heading 32° until reaching the Barama River. Following the course of this river to the town of Coquerito (Kokerite), from there following the road heading southeast until you find the river Arakabusa continues along this river until its mouth in the river Imotai, from there to its mouth in the Waini River and through it until it meets the Kuraru River. You continue along the Kuraru River to its sources and from there along the divide until you find the source of the Manawarin River and follow this river until its mouth in the Moruka River and along it to its mouth into the Atlantic Ocean.

Hypothesis No. 7:

Starting from the point whose approximate coordinates are Latitude 7°6' N. and Longitude 60°15' W continuing in a straight line towards Northeast heading 32° until you find the Barama River. Next follow the course of this river to the town of Coquerito (Kokerite), from there following the road heading southeast until you find the river Arakabusa continues along this river until its mouth in the Imotai

River, from there until its mouth in the Waini River we follow the course of this river until you find the Baramanni river and from there in a straight line heading northeast of 41° until meeting the Atlantic Ocean.

Hypothesis No. 8:

Starting from the point whose approximate coordinates are Latitude 7°6' N. and Longitude 60°15' W continuing in a straight line towards the Northeast with a heading of 32° until reaching the Barama River. Following the course of this river to the town of Coquerito (Kokerite), from there Following the road heading Southeast until you find the Arakabusa River, you continue along this river until its mouth into the river. Imotai, from there to its mouth at the Waini River. Follow the course of this river to the point whose approximate coordinates are Latitude 8°7' N. and Longitude 59°16' W and from there in a straight line to Punta Cocali, on the shores of the Atlantic Ocean.

Hypothesis No. 9:

Starting from the point whose approximate coordinates are Latitude 7°6' N. and Longitude 60°15' W, continuing in a straight line towards the Northeast with a heading of 32° until reaching the Barama River. Following the course of this river until you find the Huri River and from there until you find the town of Koriabo on the banks of the Barima River, you follow the course of this river until the point with approximate coordinates of Latitude 8°2'30" N. and Longitude 59°29' W, and from there in a straight line to Punta Cocali, on the shores of the Atlantic Ocean."

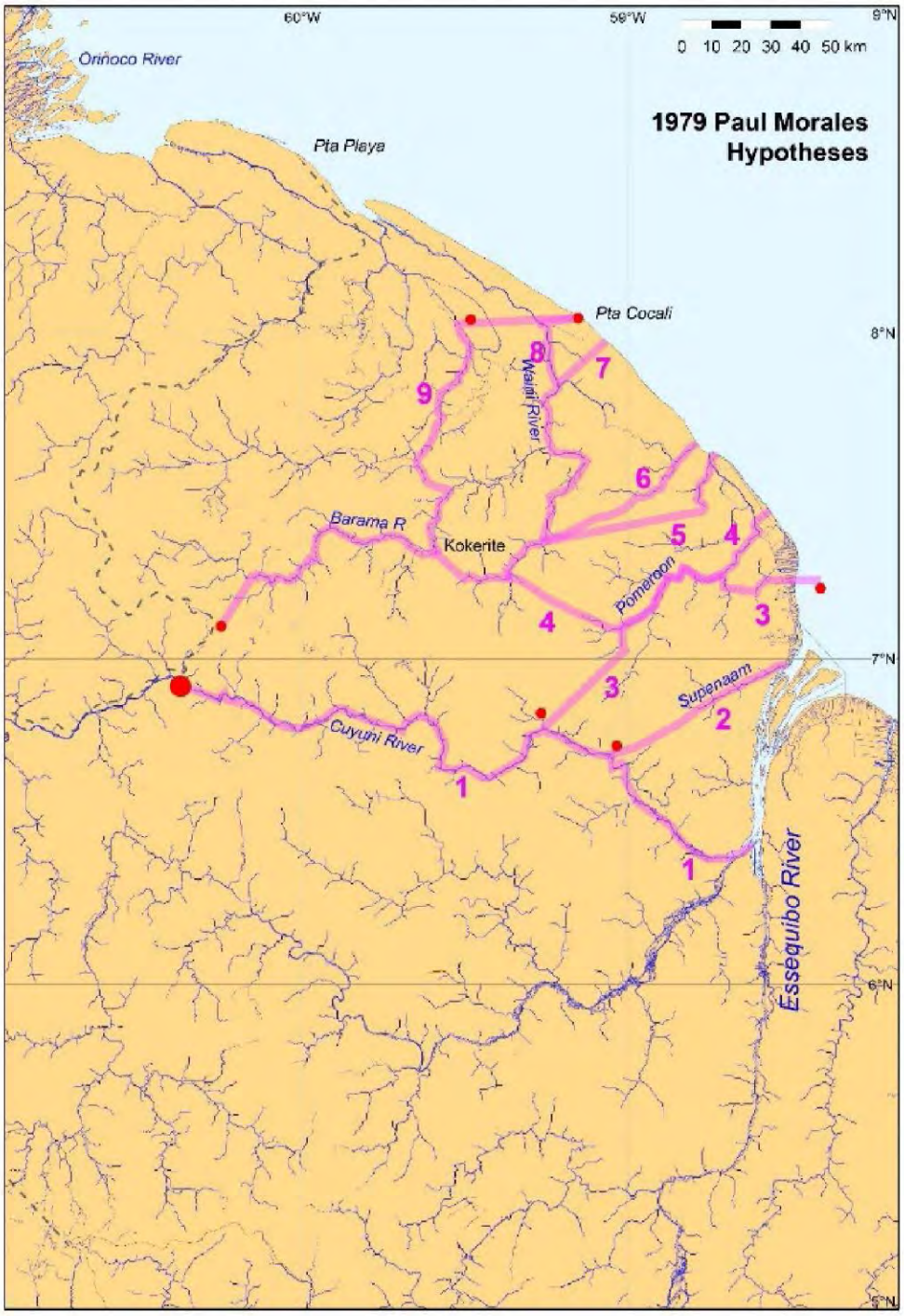

Fig. 5.1: The nine hypotheses for negotiation of the territorial boundary identified by Venezuela and which could lead to a mutually acceptable and satisfactory solution for the practical settlement of the controversy with Guyana

3.77. These hypotheses were threaded by several points of import which have informed Venezuela's position even to this day, including, recuperating the territory of *Guayana Esequiba* in a manner which is mutually acceptable and satisfactory to both Venezuela and Guyana, and ensuring an adequate starting point (or terminus) of the land boundary to ensure Venezuela's projection into the Atlantic Ocean avoiding any encroachment of its Territorial Sea, Exclusive Economic Zone and Continental Shelf entitlements.

3.78. In order to examine the questions concerning economic cooperation and the resolution of the boundary situation formulated during the November meeting, a working meeting was scheduled for a few days later in Georgetown, Guyana, on 20 December 1977.[141] Venezuela sent a delegation of highly qualified authorities that had extensive diplomatic and negotiation experience. It was composed of Ambassador Isidro Morales Paúl, alongside other officials of the Venezuelan Ministry of Foreign Affairs; Rear Admiral Rafael Luces Morales, who held the position of Director of Borders, Dr. Germán Nava Carrillo, as Director of International Policy; and lawyer Myriam Feil, as Counselor of the International Policy Directorate.[142]

3.79. At the meeting, the following cooperation proposals were considered:[143]

- Facilities for Guyana's acquisition of oil with a similar system to that as the Central American countries.
- Venezuela's Good Offices to access a credit from the OPEC Special Fund.
- Fuel supply to Guyanese fishing boats at Guiria at internal Venezuelan prices.
- Identification of five areas of commerce for which Guyana could use the line of credit given by Venezuela in 1976.
- Venezuela's purchase of Guyanese timber.
- A loan of US$10 million, for a term of six months, renewable, at 8% per annum.

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[141] Notes taken during the first session of negotiations with the Government of Guyana, Georgetown, 20 December 1977 (**Annex 106**).

[142] *Ibid.*, p. 7.

[143] *Ibid.*

- An extension of the Maiquetia [Caracas] - Port of Spain [Trinidad and Tobago] flight to Georgetown.
- Guyana reformulated its proposal so that Venezuela could participate in the development and financing of the construction of the Alto Mazaruni hydroelectric dam project, as well as the purchase of electricity.

3.80. At the working session on the boundary situation the Guyanese delegation was chaired by Attorney General, and later Member of the Court, Mohamed Shahabuddeen. Dr. Shahabuddeen adopted what was described as an "evidently evasive attitude",[144] enquiring about the fate of the Port of Spain Protocol and pointing out that the talks should be based on the Minutes of the Joint Commission provided for in the Geneva Agreement – which, as described earlier, had not made any advances – and that "the Guyanese Delegation was not empowered to deal with border issues, let alone territorial cessions."[145]

3.81. For its part, the head of the Venezuelan Delegation replied recalling that the mission of the Venezuelan Delegation consisted of examining, "jointly with the Guyanese Delegation, the possibility of achieving a practical solution, which would put a definitive end to the territorial claim" that Venezuela maintains over *Guayana Esequiba*.[146] He also disagreed in that the Minutes of the Mixed Commission could contribute to achieve the aforementioned solution. Importantly, he stressed that Venezuela was not "inflexible in procedural matters" but that they "do not consider that a discussion on substantive legal issues can lead to a positive result"[147] – in other words, an integral approach to the settlement of the boundary issue was needed. Lastly, Ambassador Morales Paúl recalled that "the initiative to propose a practical solution came from Prime Minister Burham himself, and was embodied in the Map presented by Chancellor Wills to President Perez on his recent trip to Caracas."[148] After this intervention, Mr. Sahabuddeen apologised for

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[144] Confidential Delimitation between Guyana and Venezuela by Isidro Morales Paúl. 18 September 1979 (**Annex 108**).

[145] Notes taken during the first session of negotiations with the Government of Guyana, Georgetown. 20 December 1977, p. 8 (**Annex 106**).

[146] *Ibid.*

[147] *Ibid.*

[148] *Ibid.*

not being "sufficiently prepared for the meeting and promised to expedite the study of the case and its alternatives for a future meeting."[149]

3.82. Ten months later, negotiations resumed in Georgetown, on October 18th, 1978, with the State visit of Venezuelan President Carlos Andrés Pérez, accompanied by Foreign Minister Simón Alberto Consalvi, Ambassador Isidro Morales Paúl, and Rear Admiral Rafael Luces Morales, amongst other officials. For Guyana the delegation was led by Prime Minister Forbes Burnham, General Attorney Shahabudeen and Minister of Foreign Affairs Rashleigh Jackson.[150]

3.83. In this meeting, both Heads of State exchanged views on the need and convenience of a settlement for the boundary situation. Venezuelan President Carlos Andrés Pérez "expressed the need of a fair and equitable settlement, based on political, legal and strategic considerations".[151] For his part, Prime Minister Forbes Burnham formulated considerations related to the "territorial integrity of the Republic of Guyana and that any settlement should not affect the economic development possibilities of Guyana."[152]

3.84. It is said that Prime Minister Burnham requested for a map to be displayed so that he could reference himself geographically. Attorney General Shahabuddeen proceeded accordingly to display a map that contained a line that was known as the "Aberdeen modified line". The Venezuelan delegation made it clear that a global evaluation had to be made to consider the effects in both the territorial front and the maritime projections of Venezuela in the Atlantic Ocean.[153]

3.85. During the meeting at the request of Prime Minister Burham, the Venezuelan technicians calculated the total size of Guayana Esequiba at 140.661 km^2. On this canvas three working hypothesis were formulated:

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[149] *Ibid.*

[150] Confidential Delimitation between Guyana and Venezuela by Isidro Morales Paúl, 18 September 1979 (**Annex 108**).

[151] *Ibid.*

[152] *Ibid.*

[153] *Ibid.*

"Hypothesis G:

This proposal would allow the full sovereignty of Venezuela of 14.657 km^2 that is, approximately 10% of the entire territory, and 127.004 km^2 or 90% allocated to Guyana (labelled as "G" in Figure 5.2 below). It would also locate the terminus of the land boundary to the southeast of Punta Playa at Punta Cocali (or Kokali) which would ensure a broader maritime projection from Venezuela into the Atlantic Ocean.[154]

Hypothesis V^I:

A second option would afford Venezuela full territorial sovereignty of 19.817 km^2, approximately 14% of the entire territory in controversy, and 120.844 km^2 or 86% allocated to Guyana.

Hypothesis V^{II}:

A third option would afford Venezuela full territorial sovereignty of 18.470 km^2, approximately 13% of the entire territory in controversy, and 122.271 km^2 or 87% allocated to Guyana."[155]

3.86. Further discussions were held during the meeting to ensure Venezuela's access to the Atlantic Ocean ant its full projection of maritime entitlements.[156]

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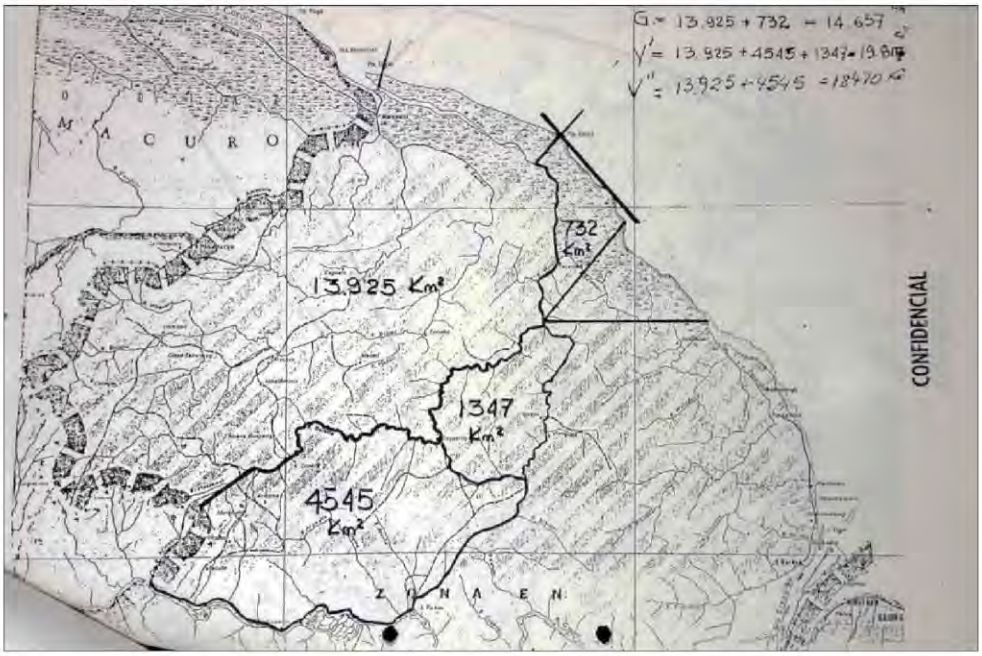
[154] *Ibid.*, p. 10.

[155] See Confidential Report by Morales Paúl, Delimitation Guyana-Venezuela, 1979 (**Annex 108**).

[156] *Ibid.*, p. 10.



Source: Confidential Report by Morales Paúl, Delimitation Guyana-Venezuela, 1979 **(Annex 108)**.

3.87. Having laid out the working hypotheses, the Morales Paúl Report concludes by stating, *inter alia*, that:

> "Although this exchange of views cannot be classified as a negotiation *per se*, it unquestionably reveals a real possibility of achieving a practical solution to the Guyana problem."[157]

3.88. In the ensuing years, diverse political developments on both sides as well as concerns on the feasibility and impact of the main point of cooperation, namely the construction of the Alto Mazaruni Hydroelectric Project, did not allow for the implementation of the hypotheses previously referred. However, they did show the different alternatives that Venezuela and Guyana were willing to ponder and indeed, compromise upon, to achieve a mutually acceptable and satisfactory settlement of the controversy concerning Guayana Esequiba. An important aspect of such a solution was that the territorial aspect could only be settled if other factors, such as access to maritime areas,

[157] *Ibid.*, p. 11 (emphasis added).

cooperation, and finance, were also considered. This integral or global approach is in line with the spirit of the Geneva Agreement and the need for a diplomatic settlement of the controversy, not a judicial one.

3.89. That such a practical solution to the overall controversy was intended is also further backed by later practice, as was confirmed by a Communiqué of the Ministry of Foreign Affairs of Venezuela of 4 April 1981, issued after the official visit to Venezuela of the President of Guyana, Forbes Burnham, and the meetings held with President, Luís Herrera Campíns, wherein it was informed that:

> "President Herrera-Campíns recalled that Venezuela and Guyana are committed to seeking satisfactory solutions for the practical settlement of the pending dispute and reaffirmed Venezuela's determination to continue exploring the most appropriate means to that end. [...]"[158]

3.90. Similarly, in a communication to the United Nations Secretary-General dated November 2nd, 1981, Guyana stated that:

> "The spirit generated by the Protocol of Port-of-Spain provided the climate for exploratory conversations *of substance* which took place in 1978 between the then President of Venezuela, Sr. Carlos Andrés Pérez, and Guyana's then Prime Minister, Cde. Forbes Burnham. These conversations examined in considerable depth the state of relations between Guyana and Venezuela and were regarded as helpful in *advancing the objectives of the Protocol* and in *opening the way for a more ordered search for a settlement* of the controversy which stemmed from the Venezuelan contention that the Award of 1899 was a nullity."[159]

3.91. Guyana thereby confirmed that *substantive discussions* as to the overall territorial controversy indeed constituted the object of the Port of Spain Protocol. Put otherwise, in

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[158] Communiqué of the Ministry of Foreign Affairs of the Republic of Venezuela, 4 April 1981, in *Claim to Guayana Esequiba – Documents 1962-1981*, Caracas 1981, p. 140 (available at Peace Palace Library).

[159] Letter from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General, 9 November 1981, p. 11 (**Annex 148**) (emphasis added).

concluding the Port of Spain Protocol, the parties had reiterated their joint wish to reach a mutually acceptable solution by way of negotiations, as indicated in the Geneva Agreement.

(ii) THE AFTERMATH OF THE PROTOCOL AND THE GOOD OFFICES OF THE UNITED NATIONS (1982-2014) REVEALS THAT THE PARTIES CONTINUED TO PURSUE A MUTUALLY ACCEPTABLE AND SATISFACTORY SOLUTION FOR THE PRACTICAL SETTLEMENT OF THE CONTROVERSY THROUGH A DIPLOMATIC AND INTEGRAL APPROACH

3.92. On 1 June 1982, that is a few weeks before the expiry of the Protocol, Venezuela invoked Article 33 of the United Nations Charter, proposing direct and bilateral negotiations with Guyana.[160]

3.93. On 20 August 1982, Prime Minister Forbes Burnham rejected such a proposal and proposed, instead, the intervention of a third party through a judicial settlement.[161]

3.94. Three months after the expiration of the Protocol and following Article IV of the Geneva Agreement, since there was no agreement between the two countries on the choice of peaceful settlement,[162] the UN Secretary-General had to be called upon to assume this task and make a recommendation to the parties. Although reluctant,[163] on the insistence of Venezuela,[164] Guyana finally agreed to accept this course of action on 28 March 1983.[165]

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[160] Memorandum of Venezuela, Annex, p. 71.

[161] *Ibid.*, pp. 72-74.

[162] Memorandum of Venezuela, Annex, p. 79 (Ref. Notes No. GM-210, GM-212 and GM-214 of 19 Sep. 1982); Note GM-212 from the Minister of Foreign Affairs of Venezuela, Dr. José Alberto Zambrano Velasco, to the Secretary of State for Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland, Mr. Francis Pym, 19 September 1982 (**Annex 70**).

[163] Memorandum of Venezuela, Annex, p. 78 (Ref. 11 Oct. 1982 Intervention from Minister of Foreign Affairs of Guyana, Rashleigh Jackson, intervention 37th General Assembly).

[164] Note GM-212 from the Minister of Foreign Affairs of Venezuela, Dr. José Alberto Zambrano Velasco, to the Secretary of State for Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland, Mr. Francis Pym, 19 September 1982 (**Annex 70**); Note GM-251, from the Minister of Foreign Affairs of Venezuela, José Alberto Zambrano Velasco, 15 October 1982 (**Annex 71**).

[165] Memorandum of Venezuela, Annex, p. 81; See also Press Release, Ministry of Foreign Affairs of Guyana, 30 March 1983 (**Annex 47**).

3.95. The period from 1983 to 2014 marked a significant chapter in the diplomatic efforts between Guyana and Venezuela.

3.96. Many of these developments have already been referenced by Venezuela in its Memorandum of 28 November 2019,[166] but some specific aspects are worth detailing in terms of the compromises the parties were willing to make to find a mutually acceptable and satisfactory solution for the settlement of the controversy. Some were recorded in the report produced by the Ambassador appointed for this matters, Mr. Emilio Figueredo Planchart, who served as facilitator for Venezuela during the Good Offices process (hereafter the "Figueredo Report").[167] The facilitator for Guyana was Mr. Shridat Ramphall, then Secretary-General of the Commonwealth and former Attorney General and Minister of Foreign Relations.[168]

3.97. The process began in 1983 when then UN Secretary-General Javier Pérez de Cuéllar sent Mr. Diego Cordovez on an exploratory mission to both countries. This period saw attempts to restore cordial relations. Simultaneously, informal procedure was initiated alongside the official one, with a meeting between the Foreign Ministers of Venezuela and Guyana and the UN Secretary-General in New York in September 1984. These efforts culminated in 1987 with the consensus to invite the Secretary-General to choose Good Offices as a means of settlement, a process that was formalised with the appointment of Mr. Alister McIntyre as the good officer in 1989.

3.98. Mr. Alister McIntyre's tenure (1989-1999) was marked by numerous meetings aimed at exploring potential solutions to the controversy, focusing on numerous areas of interest between the parties.

3.99. For example, the parties' facilitators met in New York on 13 August 1990, and discussed a solution to the controversy that could be approached by dividing it in three

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[166] Memorandum of Venezuela, Annex, pp. 71-147.

[167] Report on the Work of Emilio Figueredo Planchart in his capacity as facilitator within the envisaged Good Offices Mechanism aimed at achieving a practical settlement of the dispute between Venezuela and Guyana, 1983 (**Annex 110**).

[168] Memorandum of Venezuela. Annex. p. 83.

main areas of interest: geographic, development, and cooperation. The Figueredo Report states that:

> "In this first meeting it was pointed out that it would be convenient to break down the problem into three large areas of general interest: a coastal area, a central area or the Mazaruni zone, and an area where a binational park or ecological reserve [...].
>
> The Guianese facilitator replied that he thought it would be interesting to approach the problem from the perspective of areas where it is possible to complement with cooperation formulas."[169]

3.100. This approach was further developed in a second meeting in New York on 29 October 1990, although the Guyanese facilitator enquired about the Mazaruni dam project and indicated that an ecological reserve "could not be contemplated" as Guyana "had recently decreed a large territory to be dedicated for the same purpose."[170] He also observed that "the solution that is obtained should not be entirely favorable to some |anyone| of the parties"[171] but in any case indicated a strong resistance from Guyana to solutions that significantly modify the cartographic aspect of the territory.[172] He did however indicate that "the greatest contribution Guyana could make to overcoming the controversy was in the maritime area, he agreed with the corridor to the Atlantic, possibly accompanied by a small coastal strip."[173] Concurrent with the idea of the integral solution that the controversy requires, Figueredo noted that "[t]he positive thing about this meeting was to perceive that the Guyanese facilitator is open to all the issues and geographical areas under discussion, and that we abandon a merely legal vision of the controversy."[174]

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[169] Report on the Work of Emilio Figueredo in his capacity as facilitator within the envisaged Good Offices Mechanism aimed at achieving a practical settlement of the dispute between Venezuela and Guyana, 1983, pp. 4-5, see also p. 12 (emphasis added) (**Annex 110**).

[170] *Ibid.*, p. 5.

[171] *Ibid.*

[172] *Ibid.*, p. 6.

[173] *Ibid.*

[174] *Ibid.*

3.101. Then during the third meeting held in London on 26 January 1991, in a strong testimony as to how the parties were approaching their task to find a solution to the controversy, Mr. McIntyre expressed that, in the opinion of the UN Secretary-General, "the objective of the process was to reach an agreement to solve the border problem, tying it to a scheme of economic cooperation",[175] to which the Guyanese facilitator expressed that "it was necessary to try to break with traditional schemes and look for innovative formulas that would allow us to get out of the impasse. He then suggested that, as a sign of goodwill and progress in the process, Venezuela and Guyana should develop a *modus vivendi* in fisheries."[176]

3.102. In a following meeting on 24 September 1993, UN Secretary-General, H.E. Boutros Boutros-Ghali underlined to the Ministers of Foreign Affairs of Venezuela and Guyana

> "the importance of resolving the dispute between the two countries through a peaceful settlement mechanism, [and] stressed the importance of seeking political means and the importance of using the United Nations as a means (for him, a negotiated settlement must be the result of a process of continuous negotiation)."[177]

3.103. Moreover, the Secretary-General indicated that the aim of his good offices, envisaged by Article IV of the Geneva Agreement, was to secure a "mutually satisfactory settlement of the controversy", and that in trying to achieve this goal "creative options" must be explored.[178] While the parties would thereby acknowledge that Venezuela had title to sovereignty it was further discussed that simultaneously a "lease" in favour of Guyana of some portions of the territory would take place.[179]

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[175] *Ibid.*

[176] *Ibid.* (emphasis added).

[177] *Ibid.*, p. 8.

[178] Secretary-General reaffirms offer of his Good Offices to help resolve Controversy between Guyana and Venezuela, 24 September 1993 (**Annex 130**).

[179] Report of the Meeting between Sir Alister McIntyre, Carlos Ayala and Harry Ramkarran in New York, 14-15 December 1995, p. 2 (**Annex 132**).

3.104. For example, in meetings that took place on 14 and 15 December of 1995, the parties then discussed general parameters on maritime delimitation, as well as the possibility of providing that certain parts of the territory would revert back to Venezuela.[180]

3.105. Despite these efforts, progress was slow, and the process was further complicated by Guyana's unilateral actions, such as the issuance of a decree on the exclusive economic zone of areas pending to be delimited between the parties, the issuance of licenses for the exploitation of oil and gold, amongst other unfriendly acts, which affected the good relations with Venezuela during this period.[181]

3.106. The appointment of Mr. Oliver Jackman as Good Officer between 1999 and 2007, introduced a new phase of diplomacy, emphasising the need for a clear roadmap for negotiations. However, incidents such as the arrest of fishing vessels and the granting of offshore exploration licenses by Guyana tested the resilience of this process.

3.107. For its part, Mr. Norman Girvan's appointment as Good Officer between 2009 and 2014 promoted a more structured approach, with workshops aimed at building trust and clarifying concepts related to the controversy. He observed that, the "United Nations remains committed to supporting the Parties in the search for a *mutually satisfactory* resolution of the border dispute".[182] Despite these efforts, challenges persisted, notably Guyana's request for recognition of its continental shelf claim and the granting of offshore oil exploration licenses, which led yet again, to heightened tensions.

3.108. The Good Offices process to resolve the situation concerning *Guayana Esequiba* between Guyana and Venezuela, particularly under the auspices of the United Nations Secretary-General, highlighted several areas where both parties showed a willingness to compromise and cooperate in order to find a mutually acceptable and satisfactory solution

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[180] *Ibid.*

[181] Report on the Work of Emilio Figueredo in his capacity as facilitator within the envisaged Good Offices Mechanism aimed at achieving a practical settlement of the dispute between Venezuela and Guyana, 1983, p. 8 (**Annex 110**).

[182] Letter from Norman Girvan. Personal Representative of the Secretary-General on the Border Controversy between Guyana and Venezuela, to the Foreign Minister of the Bolivarian Republic of Venezuela, Elias Jaua Milano, 29 October 2013 (**Annex 138**).

for the settlement of the controversy. These areas aimed at creating a conducive environment for dialogue and potentially paving the way for a practical settlement of the controversy. The key topics of compromise and cooperation included:

- Economic Development and Cooperation: Both parties expressed interest in exploring options for economic development that could benefit both countries. This included discussions on how economic cooperation could be enhanced as part of a broader settlement of the controversy.

- Binational Dialogue: The parties considered establishing a binational dialogue as a complementary process to promote exchange between the civil societies of both countries. This aimed at building trust and understanding beyond the governmental level.

- Environmental Cooperation: At various points, there was an acknowledgment of the importance of environmental protection and the potential for cooperation in this area. This included discussions on rational exploitation of natural resources and environmental impact assessments in Guayana Esequiba.

- Fisheries: The development of a *modus vivendi* in fisheries was suggested as a sign of goodwill and progress. This was aimed at addressing immediate practical concerns related to fishing rights and incidents in the maritime areas pending to be delimited by agreement.

- Health, Trade and Agriculture: Increased cooperation in areas such as health, trade and agriculture, was recognised as contributing to an atmosphere of confidence, which is crucial for the resolution of more contentious issues.

- Cultural Exchange, Economic and Consular Integration: The parties agreed to give a comprehensive and global approach to their common agenda, including cultural exchange and economic integration, which could foster a more favourable environment for resolving the controversy.

- Prevention, Investigation, and Peaceful Solution of Incidents: There was an agreement on establishing mechanisms to prevent, investigate, and find peaceful solutions to incidents that could escalate tensions, such as the detention of fishing vessels or unilateral economic activities.

- Mechanism for Maritime Delimitation: There was a willingness to discuss mechanisms for the delimitation of maritime boundaries. This was significant given the unsettled maritime areas and the granting of oil exploration licenses by Guyana in areas claimed by Venezuela, as well as Guyana's submission to the Commission on the Limits of the Continental Shelf.

3.109. These topics reflect a multifaceted approach to the controversy, recognising that a resolution might not only come from addressing the territorial issue directly but also through building a framework of cooperation and mutual benefit that could lead to a more amicable settlement. As noted by Venezuela:

> "The Geneva Agreement imposes a duty on the concerned Parties to seek satisfactory solutions for the practical settlement of the issue. Therefore, Venezuela, from the beginning, has been willing to consider all the aspects involved in the matter, whether marine, political, cultural, economic or social, and not to restrict it to just the examination of the nullity of the inexistent Award of 1899 as Guyana seems to intend. Venezuela believes that a practical settlement is not possible without approaching first all the circumstances surrounding the matter as a whole and further considers that any behaviour against this constitutes a breach of the obligation to negotiate a satisfactory solution as it was agreed in the Geneva Agreement."[183]

3.110. Moreover, throughout the negotiation of the good office process, the parties were cognizant of the importance of finding a mutually acceptable and satisfactory solution for the settlement of the controversy, as per the terms of the Geneva Agreement. For example, the joint statement of 5 April 1993 called for "the peaceful resolution of issues within the

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[183] Statement by the Ministry of Foreign Affairs of the Republic of Venezuela. 2 May 1981. in *Claim to Guayana Esequiba Documents 1962-1981*, Caracas 1981, pp. 143-145 (available at Peace Palace Library).

framework of the 1966 Geneva Agreement".[184] On 2 October 1996, the president of Venezuela recalled before the UN General Assembly the importance of reaching a "practical and lasting solution" within the framework of the Geneva Agreement.[185] On 23 July 1998 a joint communiqué again reaffirmed their intention to find a "mutually satisfactory solution to the territorial controversy between Venezuela and Guyana, and [...] reiterated their firm commitment to resolve it peacefully"; they also sought to "support [...] the McIntyre Process towards achieving a definitive settlement, as provided by the Geneva Agreement of 1966",[186] that is, a formula which provides the parties with a mutually acceptable and satisfactory solution for the settlement of the controversy.

3.111. Soon thereafter in 1999, Venezuelan Foreign Minister, José Vicente Rangel, confirmed the solution to be found in the Good Offices process must be "reasonable, fair and equitable".[187]

3.112. Three Joint Communiqués followed in 2004, 2010 and 2013 respectively, and focused on practical and satisfactory solutions to be found for the territorial controversy as such.[188]

3.113. In the same vein, on the conclusion of a visit of President of Venezuela Hugo Chávez to Guyana the two parties in 2004 referred to the "search for a peaceful and

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[184] Government of the Cooperative Republic of Guyana and Government of the Republic of Venezuela, Joint Statement (5 Apr. 1993), p. 5. GM, Vol. III, Annex 67.

[185] U.N. General Assembly, 51st Session, Agenda item 9, U.N. Doc. A/51/PV.19 (2 Oct. 1996), p. 14. GM, Vol. III, Annex 69.

[186] Joint Communiqué issued on the occasion of the State visit to Venezuela to the President of the Cooperative Republic of Guyana, H. E. Mrs. Janet Jagan, Caracas, 23 July 1998 (**Annex 49**). See also Memorandum of Venezuela, Annex, p. 99; Government of the Cooperative Republic of Guyana and Government of the Republic of Venezuela, Joint Communiqué, 23 July 1998, GM, Vol. III, Annex 70.

[187] Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Cooperative of Guyana on March 29th, 2018.

[188] Joint Communiqué issued at the end of the State visit to Guyana of H. E. Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, 19-20 February 2004 (**Annex 51**); Joint Statement of Presidents Hugo Chávez Frías and Bharrat Jagdeo on the occasion of the official visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela, 21 July 2010, para. 11 (**Annex 52**); as well as Joint Declaration issued on the conclusion of the State visit to Guyana by H. E. Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 31 August 2013 (**Annex 53**).

practical settlement of the controversy" undertaken within the framework of the United Nations Good Offices Process".[189]

3.114. Likewise, in a Joint Communiqué of 2010, Guyana and Venezuela reaffirmed their confidence in the Good Offices process, which allowed them to move forward towards finding a *practical and satisfactory* solution to the *territorial* controversy. The relevant communiqué accordingly provided that the two parties:

> "[...] reaffirmed their confidence in the Good Offices Process as a mechanism that would assist the Parties to advance towards a *practical and satisfactory solution* for the border controversy".[190]

3.115. This joint perception of the scope of the controversy, and how to solve it by way of a practical settlement, was reiterated on the occasion of a visit of President Maduro in Georgetown on 31 August 2013.[191]

3.116. Following the death of the good officer, Professor Norman Girvan (2014), it was expected by the consistent practice of both parties to continue the work undertaken by the good officer and proceed to mutually agree on another, as had been the custom for years. This was not the case: Guyana withdrew from its commitment to negotiate and embarked that year with ExxonMobil on an oil contract that required it to abandon the practice of the negotiation and search an accelerated and reductionist solution at the ICJ.

3.117. Despite Venezuela's conviction that the good offices process should go ahead,[192] Guyana had already resolved to circumvent the terms of the Geneva Agreement and have

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[189] See p. 100, Annex to the Memorandum of Venezuela, 28 November 2019.

[190] Joint Statement of Presidents Hugo Chávez Frías and Bharrat Jagdeo on the occasion of the official visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela. 21 July 2010, para. 11 (**Annex 52**) (emphasis added).

[191] Joint Declaration issued on the conclusion of the State visit to Guyana by H. E. Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 31 August 2013, para. 3 (**Annex 53**).

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

the UN Secretary-General halt the process[193] and refer it, without Venezuela's consent, to the ICJ,[194] a forum which was neither foreseen as part of the pacific settlement mechanisms when the parties negotiated the Geneva Agreement.

3.118. In the light of the above, it is uncontroversial that the object of the Geneva Agreement is to put the parties on the path to finding a practical, mutually acceptable and satisfactory solution to the territorial controversy. The object of the Agreement was never related to the validity or invalidity of the Award.

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[193] GM, p. 63, para. 2.77; Letter from the Minister of Foreign Affairs of the Cooperative Republic of Guyana to the Minister of the People's Power for External Relations of the Bolivarian Republic of Venezuela (2 Dec. 2014). GM, Vol. III, Annex 8, and, See also Caribbean Community (CARICOM), Statement: Thirtieth Regular Meeting of Heads of Government, Guyana (July 2009). GM, Vol. III, Annex 75.

[194] GM, pp. 65-66, para. 2.81: Address of the President of the Republic of Guyana to the U.N. General Assembly, 70th Session, U.N. Doc. A/70/PV.16 (29 Sept. 2015), pp. 3-4. GM, Vol. III, Annex 99.

THE EFFORTS TO DENY VENEZUELA'S TITLE TO SOVEREIGNTY OVER GUAYANA ESEQUIBA THROUGH FRAUD AND ABUSE

I. INTRODUCTION

1. As has been irrefutably demonstrated in this Counter-Memorial , the Geneva Agreement gave rise to a new legal situation obliging both Venezuela and Guyana to find a practical and mutually satisfactory solution to the territorial controversy, through direct political and diplomatic negotiations. The determination of the invalidity of the 1899 Arbitral Award was therefore buried with the signing of the Geneva Agreement.

2. The Geneva Agreement is not intended, under any circumstances or under any interpretation, to determine the invalidity or validity of the 1899 Award as a precondition for the parties to comply with their obligation to find a mutually satisfactory solution. This may not be to Guyana's liking, but the commitments and obligations of the parties under the provisions of the Agreement are clear and irrefutable and must be complied with by them in good faith.

3. The object and *ratio legis* of the Geneva Agreement, confirmed by the subsequent practice of Guyana and Venezuela and the good offices work of the Secretary-General of the United Nations, is not the determination of invalidity or validity of the 1899 Award.

4. It is not unknown that territorial controversies, especially those arising out of crimes committed by (former) colonial powers of the time, are not disputes that can be resolved quickly, easily, or carelessly. These complex disputes require commitment and good faith from the parties in order to find negotiated solutions, and in the case of Guyana and Venezuela, an unaltered commitment to the obligations contained in the letter of the Geneva Agreement is also required.

5. However, Guyana, through an attitude based on lies and manipulation, left the negotiating table in 2015 to satisfy the economic interests of, mainly, Exxon Mobil, thus

affecting its obligation to resolve the territorial controversy through negotiation between two neighbouring nations.

6. In view of the historical account of the events and procedures that took place, it is clear that Venezuela was the object of a fraud at the end of the 19th century, which culminated in the arbitral award that deprived it of the territory of Guayana Esequiba.

7. Venezuela has consistently protested this dispossession, quickly realising that it had stemmed from a criminal fraud in which even U.S. government officials of the time participated, namely, the collusion between Mr. Olney (U.S. Secretary of State in 1897), Mr. Salisbury (UK Foreign Secretary) and the UK's Ambassador of the time, Julian Pauncefote, as well as the active cooperation of Joseph Chamberlain, former Minister of the Colonial Office.[195]

8. In negotiating the Washington Treaty, Chamberlain had argued that the negotiating counterparty had to be the US, because it could not negotiate with a lesser State such as Venezuela, which would be a dishonour to the UK and would cause a loss of prestige and affect the security of its colonial borders in the world.[196] This argument was accepted by Olney in exchange for the UK's acceptance of the United States' power over the Americas. Chamberlain proposed to Olney that there should be no Venezuelan judges, that the U.S. should be the negotiating counterparty, and the terms of the applicable law – which were singularly unfavourable to Venezuela.

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[195] The announcement by the British chief counsel must be seen in the light of a further letter, sent to the Secretary of State for the Colonies, Joseph Chamberlain, on 19 July 1899. In this second letter, the British chief counsel also stated that he had "no intention of making any offer to the other side" in relation to the Point Barima question. As in his reply to Lord Salisbury, he had merely sought "to obtain your guidance from Chamberlain and let him know what I thought, so that I might be prepared in case the Court should ask me any questions either publicly or privately." This was followed by the following paragraph: "If I find it necessary to take independent action, I will do so privately through our own Arbitrators and only when I am satisfied that, having regard to the expressions of opinion of any member of the Tribunal, it is desirable that our Arbitrators should appreciate our views..."

[196] Letter from Chamberlain to Olney, 9 September 1896 (**Annex 167**). Letter from Chamberlain to Olney, 28 September 1896 (**Annex 168**).

9. It is important to stress that this did not only result in the necessary nullity the 1899 Award – although this consequence is evident – but had broader, more important consequences.[197] As a result of this conspiracy, Venezuela has been fraudulently deprived of its sovereign territory by criminal acts committed in the second half of the 19th century, culminating in the 1899 Award and its subsequent derivatives, which have long prevented Venezuela from finding a remedy.

10. In particular, a singular obstacle to Venezuela's claim has been in dealing with an emerging state heir to the crime (Guyana), which against good faith and its commitment has obstructed Venezuela's claim with no compunction or understanding whatsoever. As a result, Venezuela has been a victim twice: when the unfair 1899 Award was handed down, and when Guyana decided to forego its entire responsibilities under the Geneva Agreement to benefit from this great larceny.

11. However, before delving further into the circumstances of that crime, it is essential to emphasise, as Venezuela has already done on multiple occasions, that the invalidity or validity of the 1899 Award is not subject to a factual or legal re-evaluation, or even a sort of *de novo* appeal. Guyana's unilateral capricious attitude of asking the Court to make a determination of the validity of the Award in the present case does not change, nor could it ever change, the fact that the parties have already recognised Venezuela's rejection of the Award in the 1966 Geneva Agreement and committed themselves by signing that Agreement to leave that issue aside and find a mutually acceptable and satisfactory solution.

II. THE ITER CRIMINIS OF FRAUD AND ITS CONFIGURATION

12. It is essential to begin this topic by reiterating that both the 1897 Treaty of Washington and the 1899 Arbitral Award (including the technical demarcation of 1905) are invalid as a matter of law.

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[197] It is important to stress that until recently it was wrongly claimed that the question could be reduced to that of the nullity of an international act, and although this consequence is obvious, other legal conclusions are possible under the same facts.

13. A treaty can be held invalid by fraud. Under international law, fraud, the core of which is intentionally provoked error, is only possible through fraudulent intent to defraud. Only this term can describe the British representatives' plan to fraudulently usurp the territorial integrity of Venezuela by means of deception, simulations and falsehoods, in order to create a dispute that did not exist.

14. After acquiring the three Dutch commercial settlements west of the Essequibo River of Demerara, Berbice and Essequibo in 1814 - 1815, the UK continued to respect the young republic of Venezuela, which had declared itself independent in 1810 and promulgated its first Constitution in 1811, its second Constitution in 1819 and the third in 1821 to integrate the other newly independent States into what was popularly known as "Gran Colombia." All these Constitutions recognised Guayana Esequiba as an impregnable Venezuelan territory, to the point that diplomatic exchanges with the United Kingdom reflected this.[198]

15. Subsequently, in 1825, the UK expressed its full recognition of the new integration of New Grenada (now Colombia and Panama) and Venezuela, as well as Ecuador, with its territory intact, as devised by the founding father of all those nations, Simón Bolívar. But in 1830, Simon Bolívar died and the United Kingdom decided to set up its new overseas colony, British Guiana in 1831, from the three small districts west and north of the Essequibo River that constitute the origin of present-day Guyana.

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[198] The fact that by 1822 the United Kingdom had already begun its efforts to usurp Venezuelan territory cannot be overlooked. Of capital importance is the note of 1822 sent by J Rafael Revenga, Minister Plenipotentiary of Gran Colombia to the United Kingdom, in which he is instructed: "I may, however, draw your particular attention to article 2 of the draft treaty on the point of limits. The English now possess Dutch Guiana, on which side they are our neighbors. You agree, as accurately as possible, to fix the dividing line of the two territories, according to the last treaties between Spain and Holland. The settlers of Demerara and Berbice have usurped a large portion of land, which according to them belongs to us, on the side of the river Essequibo. It is absolutely indispensable that these settlers either place themselves under the protection and obedience of our laws, or that they withdraw to their former possessions. For this purpose, they will be given the necessary time as established in the project" (Memoria histórica sobre límites entre la República de Colombia y el imperio del Brasil, by José M. Quijano Otero). Border Collection No. 8, p. 447 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

16. From that decade onwards, the British evidenced their imperial desire to exploit the gold mines and mineral wealth of the territory of another State, and before the 1840s[199] a botanist was commissioned to draw what is known as the "Schomburgk map," using an English tactic that put these supposed maps in opposition to historical tradition and geographical advances of the time, such as the contributions of Humboldt at the beginning of the century or the more precise and eloquent ones of the mid-century by the expert recognised by the French Geographical Society, Agustín Codazzi.

17. With this motive and tactic, the United Kingdom took the first steps to create a difference that would simulate a territorial controversy. To that end, the infamous Schomburgk map of 1840 was concocted, with a view to forging a territorial controversy, and taking advantage of the unequal relationship between the most powerful empire of the 19th century, whose expansionist psychosis had reached the point of depredation of almost the entire planet, in this case, against the young Venezuelan Republic. As well, the United Kingdom silently proceeded with an arbitrary exercise of plunder that was sometimes reinforced with occasional violent incursions to seize mining camps. Although Venezuela protested all these actions, the British pretended to consider this process of territorial usurpation to be complete.

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[199] Governor Light, on 20 October 1841, wrote to Mr. Aranda, Venezuelan Minister of Foreign Affairs, telling him that, "Mr. Schomburgk's mission was purely for the purpose of the Colombian government. Schomburgk's mission was purely one of reconnaissance, with instructions from Lord Palmerston, Secretary of State in the Foreign Office, to place marks on the ground for the purpose of marking by means of permanent posts the boundary line thus claimed by Great Britain; it would then be for each of the three Governments, namely, those of Brazil, Venezuela and Holland, to present any objections they might raise against these boundaries (...)." In Fortique's communication to Aberdeen, he states: "The undersigned has subsequently received orders from your Government to assure His Majesty's Government that the Commissioner Schomburgk, undoubtedly exceeding the terms of his authorization, has fixed at a point at the mouth of the Orinoco several posts with His Majesty's initials, hoisted at the said place, with the apparatus of armed force, the British flag, and perpetrated other acts of dominion and empire." And Aberdeen, in reply to Fortique, pointed out on 11 December 1841 that the erection of the posts was merely a preliminary measure, and that they were not intended "to serve as signs of dominion and empire on the part of Great Britain," and that "the British authorities have not occupied Punta Barima." In: Border Collection No. 8, pp. 205, 206 and 207 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

18. In this regard, the note sent in 1899 from the Venezuelan Foreign Ministry, prepared by the special envoy Tomás Michelena in Paris, to the Foreign Office, is very explanatory, offering a clear vision of what had happened. The note says:

> "[…] Your Excellency can hardly fail to perceive the insurmountable difficulties presented by these various frontier lines claimed or proposed by Her Britannic Majesty's Government in 1841, 1881, 1886, 1890, and at the present time; and likewise the unvarying tendency shown to extend the limits of the Colony of British Guiana at the expense of the Venezuelan territory, and the manifest discordance which the propositions of Your Excellency in 1886 show, with the present request that Venezuela accept, without any compensation whatsoever, the enlarged 'Schomburgk line,' which dispossesses her, not only of the river Guiana (an important desire of the Foreign Office in 1886), but also deprives the Republic of the river Barima and the cape of that name, together its adjacent territories".[200]

19. To this behaviour of falsehood, simulation and forging of a fabricated dispute, interspersed with arbitrary actions of local and furtive incursion to set up tiny but lucrative gold camps, was added the other method used by the British to consolidate their aim of dispossessing Venezuela of a seventh of its territory and its natural resources, namely, the alliance of American officials who, as in the case of Mr. Olney, ended up convinced that it was better to benefit themselves and their British allies than to stand by the justice of Venezuela's claims.

20. For a better understanding of the injustice suffered by Venezuela in the 19th century, it should be noted that the agents of the United Kingdom and its colony were not acting without any motive; instead, they were demonstrably aware of the immense wealth of gold in Venezuelan lands, scattered in the Yuruari and Guayana Esequiba areas. As Joseph Chamberlain, British Colonial Secretary, stated in communication with

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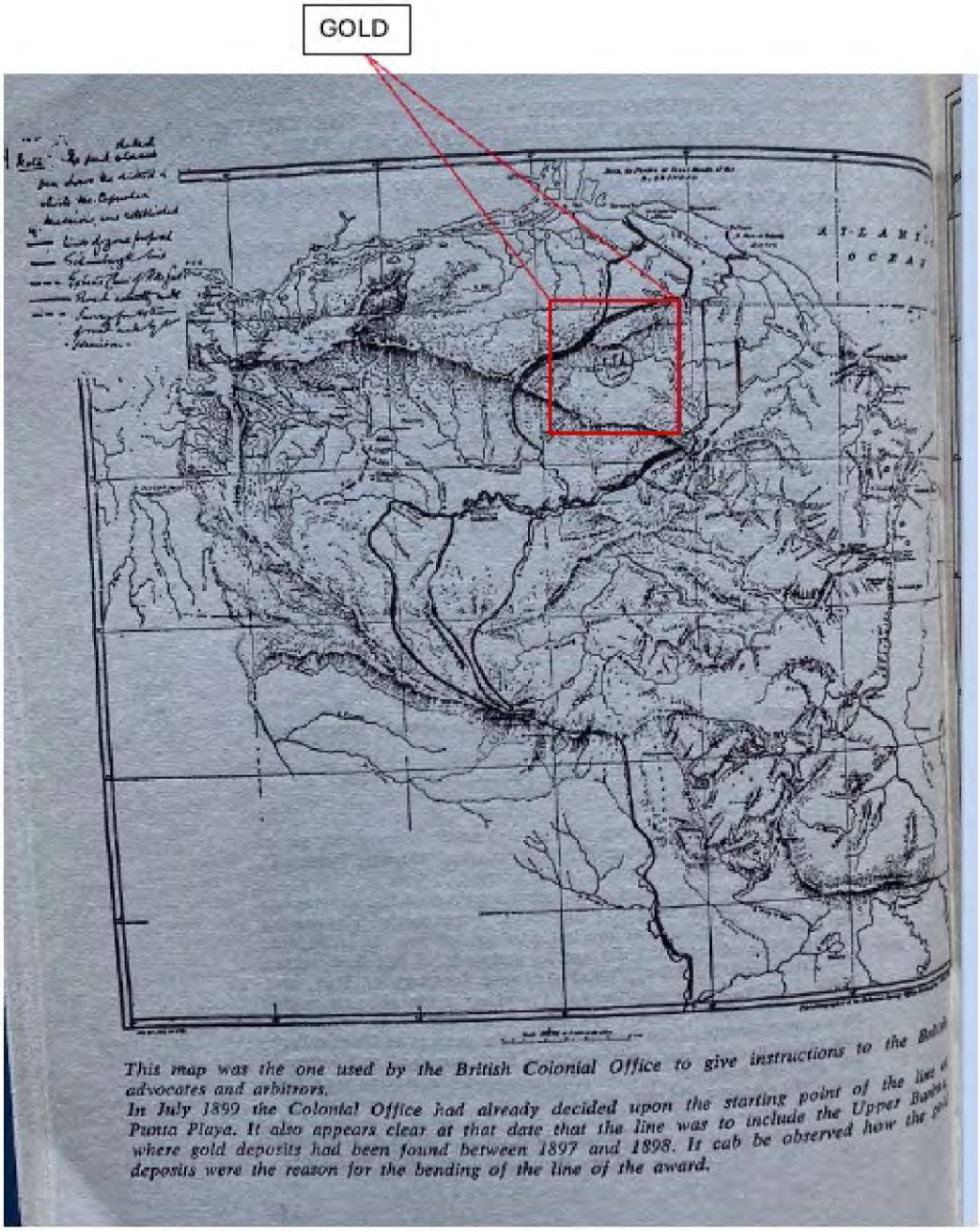
[200] Letter from Dr. Michelena to Lord Rosebery, 29 September 1893 (**Annex 38**); La reclamación venezolana (...) Colección Frontera. No. 6., p. 194 ff (available at: https://kamuru.mpprc.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

Salisbury on 4 September 1895, the latter "may have more gold than the Transvaal or Western Australia."[201]

21. Of course, just like greed for gold led the United Kingdom's policy territorial usurpation and plunder against Venezuela in the 19th century, greed for black gold is now the principal motive of Guyana's failure to comply with the Geneva Agreement.

22. As demonstrated by Venezuelan experts in their 1965 report, the Colonial Office had prepared a map as part of the British Government's instructions to its two arbitrators in the process leading to the 1899 Arbitral Award, which were to ensure that the territory where the gold was located be awarded to the United Kingdom.

[201] S. A. Consalvi, *Grover Cleveland y la Controversia Venezuela-Gran Bretaña*. Tierra de Gracia Editores, 1992, p. 70 (available at: https://www.mikeslibrary.com/pages/books/5365/simon-alberto-consalvi/grover-cleveland-y-la-controversia-venezuela-gran-bretana-bretana-la-historia-secreta).



Source: Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 38 (**Annex 150**).

23. Venezuela`s strong protests against British encroachments on its territory led to a suspension of diplomatic relations with the United Kingdom in 1887.[202] In 1895, by decision of then U.S. President Cleveland, a boundary investigation commission had been set up in the U.S. Congress.The impending historical inquiry functions of the new boundary investigation commission were the spur that moved to agree to arbitration.

24. In one of the few steps taken in line with principles of justice at that time, Mr. Olney, through the American representative in London (Bayard), sent a long note to Mr. Salisbury on 20 July 1895, in which he provided the Foreign Office with a very clear account of the situation and the injustice that the United Kingdom intended to do to Venezuela. Olney stated that:

> "The continued growth of the indefinite British claims, the fate of the various attempts to arbitrate the controversy, and the participation, up to that time, of the United States in the matter. As has been seen, the drawing of the Schomburgk line in 1840 was followed by the immediate protest of Venezuela (...) Each British advance action became more and more vigorous westward of the proposed line. The Granville line of 1881 fixed the starting point twenty-nine miles from the Moroco in the direction of Punta Barima. The Rosebery line of 1886 fixed it west of the Guaima River and by that time, if the *Statesman's* Year Book (an unofficial report of the Empire) is to be believed, the area of British Guiana was suddenly enlarged by 33,000 square miles, having been 76,000 square miles in 1885 and 109,000 in 1887. The Salisbury line of 1890 fixed the starting point at the

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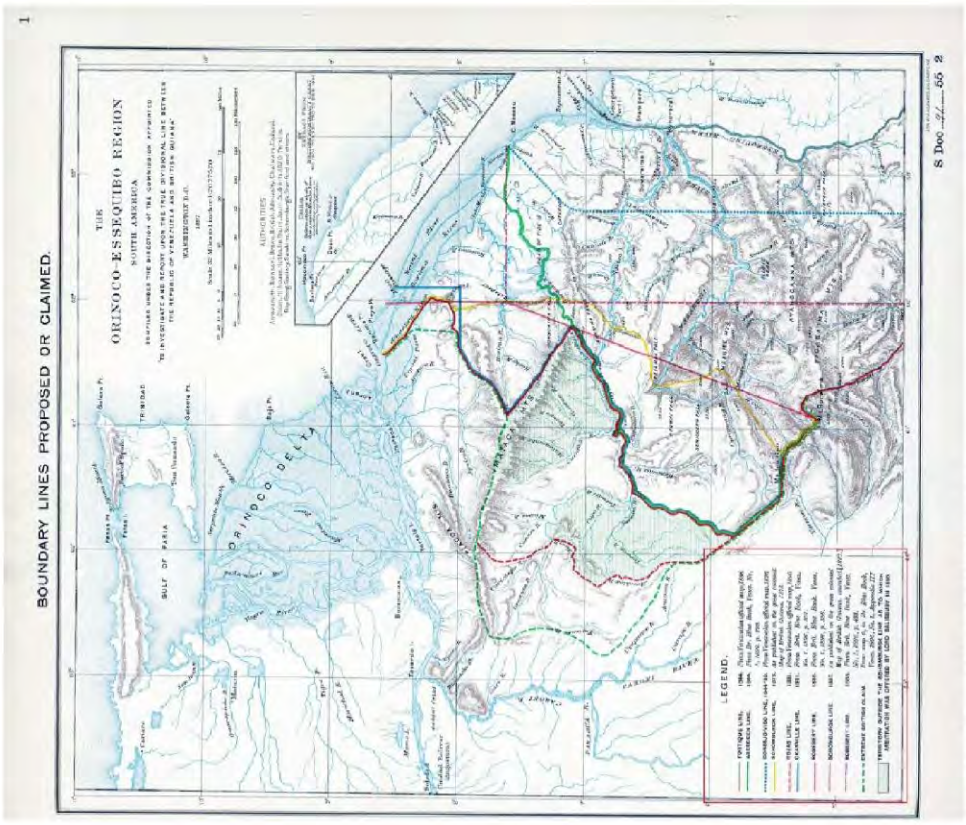
[202] The severance of diplomatic relations between Venezuela and the United Kingdom stands out in Venezuela`s pleadings before the Paris Tribunal (which the latter, of course, ignored). In this respect, Venezuela stated that: "These facts having come to the knowledge of the Venezuelan Government, and the latter despairing of being able to settle in any way the boundary question with Great Britain, it resolved to establish a lighthouse at Punta Barima, and sent commissioners to Amacuro, Barima, Guaina and Georgetown, to protest against the usurpations of Great Britain and to notify the British colonists who were on Venezuelan soil." On their return to Caracas, the Commission informed the Venezuelan Government that there were on the right bank of the Amacuro two British Commissioners acting there as Rural Commissioners with the authorization of the British Government. Consequently, on 26 January 1887, the Venezuelan Foreign Minister addressed a note to Mr. F. R. St. John, British Minister in Caracas, informing him of the above facts, protesting against such acts, demanding the immediate evacuation of the territory situated between the Orinoco and Pomaron rivers, and stating that, in the event of no reply, or a negative reply, diplomatic relations would be broken off: Letter from Diego B. Urbaneja, Minister in Venezuela, to F. R. St. John in Caracas, 26 January 1887 (**Annex 31**).

> mouth of the Amacuro River, west of Punta Barima on the Orinoco. Another line, Rosebery's second, goes even further [...] in 1850 a compromise was agreed between the two sides to avoid such occupation until the dispute was resolved".[203]

25. The malicious intent to appropriate Venezuelan territories was clearly reflected in the following map.

[203] *Ibid.* S. A. Consalvi, *Grover Cleveland y la Controversia Venezuela-Gran Bretaña*. Tierra de Gracia Editores, 1992, p. 51. On p. 169 of this text, there is a detail of Olney's communication to Bayard, meant to ensure that he would sufficiently inform Mr. Salisbury of the British actions in Venezuelan territory (available at: https://www.mikeslibrary.com/pages/books/5365/simon-alberto-consalvi/grover-cleveland-y-la-controversia-venezuela-gran-bretana-bretana-la-historia-secreta).



MAP 26. Boundary Lines Proposed or Claimed[204]

[204] Map 1 of the Venezuela Boundary Commission Report Atlas, 1898 (**Atlas**).

26. British civil servants, realising that the American government's intentions were serious,[205] accepted the arbitration proposal. For his part, Mr. Olney hastened to dissolve the Commission set up by Cleveland. Thereafter, talks became more intense between Olney and Pauncefote, and the result of these intense talks, or arrangements, was expressed by Salisbury on 9 November 1897, where he announced in a speech at the Lord Mayor's annual banquet at Guildhall that:

> "the controversy was over. It is always surprising how through simple arrangements problems of great difficulty are solved and on the continent discovered by Columbus (...) The question has not been whether there should be arbitration, but whether arbitration should have unrestricted application (...) Our difficulty for many months lay in how to define the settlements and a solution has been found".[206]

27. In other words, the UK had already assured itself through secret negotiations that it would obtain an outcome in its favour. Not surprisingly, shortly afterwards, Mr. Olney lost interest in the substance of the Venezuelan claim.[207] Proof of this is that Mr. Olney did

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[205] Consalvi's analysis of John A.S. Grenville's *Lord Salisbury and Foreign Policy, the Close of the Nineteenth Century, in* Chapter III, "Anglo-American Misunderstandings, 1895-1897", examines the Venezuelan-British question within the general context of imperial foreign policy at the end of the century and offers a perspective that allows Venezuelans to see more clearly (if one can speak of clarity) the fundamental aspects of the whole process. For it was unexpected and unthinkable to the British. Cleveland's message to Congress came as a shock, and even more so, the possibilities of war between the two countries, which were at first perceived as certain. "But there was never any possibility of war," said Grenville. In S. A. Consalvi, *Grover Cleveland y la Controversia Venezuela-Gran Bretaña*, Tierra de Gracia Editores. 1992, p. 68 (available at: https://www.mikeslibrary.com/pages/books/5365/simon-alberto-consalvi/grover-cleveland-y-la-controversia-venezuela-gran-bretana-bretana-la-historia-secreta).

[206] *Ibid.*, p. 66.

[207] Mr. Olney knew the meaning of the so-called occupation clause, in that regard, in Venezuela's memorial to the Paris Tribunal it was noted that Mr. Olney's contention that Lord Salisbury's proposal was unfair to Venezuela in that it provided that, where there was territory occupied bona fide by subjects of Great Britain, "the line of division shall be diverted. Mr. Olney's contention that Lord Salisbury's proposal was unfair to Venezuela in so far as it provided that, where there was territory occupied *bona fide* by subjects of Great Britain. "the dividing line in all similar cases shall be so deviated as to make such territory part of British Guiana" prevailed, and the present Rule was inserted, which provided for the claims, not only of British occupiers in 1887, but those of British occupiers up to the date of the Treaty. But, instead of providing that such occupation should deprive Venezuela of territory which might be found to be hers by the line of 1814, provision was made in the Treaty that the Tribunal itself should adjust the relations between these British occupiers and the

not consult Venezuela when he sent his memorandum to the British and, to make matters worse, Venezuela was left out of the Treaty negotiations and the composition of the Arbitral Tribunal.

28. Venezuela did its best to ensure that an arbitration would proceed under the law. Venezuela trusted the "negotiators" that they would facilitate an arbitration supposedly based on the criteria of legal justice.

29. The main achievement of the stratagem was that only Olney and Salisbury, through Pauncefote, were the main protagonists of the 1897 Treaty,[208] and thus Olney acceded to British pretensions to prepare a treaty tailored to British interests, in which Venezuela already had everything to lose. The 1897 Treaty itself anticipated Venezuela's defeat, and its normative features focused on the advantages of one of the parties, the United Kingdom.

30. A palpable demonstration of this fraudulent action can be found in Pauncefote's submission, in which it indicated that:

> "There is no danger of Mr. Olney listening for a moment to the Venezuelan howl for a modification of our terms of Arbitration. [...] It may appear unfair that there should be two Englishmen on our side and no Venezuelan on the other, but the Venezuelans agreed to be represented by the U.S., and I certainly understood that the question would be arbitrated precisely as if the controversy were between Gr. Britain and the U.S. for the reason among other that we know of no Venezuelan jurist worthy of the name, or whom we could consent to entrust with the function of Arbitrator in such a case."[209]

Venezuelan Government by considerations of reason, justice, the principles of International Law, and the equity of the case. In: Memorial of Venezuela, 15 December 1898, Paris Tribunal. In Frontier Collection 9, Arbitration (...) p. 63.

[208] P. Reuter, quoted by Gross Espiell, could say: 'The conditions under which Venezuela consented to be represented, without the existence of a protectorate or any other analogous institution, by a third state, are very rarely found in an arbitration proceeding and reveal a quasi-colonial sovereignty", in M. Terentyef, *Russia and England in Central Asia*, Ediciones Presidencia de la República, Caracas, p. 21.

[209] Christ Church College (Oxford), Salisbury Papers A/139. f.141, in Ministerio de Relaciones Exteriores, Reclamación de la Guayana Esequiba. Documents, Caracas. 1967, p. 36 (**Annex 150**).

31. With this reference it was already a given that Olney had agreed with the British, that Venezuela would not be given any chance to benefit from the treaty, let alone to appoint arbitrators, which in itself should suffice to invalidate the treaty and the arbitration.

32. Then, in other correspondence at the time of the signing of the 1897 Treaty, which would define the terms of the "legal" arbitration procedure, Olney himself, in a confidential letter dated 29 October, addressed to Pauncefote, suggested that the "1850 Agreement" should become a dead letter, reasoning that "an attempt to construe it will involve us in a protracted debate and indefinitely postpone the attainment of the object we now have in view".[210] Mr. Olney, in the context of the negotiations on the basis of the Washington Treaty, made the following point:

> "It is most desirable, I think, not to give the Agreement of 1850 any status on the face of the Convention even by reference – much less by an attempt to define its scope and meaning".[211]

33. Thus, the U.S. and Britain deliberately excluded Venezuela from the negotiating process and kept some crucial decisions strictly confidential. The level of confidentiality was attested to by the fact that the relevant documents were not even allowed to "pass into the archives of the State Department".

See also "I enclose a copy of a private letter I received from him. as well as my reply. He has not revived the matter, since the press here presumes that there is an agreement between Mr. Olney and Mr. Andrade regarding the appointment of a Venezuelan. But it seems to me that there has been an implicit agreement through all the correspondence and negotiation that two arbitrators on the Venezuelan side must be Americans, and I know of no precedent otherwise - a neutral sovereign chosen by the disputing parties to appoint a super-arbitrator - appoints of course a person of their own nationality. Likewise, Chamberlain suggests taking the same approach to Olney to prevent any Venezuelan from having any representation in the arbitration." *Ibid.*

[210] Public Record Office (London) F.O 80/375, in Ministerio de Relaciones Exteriores Republica de Venezuela in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 40 (**Annex 150**).

[211] Julian Pauncefote. British Ambassador in Washington. 29 October 1896. Ministerio de Relaciones Exteriores Republica de Venezuela in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 40 (**Annex 150**).

34. However, the fraud does not end here, but continued with Olney pressing for the 1897 Treaty to be signed by Venezuela, through an obvious threat of use of force, referring to "the dangerous consequences of the helplessness in which refusal would place Venezuela".[212]

35. As if that were not enough, and not content with having all the normative pieces of the arbitration treaty in its favour, during the arbitration process, the United Kingdom produced and presented adulterated maps (documentary forgery). This particular issue invalidates the documentary evidence presented by the British delegation before the 1899 arbitration tribunal – not to mention the chicanery of the arbitrators who colluded to harm Venezuela.

36. Furthermore, of key importance was that the British representatives went so far as to hide relevant maps from the Arbitral Tribunal (among them, the Foreign Office map of 1857 and the so-called "Stanford" map of 1875), and presented others drawn up by the Colonial Office, following a Schomburgk line that was not correctly represented, or whose qualifying notes were eliminated (among them, the so-called "Herbert" map of 1842, with a third Schomburgk line falsified in 1887). Herselt said in this regard:

> "I suggested to the gentleman at the Colonial Office (Joseph Chamberlain) that they should at once get in communication with Stanford and get him to republish the Map properly coloured, removing the last two lines of the present note, and adding this note upon it: 'Corrected to date, 1886' and in the meantime suspend the sale of the incorrect copies so that the dispute with Venezuela in regard to this Frontier has become considerable, a claim will surely produce the best map on the subject, and if this is the best Map that S. M.'s Government can produce in support of their claim, general opinion cannot fail to pronounce largely, in favour of Venezuela, and against the justice of the British claim, that the Map is the best that the British Government can produce. M. can produce in support of its claim, general opinion cannot fail to pronounce largely in favour of Venezuela, and against the justice of the British claim. This

[212] Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 33 (**Annex 150**).

> question is so important that I would venture to suggest that the Office of the War Intelligence Department be immediately requested to prepare a map based on Schomburgk's maps and other official data, to be supplied by the Colonial Office (Joseph Chamberlain), supplemented by information on historical and Treaty points to be furnished by this Office. We could then cite this as our Official Map. I send herewith a sheet of the great Stanford map, and have shown, with a yellow coloured line, in what respect our present statement, which was marked on a map and handed to the Venezuelan Minister (Mr. de Rojas) on September 15, 1881, differs from the pink coloured line on the Colonial Office (i.e. Stanford) map of 1875, as denoting the British Boundary Line at that time."[213]

37. Chamberlain's falsified maps in the Colonial Office, contrary to any legal and factual basis, were accepted by the Tribunal. This was aggravated by the lack of motivation in the Tribunal's decision.

38. In this regard, Pablo Ojer observed that "[t]he 'tribunal' was substantially satisfied with a Schomburgk line adulterated by Great Britain twenty years after the alleged author's death, with the result that the tribunal did not even recognise territories to the North of the Cuyuní (Alto Barima and Alto Barama) and to the South (Venamo and Camarang) that Great Britain had recognised as Venezuelan, out of all dispute, in all official publications of the second Schomburgk line, also called North-South, from 1840 to 1886, both inclusive".[214]

39. This certainly reveals a serious procedural defect, as it constitutes a false assumption of fact resulting in a delimiting criterion that affected the rights of one of the parties (Venezuela), without further explanation. Yet, this was only one part of the trickery deployed from the Treaty of Washington of 1897 onwards.

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[213] VENEZUELA: Memo. British Guiana Boundary (Sir E. Hertslet). Bound: Memo, Reference: FO 881/5311 (available at: https://discovery.nationalarchives.gov.uk/details/r/C3661874 [restricted]).
[214] P. Ojer, *Sumario Histórico de la Guayana Esequiba,* Maracaibo, San Cristobal, 1982, p. 50.

40. The Arbitral Tribunal awarded Venezuela only a tiny portion of the territory to which it had indisputable rights. The tribunal's failure to explain this outcome shows the self-interested approach of the arbitrators to favour the British side.

41. Venezuela sought to protect its territory, which belongs to it on the basis of its just title sufficiently demonstrated before the Tribunal; it could have never expected that the vast forest and jungle territory invaded in tiny fractions by poaching mining camps and occupied *de facto* by British citizens and miners would be fraudulently taken away.

42. It should be stressed that Venezuelan officials trusted in good faith in the American efforts; no one imagined a fraud of the magnitude that had taken place, to the detriment of Venezuela. Although there was much resentment in Venezuela over the signing of the Treaty of Washington in 1897, Mr. Olney persevered in forcing Venezuela to sign the Treaty, under the excuse that the Cleveland government was ending, and he (Olney) could not know what might happen since the new U.S. president was a British-friendly character.[215] More lies designed to deceive Venezuela.

43. In the framework of the course of the fraudulent conduct, the artifice with deceit (that is notorious and sufficiently demonstrated here, was then to construct the lie, create a fictitious scenario and also act - inter *alia* - by means of silence). The U.S. official Olney, given his private knowledge of the information he had on the controversy and his role as Venezuela's negotiator, was obliged to tell the truth and even not to remain silent, which is what is known as silent fraud (through silence), as Impallomeni described so well.[216] In this case, Olney's complicit silence and his active actions caused Venezuela's official representation to fall into the deception and subsequent fraudulent error.[217]

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[215] Thus, according to Ojer: "Olney, in his well-known Harvard speech (1899), developed the thesis that the two countries, in order to emerge from their isolationism, should march together in brotherhood of peoples and community of interests (...)." In 1898, already in the midst of the arbitration process, news circulated that the Republican administration of President McKinley had signed a secret treaty of alliance with Great Britain". *Ibid.*, p. 41

[216] Stefano Impallomeni. Código Penal Italiano, volume III, Tirant lo Blach. p. 295.

[217] Therefore, the circumstances of the acts, their formation and consequences must always be assessed. In short, an essential defect in the formation of the legal act, caused by fraud, can be the

44. By way of corollary, under the above account and analysis, it can be affirmed that the conditions for considering the 1897 Treaty invalid for fraud are fulfilled.

45. *First*, the fraud came from one negotiating party, Great Britain, with the co-authorship of the chief U.S. representative (Richard Olney) who served as a representative of the interests of the United States and not of Venezuela.

46. *Second*, the fraud was a determining factor in coercing Venezuela to accept the Treaty (causing the error), as the fraudulent conduct affected the crucial issue concerning key aspects of the dispute which, properly analysed, constituted an inexcusable prejudice to Venezuelan interests.

47. *Third*, Venezuela was not and could not have been aware of the fraudulent conduct of Great Britain and the United States (good faith prevailed).

48. For all these reasons, the 1897 Treaty is considered invalid and without effect, as well as the consequent result of the arbitration, namely the award of 3 October 1899 and the technical demarcation verified in 1905.

III. QUID BASED ON THE UNEQUAL TREATIES ARISING FROM FRAUD AND COERCION

49. Before proceeding to the following chapters, it is relevant and crucially important to focus on the notion of political domination introduced in the 1897 Washington Treaty (i.e., the idea that "Adverse holding or prescription during a period of fifty years shall make a good title"), which was coined and used by the United Kingdom in the 19th century to exercise its territorial dominion and as an attempt to justify their expansionism.

50. In such circumstances, the aforementioned notion introduced in the Treaty of Washington has been discredited, for good reasons, as it would go against a principle of

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trigger for nullity. The problem is that if the error is essential (inexcusable), it cannot be validated in any case, since the essential error is perceived to be detrimental. Therefore, what is important is the prejudice that may be caused to either party through the essential defect: *Pas de nullité sans grief* (no nullity without prejudice).

international *jus cogens* that makes it invalid to acquire territorial rights or territories, or securing titles, through a mere *fait accompli*. Therefore, the Treaty of Washington of 1897 today has no possibility of application, nor could it be used as support for obtaining territory and consequently, it is invalid as a matter of law. For the same reasons, the Paris Arbitral Award of 1899 is invalid.

51. The issue of territorial domination is all the more iniquitous that it frequently resulted in unequal treaties, i.e. those agreements that are negotiated under conditions of disadvantage, inequality and coercion, which disqualifies their validity. History is full of such treaties, and the 1897 Treaty of Washington in particular is no exception, since Venezuela, being a sovereign republic, was treated as a colony in the face of British power, a fact compounded by the coadjutant action of U.S. officials.

52. Venezuela was certainly a weak country and regarded as "uncivilised", prompting the British to entrench their territorial political dominance in order to appropriate Venezuelan territory. The rejection of the doctrine of political domination advocates the revision, renegotiation or annulment of these treaties in order to correct such injustices and re-establish the necessary balance between the parties.

53. This is a long-standing position of Venezuela. Notably, in the context of negotiating the Vienna Convention on the Law of Treaties, Venezuela considered that the issue of acquiescence – *inter alia* – was a major obstacle to formalising complaints about unequal treaties. The Venezuelan diplomatic commission at the Conference on the Law of Treaties therefore disagreed with the Convention's proposals on this point, and made its position very clear, in full that the Treaty of Washington of 1897 is the masterpiece or emblematic piece of an unequal treaty. What Venezuela expressed at the conference applies perfectly, which is why the Republic is not a party today. In this sense, the Venezuelan Foreign Ministry said:

> "The Conference, which was concerned with the progressive development of international law, could not and should not recognize unequal treaties which had been imposed upon weaker nations by the more powerful nations of a former era. It had been alleged that acquiescence in the validity of a treaty, even for a comparatively

> short time, was sufficient to confirm it; acceptance of that principle, however, would represent an obstacle to the revision of unequal treaties and would therefore be a step backward in the field of international law. It had been argued that article 42 provided certain safeguards against bad faith on the part of States parties to a treaty, but he wondered whether it afforded any protection against those who had originally been guilty of bad faith. In his opinion, the article only served to erect barriers against the revision of illegal instruments and thus to close the door to any honourable solution of situations which were patently unjust because they had been imposed by the strong upon the weak".[218]

54. This Venezuelan affirmation before the UN leaves no doubt as to the firmness of its claim that arose in 1962, the serious situation that arose before and during the process of making the Washington Treaty of 1897, and the subsequent consequences that arose with the arbitration. The Treaty found its roots in inequality and discrimination, to the detriment of an emerging and sovereign republic, whose territory was subject to a relentless attack of usurpation by the United Kingdom at the end of the 19th century, as has been well recorded throughout this painful history.

IV. CONCLUSION

55. This introduction has demonstrated in a synthetic manner the British representatives' fraudulent action, with the complicity of the United States of America, aimed at usurping the territorial integrity of Venezuela, committed through fraudulent intent, that is, with the malicious intention of appropriating a territory that never belonged to them by means of falsehoods, deceit, simulations, and abuse, including violence and threats.

56. Given the issues sufficiently raised in the previous paragraphs, it is incontrovertible that the Treaty of Washington of 1897 is invalid, as is the Award of 3 October 1899.

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[218] Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 (resumed from the previous meeting), Articles approved by the Committee of the Whole (continued), Article 42.

57. Furthermore, the Tribunal's actions are invalid from the moment of the pronouncement of its decision when it manifestly exceeded its powers and between the lack of arguments (serious omissions) and functional and power excesses that allowed it to act without any legal limitations or sense of justice. It acted inconsistently with the scope of its powers as defined in Articles I and III by deciding matters outside the Washington Treaty; and ultimately, it acted inconsistently with its duty to make an award based on international law.

CHAPTER 4: VENEZUELA'S TITLE TO SOVEREIGNTY OVER GUAYANA ESEQUIBA

4.1. Spain since colonial times have always had the sovereignty title to Guayana Esequiba, as was recorded in the formation of the Captaincy General of Venezuela in 1777, and then by the independent Venezuela since 1810, whose successive Constitutions clearly confirm this sovereignty. This title was still in force when around 1814-15 the Netherlands ceded its small settlements of Demerara, Berbice, and Essequibo to Great Britain, who just in 1831 saw the opportunity to unite them to create its new colony of British Guiana and to give free rein to its greed to follow the path that would finally lead it to consummate the dispossession of Venezuela, so that overnight the Arbitral Award of 3 October 1899 changed an unaltered situation.

4.2. One simple glance to the cartography and the historical maps reveals this. Guyana attempts to trace its territorial origins to a nebulous past that goes back centuries in history. Never could the vastness of Guayana Esequiba, especially towards its centre and even less so to the Venezuelan south and west projected along the Essequibo River, have belonged to the Netherlands, let alone ceded it to the United Kingdom. There is not the slightest historical or geographical clue to this. The British manipulation later inherited by Guyana deceives the world by using the origins of Guyana determined between the eastern bank of the Essequibo River and the present Suriname – always to the east of the river – using as a "half lie" the natural and understandable fact of the settlements located on the west coast that crossed the western bank of the river at the height of its mouth into the sea and that, in any case, were always protested by Venezuela. On the other hand, it is well known that the three small provinces to the northeast of the Essequibo River, called Berbice, Demerara and Essequibo, are the cradle of the territory of the former British Guiana Colony barely born in 1831, which in 1966 became the Republic of Guyana. These three small settlements east of the Essequibo River, are the true current territory of Guyana, to the east of the Essequibo River.

4.3. For 150 years – from 1498 to 1648 – Spain was the sole sovereign State over Guayana Esequiba. This territory was internationally recognised as Spanish. In 1581, the Dutch renounced their allegiance to the King of Spain and waged a war that led to their

independence in 1648. With the Treaty of Münster of 30 January 1648, Spain ceded sovereignty to the Dutch over the territory they were occupying, and the Dutch agreed not to expand further into Spanish territory. But the bizarre historical narrative that Guyana is now trying to recreate in its Memorial can in no way be transposed to Guayana Esequiba. It further shows that the British Empire, motivated solely by its greed for the gold mines progressively discovered in the territory of Guayana Esequiba, embarked on a predatory policy, invented out of thin air, false maps, false dividing lines, growing claims based on nothing close to a legal right, to capture the territory of Venezuela. Venezuela consistently opposed British manoeuvres on the basis of its rights.

I. VENEZUELA SUCCEEDED SPAIN, WHICH WAS RECOGNISED BY THE DUTCH AS THE HOLDER OF THE TITLE TO SOVEREIGNTY OVER GUAYANA ESEQUIBA

4.4. At the time of its independence, Venezuela succeeded Spain as the holder of territorial sovereignty over Guayana Esequiba. Spain established its title at a time when international law accepted the discovery and occupation of *terra nullius* as a means of acquiring territorial sovereignty. The term *terra nullius* was not used as a synonym for uninhabited territory, but as a reference to a territory in which there was no State organisation,[219] as were the Americas. In this legal context, on the basis of a Bull of Pope Alexander VI,[220] Spain and Portugal signed the Treaty of Tordesillas of 7 June 1494,[221] by which both Powers reciprocally recognised sovereignty over the territories located on either side of a straight line drawn between the two poles and situated three hundred and seventy leagues from the Cape Verde Islands. From this moment, Spain freely took possession of Guayana Esequiba through discovery and subsequent occupation. The Dutch

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[219] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 39-40.

[220] Bull of Pope Alexander VI, dated 4 May 1493, determining the line of demarcation in the dominions of the Crowns of Spain and Portugal in America. For the text, see *Blue Book 8*, cit. pp. 3-6 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

[221] Treaty of Tordesillas of 7 June 1494, by virtue of which the line of demarcation was to pass three hundred and seventy leagues (not one hundred as fixed by the Bull of Alexander VI) to the west of the Cape Verde Islands. This treaty can be consulted in *Blue Book 8*, *El Derecho Internacional Venezolano. Límites británicos de Guayana*, Ministerio de Relaciones Exteriores, Colección Fronteras, Caracas, 1988, pp. 7-18 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

recognised that the territory was Spanish territory and with the Treaty of Münster of 1648 they undertook not to expand further into the territory.[222] Great Britain succeeded in 1814 to the Dutch sovereignty over a territory to the east of the Essequibo River, made of the Demerara, Berbice and Essequibo establishments. Such was the established sovereignty rights over the relevant territory in the beginning of the 19th Century. In so far as international law is concerned, this situation never changed since then, even if, for a too long period, Great Britain, and now Guyana, have unlawfully administered and controlled Guayana Esequiba, on the basis of what is probably the most scandalous manipulation ever seen in recent history.

4.5. This section revolves around two key dates. On the one hand, 1648, the year in which Spain and the United Provinces of the Netherlands concluded the Treaty of Münster by which the Spanish Crown ceded to the Netherlands establishments located in Guyana.[223] On the other hand, 1810-1811, the year Venezuela succeeded Spain in all its title to sovereignty over Guayana Esequiba.

(i) THE DISCOVERY AND OCCUPATION OF GUAYANA ESEQUIBA UP TO 1648

4.6. In 1499, a year after Christopher Columbus approached the Orinoco Delta, Alonso de Ojeda took possession of the Guiana coast and the lands he was discovering, starting at the Boca del Marañón (Amazon) and heading north and northwest, sighting the Esequibo – which took the name of Juan de Esquivel who first surveyed it – and Orinoco rivers.[224] All these actions were carried out on behalf of the Spanish Crown.[225]

4.7. They were followed by many other Spanish expeditions during the 16th century, both along the Atlantic coast and inland to Guyana. When some Dutch navigators began

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[222] Treaty of Peace between Philip IV, King of Spain, and the United Provinces of the Low Countries, Munster, 30 January 1648 (**Annex 1**).

[223] The term Guyana identifies a large region of South America stretching from the Amazon to the Orinoco.

[224] P. Ojer, *Sumario Histórico de la Guayana Esequiba,* Maracaibo, San Cristobal, 1982, p. 9.

[225] GM, Vol. III, Annex 8.

their voyages to Guyana, the Spanish had already been discovering, carrying out topographic surveying and occupying this territory, a vast region situated between the Orinoco River, the Amazon, the Atlantic Ocean and the sources of the Orinoco, the Rio Casiquiare and the Rio Negro.[226]

4.8. In the conquest of America, Spain made use of the *capitulations* as a way of making the occupation of the territory effective. A capitulation was a document authorising exploration and establishing a delegation of authority in favour of a private individual empowered to carry out civil and military activities in the discovered territory, thus making colonisation effective.

4.9. The Spanish Crown granted several capitulations related to Guayana Esequiba during the 16th century.[227] One of the most important, due to its genesis, was granted on 21 July 1569 in favour of Gonzalo Jiménez de Quesada. It was succeeded by D. Antonio de Berrío,[228] who discovered and explored the provinces of Guayana and El Dorado,[229] and took possession and governed them.[230]

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[226] On this colonial period and the occupation and administration of the territory of Guayana Esequiba by Spain, see HUMBERT, J. *Los orígenes venezolanos (Ensayo sobre la colonización española de Venezuela)*, Biblioteca de la Academia Nacional de la Historia, núm. 127, Caracas, 1976; MARQUEZ, O. La venezolanidad del Esequibo: reclamación, desarrollo unilateral, nacionalidad de los esequibo. 127, Caracas, 1976; MARQUEZ, O. *La venezolanidad del Esequibo: reclamación, desarrollo unilateral, nacionalidad de los esequibanos*, Caracas, 2002; DE VEGAMIAN, PFM, *El Esequibo frontera de Venezuela: documentos históricos y experiencias personales*, Raycar SA Impresores, Madrid, 1968, pp. 48-55, and CABRERA SIFONTES, H., *La verdad sobre nuestra Guayana Esequiba*, Monte Ávila Editores C.A., Caracas, 1970.

[227] Some of the capitulations issued by the Spanish Crown can be found in *The Case of Venezuela*, 1899 (available at: https://archive.org/details/venezuelabritis01venegoog/page/368/mode/2up).

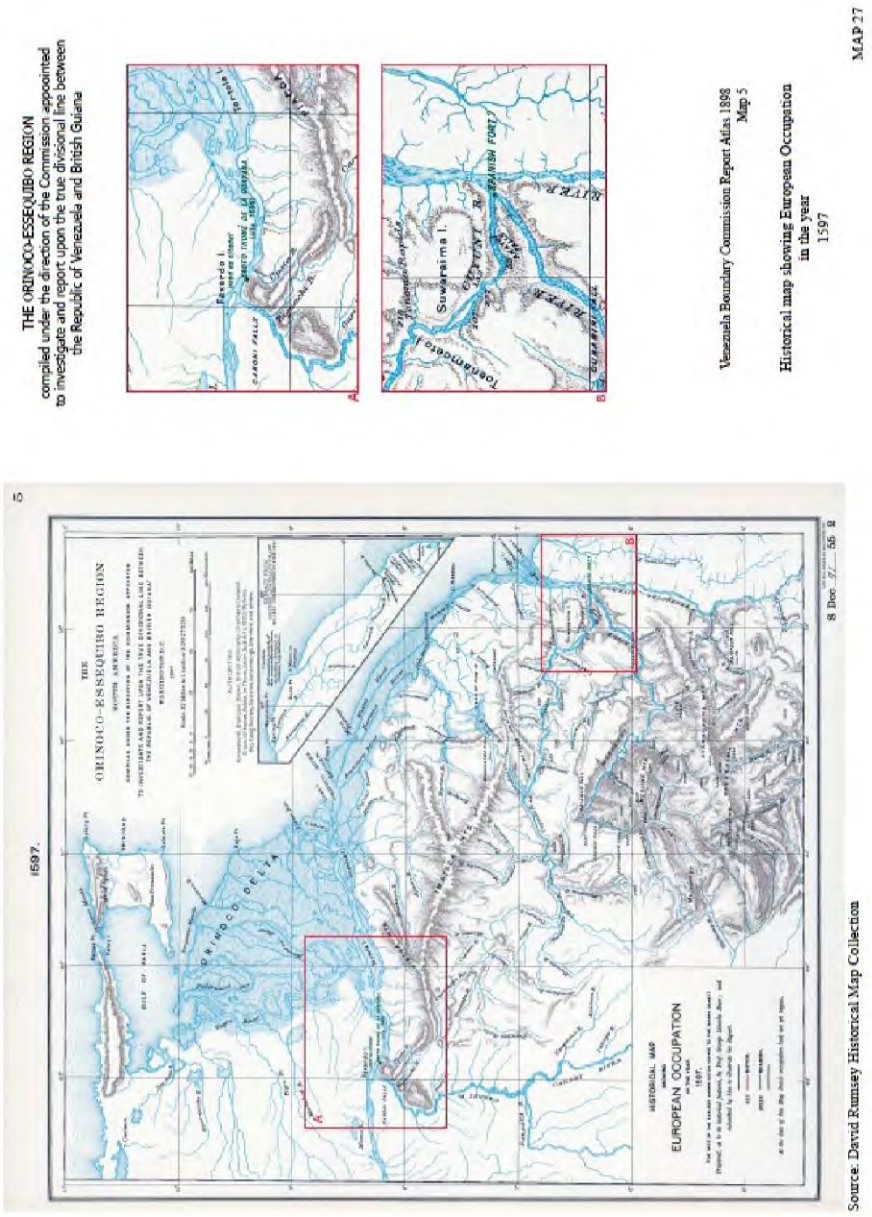
[228] The capitulation in favour of D. Gonzalo Jiménez de Quesada and his succession by D. Antonio de Berrío can be consulted in (**Annex 8**).

[229] Letter from Antonio Di Berrío to the King, 2 December 1594 (**Annex 8**).

[230] See *Blue Book 7 Arbitramiento sobre los límites de Venezuela y la Guayana Británica. Alegato y Contra-alegato*, Ministerio de Relaciones Exteriores, Colección Fronteras, Caracas, 1981, pp. 79-81, which contains the text of a letter stating that Domingo de Vera, representing Antonio de Berrío, took possession of the province of Guyana for Spain (available at: https://kamuru.mppre.gob.ve/index.php/s/oiwST6o4wKpTETi).

4.10. As a result of these expeditions and the lands discovered, the Council of the Indies created in 1595 a political-administrative entity called the Province of Guayana.

4.11. At this time there were no Dutch settlement west of the Essequibo River (Map 1).



MAP 27. Historical map showing European Occupation in the year 1597[231]

4.12. Guyana states in its Memorial that:

> "The first Europeans to settle in present day Guyana, including the Essequibo Region, were the Dutch. They arrived in 1598, seventeen years after the 'United Provinces' declared independence from Spain."[232]

and that:

> "The Spanish did not establish settlements east of the Orinoco River. Historical records show that the last Spanish expedition across the Orinoco River, for moblue bre than a century, took place in 1619, and was rebuffed by the Dutch."[233]

4.13. This is simply wrong. The reality is that while Spain had an already established title, the Dutch new settlements established at the time were all located east of, or in, the Essequibo River. The map of the Venezuelan Boundary Commission created by the United States Congress, entitled *European Occupation 1626*, shows this very limited Dutch presence in Guyana[234] (map no. 2). This territorial situation remained unchanged during the first half of the 17th century and was therefore the same when Spain and the Netherlands concluded the Treaty of Münster. The aforementioned Boundary Commission

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[231] Map 27 of the Venezuela Boundary Commission Report Atlas, 1898 (**Atlas**).

[232] GM, pp. 29-31, paras. 2.11-2.12.

[233] GM, pp. 31-32, para. 2.14.

[234] "European Occupation in 1626", *David Rumsey Map Collection* (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~203930~3001725:European-Occupation-in-1626-?sort=pub_list_no_initialsort%2Cpub_list_list_no_initialsort%2Cpub_date%2Cpub_date&qvq=w4s:/who%2FUnited%2BStates%2Bof%2BAmerica%2Fwhere%2FGuyana;q:Venezuela;sort:pub_list_no_initialsort%2Cpub_list_list_no_initialsort%2Cpub_date%2Cpub_date%2Cpub_date;lc:RUMSEY~8~1&mi=10&trs=81).

also left a cartographic sample of this reality in its map entitled *European Occupation in 1648*[235] (Map no. 3).

4.14. By the Treaty of Münster of 30 January 1648, Spain recognised the independence of the Dutch States General (Art. I), while the Dutch States General recognized as opposable to them Spain's title to territories over which the Dutch had no established settlements at this date.[236] The Dutch possessions at the time became the Dutch colonies east of the Essequibo River. The Dutch also undertook not to expand further into Spanish territory. Indeed, as stated in Article V of the treaty, they were authorised to conquer and possess additional territories, but only to the extent that they were controlled by the Portuguese, not by Spain. With the adoption of the Treaty of Münster, Spain definitively consolidated its title vis-à-vis the Dutch States General.[237]

4.15. By stipulating that no subsequent conquest or occupation could contravene its provisions, the Treaty of Münster froze the Dutch's opportunity to lawfully conquer Spanish territory. Thus, any occupation of Spanish territory by the Dutch after 1648 would

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[235] "European Occupation in 1648", *David Rumsey Map Collection* (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~203931~3001726:European-Occupation-in-1648-?sort=pub_list_list_no_initialsort%2Cpub_list_list_no_initialsort%2Cpub_date%2Cpub_date&qvq=w4s:/who%2FUnited%2BStates%2Bof%2BAmerica%2Fwhere%2FGuyana;q:Venezuela;sort:pub_list_no_initialsort%2Cpub_list_list_no_initialsort%2Cpub_date%2Cpub_date%2Cpub_date;lc:RUMSEY~8~1&mi=11&trs=81).

[236] "The navigation and traffic of the East and West Indies shall be maintained according to and in conformity with the concessions 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 all the Powers, Nations, and Peoples, with whom the said Lords States, shall be comprehended in the said Treaty, 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 is to wit, the said Lords King and States respectively, shall remain in possession of and enjoy such lordships, towns, castles, fortresses, commerce and countries of the East and West Indies, as well as of Brazil, and on the coasts of Asia, Africa, and America, respectively, which the said Lords the King and States, respectively, hold and possess, in this being specially comprised the spots and places which the Portuguese since the year 1641 have taken from the said Lords the States and occupied, comprising also the spots and places which the said Lords the States hereafter without infraction of the present treaty shall come to conquer and possess." Treaty of Peace between Philip IV, King of Spain, and the United Provinces of the Low Countries, Munster, 30 January 1648, Article V (**Annex 1**).

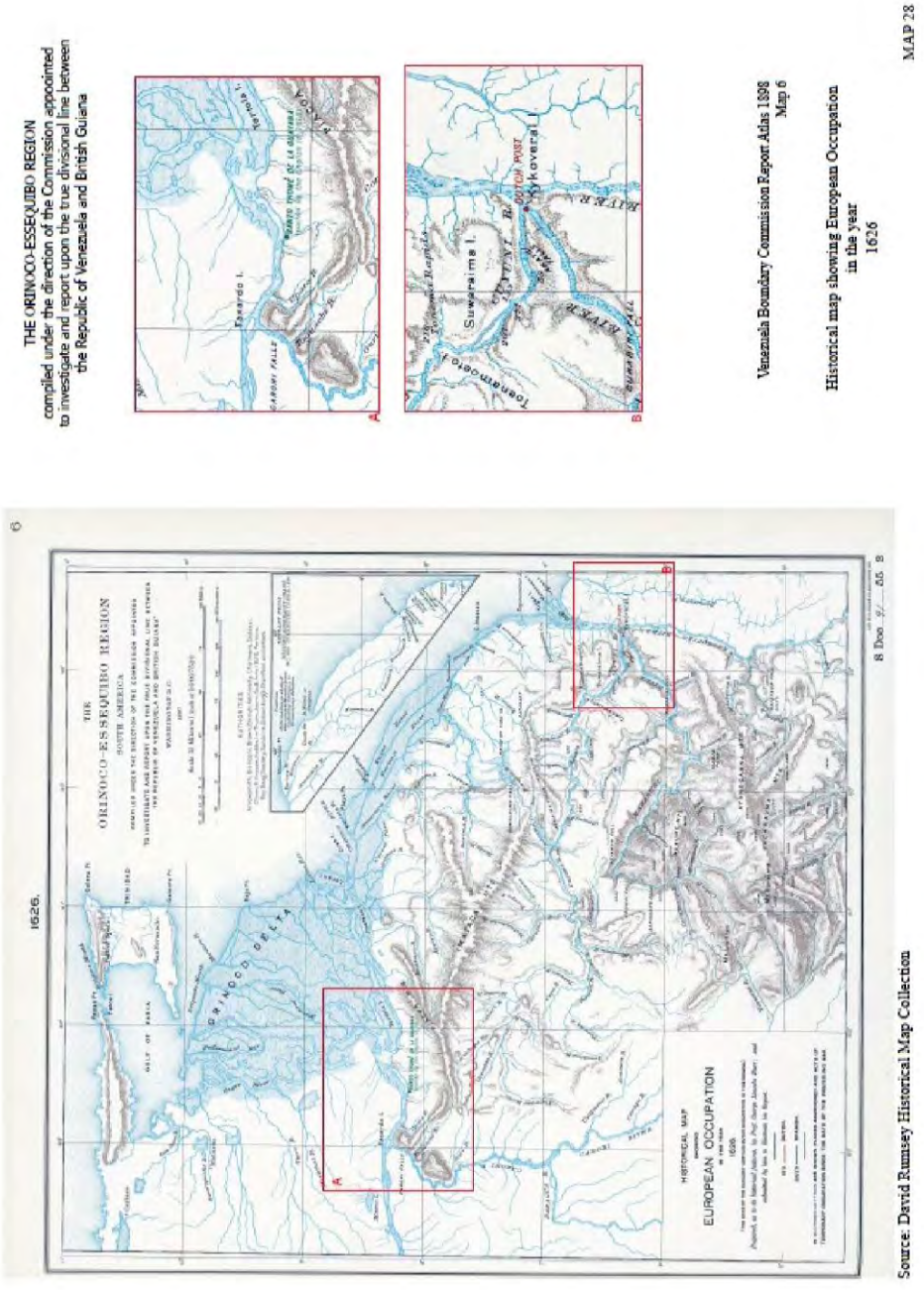
[237] On the importance of the Treaty of Münster in the title of Spain and Venezuela and the other conventional sources that support it, see DE PEDRO FERNANDEZ, A., *La Historia y el Derecho en la reclamación venezolana de la Guayana Esequiba,* Ed. Mediterráneo, Madrid, 1969, pp. 29-35.

have been to be considered an illegal usurpation, lacking legal effect between the parties and unenforceable against Spain.

4.16. There is no doubt that at the time, there were no Dutch settlement west of the Essequibo River.[238] The map showing the situation of the occupation in 1648 illustrates this reality (map no. 3).[239]

[238] A. S. Reyner, W. B. Hope, "Guyana's Disputed Borders: A Factual Background", *World Affairs*, July, August, September 1967, Vol. 130, No. 2 (July, August, September 1967), p. 109.

[239] "European Occupation in 1648", David Rumsey Map Collection (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~203931~3001726:European-Occupation-in-1648-?sort=pub_list_list_no_initialsort%2Cpub_list_list_no_initialsort%2Cpub_date%2Cpub_date&qvq=w4s:/who%2FUnited%2BStates%2Bof%2BAmerica%2Fwhere%2FGuyana;q:Venezuela;sort:pub_list_no_initialsort%2Cpub_list_list_no_initialsort%2Cpub_date%2Cpub_date%2Cpub_date;lc:RUMSEY~8~1&mi=11&trs=81).



MAP 28. Historical map showing European Occupation in the year 1626[240]

[240] Map 6 of the Venezuela Boundary Commission Report Atlas, 1898 (**Atlas**).

MAP 29. Historical map showing European Occupation in the year 1648[241]

[241] Map 7 of the Venezuela Boundary Commission Report Atlas, 1898 (**Atlas**).

(ii) SPAIN'S ANIMUS *OCCUPANDI* AFTER THE TREATY OF MÜNSTER

4.17. In the 18th century, the Spanish Crown undertook a process of reform and modernisation of its imperial apparatus of government in the Americas (known as the Bourbon Reforms), which promoted the creation of administrative units and more efficient colonisation methods that allowed it to increase its presence and dominance in the area. The concrete expression of this was the strengthening of the method of conquest and colonisation through the presence of religious missions, which was successfully practised in three regions under the dominion of the Spanish empire: northern Mexico, Paraguay and Guayana Esequiba. Therefore, Spanish missionary occupation and settlement was a project of State expansion over the territory and population that were incorporated into the effective control of the State in a permanent manner, and without the use of violence typical of the Dutch system of slave exploitation.

4.18. For administrative purposes, Spain created in 1762 two commanderies, the general commandery of new towns and the entire Orinoco River, under the command of José de Iturriaga, and the General Commandery of Guayana, headed by Joaquín Moreno de Mendoza.[242] Spanish Guayana, then called "province of Guiana", was firmly established on the political administration of the territory and gained autonomy.

4.19. In the dossier concerning the boundaries of Spanish Guiana with Dutch Guiana, which created the separate command of Guiana,[243] it was stated that:

> "The province of Guiana is bounded on the east by the whole coast on which are situated the Dutch colonies of Esquivo, Berbis, Demerari, Corentin and Surinan, and further to windward the Cayenne belonging to the French: to the North, the banks of the Orinoco, which dividing the provinces of Cumaná, Barcelona,

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[242] Real Cédula por la cual la región de Guayana se escindió de la Nueva Andalucía y se erigió en Comandancia General Independiente, 4 June 1762, *Blue Book 8*, pp. 47-48 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY), also Ministry of Foreign Affairs, 1981, Venezuelan International Law: British Limits of Guyana, Collection "Fronteras" 8, Caracas (**Annex 10**).

[243] *Blue Book 8*, pp. 45-48 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

> Caracas, Barinas, Santa Fé and Popayan, formed a half circle returning to the East to seek its headwaters in the lagoon of Parime, as would be seen in a general map of the said provinces and river: to the South, with the dominions of King Fidelissimo in Brazil, the confines of these and the said province of Guayana being unknown, as well as what it contains in the centre".

4.20. It goes on to reiterate that:

> "the Dutch colonies of Esquivo, Demerari, Berbis, Corentin and Surinan are located to the east and on the coast of Guiana, according to the information acquired by Don Juan de Dios Valdez, commander of Guiana: that Esquivo consists of cane plantations that the Dutch had planted at a distance of 30 leagues along the banks of the Esquivo River".[244]

4.21. However, because the separation of the previous Commandery into two and the defence plans established for the territory did not favour an increase in settlements, both commanderies were merged in 1768 under the authority of Manuel Centurión, General Commander of Guayana,[245] who brought together civilian power (governor) and military power (commander)[246] and promoted the creation of towns and the occupation of the territory. In the Royal Decree establishing this unification, the boundaries of the province were set out as follows:

> "on the north, the lower Orinoco, the southern boundary of the provinces of Cumaná and Venezuela; / on the west, the upper

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[244] This is equivalent to 144.84 kilometers.

[245] Cédula, 5 May 1768, confirming the provision that the Comandancia General de Nuevas Fundaciones del Bajo y Alto Orinoco y Rio Negro would remain under the governor and commander of Guayana, *Blue Book 8*, p. 49 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY), also in AHMPPRE-VEN, Archivo Antiguo, Colombia, Colección Verde, Volumen 146, Expediente 24, Doc. 1, Fs. 17-18, and Real Cédula of 10 January 1769 on the continuity of the unification (AGN-VEN, *Real Hacienda*, "Borrador de Cartas", Caracas, t. 99 (1752-1777)).

[246] Manuel Centurión appointed Interim Commander of the Province of Guyana, 1 May 1766 (**Annex 11**).

> Orinoco, the Casiquiare and the Rio Negro; on the south, the Amazon River; and on the east, the Atlantic Ocean".[247]

4.22. In 1777, in order to improve the management of the territory and to avoid the inconveniences caused by the distance from the capital and for defensive needs, Guayana was separated from the New Kingdom of Granada and was added, politically and militarily, to the recently created Captaincy General of Venezuela.[248]

4.23. In addition to these administrative decisions, the authorities in Spanish Guiana exercised multiple powers, in particular those relating to the arrest of Dutch slave traders.[249] The Spanish Crown was also involved in the defence of the territory, as illustrated by the orders issued for the defence of the city of Santo Tomé[250] or the religious missions.[251] The Strategic Plan drawn up by José Solano y Bote in 1762 was based on the premise that it was essential to change the location of the towns at the mouth of the Orinoco River and move them inland. This would prevent the enemy from finding supplies and support in their coastal assaults and make it more difficult for them to invade the coastal area that had not yet been occupied. This approach to defence was later supplemented by the Plan for the Defence of the Province of Guiana of 15 March 1777, drawn up by Brigadier D. A. Crame and the interim Commander of Guiana.[252] In addition, the correspondence of the

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[247] See Letter from Centurión, 11 November 1773, which includes the text of the Royal Decree of 19 September 1776, in *Blue Book 8*, pp. 70-71 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

[248] Royal Decree separating the Provinces of Cumaná, Guayana, Maracaibo Margarita and Trinidad from the New Kingdom of Granada, adding them in Government and Military matters from the Captaincy General of Venezuela, 8 September 1777 (**Annex 12**).

[249] There are multiple references to these proceedings in the documentation submitted to the Arbitral Tribunal, which can be consulted in Venezuela-British Guiana Boundary Arbitration, see Ministerio de Relaciones Exteriores, (1981), *El derecho internacional venezolano. Límites Británicos de Guayana* (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY). Documents taken from Spanish sources nos. 361, 365, 366, 366-371, 371-385, 396 and 398. 361, 365, 366, 368-371, 378-385, 396 and 398. Vol 3, Documents from Spanish sources, nos. 5-7. See

[250] Orders of Cristobal Felix Guzman, Governor of Guiana, to Francisco de Venavides, his Lieutenant of War of Santo Thomé de la Guyana. 7 July 1711 (**Annex 9**).

[251] See Orden del Rey de España al Gobernador de Cumaná, 30 March 1753, *The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2*, Vol. 2, No. 643, p. 372.

[252] *Ibid.*, Vol. 2. No. 431.

Governor of Guiana, Miguel Marmión, records the carrying out of inspections in certain territories with the aim of establishing defensive constructions.[253]

4.24. The Spanish Crown's interest in occupying Guayana was evident. Proof of this can be found in Colonel Manuel Centurión's ideas on the management of the territory. In them, Centurión considered that:

> "3rd- The population of the Orinoco should be extended on both banks, from the Angostura to its mouths, and the islands and fertile plains on this part of the river, which is the most precious part of it, should be cultivated, as it is the most fertile and closest to the sea, thus repealing the Royal Order of 5 June 1762 which deprives us of its utilities".[254]

4.25. The evangelising purpose of Spanish colonisation gave the religious missions a key role in the occupation of the territory and allowed for the implementation of a model of social and cultural control with a structure similar to that of the cities of the metropolis – with a Cabildo made up of different positions held by indigenous people who executed the directives of the monks who were in charge of the mission.[255]

4.26. The missionaries received not only a religious but also a civil mandate from the King, and thus constituted one more piece in the effective occupation of the territory. The letter sent to the King by the Viceroy of Santa Fe, D. Manuel de Guirior, on 8 January 1776, reported, for example, the revocation of the appointment of corregidores[256] and the

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[253] See for example *ibid.*, Vol. 3, Documentos de fuentes españolas No. 75.

[254] Instrucción para el Gobierno de la Comandancia de Guayana. 1762, Ref. AHMPPRE-C, Archivo Antiguo, Colombia, Colec. Verde, t. 146, Exp.1. fs. 129-134.

[255] On the religious missions and their importance in the colonisation of Guyana Escquibia, see P.B. de Carrocera, *Misión de los Capuchinos en Guayana*, vol. 3, Academia Nacional de la Historia, Caracas, 1979.

[256] A corregidor was a royal official in the Spanish empire whose office comprised the exercise of royal jurisdiction at various levels and locations, from provincial to municipal, and was the link between these territorial powers and the monarch. His positive jurisdiction was the corregimiento.

return to the previous situation in which the missionaries held the direction and civil government of the towns founded.[257]

4.27. When the Society of Jesus gave up its evangelising mission in the province of Guiana,[258] it was the Catalan Capuchins who, following the Royal Decree of 7 February 1686, took on this task in the whole of Guayana Esequiba.[259] From that time onwards, the territory would be dotted with population centres scattered throughout most of Guayana Essequibo.

4.28. The first Capuchins settled in the villages of Mariguaca, which they decided to name Montecalvario, and Belén de las Totumas, which was far from Santo Tomé. In addition, as indicated in the letter of Father Prefect Tomás de Barcelona to the superiors of the province of Catalonia, they founded two more centres, Platanal and Parapara.[260]

4.29. From 1724 onwards, mission towns began to be created with permanent subsistence, with the number of villages founded reaching sixty.[261] All of them appear on one or more of the old maps and bear witness to the firm, constant and undeniable presence of Spain in the Guiana region.

4.30. The importance of the Spanish religious missions in the effective occupation of the territory was clearly stated in Governor Diguja Villagómez's report on the Capuchin mission of Guayana following his visit (1763).[262] Diguja warns that it is to the mission of the Catalan Capuchins in the province of Guayana that the Dutch have not located

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[257] AGI, Caracas, 352, dossier on this matter, ff. 37-39.

[258] AGI. Santo Domingo, 678.

[259] AGI. Indiferente general. 2876, Registro de cédulas, Book FF-8, f. 85. BN Madrid, ms. 3561, f. 47 and ms. 20418/15.

[260] P. B. de Carrocera, *Misión de los Capuchinos en Guayana,* Vol. 1, Academia Nacional de la Historia, Caracas, 1979, p. 121-123.

[261] The table in Appendix 3 shows the villages established by the Catalan Capuchins.

[262] AGI. Caracas. 411. ff. 39-45.

themselves in the centre of the province and that they are moving inland along the Cuyuní and Mazaruni rivers.[263]

4.31. Their presence in almost all of Guayana Esequiba and the resulting spread of Spanish culture and language was evident. This is attested to by the letter sent by the United States Consul in Demerara, Andrew Patterson, to Edwin Uhl, Deputy Secretary of State of the United States, on 27 February 1896 in which he noted that in the settlements visited in the disputed area, Spanish was spoken very well.[264]

4.32. Alongside the missions, there was also a proliferation of mixed villages, of which Centurión was a staunch supporter, as he made clear in his letter of 20 April 1771 sent to the Secretary of the Council of the Indies, informing him of the results of the transfer of four missionary villages.[265] Their establishment, as well as the effective expansion of the existing settlements, was in many cases carried out with population imported from the metropolis or from other provinces.[266]

4.33. Despite these advances, there were still unoccupied areas in the territory of Guiana in which Spanish interest was evident. In the aforementioned Centurion Letter (1773) and the Cédula it contained; it was emphasised that:

> "At that time nothing was known of the vast interior of that province other than the thirty leagues penetrated by the Catalan Capuchin missionaries, and that the geographical charts showed that even leaving between the foreign colonies and our establishments a desert of eighty or a hundred leagues to impede communication and trade, we still had many hundreds of leagues left to populate with great benefit to the State and Religion; but that by our misfortune it was all not only incognito to the Spaniards, but also abandoned to the foreign settlers who introduce themselves with the Caribs to the slave

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[263] Other documents of the Governor of Cumaná can be found in *The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2.*, Vol. 2, Nos. 392 and 394.

[264] Annex 4 Include the original of the letter.

[265] AGI, Caracas, 228.

[266] AGN-VEN, *Papeles del Gobernador Centurión*. Caracas. t. único, 1766-1776, f. 138.

> trade of the barbarian nations that inhabit the centre of that vast country, and by this means considerably promote their establishments on the coast of the sea and river of Amazonas, leaving the land deserted and incapable of being occupied by us in the future, and finding no more natives with which to populate it unless prompt, effective measures are taken on our part, advancing to the frontiers of the foreigners to contain their raids and usurpations".[267]

4.34. The Spanish Government of the Indies issued instructions for the occupation of the whole of eastern Guiana and, consequently, in 1778 the Intendant of Caracas established a Plan of Occupation and the officer José Felipe de Inciarte was commissioned to carry out a reconnaissance of the whole territory.[268] The Instruction of Intendente D. José de Ábalos[269] showed Spain's interest in the occupation of the Guayana Esequiba by stating (rule 1) that the main objective of populating the places it indicates is to "secure the limits" of the province of Guayana further indicating that:

> "The first of the commissioners' first concerns in the establishment to be made was 'to get as close as possible to the aforementioned colony, trying to choose the most advantageous and useful place to found the first settlement, bearing in mind that on that border it may be necessary to build fortifications for the defence of the limits".

4.35. In Rule 2 of the Instruction, after indicating the location of the Dutch establishments, it mentions the occupation of the territory:

> "The said Dutch colony of Esquivo, and the others which the States General possess on that coast, are all generally found on the banks of the rivers close to the seashore, without penetrating far into the interior of the country, and therefore behind the Esquivo and other Dutch possessions, running eastward to French Guiana, and

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[267] *Ibid.* The raids and usurpations referred to in the letter were raids by slave hunters who spread terror among the indigenous populations, who turned to the villages of the Spanish missionaries for protection.

[268] On his appointment see *The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2*, Vol 3, No. 59.

[269] *Blue Book 8*, pp. 87-90 (available at: https://kamuru.mpprc.gob.ve/index.php/s/f4EgYB65s3N4JHY).

> southward to the river of the Amazons, the land is clear of part of them, and occupied only by Gentile Indians and a large portion of the Gentile Indians, running eastwards to French Guiana, and southwards to the river of the Amazons, the land is clear of part of them, and only occupied by the Gentile Indians and a growing portion of fugitive blacks, slaves of the Dutch, and also of the plantations of Guiana".

4.36. Ábalos added that:

> "The Commissioners shall endeavour to occupy the said lands, as belonging to Spain, its first discoverer, and not ceded or occupied at the present day by any other power, nor having title to it, advancing in the occupation on the eastern side as far as possible until it touches French Guiana, and also extending as far as they can on the southern side until they reach the limits of the crown of Portugal",
>
> and that:
>
> (rule 4) "it would be very convenient that the aforementioned occupation of land and its population should begin at the back of the Dutch establishments in the immediate vicinity of French Guiana, and especially at the rivers that have been named Oyapoco and Aprovak,.... because once the establishment of the limits has been verified, foreigners are prevented from trying to occupy what belongs to us, and they will try to do so if they continue to see it free, to which is added the fact that once we are situated on the frontier, in an advantageous place on it, it can be thought of if circumstances require it, if circumstances require it, and there are no other reasons to hinder it, it may be considered to build a small fortress to serve as an ante-mural for the security of the limits, and at the same time as a shelter for the new settlers against the incursions of the Gentile Indians and fugitive blacks who have risen".

4.37. However, knowing the difficulties posed by the task of settling these places, the Instruction suggested (rule 5) that the first settlement should be erected in the most suitable place between the mouths of the Orinoco and the colony of Esquivo and that (rule 7) where it was not possible to found towns, all possible land should be occupied towards the east

and south by means of cattle herds "from distance to distance", to prevent the new settlers from falling victim to the ferocity of fugitive blacks and Gentile Indians.

4.38. Capuchin missionary livestock farming was of great importance in the occupation and development of Guayana Esequiba. Its growth was significant in the region and generated an economy of productive chains that turned this region into one of the richest areas of the entire Captaincy General of Venezuela.

4.39. The Instruction (Rule 8) asks the Commissioners for information on:

> "The places to which the Dutch in Esequivo, Surinam, Berbice and Demerara, and the French in French Guiana, have extended; the internations they have made; the cattle they have introduced and promoted; the dispositions in which they are found; the designs they discover or fear; the precautions that should be taken to stop their progress".

4.40. As evidenced by the Report of 27 November 1779, which Inciarte presented to the Intendente General of Venezuela on the reconnaissance and population of the eastern part of the lower Orinoco,[270] the commissioners examined the coastal area including the Moroco River and the area of the Pomaron River. On the Dutch Post on the Moroco, Inciarte noted:

> "It is advanced from Esquivo towards the Orinoco, something of eighteen leagues, one being almost northwest and southeast of the other, and although at present it is a despicable house that has no more than two dismounted cannons with some stonework, it would be very convenient for the security of the new settlements that would be made, to dislodge the said Dutch from Esquivo in the term of twenty-four hours".

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[270] *Blue Book 8*, pp. 91-96, at p. 94 (available at: https://kamuru.mpprc.gob.ve/index.php/s/f4EgYB65s3N4JHY).

4.41. The commissioners chose a site on the Moroco to locate a village and a fort that would prevent the passage of any enemy and another on the high Pomaron where they considered it appropriate to install a fortified village, as with it:

> "The Dutch are deprived of communication, not only with the various nations of Indians that fall to the south of Esquivo and with all the channels of the Orinoco, but also with the whole of Parime, since there being no other passage for them than the said river, by cutting it off, they are prevented from all correspondence, since they can only achieve this with their compatriots in Surinam and the French of the Cayenne that are on the eastern side of the said Esquivo".[271]

4.42. Spain's interest in occupying the area was thus evident and, furthermore, there was no claim by the Dutch to the territory, while as the Dutch governor of Esequibo was informed of Inciarte's presence and his intentions to build settlements and/or forts, informed the Compañía de las Indias, and no protest was lodged with the Spanish Crown.

4.43. A consequence of Inciarte's trip was the Royal Order of 1 October 1780 on the recognition and population of the eastern part of the Lower Orinoco, which authorised the expulsion of the Dutch from the Moroco River and the construction of the planned establishments on that river and on the Pomaron. In the same, instructions are given that in the event of any complaint from Holland it should be stated that:

> "The matter has been and is proceeding in accordance with the laws and general instructions of good government of our Indies, which do not permit such intrusions by foreigners into Spanish dominions as these; for the same will be said here if any complaints or claims are made by the States General of Holland".[272]

4.44. Inciarte's plan was later expanded by Intendente Saavedra to also cover the banks of the Orinoco from Angostura to the delta at its mouth.

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[271] *Ibid.*, p. 95.

[272] Royal Order to survey the region East of the Lower Orinoco, 1 October 1780 (**Annex 13**), pp. 97-98.

4.45. A second report by José Felipe de Inciarte, dated 5 December 1783, on the eastern part of the lower Orinoco under his care,[273] pointed out the disadvantages of expanding the population and the advantages that would be derived from its settlement, and therefore recommended founding:

> "two villages of Spaniards, one in the lands of the Orinoco to the south of the western head of the said island of Imataca and the other eight to twelve leagues to the east of the first... and to assign "eight missionaries with a sufficient escort for the reduction of the multitude of Mañosas, Guaraunos and Carib Indians who live in the vicinity".

4.46. Intendente Saavedra, in a letter dated 1 February 1784, emphasised that:

> "The population, in the opinion of all intelligent people, should begin with the lower Guiana, which is the flattest, most fertile and most suitable for the new foundations to flourish. From there it will be easy to extend them to the frontiers of Esquibo and Demerari in order to contain the Dutch, to the vicinity of the Rio Negro to border the Portuguese, to occupy the main canals of the Orinoco and to avoid clandestine introductions. Otherwise, none of these objects can be achieved, and if the population and fort projected in the vicinity of Esquibo is executed, keeping low Guayana deserted, the infinite cost to the Royal Treasury of an establishment so many leagues distant from the town will be a reservoir of abuses, a deposit of contraband, a precarious possession in time of war and a weak barrier against the bordering nations."[274]

4.47. The interest in settling in the Barima River is reflected in the Letter from the Intendente General de Caracas D. José de Abalos to D. José de Gálvez,[275] about the escort of 25 men for the mission of Guayana, sending missionaries and founding some Spanish villages among the Indians, 1780, which reads:

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[273] *Ibid.*, pp. 98-103.

[274] Archivo General de Simancas, 'El intendente sobre el regreso de José de Inciarte de explorar la frontera con los holandeses en busca de sitios para poblar 25/11/1779, Ref. SGU, LEG, 7305, 3, 42.

[275] José Gálvez held the post of Secretary of the Indies.

> "My Lord: |...| for which purpose Your Excellency commands me, by order of Your Majesty, that, in agreement with this Captain General and the Governor of Guayana, I should endeavour to erect in that province some Spanish villages among the Indians of the new reduction, wherever I consider them most suitable.
>
> In your understanding and fulfilment, I must inform your Excellency that I have long had the same thought, the execution of which I am ordered to carry out, and with this same idea I discussed its practice with the previous Prefect of the missions, when he was here, and it seemed very convenient to him that it should be carried out, but both this and other plans, Your Excellency, have been detained due to a lack of settlers".
>
> However, from all that has been said, you may be persuaded that I will not lose sight of the royal commission to found some villages among those of the Capuchin missions of Guayana, and that I will do everything within my power and authority to do so".[276]

4.48. In short, from 1648, the year of the conclusion of the Treaty of Münster, until the time of Venezuela's independence, the Spanish dominated the region politically and effectively occupied it. They also made their presence felt in the area of the Moroco and Pomarón rivers and claimed these territories as their own. In the Minuta de Carta reservada a Iturriaga, dated Madrid, 8 October 1753, Spain restated its plan to evict the Dutch.[277]

4.49. Crucially, the Dutch did not establish any permanent settlements west of the Essequibo that would have impinged on Spanish rights or deprived Spain of its title to the territory.

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[276] AGI, Caracas, 946.

[277] A.G. Simancas, Secretaría de Estado. Legajo 7243, in *British Guiana Boundary Case presented on behalf of her Majesty's Government,* Apendix, vol II 1724-1763, London, 1898, p. 86 (available at: https://books.google.com.cu/books?id=DmcMAAAAYAAJ&printsec=frontcover&hl=es&output=html_text&source=gbs_ge_summary_r&cad=0).

4.50. In its Memorial, Guyana gives an account of the Dutch presence with little rigour and scarce evidence, and of the period here analysed it only speaks of the fort of Zeelandia and the transfer of the seat of the administration to the same.[278]

4.51. The reality is that the Dutch did not venture west of the Essequibo River, except to a very scarce and limited extent, on the northernmost coastal side around the mouth of the river and without claiming any right to do so. The low productivity of the Essequibo colony led the Dutch at the end of 1657 to entertain some exploitation on western side of the river, between the Pomaron and the Moroco. However, the Dutch Pomeroon post, New Zealand fort and the town of Middelbrough did not constitute permanent establishments. Indeed, in 1689, the West India Company decided to abandon the Pomaron region, return to the Essequibo and reinforce the Kykoveral fort.[279] In the same vein, when it was informed that a small post had been erected on the Barima River (1684), the West India Company Governor Beekman ordered to stop all traffic to the Orinoco.[280]

4.52. The same happened in the Cuyuni river basin where Dutch presence appeared and disappeared from one map to the next like a flower of a day. Furthermore, as indicated in the Comunicados conjuntos entre el Capitán General de Venezuela y el Padre Prefecto de la Misión de Guayana acerca del estado actual de los pueblos misionales (1778), the attempts of the Dutch to settle in lands above the Cuyuni, as was the case of Tocoropati and Aguigua, failed as they were expelled in 1758 and their settlements only reached the mouths of the Cuyuni and Mazaruni rivers.[281]

4.53. In the report presented by D. Antonio López de la Puente, commissioned by the Governor of Guayana to explore the Cuyuni River up to the limits of the Dutch colony of Escquibo, on 26 February 1788, it is stated that:

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[278] GM, pp. 34-35, paras. 2.16-2.19.

[279] *Blue Book 7*, pp. 127-128 (available at: https://kamuru.mppre.gob.ve/index.php/s/oiwST6o4wKpTETi).

[280] *Ibid.*, pp. 116-117.

[281] AGI. Caracas. 946.

> "having descended the river to the site of the Horqueta which it forms to drain into the Esequivo, which is where the possessions of the said Colony began, he found the first dwellings of the Dutch at the mouth of the Masuruni, that is to say, at the same site of the Horqueta, without until then having usurped new territories on this part".[282]

4.54. The temporary character of the Dutch settlements was reflected in the Venezuelan Boundary Commission's *Grand View of European Occupation, 1597-1803 (1814)* map[283] (map 5). The short life of these establishments can be seen by looking at the different maps marking the period (1674-1803)[284] (maps 6-12).

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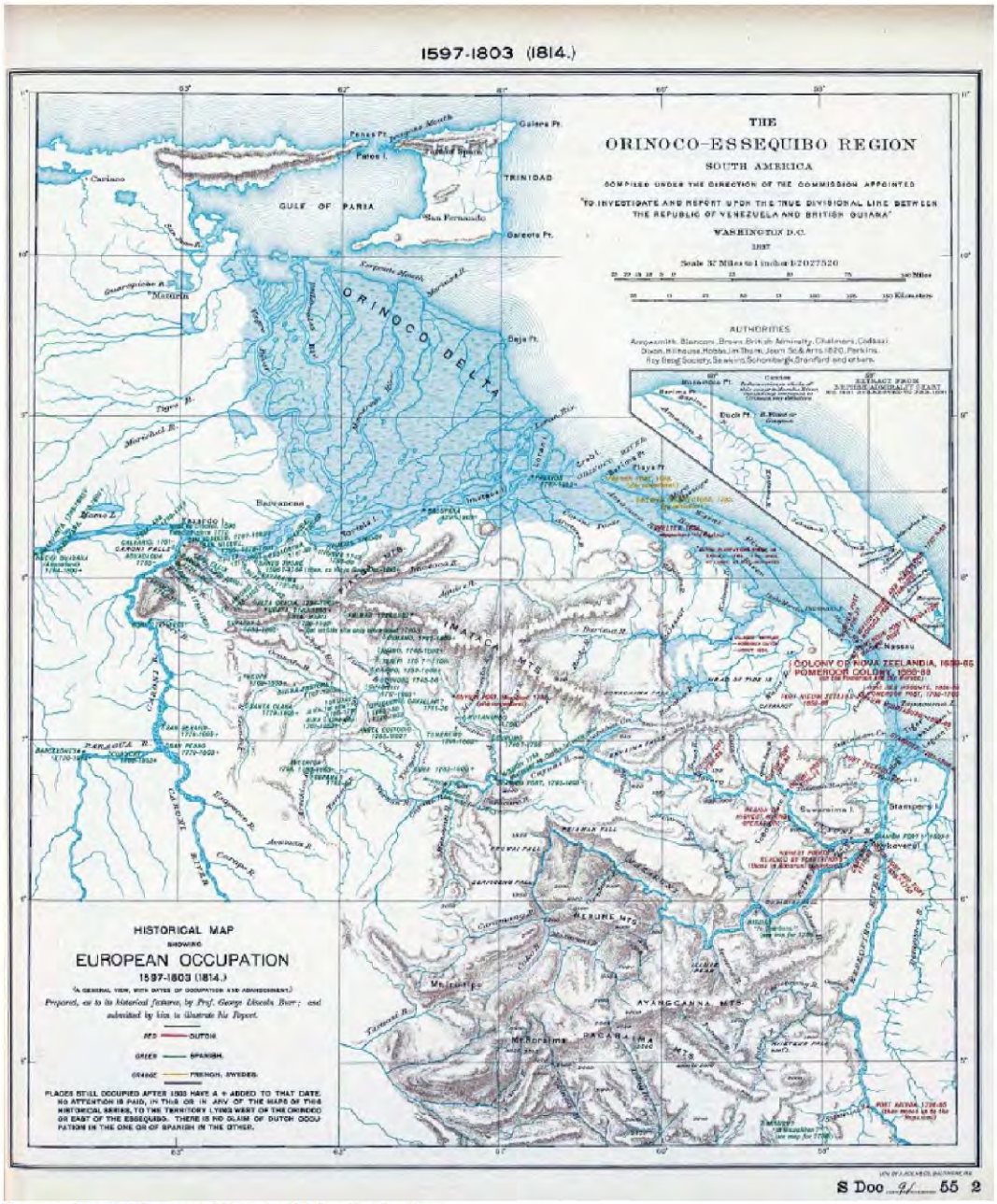
[282] Report of Antonio López de la Puente upon his exploration of the Cuyuni River in 1788, 13 April 1788 (**Annex 14**).

[283] "Grand View of European Occupation, 1597-1803 (1814)", *David Rumsey Map Collection*, see, Atlas, VCM.

[284] See the various maps produced by the United States Commission on the state of European occupation between 1674 and 1803 and relating to 1703, 1724, 1756, 1773, 1773, 1796 and 1803, *David Rumsey Map Collection* (**Atlas**).



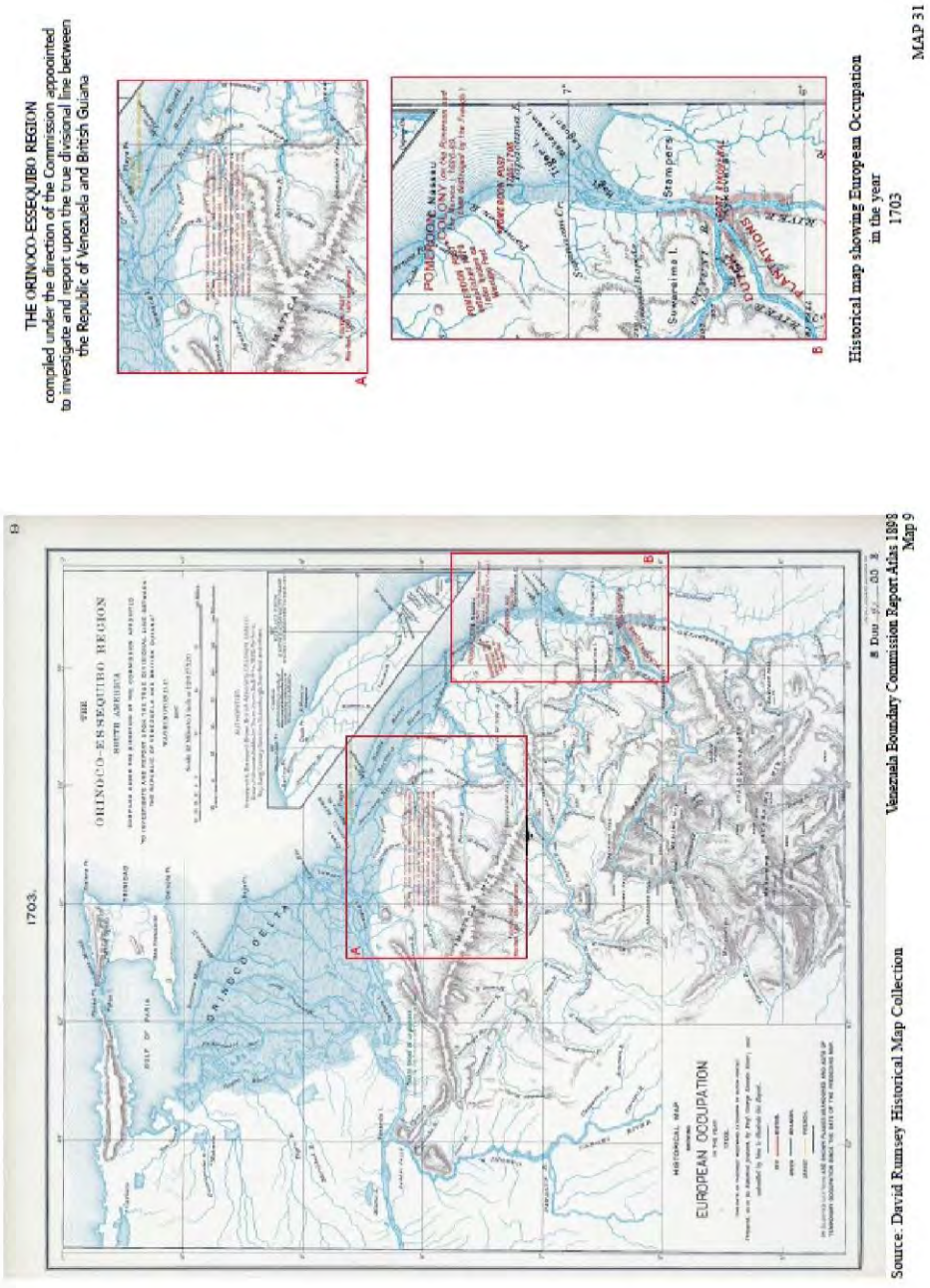
Source: David Rumsey Historical Map Collection

MAP 37. Historical map showing European Occupation 1597-1803[285]

[285] Map 15 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).

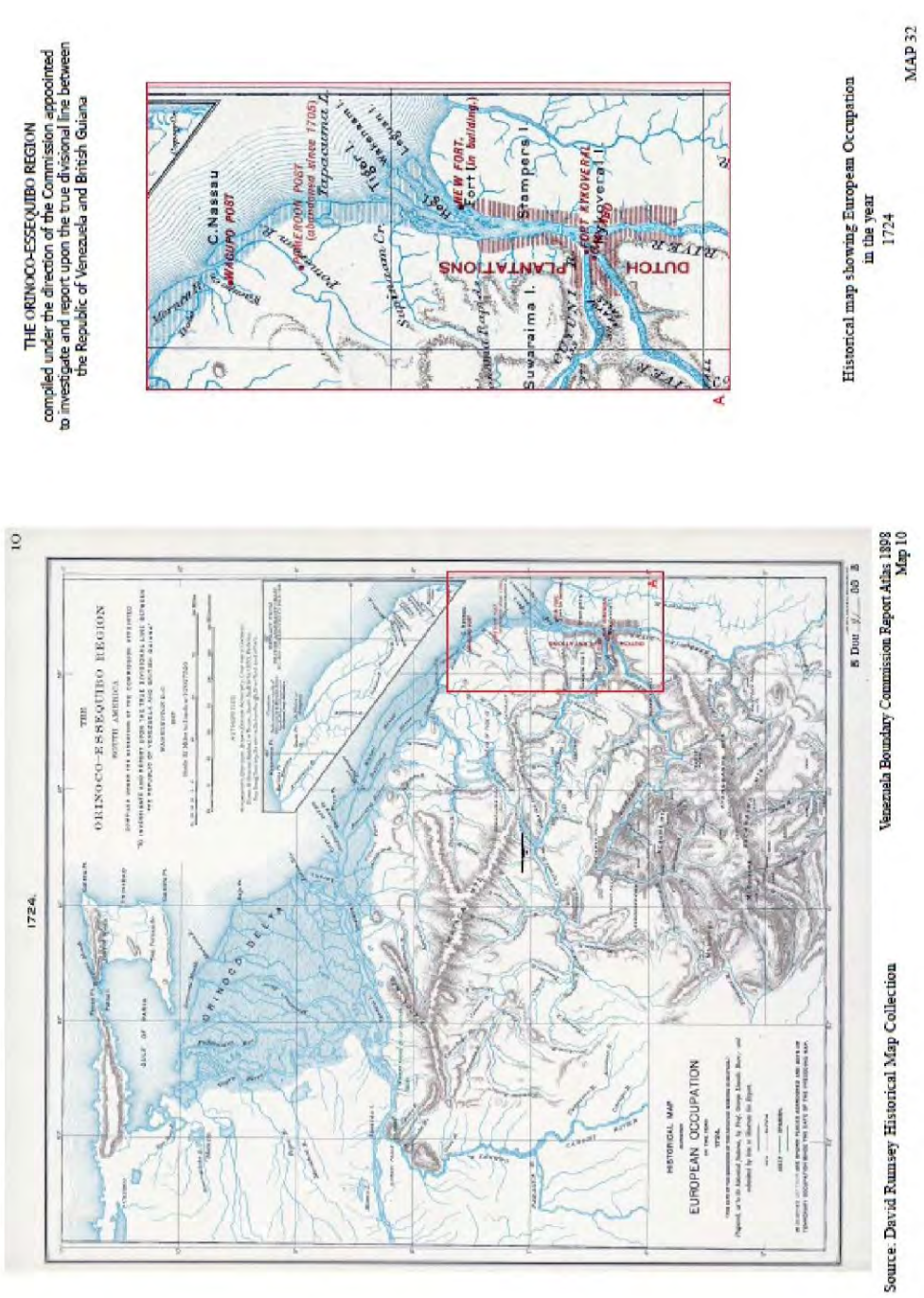
MAP 30. Historical map showing European Occupation in the year 1674[286]

[286] Map 7 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).



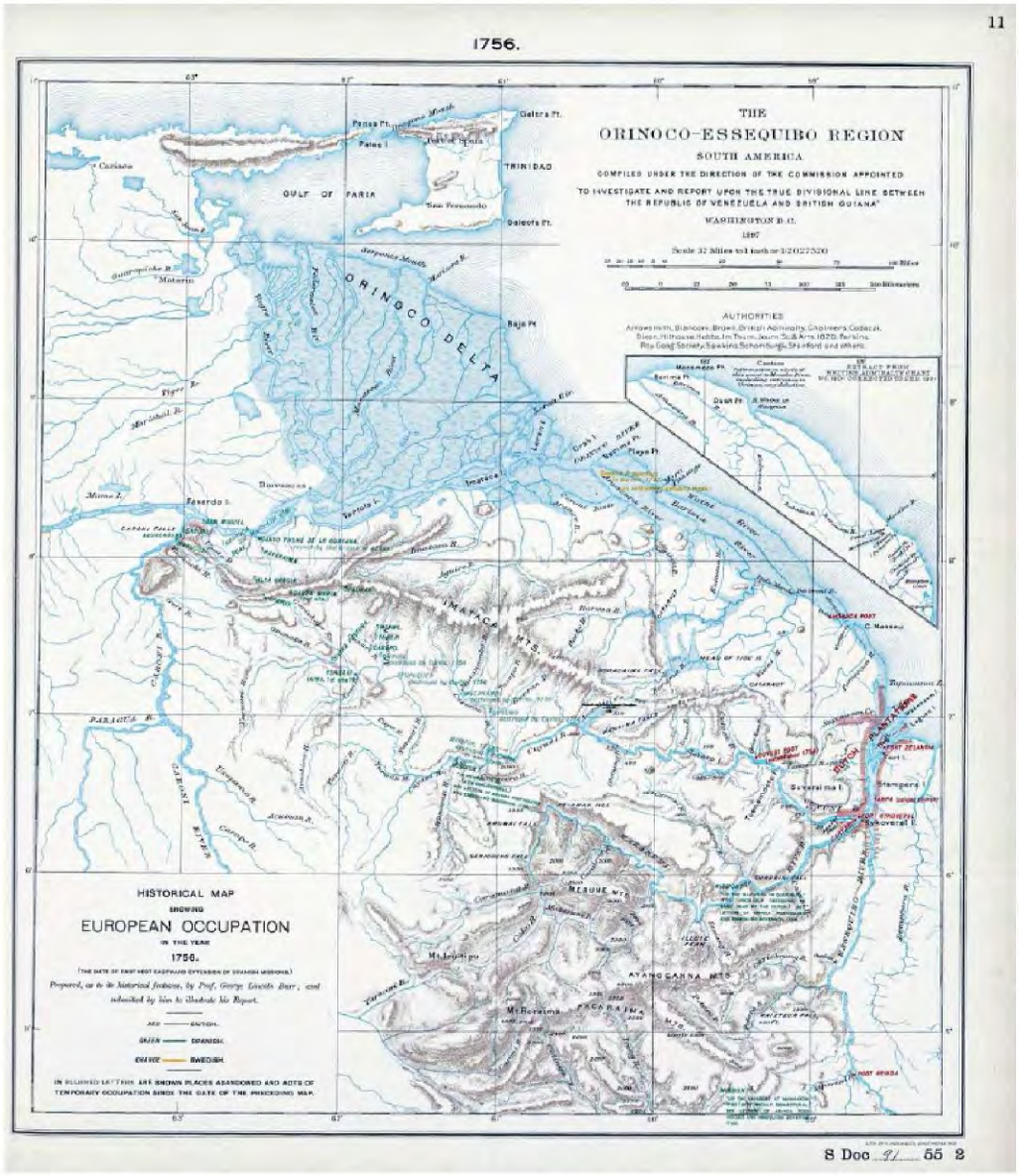
MAP 31. Historical map showing European Occupation in the year 1703[287]

[287] Map 9 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).



MAP 32. Historical map showing European Occupation in the year 1724[288]

[288] Map 10 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).



Source: David Rumsey Historical Map Collection

Venezuela Boundary Commission Report Atlas 1898
Map 11

MAP 33. Historical map showing European Occupation in the year 1756[289]

[289] Map 11 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).

Source: David Rumsey Historical Map Collection

Venezuela Boundary Commission Report Atlas 1898
Map 12

MAP 34. Historical map showing European Occupation in the year 1772[290]

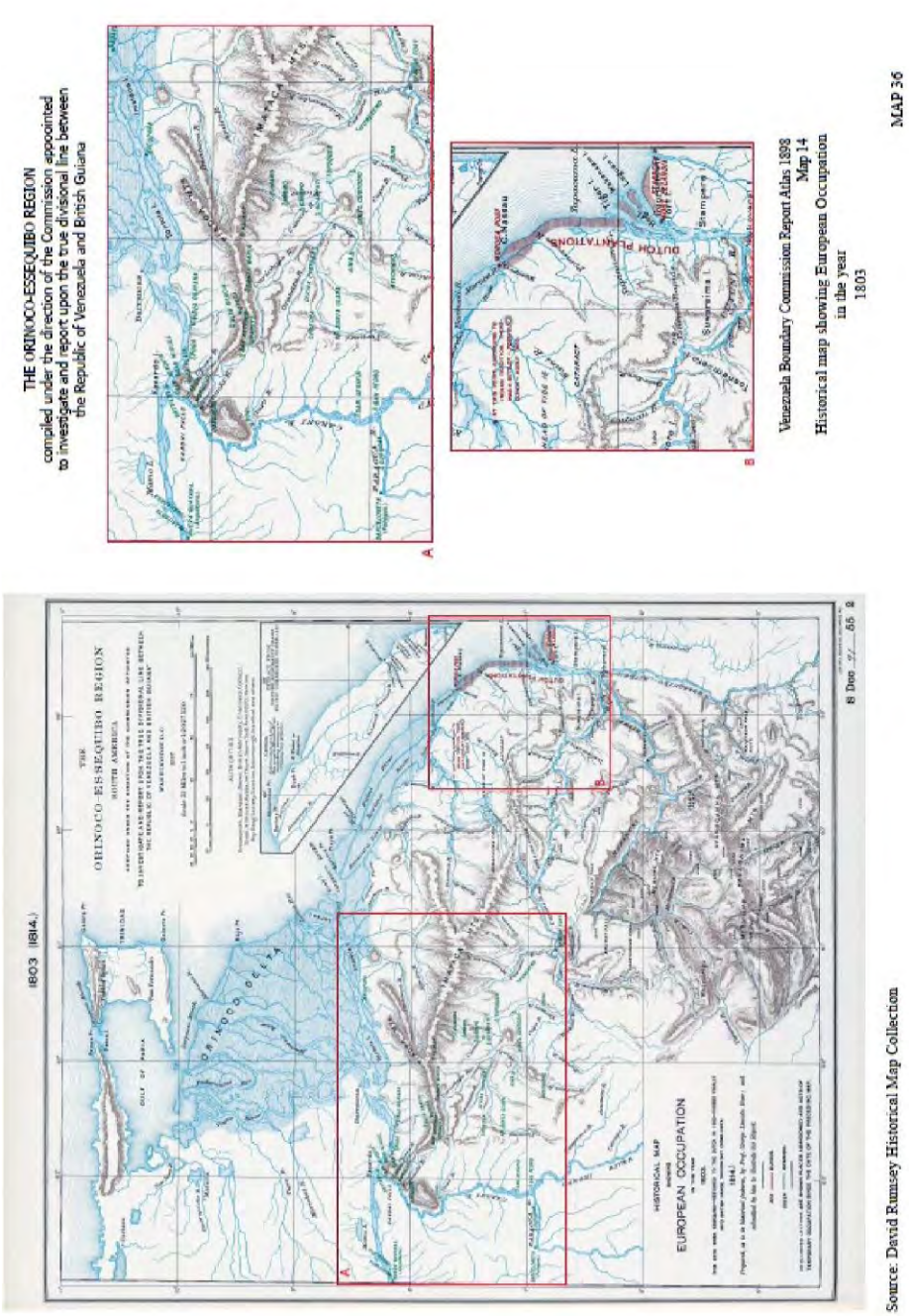
[290] Map 12 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).

Source: David Rumsey Historical Map Collection

Venezuela Boundary Commission Report Atlas 1898
Map 13

MAP 35. Historical map showing European Occupation in the year 1796[291]

[291] Map 13 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).



MAP 36. Historical map showing European Occupation in the year 1803[292]

[292] Map 14 of the Venezuela Commission Report Atlas, 1898 (**Atlas**).

4.55. The very limited nature of the Dutch presence on the west bank of the Essequibo River was also maintained by Governor Beaujon, a Dutch who, when speaking of the boundaries of the colonies, considered the existence of settlements on the west bank of the Essequibo in the following terms:

> "Demerara being on the windward side of the Essequibo extends from the creek of Abari the western boundary of Berbice to the stream of Bourasirie and from here begins the Essequibo which extends to the post of Moruca situated next to the Pomeron River below which begins the Spanish border".[293]

4.56. The British were fully aware of this reality at the end of the 19th century. This is illustrated by a letter sent by Consul Churchill to the Marquess of Salisbury on 13 December 1896.[294] In this letter Consul Churchill reports to the Marquis of Salisbury that as a result of his investigations ordered by Salisbury, he found Dutch documents from 1785, which proves Dutch presence up to the mouth of the Pomeroon River, explaining that it was not possible to expand agriculture towards the Moroco River since the Spaniards protected the runaway slaves from the Dutch plantations. He further states that an agreement with the Spaniards to return runaway slaves would return fugitive slaves and would allow agriculture to expand. Thus, it is clear that the Dutch knew the maximum limit of occupation to the west at the mouth of the Pomeroon River. The Treaty of Aranjuez of 1791 was the last Dutch-Spanish treaty in this region and its importance lies in the recognition of the slave problem and the sovereignty of the two States in their respective territories. Holland had no presence beyond the Pomeroon and aspired to reach the mouths of the Moroco. These two aspects were known to the English in 1899, as their internal correspondence shows, thus constituting important evidence of the real limit of occupation in 1814. It should be clarified that Holland (the Bavarian Republic, proclaimed on 19 January 1795 and ended on 5 June 1806), lost its independence in the last decade of the 18th century and did not advance in Guayana Esequibo territory after 1791. The West India

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[293] Colonial Office, III, 3, Governor Anthony Beaujon to the Duke of Portland, 15 June and 12 July 1799.

[294] Letter from Consul Churchill to the Marquess of Salisbury. 13 December 1896 (**Annex 170**).

Company was dissolved in 1799, reflecting the loss of Dutch power in the region, to the point that some of its colonies were occupied by the British from 1796.

(iii) VENEZUELA SUCCEEDED SPAIN AS HOLDER OF TERRITORIAL SOVEREIGNTY

4.57. The Captaincy General of Venezuela, as a territorial and administrative entity, played a fundamental role in the management of the territory, but its work went beyond administration and defence. The ideas that culminated in Venezuela's independence and the creation of a new sovereign Republic were born within it.

4.58. On 19 April 1810, a major step was taken in the liberation process against Spain, which led to the dismissal of the governor appointed by the Spanish Crown, the signing of the Act of Independence on 5 July 1811 and the establishment of the new Constitution of 1811, which established the republic on the territory of the then Captaincy General of Venezuela, made up of all the provinces in accordance with the constitutional prescription of article 128.[295]

4.59. The Decree of 10 October 1817, by which Guyana became loyal to the Republic, referred to the limits of the Department of the Lower Orinoco, so that it can be seen that the Marroco was the maximum point of Dutch/English occupation. Its article 2.3º reads:

> "Department of Lower Orinoco. To the North: the streams of the Orinoco from the mouth of the Caroni to the mouth of the Rio Grande, and the coast of the sea as far as Fort Muruca Exclusive. To the East and South: the limits with foreign possessions. To the West: those that have been indicated to the Department of the centre by the East."[296]

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[295] Federal Constitution of the States of Venezuela, 1811 (available at: https://www.cervantesvirtual.com/obra-visor/constitucion-federal-de-los-estados-de-venezuela-21-de-diciembre-1811/html/86de8dbc-4b14-4131-a616-9a65e65e856a_2.html).

[296] Decree by the Liberator Simón Bolívar, 15 October 1817 (available at: http://www.archivodellibertador.gob.ve/escritos/buscador/spip.php?article2283).

4.60. In the constitutional texts of the Republic and in the laws on territorial division, the territory of Venezuela is identified by reference to that which corresponded to the Captaincy General of Venezuela before the political transformation that began on 19 April 1810.

4.61. There was graphic evidence of its extent, as noted above, such as Agustín de Codazzi's 1793 map of the Viceroyalty of Santa Fe and the Captaincy General of Venezuela[297] and, for the Gran Colombia period, José Manuel Restrepo's 1827 map.[298]

4.62. Venezuela's ownership of the territory of the Captaincy General of Venezuela was ratified by the Treaty of Peace and Friendship of 30 March 1845 between Venezuela and Spain, in which the Spanish Crown recognised the Republic of Venezuela and the cession of its rights over the territory.[299]

4.63. Since its independence and until the Arbitral Award of 3 October 1899 fraudulently stripped Venezuela of this immense territory, Venezuela exercised its sovereignty over Guayana Esequiba. Examples include the Decree of 11 May 1843, which provided for the establishment of a lighthouse at the entrance to the Orinoco River, a notification from the Governor of Demerara, dated 3 December 1857, highlighting the prohibition of entry into Venezuela via the Cuyuni River, which had been decreed by the Government of the Republic.[300]

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[297] "Carta del Vireinato de Santafe y de la Capitania General de Venezuela", *David Rumsey Map Collection* (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~246181~5514967:Letter-from-the-Vireinate-of-Santafe-y-dc?sort=pub_list_no_initialsort%2Cpub_date%2Cpub_list_no%2Cseries_no&qvq=w4s:/where%2FColombia;q:Restrepo;sort:pub_list_no_initialsort%2Cpub_date%2Cpub_list_no%2Cseries_no;lc:RUMSEY~8~1&mi=14&trs=29).

[298] "Colombia", *David Rumsey Map Collection* (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~20243~590076:Colombia-?sort=pub_list_no_initialsort%2Cpub_date%2Cpub_list_no%2Cseries_no&qvq=q:GRan%20Colombia;sort:pub_list_no_initialsort%2Cpub_date%2Cpub_list_no%2Cseries_no;lc:).

[299] Treaty of Peace and Recognition between Venezuela and Spain, 30 March 1845 (**Annex 4**).

[300] *The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897*, vol. 3, nos. 98 and 87 respectively.

4.64. As will be further explained below, Venezuela also defended its territorial integrity by protesting and opposing British abuses, as highlighted in the letter sent on 15 November 1894 by Dr. José María Rojas to the Venezuelan Consul in Demerara, in which he refers to the decision of 13 May 1890:

> "The Republic has never ceased to protest against the acts, the children of force alone, which have determined the possession by England of a considerable portion of Venezuelan Guyana. To prevent its continuation, in 1890 (13 May) it established the Barima-Pomarón and Esequibo-Cuyuní Districts; it later established a station at the confluence of the Yuruan, and the current Administration decreed the Alto Cuyuní Commissariat as the directing centre of others which will make the jurisdiction of Venezuela effective in those regions".[301]

II. THE BRITISH EXPANSIONIST POLICY AND VENEZUELA'S OPPOSITION

4.65. The following analysis shows first that there was no dispute whatsoever regarding the extent of the Venezuelan territory, until second, the British began to invent a dispute. The following presentation is structured in two parts. The first analyses the facts that demonstrate the British fraudulent strategy, distinguishing two series of events that occurred, first, from the exploration carried out by Robert Schomburgk until the rupture of diplomatic relations between Venezuela and the United Kingdom (1887) and, second, from this moment until the negotiations of the Treaty of Washington, a stage which saw the involvement of the United States into the settlement of the controversy. The second part demonstrates the impossibility of United Kingdom having acquired title to territorial sovereignty on the basis of prescription as a consequence of the constant Venezuelan protests, and also because the United Kingdom did not occupy the territory for the periods foreseen in the Treaty. Moreover, the British who entered the territory were private miners who came at their own risk, for short periods in search of gold, as stated by the British on multiple occasions. The temporary entry of these British subjects could hardly constitute settlements. In addition, the Treaty of London was signed in 1814, and any eventual

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[301] *Blue Book 6, Historia oficial de la discusión entre Venezuela y la Gran Bretaña. Sobre sus límites en la Guayana*, Ministerio de Relaciones Exteriores, Caracas, 1981, p. 278 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

occupation made since that date would have been interrupted by the 1850 agreement. Indeed, Venezuela considered that the prescription clause was designed to refer exclusively to occupations prior to 1814 because the Treaty of 1850 interrupted the continuity of any occupation between 1814 and 1850, and therefore, such occupation did not comply with Rule A of the Treaty of Washington of 1897, *i.e.*, that 50 years of occupation would constitute good title.

(i) VENEZUELA'S UNCONTESTED TERRITORY

4.66. As legal history shows, Spain and then Venezuela had a sovereign title over Guayana Esequiba opposable to the Dutch, who recognised it in the Treaty of Münster. The Netherlands generally respected this Treaty, settling to the east of the Essequibo River where they were established at the time of its conclusion. This was the legal situation when the Netherlands ceded its possessions to Great Britain. The map established by Frederich Von Vouchenroeder, to which reference has already been made, illustrates this situation (map no. 12).

4.67. At the end of the Napoleonic Wars, Great Britain and the Netherlands concluded the Treaty of London of 13 August 1814,[302] by which the Netherlands ceded its settlements of Demerara, Berbice and Essequibo to the British crown, as they were in 1803. This cession is the only legal basis of the title that Great Britain held over the territories of the former Dutch colonies. Of course, the Netherlands only ceded in the Treaty of London what they had title to,[303] i.e. what Spain had recognised as legitimately under Dutch control in the Treaty of Münster. It should also be recalled in this regard that the British Crown had committed in 1713 to restoring the Spanish dominions in the Americas as they were

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[302] Convention between Great Britain and Holland relating to their Colonies, Holland cedes the colonies of Demerara, Essequibo and Berbice to Great Britain, 13 August 1814 (**Annex 3**).

[303] As Arbitrator Max Huber warned in the *Island of Palmas* case, no one can cede more than they own; a connection that also conditions the validity of the title. See *Island of Palmas (or Miangas) Island of Palmas (or Miangas) (The Netherlands / The United States of America), PCA Case No. 1925-01, Award*, 4 May 1928, p. 11.

under Charles II,[304] whom reign finished in 1685, a few years after the conclusion of the Treaty of Münster.

4.68. The limits of the new British colony with Venezuela were therefore at the Essequibo River. However, since the Dutch plantations had been settled west of the Essequibo River, Venezuela considered of good policy to conclude a treaty with its new neighbour, including a boundary provision. Thus, in 1822, the Minister of Foreign Affairs of the Government of the Republic of Colombia instructed his plenipotentiary in London, J. Rafael Revenga, on how to deal with the boundary question with a view to concluding a treaty that would include a boundary provision.[305] Although these instructions were never implemented, they are a further indication of the new Republic's interest in clarifying the boundary issue, as well as its plain knowledge of its settled rights.

4.69. There was nothing to suggest that a boundary dispute existed when Great Britain recognised the Republic of Venezuela, which was part of Gran Colombia, through the Treaty of Friendship, Commerce and Navigation of 18 April 1825. Then the state popularly known as Gran Colombia, a confederation formally called the Republic of Colombia, which according to Simón Bolívar's intentions had been conceived in 1819 for the integration of the republics of Venezuela and New Granada (now Colombia), defined the eastern border in the following terms:

> "The Republic of Colombia is today composed by the countries known as Venezuela and Nueva Granada, and it is located within the heart of the torrid zone of South America. This beautiful and rich country extends by the Northern Sea, from the Essequibo River or

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[304] Treaty of Peace between England and Spain, Utrecht, 13 July 1713, Exp. 42 (**Annex 2**).

[305] The instructions stated: "[…] Agree as exactly as possible to fix the dividing line […] according to the latest treaties between Spain and Holland. The settlers of Demerara and Berbice have usurped a large portion of land which, according to them, belongs to us on the side of the Essequibo River. It is absolutely indispensable that these settlers either place themselves under the protection and obedience of our laws, or that they withdraw to their former possessions. For this purpose they will be given the necessary time […]": *Blue Book 6*, p. 498. See also *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, p. 6 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

> the limits of the Province of Guayana, up to the Culebras River in the boundary with Guatemala."[306]

4.70. Nor did it seem to make any difference when Great Britain again recognised in 1834 the Republic of Venezuela after its separation from Gran Colombia (1830), nor could the Republic of Venezuela have imagined what changes the British position would undergo and what their ambition would be when Her Britannic Majesty's Minister in Caracas requested the construction of a lighthouse at Punta Barima to avoid the dangers to which ships were exposed. The letter sent on 26 May 1836 by Mr. Porter to Mr. Gallegos reads:

> "[...] it falls to me by my official duties to represent to the Executive of this Republic the indispensable necessity, and this without further delay, of placing a fairly visible signal or lighthouse at the point of Barima which forms the great mouth of the Orinoco to the S. S. E. S., where I am informed that it can be done with the greatest facilities and advantages".[307]

4.71. No one could it have imagined in August 1838 that the British intended to claim sovereignty beyond, at most, a narrow strip of land near the west bank of the Essequibo River. It was in this month that the British Crown surveyor and topographer, J. Hadfield, presented a gift to the Governor of British Guiana, H. Light. It was a map entitled *Map of British* Guiana, which had been commissioned by the House of Commons. This map was the result of a combination of the studies of the British colonial explorers and cartographers: Schomburgk, Owen, Hilhouse, Hancock, Van Cooten, Bouchenroeder and Bercheyck. It shows the parish divisions, as well as the widespread cultivation of the staple crops and all those lands that had been abandoned during the last 30 years, i.e. by 1808. All the indications on the map show that the settlements, until 1838, first Dutch and then British colonial, were located on a narrow strip of coastline to the north, a coastal strip that

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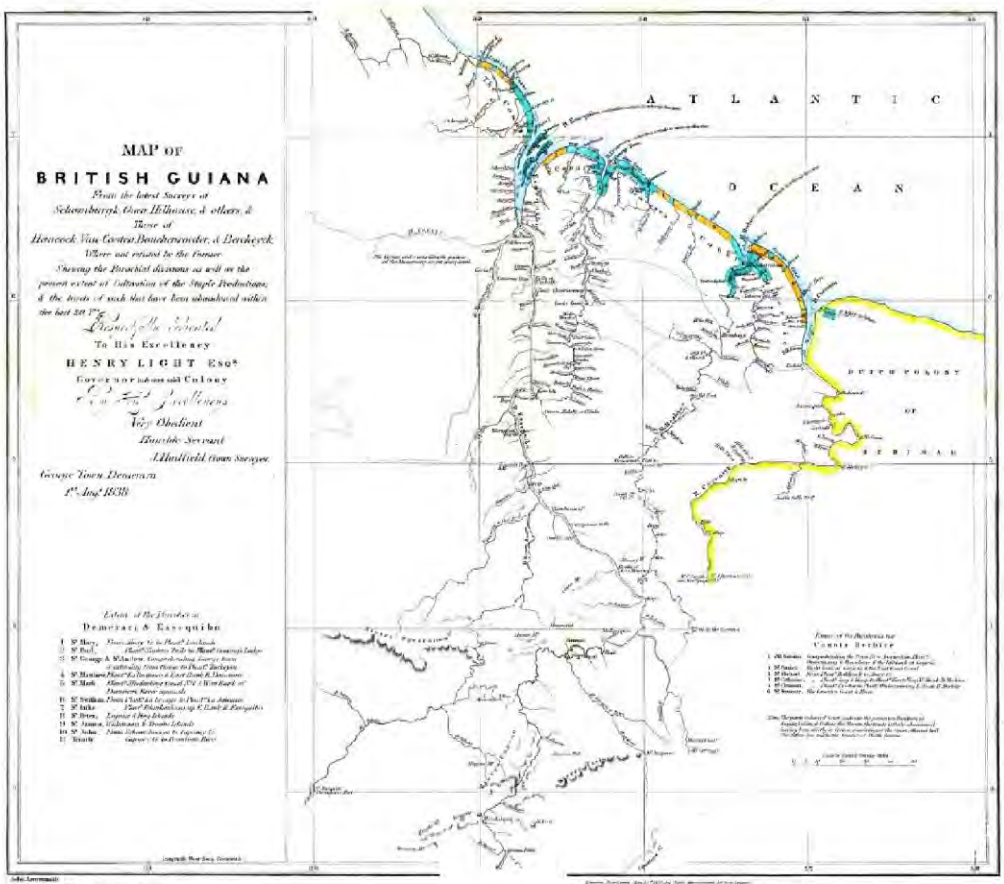
[306] Memorandum presented by the Plenipotentiary Minister of Gran Colombia José Manuel Hurtado to the Government of His British Majesty, London, 16-VII-1824, Public Record Office, F.O. 18/10 (**Annex 15**).

[307] *Blue Book 6*, pp. 6-9 (available at: https://kamuru.mpprc.gob.ve/index.php/s/XSLfiiQbn2mtAF4).; *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 6-9 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

continuously bordered the Atlantic Ocean from the vicinity of the Moroco River, passing through the mouths of the Essequibo River and extending to the mouths of the Corinthian River. The map contains an inscription which emphasised that "the Cuyuní and a considerable portion of the Masaruny are still unexplored", which unequivocally and early on denied, on the part of the English themselves, the British presence in the area (map 13).[308]



Source: Raremaps.com

MAP 19. Map of British Guiana, 1839[309]

[308] An original copy is in the Venezuelan archives (BN /IGVSB). Map of British Guiana (available at: https://www.raremaps.com/gallery/detail/64841/map-of-british-guiana-from-the-latest-surveys-of-schomburgk-arrowsmith).

[309] Map of British Guiana, Hadfield, 1839 (**Atlas, MAP 19**).

4.72. Nothing foreshadowed what was to come when the Governor of British Guiana, Henry Light, in September 1838, described the boundaries of British Guiana as follows:

> "The Pomaroon river, at the western extremity of Essequibo, may be taken as a limit to the country, though there is a mission supported by the colony on the Maracca river or creek, a short distance westward, where 500 Spanish Indians are collected in a settlement under a Roman-catholic priest, recommended from Trinidad for that purpose; he is reported to be effecting good."[310]

III. THE BRITISH BASELESS CLAIM FRAUDULENTLY CREATED AND ARGUED HAS BEEN CONSTANTLY REJECTED BY VENEZUELA

a) The British invention of a territorial dispute and British ever-growing territorial claims

4.73. The elements that give concrete expression to the unlawful British expansionist policy are to be found in the explorations carried out by Robert Schomburgk and in British unilateral actions that disregard the rights of Venezuela.

4.74. By acting unilaterally, Great Britain created a territorial dispute where there was none and fed it with territorial incursions, the drawing of lines that reflected its illegitimate pretensions and with which, when its interests required it, it tried to change the character of the territory from undisputed Venezuelan territory to disputed territory, and finally to British territory. Its final trick was to whitewash as prescriptions what was nothing more than usurpations contrary to basic international law and the treaties concluded between the two parties or their predecessors. In short, Britain was creating a fictious environment that would allow it to satisfy its ever-growing territorial aspirations.

4.75. Two periods can be distinguished, before and after Venezuela broke off diplomatic relations with Great Britain (1887), which marked the intervention of the United States in the dispute. Great Britain's shameful manipulation of maps as a mechanism for rewriting

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[310] Extracts from Letter of Henry Light, Governor of British Guiana to Lord Glenelg, 1 September 1838 (**Annex 16**).

history and as a means of supporting its illicit claims will be presented separately as an undisputable proof of the British manipulation.

b) From Robert Schomburgk's "exploration" to the severing of diplomatic relations

4.76. The implementation of Britain's expansionist policy began with the exploratory mission to Guiana entrusted to Robert Schomburgk.[311] He had already worked for the Royal Geographical Society and the Colonial Office on the reconnaissance of the terrain in 1834 and entertained an exploration of the area in 1835. At this time, the boundary line had already been described by Alexander von Humboldt, a learned and neutral observer who confirmed without hesitation that the border between Venezuela and British Guiana was in the Essequibo River,[312] except at the point on the coast where the Moroco River flows into it.[313]

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[311] When O'Leary, the British Consul General, informed the Venezuelan Foreign Office of the appointment of R. Schomburgk to recognize and demarcate the boundaries of British Guiana, Venezuela considered that the most appropriate course of action was to conclude a boundary treaty and then proceed with the joint demarcation, but this wise proposal was not heeded by Great Britain.

[312] On Robert Schomburgk and his lines, see the work of P. Ojer. *Robert H. Schomburgk, explorador de Guayana y sus líneas de frontera,* Universidad Central de Venezuela, Caracas, 1969.

[313] Humboldt wrote: "The following are the present boundaries of the republic of Colombia, according to the information I obtained on the spot, particularly at the southern and western extremities; that is at Rio Negro, Quito, and in the province of Jaen de Bracamoros. Northern coast, that of the Caribbean Sea, from Punta Careta (lat. 9° 36′, long. 84° 43′), on the eastern border of the province of Costa Rica (belonging to the state of Guatimala), to the rivers Moroco and Pamaroun, east of Cape Nassau. From this point on the coast (lat. 7° 35′, long. 61° 5′?), the border of Colombia extends across the savannahs, in which some small granitic rocks protrude, first to the S. W., then to the S. E., towards the confluence of the Cuyuni River with the Masuruni River, where a Dutch post was formerly established opposite the Caño Tupuro. Crossing the Masuruni, the boundary runs along the western banks of the Essequebo and Rupununi, to the point where the Pacaraimo Range (4° N. latitude) gives way to the Rupununi River, which is a tributary stream of the Essequebo; then, following the southern declivity of the Pacaraimo Range, which separates the waters of the Caroni from those of the Rio Branco, it goes successively westward, by Santa Rosa (nearly lat. 3° 45′, long. 65° 20′), to the sources of the Oroonoko, lat. 3° 40′, long. 66° 10′?); S. W., to the sources of the Rio Mavaca and the Idapa (lat. 2°, long. 68°), and, crossing the Rio Negro at the island of San Jose (lat. 1° 38′, long. 69° 58′) near S. Carlos del Rio Negro; W. S. W., across entirely unknown plains, to the Gran Salto del Yapura, or Caqueta, situated near the mouth of the Rio de los Enganos (lat. south 0° 35′); and finally makes an extraordinary turn to the S. E. at the confluence of the Rio Yaguas with the Putumayo, or Içа (lat. south 3° 5′); the point ...": A. de Humboldt, A. Bonpland, *Personal narrative of travels to the equinoctial regions of the New Continent, during the years 1799-1804; with maps, plans, &c.*, written in French by A. de Humboldt, and translated into English by H. M. Williams, London, Longman, Hurst, Rees, Orme and Brown, Vol. 6, Part. 1, 1826, pp. 154-155.

4.77. When O'Leary, the British Consul General, informed the Venezuelan Foreign Office of the appointment of R. Schomburgk for the elaboration of a map and the unilateral demarcation of the border on the ground, Venezuela considered that the best course of action was, to the contrary, to conclude a boundary treaty and then proceed with the joint demarcation. But this wise proposal was not heeded by Great Britain.

4.78. While for the Republic the codification into a Treaty of the existing boundary between Venezuela and British Guiana was a priority, Britain's interest was obviously different. The letter from Lord Aberdeen, British Foreign Secretary, to Dr. Fortique, the Venezuelan Minister in London, dated 21 October 1841, is revealing of this difference. It reads:

> "[w]ith regard to the proposal of the Venezuelan Government that the Governments of Great Britain and Venezuela should conclude a treaty as a preliminary step to the demarcation of the boundaries between British Guiana and Venezuela, let the undersigned observe that it appears to him, that if it should be necessary to adjust a treaty on the subject of the boundaries in question, such a measure should follow, rather than precede, the operation of the survey".[314]

4.79. In 1841, the publication of the Schomburgk line of 1840 in the *Parliamentary Papers* prompted the British government to issue instructions for the mapping and unilateral demarcation of the border on the ground:

> "I come to instruct you that the course of proceedings which Lord Palmerston would suggest for Lord Russell's consideration is, that a map of British Guiana be made according to the boundaries described by Mr. Schomburgk; that such map be accompanied by a descriptive and detailed memoir of the natural features which define and constitute the boundaries in question, and that copies of such map and memoir be transmitted to the Governments of Venezuela, Brazil, and Holland as a statement of the British claim. That in the meantime British commissioners shall be sent to erect milestones on the ground, for the purpose of marking with permanent marks the boundary line claimed by Great Britain. It shall then be the duty of

[314] *Blue Book 6*, p. 11 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

> each of the above governments to present such objections as they may have to those boundaries and to state the reasons on which those objections are based, and Her Majesty's Government would then make the appropriate and just reply thereto."[315]

4.80. The actions of the British commissioners, led by Schomburgk, provoked Venezuela's protest and evidenced its insistence on defining the legal border.[316] The British were forced to assert that the marks erected by the Prussian technician constituted "a provisional measure, not an act of possession",[317] and Her Majesty's Government ordered their removal.[318] Aberdeen, then Britain's Foreign Secretary, acknowledged in 1842 that the posts that had been erected were not "indications of dominion and empire on the part of Great Britain". Rather, they were "were only a preliminary step subject to future discussion between the two Governments".[319] This statement was a clear acknowledgement that the British claim was not based on any legal title; it was simply trying to create out of nothing a perfectly fictional claim.

4.81. The line now drawn by Schomburgk was quite different from the one that had been known until then although he did himself recognise that:

> "It must be generally acknowledged that Alexander de Humboldt, of all others, was best acquainted with the history of the former Spanish Colonies, and his long sojourn in Venezuela, and subsequent study

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[315] F. O. to C. O. 18-III-1840. Also available at https://www.google.com/books/edition/Accounts_and_Papers_of_the_House_of_Comm/1nFbAAAAAAQAAJ?hl=en&gbpv=1&dq=ACCOUNTS+AND+PAPERS,++(COLONIES)+1840+Vol+XXXIV&pg=PP7&printsec=frontcover.

[316] Letter from Alejo Fortique to Lord Aberdeen. 5 October 1841 (**Annex 21**).

[317] *Ibid.*; *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, p. 10 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

[318] Exchange of Letters between Alejo Fortique and Lord Aberdeen, 10 January 1842, 31 January 1842 (**Annex 17**); Letter from Henry Light, Governor of British Guiana to Mr. Daniel F. O'Learly, 9 March 1841 (**Annex 17**); Letter from Mr. Daniel F. O'Learly to Mr. Aranda, 8 April 1841 (**Annex 17**); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp.16-20.

[319] Lord Aberdeen's letter of 31 January 1842 (**Annex 17**).

> of its history, authorizes his opinion to [be given] weight and consideration."[320]

4.82. What were the reasons that led Schomburgk to change the line described by Humboldt.[321] The confidential letter that Schomburgk sent to Governor Light on 23 October 1841, shows that the reasons had nothing to do with any sort of international legal title:

> "The example of the difference which has arisen between Her Majesty's Government and the United States with regard to the limits of Canada prove the necessity that to prevent future misunderstandings where limits are to be determined between adjacent territories, permanent or natural boundaries ought to be selected, such as rivers, ridges of hills, &c., which, ascertained with astronomical precision, leave no grounds for dispute.
>
> [...] The Barima, and the uncultivated forests on marshy ground, present an impenetrable barrier against the interior, and debarkation from the Orinoco might be put under the fire of any number of guns — and the land reproaches on that soil could be easily rendered inaccessible to an invading force.
>
> This is the importance which Colonel Moody in a military respect has attached to this point ...
>
> Finally, trusting to the prospects of prosperity and a continued emigration to British Guiana, there could not be a more favourable position for a commercial settlement than Point Barima."[322]

4.83. Confirmation that geopolitical reasons were laying behind the Schomburgk line can be found in O'Leary's letter to Henry Light on 4 August 1841. It warns of the strategic

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[320] R. Schomburgk to Governor Light, 23 October 1841 (available at https://archive.org/details/venezuelabritis01venegoog/page/368/mode/2up).

[321] P. Ojer, *Robert H. Schomburgk, explorador de Guayana y sus lineas de frontera,* Universidad Central de Venezuela, Caracas, 1969, p. 77. This work is essential to understand what happened with the so-called Schomburgk lines.

[322] R. Schomburgk to Governor Light, 23 October 1841 (available at https://archive.org/details/venezuelabritis01venegoog/page/368/mode/2up).

importance of Barima Point as a commercial, political and military control point. The British, which already controlled Trinidad and British Guiana, would gain control of the interior of the continent with Punta Barima.

4.84. The letter of 4 March 1842 sent by Henry Light, Governor of the British Guiana Colony, to Lord Stanley, Minister of Colonies, is also enlightening:

> "I have the honour to state that, were British Guiana/a well-peopled Colony, capable of employing a surplus population in the cultivation of the extensive tracts of waste land between the Pomaroon and the Orinoco, it might be necessary to insist strongly on every point marked by Mr. Schomburgk as the natural boundaries of this province.
>
> Limited as is the population both of Venezuela and British Guiana, the Governments of neither country can derive any benefit from the boundary in question for at least a century to come; yet it is the hereafter that we must consider.
>
> We have no claim to the Amacura River, west of the Barema, though in the old map of Major L. von Bouchenroeder, published in 1798, the first river is marked east of the second, both flowing into the Orinoco.
>
> Mr. Schomburgk's map, as well as Codazzi's, place these rivers in their proper position, the Amacuro entering the Orinoco south-west of the Barema. |...|
>
> Mr. Schomburgk assumes the Amacura as a boundary, I believe, only by a right of expediency. |...|
>
> Neither the Barima nor the Amacura can now be of any importance to Great Britain, and could only be occupied at an expense of life and money which could not be expedient; but care should be taken that some more important Power than that of Venezuela should not get possession of them."[323]

[323] Letter from Governor Henry Light to Lord Stanley, 4 March 1842 (**Annex 18**).

4.85. It is relevant to note that this evidence that the British knew that they had no legal claim to the Amacuro River, west of the Barima River, was not presented before the Arbitral Tribunal in 1899, because it was then a secret British archive. However, by this letter, Governor Henry Light made clear that the British knew of the illegitimacy of the second Schomburgk line, and that Britain had no title to justify the appropriation of Punta Barima, contrary to what they claimed before the Arbitral Tribunal.

4.86. The Schomburgk line marked a British aspiration outside any legal title and could in no way be understood as the boundary of the hitherto disputed territory. Correspondence in 1844 between Dr Fortique, the Venezuelan minister in London, and Lord Aberdeen, head of the Foreign Office, on the establishment of the border shows that the territory that England was then trying to claim was between the Esequibo and the Moroco.

4.87. In his note of 31 January 1844, Dr. Fortique warned that:

> "it cannot be denied that the Essequibo has been considered as the dividing line between the two possessions, either on account of difficulty in crossing it, its current being so strong that the natives called it 'the brother of the Orinoco,' or that the kings of Spain, being unable to control such a vast expanse of coast, reserved to themselves particularly that part lying between the Essequibo and the Orinoco, without, however, resigning the right they had to the rest of the territory."[324]

4.88. Lord Aberdeen proposed in his note of reply the Moroco River as a border, as a form of "concession", which of course it was not.[325] At the time the British were not open to any "cession" of anything they thought they had. Lord Aberdeen's "concession" was nothing more than a negotiating trick, pretending to relinquish an inexistent claim to obtain recognition of a likewise inexistent other claim.

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[324] Letter from Alejo Fortique to Lord Aberdeen, 31 January 1844 (**Annex 19**).

[325] Note of Lord Aberdeen, 30 March 1844 (**Annex 22**).

4.89. Although it is not known if an agreement on such terms could have been reached, the British offer was rejected by Venezuela[326] and Fortique's death the following year stalled contacts for the establishment of the boundary.[327] In any case, it clearly shows that the British had not serious thought at the time that they could have a territorial title further west of the Moroco River, which is immediately west of the Pomeron River, but far east of the Orinoco.

4.90. International news revealing British intentions to take over Venezuelan Guayana triggered strong reactions of protest in the local Venezuelan press and massive demonstrations of repudiation in the capital. The British Chargé d'Affaires in Venezuela, Mr. Belford Winton Wilson, on behalf of the British government, proposed an agreement to the Venezuelan government whereby the British government undertook not to usurp or advance in the disputed territory in exchange for the Venezuelan government giving the British government a communication in which it undertook to do the same. This is one of the most important commitments in the history of the border dispute, known as the 1850 Agreement. Thus, in the note of 18 November 1850, the British representative stated:

> "The Government of Venezuela, without being unjust to Great Britain, cannot for a moment distrust the sincerity of the formal declaration, now made in the name and express order of Her Majesty's Government, to the effect that Great Britain has no intention of occupying or usurping the disputed territory; so, in the same spirit of good faith and friendship, the Government of Venezuela can have no objection to make to Her Majesty's Government a similar formal declaration, to the effect that Venezuela itself has no intention of occupying or usurping the disputed territory. |...| His Majesty's Government will neither order nor sanction such usurpations or occupation on the part of British authorities, and the undersigned is persuaded that, should there ever be misunderstanding as to the determination of his Government on this point, he would gladly renew his orders in the matter; I therefore

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[326] To confirm this assessment, it is sufficient to read the Extract from the Instructions of the Government of Venezuela to Mr. Dr. Alejo Fortique, Venezuela's Minister in England, September 1841 (**Annex 20**).

[327] This is stated in the Memorandum of 15 July 1882, prepared by Mr. Rojas, pp.191-218 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

> cherish the conviction that, in accordance with the friendly directions of His Majesty's Government, that of Venezuela will not hesitate to send to the Venezuelan authorities in Guiana positive instructions to refrain from taking measures which the British authorities may justly regard as aggressive."[328]

4.91. The Government of Venezuela, by a note of 20 December 1850, acceded to the request, declaring that it had no intention of occupying or usurping any part of the territory whose dominion was newly disputed by Great Britain, nor would it be indifferent to any other course of action on the part of Great Britain. It also ordered the British authorities to refrain from taking any steps which would violate the obligation which, by virtue of what had been declared, the Government had contracted, and which might lead to disastrous results.[329]

4.92. With this agreement, both Parties undertook to maintain the *status quo* without occupying the disputed territory. The conclusion of the agreement thus nullified any title that the Parties might claim against each other on the basis of an occupation carried out after that year and delegitimised any claim that would alter the existing *status quo*. This agreement was to be of central importance in the negotiation of the terms of the 1897 Treaty of Washington, which defined the rules of arbitration for the adjudication of the disputed territory.

4.93. At this moment the Venezuelan territory claimed by Great Britain was located between the Essequibo and the Pomeroon Rivers – Venezuela's understanding, which it stated on successive occasions when it pursued its policy of control of the territory or protested against British violations[330] – or, according to an expanded British claim, between

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[328] AHMPRE, Old Archive, Country: Great Britain, Gestiones Diplomáticas, Vol. 9, 1884-1896, Fs.10-11.

[329] Letter from Ezequiel Rojas to José Andrade, 9 December 1896 (**Annex 59**).

[330] AHMPPRE, Actas relativas a las Comisiones venezolanas designadas para el estudio de los planos de las bocas del río Orinoco. Archivo Antiguo, País: Gran Bretaña, Periodo 1886-1887, Vol. 148, N° 12, Folios 22-45. 1886; AHMPPRE, Archivo Antiguo, Comunicación del Doctor Diego Urbaneja al Señor Saint John, País: Gran Bretaña, Periodo 1886-1887, Tomo II, Vol. 148. Folios 74-79. 1887; AHMPPRE, Archivo Antiguo. Queja sobre la actitud del Comisario Británico en Amacuro y por la extracción de oro en territorio venezolano. Demanda por el atrevimiento de Gran

the Essequibo and the Moroco. In any event, the territory in question was far from including the entire area between the Orinoco and Essequibo rivers, claimed later on by Great Britain.

4.94. However, Great Britain has no intention to respect its commitment in good faith, and to the contrary developed a creeping strategy based on increasing, without any sort of legal basis, its territorial claims, and re-qualifying the territory. Although it had committed not to usurp more territory, Great Britain developed a contrary strategy and gradually increased its claim over Venezuelan territory.

4.95. The discovery of the Yuruari region between 1850 and 1880 and the unleashed gold rush were some of the reasons behind the British actions in Guyana.[331] Indeed, the location of the main gold-bearing basins, the Hoyas del Cuyuní, del Callao and del Dorado, explain the fraudulent reasons behind the different lines claimed by the British and the reclassifications of territory not in dispute in a disputed territory, with which Britain tried to dispossess Venezuela.

4.96. Of course, the British were aware that the gold deposits were located in Venezuelan territory. The British Vice Consul in Ciudad Bolívar, Kenneth Mathison, who brought the

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Bretaña de tomar jurisdicción sobre el Orinoco. Recapitulación de negociaciones desde 1840. Demanda de arbitramento o suspensión de relaciones. País: Gran Bretaña. Periodo 1886-1887. Vol. 148. Exp. 12. Folios 83-119. 1887; AHMPPRE. País: EUA, Protesta de Venezuela ante la usurpación de su territorio y el decreto del Gobernador de Demerara, Charles Bruce, que declara Barima puerto colonial inglés, además de crear una estación de policía. Venezuela protesta contra el acto de jurisdicción que la colonia británica pretendió ejercer sobre tierra de Venezuela. Exp. 471, Pieza 4. Folios 82-83. 1889; AHMPPRE. Archivo Antiguo. Sobre el derecho de Venezuela al territorio y el apoyo del gobierno venezolano al súbdito alemán Faull, quien fue autorizado para construir una casa y labranza en el margen derecho del Cuyuni. Menciona la denuncia del alemán, quien se quejó ante la autoridad venezolana de la presencia de hombres armados (ingleses) que le impidieron continuar con su labor, ante la denuncia fueron enviados policías ante toda agresión. País: Gran Bretaña. Tomo 164, Folio 328-329. 1894; AHMPPRE, Archivo Antiguo, Informe sobre los sucesos ocurridos en las riberas del Cuyuni. Defiende los derechos de Venezuela sobre el territorio y la evolución del poblamiento del territorio por parte de venezolanos. Señala que antes de 1890 existían propiedades pertenecientes a venezolanos. También denuncia la ocupación inglesa y los conflictos generados entre 1894-1895. País: Gran Bretaña, Tomo 164, Folio 201-220. 1895.

[331] J. Almécija Bermúdez. *La estrategia Imperial Británica en la Guayana Esequiba*, Universidad Católica Andrés Bello, Caracas, 1987: points out that it was the agricultural and mineral wealth, particularly the gold seams in the Yuruari basin, which, together with the economic crisis that shook the British colony between 1850 and 1880, motivated the implementation of this strategy of usurping Venezuelan territory.

discovery of the gold deposits to the attention of his superiors, also reported that the district in which the discovery had been made belonged to Venezuela.[332] This did not seem to be an inconvenience for Mathison, as he himself had already suggested the possibility of annexing Venezuelan Guiana to His Majesty's Crown.[333]

4.97. In 1863 the British Governor of the Colony refrained from granting concessions for the exploitation of gold mines on the grounds that they were in disputed territory.[334] The British Government issued a notice on 30 January 1867, making it clear that it could not undertake to offer protection to British subjects invading the disputed territory, but would only recognise them as a community of British adventurers acting on their own responsibility and at their own risk and expense.[335]

4.98. The incursions that the British made into Venezuelan territory were individual incursions that did not have State authorisation and were limited to a few mining camps. The establishment of some camps followed the discovery of gold deposits in Barima from 1887 onwards. At the same date, in June 1887, the British government continued to ensure that adventurers entering the territory did so at their own risk and had no legal protection from their government. Despite the assertion of this private, limited and provisional character, the British changed their position and used the installation of the camps after 1887 to support the existence of an occupation that would somehow allow it to claim the acquisition of a title to territorial sovereignty by prescription.

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[332] This is evidenced by Mathison's communications to Belford H. Wilson. British Consul in Caracas on 14 and 15 June 1850, The National Archives UK, Guiana Boundary, Vol. 4, Ref. FO 80/109.

[333] *Ibid.*

[334] Hincks to Newcastle, dispatch of 16 April 1863, C.O.111/333, The National Archives UK, Correspondence from 'offices' (Government departments and other organizations) and individuals on matters relating to British Guiana, Ref. FO 80/109. However, although the colonial authorities refrained from granting concessions, they did encourage prospectors to venture out in search of gold by promising them protection in case they were disturbed.

[335] *The case of the United States of Venezuela before the tribunal of arbitration to convene at Paris*, Vol. 1, pp. 182 (available at: https://archive.org/details/venezuelabritis01venegoog/page/368/mode/2up).

4.99. All this would have led any *bona fide* observer to consider, during the arbitration proceedings that culminated in the award of 3 October 1899, that the territory lying west of the Essequibo River had not been occupied by the British until 12 years before the arbitration and that the existing occupation at that time had been rejected as having no legal effect by repeated warnings from both the Venezuelan and British governments.[336]

4.100. The conclusion is obvious: there was no British occupation. The British knew it well: they had no right whatsoever on the territory they coveted for its gold. It was therefore essential for Great Britain to manipulate the law and the facts, and to elaborate a sort of legal strategy based on the notion of acquisitive prescription, and for that purpose they inserted as a clause giving effect to this notion in the Treaty of Washington of 1897.

4.101. The question of the boundary between Venezuela and British Guiana was not discussed again until the 1870s. On 14 November 1876, the Venezuelan Foreign Minister, Dr Eduardo Calcaño, sent a letter drafted by the President of the Republic, Guzmán Blanco, to Lord Derby, Secretary of State at the Foreign Office. In this letter, Venezuela asserted and supported in Spain's title its right to establish the boundaries with British Guiana on the Essequibo River;[337] a position reiterated in February 1887 by José María Rojas, who had been appointed Venezuelan Minister in London.[338]

4.102. From 1880 onwards, contacts between the Foreign Office, the Minister of the Colonies and Venezuela's representatives in London, as well as between the Venezuelan foreign ministers and the British representatives in Caracas, intensified. Successive communications up to February 1887 are written proof of British manipulation and of Venezuela's constant opposition to accepting as valid the usurpations of territory carried out by Britain in violation, among others, of the 1850 agreement.

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[336] *Ibid.*, p. 187.

[337] *Blue Book 8*, pp. 504-51 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

[338] Memorandum of Dr. Rafael Seijas, 15 July 1882 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

4.103. The map drawn up by the Venezuela Boundary Commission, entitled *Boundaries Claimed or Proposed*[339] shows the different lines proposed or claimed by the Parties, showing that the British lines are moving, with no reason at all, except British greed, deeper and deeper into Venezuelan territory (map 16).

4.104. On 10 January 1880, Lord Salisbury, Secretary of State in the *Foreign Office* and known to have been an imperialist who worked for the maximum extension of the British Empire, sent a letter to José María Rojas in which he expressed his interest in a negotiated border that was not based on strict legal grounds and that would satisfy the interests of both countries. In it, the author "identified" the boundaries that Great Britain could claim, based in inexistent "ancient treaties with aboriginal tribes" and Dutch cession:

> "The boundary which the Government of S. M. claims, by virtue of ancient Treaties with the aboriginal tribes and subsequent cessions from Holland, begins at a point at the mouth of the Orinoco west of Punta Barima, passes thence in a southerly direction to the mountains of Imataca, which line it follows north-west, passing from them through the high lands of Santa Maria, just south of the town of Upata, until it meets with a mountain range on the eastern bank of the river Caroni; following this southwards until it touches the great spine of the Guiana District, the Roraima Mountains of British Guiana, and from there, still southwards, to the Pacaraima Mountains."[340]

4.105. He also warned that Great Britain could never accept the Venezuelan position of considering the Essequibo River as a boundary, as it would imply, as he wrote in a straightforward lie:

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[339] Venezuela-British Guiana Boundary Commission, Boundaries Claimed or Proposed, *David Rumsey Map Collection*, 1897 (available at: https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~203924~3001803:Boundaries-Claimed-or-Proposed-?sort=pub_list_no_initialsort%2Cpub_date%2Cpub_list_no%2Cseries_no&qvq=q:Guiana;sort:pub_list_no_initialsort%2Cpub_date%2Cpub_list_no%2Cseries_no;lc:RUMSEY~8~1&mi=40&trs=220).

[340] *Blue Book 6*, p. 44 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

> "the abandonment of a province now inhabited by 40,000 British subjects and which Holland and Britain have successively possessed without interruption for two centuries".

4.106. Of course, contrary to Salisbury's assertion, the territory was far from having such a large number of British subjects. Harrison proved this before the Paris Tribunal in 1899 by citing British censuses for the years 1831, 1851 and 1891. The British inflated the number of settlers to exaggerate the occupation and argue inexistent difficulties in withdrawing from the territory, as well as likewise inexistent need to protect their subjects. Subsequently, when the case came up for debate in the 1899 Tribunal, the British presented false population numbers to create a title of prescription that was in fact unsubstantiated both by the time of occupation as well as by number of occupants. Thus, the population argument became another false proof similar to the manipulation of the maps.

4.107. In view of the alarming change of position that such an approach implied with respect to previous British aspirations, Dr. Rojas asked Lord Salisbury first, and then Lord Granville who had succeeded Salisbury in office, whether Great Britain, as it had done in 1844, would agree to accept the Moroco River as the starting point of the border.[341] The British refusal[342] was followed by a new proposal by Dr. Rojas fixing the beginning of the border one mile north of the Bocas del Moroco.[343] (map 16)

4.108. Great Britain's reply in a letter from Lord Granville, Secretary of State in the Foreign Office, dated 15 September 1881, was incorporated in a Memorandum in which, besides rejecting Venezuela's proposal, made a proposal considered to be in accordance with Schomburgk's original line.[344] (map 16). This proposal was unacceptable to

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[341] *Blue Book 6*, pp. 45-46 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

[342] Letter from Lord Granville to Dr. José María Rojas, 12 February 1881 (**Annex 23**).

[343] Letter from Dr. José María Rojas to Lord Granville, 21 February 1881 (**Annex 24**).

[344] Memorandum on the Boundary Question between British Guiana and Venezuela. *Blue Book 6*, pp. 50-52 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

Venezuela, which was already persuaded that obtaining an amicable settlement was unfeasible and that a solution in accordance with the law was necessary.[345]

4.109. In his memorandum Lord Grandville dared to assert a completely newly invented claim, abandoning its predecessor's brilliant idea of referring to inexistent "Ancient Treaties with aboriginal tribes":

> "As to that portion of the territory which lies between the Moroco and the Boca del Orinoco, the Government of H.M. believes that no impartial person, after studying the archives, can avoid the conviction that the Barima was undoubtedly before, and at the time of the conclusion of the Treaty of Münster (1648) possessed by the Dutch, and that consequently the right of the Government of H.M. to the territory up to that point is unassailable".[346]

4.110. Such assertion is of course factually untenable. To recall, in 1836, Great Britain knew and accepted that Punta Barima was Venezuelan and, precisely for that reason, asked the Venezuelan government to install a lighthouse. But it also demonstrates that in 1881 the British, as successors to the Dutch states, knew that they could never have claimed against Venezuela, as successor to Spain, anything that was not under Dutch rule according to the Treaty of Münster.

4.111. The insurmountable differences over the boundary question gave Venezuela, which was sure of its rights, the impetus to the search for an arbitration solution. The negotiation of a treaty of friendship, commerce and navigation opened the door to the possible incorporation of a general arbitration clause, but this door was closed with the dismissal of Granville as Secretary of State and his succession by Lord Salisbury, again appointed as Foreign Secretary, who proposed changes to the arbitration commitment made by his predecessor.

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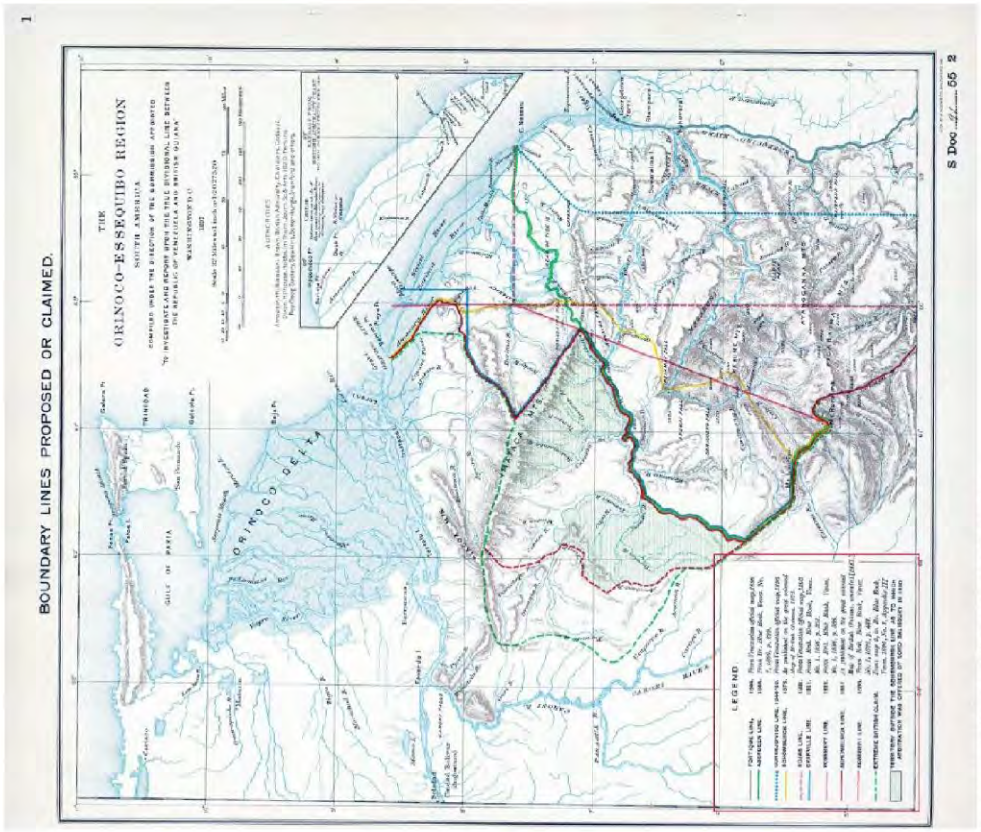
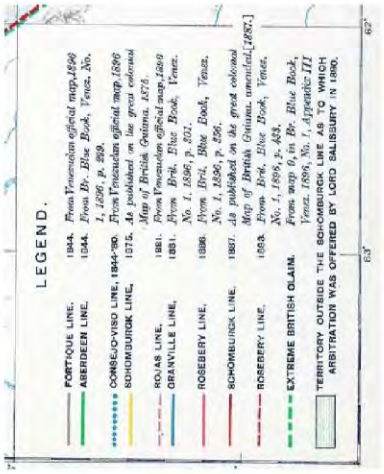
[345] Memorandum of Dr. Rafael Seijas, 15 July 1882 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

[346] Item 5 Memorandum, *Blue Book 8*. pp. 191-218 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).





Venezuela Boundary Commission Report Atlas 1898
Map 1

Boundary Lines Proposed or Claimed

MAP 30

MAP 26. Boundary Lines Proposed or Claimed[347]

[347] Map 1 of the Venezuela Boundary Commission Report Atlas, 1898 (**Atlas**).

4.112. The subsequent replacement of Lord Salisbury by Lord Rosebery at the head of the Foreign Office prompted the presentation of bases for negotiation.[348] The one concerning boundaries reads:

> "It is proposed that the two Governments shall agree upon considering as territory disputed between the two countries the land situated between the two boundary lines indicated, respectively, in the eighth paragraph of Senor Rojas's note of February 21st, 1881, and Lord Gransville's note of September 15th, 1881, and to draw a dividing line within the limits of this territory, either by arbitration or by a mixed commission, on the principle of equal division of said territory, and in due regard to natural boundaries. The Government of Her Majesty give especial importance to the possession of the River Guaima by British Guiana, and wish, therefore, to make the stipulation that the boundary line is to begin at the coast point, and a proper compensation to be found in any other part of the disputed territory for this deviation from the principle of equal division. In connection with the boundary there shall be considered the cession of the Island of Patos to Venezuela."[349]

4.113. The basis of the negotiation put forward by Lord Rosebery once again showed Great Britain's fraudulent intent, through and the changing and shifting character it attributed to the disputed territory, which was increasingly distant from British Guiana and deeper into the territory of Venezuela. This attitude once again provoked displeasure and rejection on the part of Venezuela, which is evident in the notes of its representative in London, Guzmán Blanco, dated 28 and 29 July 1886.[350] The first note states that:

> "the acts committed to the detriment of Venezuela lack all possible justification" and "naturally, because of this, and because they come from agents of a great and powerful nation, with whom Venezuela

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[348] Letter from Earl Rosebery to General Guzman Blanco, Minister of Venezuela in Great Britain, 20 July 1886 (**Annex 26**).

[349] Memorandum relating to the Question of Limits between Venezuela and British Giuana, presented to the Honorable W. Q. Gresham, Secretary of State, by José Andrade, 31 March 1894, p. 305 (**Annex 39**).

[350] *Blue Book 6*, pp. 107-128 (available at: https://kamuru.mpprc.gob.ve/index.php/s/XSLfiiQbn2mtAF4) and *Blue Book 8*, pp. 547-567 (available at: https://kamuru.mpprc.gob.ve/index.php/s/f4EgYB65s3N4JHY).

> has lived in ancient and cordial friendship, they have considerably excited public opinion and awakened feelings that had been calm since 1841".[351]

4.114. It expressly mentions the 1850 Agreement, its validity and effects, stating that:

> "If such an agreement means anything, neither Great Britain nor Venezuela has been able to occupy disputed places, the specification of which should have been made, and was not made, on that occasion as an integral part of the agreement. But the rational meaning of the agreement is that it was intended to maintain the *status quo*. This has been the understanding of the Republic, which, claiming as its own places of which Great Britain has de facto possession as far as the Essequibo, has provisionally left them there".[352]

4.115. The note sets out the Venezuelan position on what was the disputed territory at the time of the conclusion of the 1850 agreement and records the British outrages and changes of position.

4.116. Between December 1886 and February 1887 contacts took place in Caracas between Diego B. Urbaneja Alayón, Chancellor under the new Guzmán Blanco presidency, and the British Minister in the capital, F.R. Saint John, whose only novelty was the sending of a commission to inspect part of the territory. Commissioners Muñoz Tébar and Rodil travelled to the Delta and toured the Amacuro River, the Brazo Barima and Caño Morajuana, and the Barima, Arauca and Guaima Rivers, and in all these places the commission made a public declaration that the territory belonged to Venezuela and appointed police commissioners representing the authority of Venezuela.

4.117. The result of the Commission's work was reported by Urbaneja to St. John and highlights the change in Britain's position from 1841/1842 to the time he writes his note and records that Venezuela:

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[351] *Ibid.* pp. 115-116 and p. 554 respectively.

[352] *Ibid.*, pp. 117 and 556 respectively.

> "has never understood that the ownership of the places situated beyond the mouth of the Pomaron, but only of those between that river and the Essequibo, was disputed; and it is quite clear from Lord Aberdeen's proposal that he was satisfied with the mouth of the Morocco as the western limit of British possessions".

4.118. The note concludes with the following request:

> "[T]he President of the Republic demands from Her Majesty the evacuation of Venezuelan territory from the mouth of the Orinoco to the Pomaroon, which she (Great Britain) has unjustly occupied with the understanding that if by 20th February next, at the meeting of Congress, to whom the Government is bound to render an account of everything, no reply should be received, or should be negative, the diplomatic relations between the two countries shall be broken off".[353]

4.119. The British reply, dated 31 January 1887, merely denied the official nature of the request made in 1836 for the construction of a lighthouse at Punta Barima and, once again, manipulating reality, cynically allowed itself to communicate that it was prepared to give Venezuela permission to build the aforementioned lighthouse.[354]

4.120. The Venezuelan reaction was not long in coming, and on 31 January 1887 Urbaneja sent a letter to St John in which, in addition to expressing the President of the Republic's displeasure and reiterating his request of 26 January, he made it clear that the Venezuelan government was not prepared to accept the request:

> "This is the first occasion on which the Government of H.M. discloses its claims to the Orinoco River [...] Before now, everything had been limited to the acts of one party alone, foreign to the knowledge of the other; but today the latter is notified of what is

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[353] Letter from Diego B. Urbaneja, Minister in Venezuela, to F. R. St. John in Caracas, 26 January 1887 (**Annex 31**).

[354] *Blue Book 6*, pp. 164-165 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4) and *Blue Book 8*, pp. 604-605 (available at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY).

being carried out, and it is hoped to obtain its approval of acts and claims contrary to its rights".[355]

4.121. The British response could not have been more unfortunate and on 20 February 1887, Urbanеja sent a note to Saint John in which he pointed out:

> "Venezuela's complaints have gone unheeded. They have not even met with a response. It seems that they have been taken as a pretext for the aggravation of the offences. 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 unbelievable occurrences. He also informed your Excellency that the construction of a lighthouse at Punta Barima was to be ordered, as had been recommended since 1836, with the most earnest urging, by Sir Robert Ker Porter, Chargé d'Affaires of Great Britain. Your Excellency refused to give the explanations requested, on the ground that the President had not consented to defer the execution of his purpose until your Excellency had consulted your Government in the case. That is to say, Your Majesty wished the President not to perform an administrative act in the territory of Venezuela without obtaining permission for the purpose from Her Britannic Majesty, who without any right has occupied and retained it.
>
> [...]
>
> It has seemed to the Republic the most unusual thing that the Convention of 1850, violated by Great Britain, should be invoked against it; with the allegation of the Convention, the British Cabinet acknowledges the duty of complying with it, and its conduct is in singular contrast with what should be the norm for it.
>
> [...]
>
> 20 February has arrived.
>
> [...]

[355] *Ibid.*, pp. 162-164 and pp. 605-608 respectively.

> Great Britain has violated the territory of Venezuela by entering it through forbidden places, by appointing Commissioners, by establishing Government offices in which the English flag flies, by seizing, judging and punishing an employee of Venezuela, by sending there with armed police officers a judge who has notified those places to be British, by decreeing prohibitions of commerce, by going with a coastguard through the space between Amacuro and Barima, by including these rivers in the jurisdiction of the Governor of Demerara, and by authorising the benefit of mines included in the soil of Demerara, decreeing prohibitions of commerce, travelling with a coastguard the space between Amacuro and Barima, comprising these rivers in the jurisdiction of the Governor of Demerara, authorising the benefit of mines included in the soil of the Republic, and exercising acts of dominion.
>
> Britain has arrogated to itself the right to decide for itself and on its own behalf a question that concerns it as much as Venezuela.
>
> [...]
>
> Consequently, Venezuela, not being obliged to maintain friendly relations with a State that thus insults it, suspends them as of this day.
>
> And protests [...] against the acts of despoilment which to its detriment have been consummated by the Government of Great Britain, and which it will not at any time, nor for any reason, recognise as capable of altering in the least the rights which it has inherited from Spain, and on which it will always be ready to submit to the judgment of a third power".[356]

c) From the severance of diplomatic relations to the negotiation of the Washington Treaty

4.122. The breakdown of diplomatic relations in 1887 which weighed more heavily on Venezuela strengthened Great Britain, which now dared to be much more demanding. It

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[356] *Blue Book 6*, pp. 167-174 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4) and *Blue Book 8*, pp. 610-618 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

was at this point that the United States entered into diplomatic contacts with the aim of attempting to settle the dispute.

4.123. Attempts to re-establish diplomatic relations provoked new disagreements between the British authorities – Thomas Sanderson, Under-Secretary of the Foreign Office and Lord Rosebery, Secretary of State of the Foreign Office – and the Venezuelan confidential agents – Messrs. Urbaneja, Lucio Pulido and Michelena –, and again demonstrated British intransigence both on the territorial controversy and on the recourse to arbitration.[357]

4.124. On 10 February 1890, Britain sent through Th. Sanderson, Under-Secretary of the Foreign Office, the conditions necessary to resolve the outstanding issues between the two states. In the Pro Memoria attributed to Salisbury, it can be seen how, regarding the boundary question, Great Britain now warned that it:

> "could not accept as satisfactory any arrangement which did not admit as English property the territory within the line demarcated by Sir R. Schomburgk".
>
> and that:
>
> "[w]e would be prepared to submit to arbitration the claim of Great Britain to certain territories west of that line".[358]

4.125. In a communication dated 19 March 1890 Lord Salisbury, writing from Thomas Sanderson, advised that:

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[357] British Memorandum in reply to Mr. Pulido's Memorandum (**Annex 33**); Letter from Lord Rosebery to Dr. Michelena in response to the Pro-Memoria, 3 July 1893 (**Annex 35**); Letter from Dr. Michelena to Lord Rosebery, 31 July 1893 (**Annex 36**); Letter from Dr. Michelena to Dr. Rojas, 30 August 1893 and Letter from Dr. Rojas to Dr. Michelena, 4 August 1893 (**Annex 37**); Letter from Lord Rosebery to Dr. Michelena, 22 September 1893 (**Annex 41**); Letter from Dr. Michelena to Lord Rosebery, 29 September 1893 and Letter from Dr. Michelena to Lord Rosebery, 6 October 1893 (**Annex 38**).

[358] The Pro Memoria setting out these conditions is included in *Blue Book 6*, p. 175 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, p. 175 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

> "Britain's claim to the whole of the Cuyuni and Yuruari basin is well founded, and the greater part of the district has been for three successive centuries colonised by the Dutch and by the English, their successors.
>
> [...]
>
> Her Majesty's Government has constantly maintained that in strict law the whole region within the line described in Lord Salisbury's note to Lord Rojas of 10 January 1880, that is to say, as far as the Upata mountains, if not as far as the Orinoco itself, belongs to her; and that any establishment of Venezuela east of that line is considered an encroachment upon the rights of Great Britain [...]".[359]

4.126. The change in the British position was outrageous, again, in that it now considered any area east of the Schomburgk line to be undisputed British sovereignty, a line which was no longer identified with the one effectively drawn by the Prussian in 1841, but with the one that Lord Salisbury had named as such after the manipulation of the maps that will be explained below, and which was actually an extension of the Schomburgk line (Map 16 showing the enlarged Schomburgk line).

4.127. Venezuela's response to Salisbury's proposal was received by Sanderson on 24 June 1890 through Lucio Pulido. In his memorandum, Venezuela sets out its basis for concluding an agreement to re-establish diplomatic relations:

> "1° The Government of the United States of Venezuela would formally declare that the Essequibo River, its banks and the lands covering it, belong exclusively to British Guiana; and Her Majesty's Government would formally declare that the Orinoco River, its banks and the lands covering it, belong exclusively to the United States of Venezuela.

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[359] Minute NQ 3353 of 25-11-1890, C.O. 111/458. The translation is that found in *Blue Book 6*, pp. 178-179 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 178-179 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

> 2° Whereas the region west and north-west of the Essequibo River towards the Orinoco River is not well known officially; and whereas the explorations made by the explorer Mr. Schomburgk cannot be invoked as title to property against the United States of Venezuela, just as the explorations made by various Venezuelan explorers cannot be invoked as title to property against His Majesty's Colony of British Guiana, both Governments should agree, as a matter of course, to appoint a Joint Commission, composed of two Chief Engineers and their respective staffs, to proceed to make without delay and within a year maps and chorographical, geographical or hydrographical charts of the said region, to determine officially the exact course of the rivers and streams, the exact position and situation of the mountains and hills, and all other valuable details which will enable both Governments to have a reliable official knowledge of the territory now in dispute.
>
> 3° Such official maps and charts would enable both Governments to determine, in a spirit of mutual friendship and goodwill, a boundary with full knowledge of the facts; and a natural boundary between British Guiana and the United States of Venezuela should in every case be preferred and determined".[360]

4.128. Great Britain's rejection of the bases proposed by Venezuela was communicated to Venezuela on 24 July 1890 by a note sent by Mr. Sanderson in which Great Britain persisted in maintaining its refusal to accept Venezuela's title and took a qualitative leap when it threatened Venezuela for exercising its sovereignty.[361] In the aforementioned note, in relation to some Decrees passed by the Venezuelan government, the following can be read:

> "But Lord Salisbury has received with great surprise, within the last few days, notice that the Government of Venezuela has issued two decrees [...] for the establishment of Venezuelan Administrations in the district between Punta Barima and the Pomaron River, and in the neighbourhood of the point where the Cuyuni flows into the Essequibo. Such notices can have no practical effect, and any attempt

[360] *Ibid.*, pp. 184-186.

[361] *Ibid.*, pp. 186-189.

> to put them into execution could only be considered as an invasion of the Colony and would be dealt with accordingly".

4.129. A period of silence followed, with contacts resuming in the spring of 1893 with Lord Rosebery, Secretary of State in the Foreign Office, and Tomás Michelena as Confidential Agent with full powers to settle outstanding differences and resume diplomatic relations.[362]

4.130. The first step was the *Pro Memoria de bases para la conclusión de un Convenio preliminar* presented on 26 May 1893 by Mr. Michelena, which provided for recognition of the 1850 Agreement as the *status quo* on the boundary question to be maintained until a treaty was concluded after examination of the titles and documents invoked by the parties.[363]

4.131. The text of the Memorandum proposed:

> "Basis for the conclusion of a preliminary agreement between the Governments of H. M. Britannica and the United States of Venezuela, for the purpose of re-establishing diplomatic relations and amicably settling the various questions pending.
>
> 1° *First.* - The Government of Great Britain, claiming certain territories in Guiana, as successor to the rights of the Netherlands, and the Government of Venezuela, claiming a portion of the same lands, as heir of Spain, animated by amicable dispositions and desiring to put an end to the differences which have arisen in this matter, each respecting the titles which prove their respective jurisdiction and ownership of the territories under discussion, agree and stipulate that, official relations between the two countries being re-established, upon the ratification of this preliminary agreement by their respective Governments, one or more Delegates shall be appointed by each party, with full powers to conclude a boundary

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[362] *Blue Book 6*, pp. 194-195 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 194-195 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

[363] *Ibid.*, pp. 195-197.

> treaty, based on the conscientious and careful examination by them of the documents, titles and antecedents which legitimise the respective pretensions, It being further agreed that the decision of doubtful points or demarcations of a boundary line, on which the appointed Delegates cannot agree, shall be submitted to the final and unappealable decision of an arbitrator *juris*, who shall be appointed, as the case may be, by common agreement of the two Governments.
>
> [...]
>
> 4° *Fourth.* - It shall be recorded in the preliminary agreement that both the Government of H. M. Britannica and the Government of Venezuela recognise and declare as the *status quo* of the boundary question that which existed in the year 1850, when the Honourable Sir Belford Hinton Wilson, Chargé d'Affaires of England at Caracas, made the formal declaration on behalf and by express order of the Government of H. M. Britannica, that no part of the territory in dispute would be occupied, requiring the same declaration from the Government of Venezuela, as was obtained. This *status quo* shall be maintained until the conclusion of the treaty of limits mentioned in Base 1°".[364]

4.132. On 3 July 1893, Lord Rosebery sent to Dr. Michelena a note in which he rejected the Venezuelan proposal and proposed changes. With regard to point 1, the British considered that it should be drafted as follows:

> "Inasmuch as the Government of Great Britain claims certain territory in Guiana, as successor in title to the Netherlands, and the Government of Venezuela claims the same territory, as heir of Spain; Both Governments, inspired by friendly intentions and desirous of putting an end to the differences which have arisen in this matter, and both Governments desiring to give their respective value to the titles alleged by each to prove their jurisdiction and rights of ownership over the territory in question, agree and stipulate that as soon as official relations are restored between the two countries, and after the ratification of this preliminary agreement by both Governments, one or more Delegates shall be appointed by each party with full powers to conclude a boundary treaty, based on a thorough and complete

[364] *Ibid.*

> examination by the Delegates of the documents, and background supporting the claims of each party, it being *agreed that the said disputed territory lies to the West of the line placed on the map sent to the Government of Venezuela on March 19, 1890, and to the East of a line to be marked on the same map running from the source of the Cumano River, following down its current and up the Aima, along the Sierra Usupamo*, and that the decision of doubtful points and the delineation of the frontiers, if the Delegates should be unable to arrive at a settlement, shall be submitted to the final decision, from which there shall be no appeal, of a juridical Arbitrator, who shall be appointed, if the case arises, by common agreement between the two Governments."[365]

4.133. In relation to point 4, the Rosebery Letter expressed Great Britain's rejection of the 1850 Agreement in the following terms:

> "As to the fourth clause of the Memorandum, in which it is proposed that both His Majesty's Government and the Government of Venezuela shall recognise and declare that the *status quo* of the boundary question is that which existed in 1850, His Majesty's Government considers that it is quite impossible for it to consent to go back to the *status quo* of 1850 and to evacuate what has constituted for some years an integral part of British Guiana. It deplores, of course, that it is unable to accept this proposition".[366]

4.134. Great Britain's proposed modification is further proof of its fraudulent strategy in relation to Venezuelan territory. What in 1841 were merely British aspirations subject to negotiation with Venezuela had become Britain's undisputed rights; territory that was indisputably Venezuelan in 1841 had become, according to Great Britain, indisputably British territory without the possibility of its treatment by an arbitral tribunal as disputed territory.

4.135. Moreover, Great Britain was again distorting reality when it considered the recognition of the *status quo* of 1850 as if it were a new proposal by Venezuela. What is

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[365] The highlighted text corresponds to the modification incorporated by Great Britain. *Blue Book 6*, pp. 199-200 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).
[366] *Ibid.*, p. 198.

envisaged in the fourth point of Mr. Michelena's Memorandum is simply that the treaty to be signed should *state* that both parties recognise the *status quo* which they undertook to respect as a consequence of the 1850 Agreement. It was not a question of accepting anything new, but of recording the existence of the commitment made.

4.136. The same fraudulent tactic was in play in Great Britain's allegation that it was impossible to evacuate what had allegedly constituted for some years an integral part of British Guiana. Britain was an illegal occupier, and usurper of territory in contravention with General International Law and the 1850 Agreement and could not consider the territory it had illegally dispossessed Venezuela of to be an integral part of British Guiana.

4.137. The new line resulting from the British proposed change in the identification of the disputed territory was rejected by Venezuela. In his note of 31 July, Dr Michelena pointed out that such a modification:

> "[...] only alters the extreme claim of the Government of Great Britain .... and corrects in part the capricious line drawn by the explorer Schomburgk, all in complete opposition to another demarcation which was proposed by the Earl of Rosebery in 1886 and which reduced the British claim to narrower limits".[367]

4.138. The constant disagreement led Michelena to denounce the incoherence of the British position, Great Britain's persistent tendency to increase the colony's boundaries at the expense of the Republic's territory, and the more than likely lack of solidity of the titles that Great Britain could claim.[368] In his lengthy note of 29 September 1893, Michelena warned that:

> "the refusal of her Britannic Majesty's Government to consider acceptable and practicable the proposition to submit the question of limits to a Commission of Delegates and, as a last resource, to the judgment of *arbiters juris*, without restrictions, would entirely frustrate the desire, which Your Excellency assures me is cherished by Her Britannic Majesty's Government to arrive at an amicable

[367] *Ibid.*, p. 202.

[368] Letter from Dr. Michelena to Lord Rosebery, 29 September 1893 (**Annex 38**).

settlement, and to consider any practicable proposition to that end. I must be allowed to say that the rejection of the offer made, and the last declared purpose to consider any practicable proposition for a settlement, seem to me to be wholly incompatible."[369]

4.139. It also drew attention to:

"Your Excellency can hardly fail to perceive the insurmountable difficulties presented by these various frontier lines claimed or proposed by Her Britannic Majesty's Government in 1841, 1881, 1886, 1890, and at the present time; and likewise the unvarying tendency shown to extend the limits of the Colony of British Guiana at the expense of the Venezuelan territory, and the manifest discordance which the propositions of Your Excellency in 1886 show, with the present request that Venezuela accept, without any compensation whatsoever, the enlarged 'Schomburgk line,' which dispossesses her, not only of the river Guaima (an important desire of the Foreign Office in 1886), but also deprives the Republic of the river Barima and the cape of that name, together its adjacent territories"[370]

4.140. Michelena wonders:

"What is the nature of the titles and of the documents upon which the present enlarged and extended British claim is supposed to rest; a claim so diverse and elastic, and so foreign to antecedents, to unity and precision? If any titles at all exist, and they be as conclusive as the British Foreign Office now assumes them to be, why not submit them to examination by an impartial tribunal?".[371]

4.141. And, finally, it denounced that:

"Great Britain has never once produced any historical or other lawful title to show with any degree of certainty the true and legitimate origin of any one of the many lines which she pretends that Venezuela ought to accept as 'indisputable.' Lacking these lawful

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[369] Letter from Dr. Michelena to Lord Rosebery, 29 September 1893 (**Annex 38**).

[370] *Ibid.*, p. 213.

[371] *Ibid.*

> titles, and violation all that was stipulated and promised by Sir Bedford Wilson in 1850, to wit, that both countries should hold as neutral the then disputed territory until the conclusion of a Definite Treaty of boundary, Great Britain has proceeded to occupy de facto the area comprised within the 'Schomburgk line' which was once formally disclaimed by the British Government."[372]

4.142. The Memorandum of José Andrade,[373] Venezuelan Minister in Washington, dated 31 March 1894, is very expressive of the British strategy. Mr. Andrade considers that:

> "Great Britain has not listened to the Powers who have been good enough to offer the interposition of their good offices, nor has she been willing to accept their mediation. And as for direct discussion, it has not admitted it as an effective means of clarifying the reasons in support of the claims of the one or the other party, but only to make their conciliation less possible by their increasingly immoderate demands".
>
> "Venezuela has always believed itself entitled to establish the Essequibo River as the boundary between itself and British Guiana; but it has not for that reason failed twice to show itself ready to reduce its claim in return for an amicable accommodation, when the national constitution allowed it to do so.
>
> Great Britain, which before 1840 had not advanced from Pomarón, in that year attempted to make a leap to Barima and to make the dividing line of the two Guianas start from there - Schomburgk line; in 1844, retrograding, it proposed that the line should start from the Moroco River, between Pomarón and Punta Barima - Aberdeen line; in 1881, from a point 29 miles from the Moroco to Punta Barima - Granville line; in 1886, from a place on the coast west of the Moroco to Punta Barima - Granville line; in 1886, from a place on the coast west of the Guaima, between the above point and Punta Barima - Rosebery line; in 1890, from the mouth of the Amacuro, west of Punta Barima on the Orinoco - Salisbury line; and, finally, in 1893, from west of the Amacuro, proceeding steadily inland west and

[372] *Ibid.*

[373] *Ibid.*, pp. 223-264.

> south, to the source of the Cumano river and the Usupamo range - new Rosebery line".[374]

4.143. Furthermore, Andrade summarised the position that Great Britain has maintained with Venezuela, as it was clear that:

> "Britain has insisted on treating Venezuela as a minor state, dictating to it the sacrifice it must make of its rights and territory, and deciding for itself which belong to it indisputably and without further discussion. Venezuela has not been able to enforce its legal equality. To every violation of it it has made a representation and a solemn protest".[375]

4.144. The dispatch of the Andrade Memorandum to Great Britain by the Secretary of State, Mr. Gresham, through the U.S. Minister in London, Mr. Bayard, on 13 July 1894, allowed Gresham to highlight Great Britain's successive refusals to the Venezuelan proposals for the resumption of diplomatic relations and the submission of the dispute to arbitration, and to warn that he saw only two equitable solutions: arbitration or agreement.[376]

4.145. In the autumn of 1894, José Andrade had the opportunity to meet with Gresham and Bayard, and on 1 December 1894, Gresham wrote to Bayard:

> "I cannot believe that the Government of H.M. holds that the validity of its claims to the territory long disputed between the two countries is to be conceded as a condition precedent to the arbitration of the question whether Venezuela has a right to the other territory, which until very recently was never questioned. [...] There is no doubt that you quietly exercise your influence in favour of any honourable plan of settlement".[377]

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[374] *Ibid.*, pp. 263-264.

[375] *Ibid.*, p. 264.

[376] Letter from Mr. Gresham to Mr. Bayad, 13 July 1894 (**Annex 40**).

[377] *Blue Book 6*, pp. 280-281 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

4.146. On 3 December 1894, in his annual message to the United States Congress, communicated by Gresham to Andrade and thanked by the Venezuelan authorities,[378] President Cleveland, in relation to the boundary question between Venezuela and Great Britain stated:

> "I shall renew the efforts hitherto made to bring about the re-establishment of diplomatic relations between the disputants, and induce them to submit to arbitration, a means which Great Britain so conspicuously favours in principle and respects in practice, and so ardently solicited by her weaker adversary".[379]

4.147. The Venezuelan authorities, in a letter from Mr. Andrade to Mr. Gresham dated 19 December 1894, informed the United States of the proposal of the Demerara Legislative Chamber of 24 October 1894 regarding the construction of a road between the sources of the Barima and the Upper Cuyuní or Yuruán. In it, Andrade warned that the conflict had entered a threatening phase given the attitude of the colonial government and the risks posed by Britain's domination of the mouth of the Orinoco.[380]

4.148. The following month, the Senate and House of Representatives of the United States of America, meeting in Congress, on 10 January 1895, agreed that:

> "the direction made by the President in his last annual message to this Body, namely, that Great Britain and Venezuela submit their boundary dispute to amicable arbitration, be strongly recommended for the consideration of both parties concerned."[381]

4.149. A few days later, on the 17th of the same month, having learned of Great Britain's refusal to submit the dispute to arbitration, which was of course because Great Britain knew

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[378] Communication of 20 December 1894 from the Minister of Foreign Affairs, Ezequiel Rojas, to the United States Minister in Caracas, Seneca Haselton, forwarded by the latter to Secretary of State Gresham on the 21st; communication from the Venezuelan Minister in Washington, José Andrade, to Secretary of State Gresham on the 31st.

[379] *Blue Book 6*, pp. 280-282 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

[380] *Ibid.*, pp. 282-284.

[381] *Ibid.*, pp. 287-288.

it had no title to the territories it claimed, President Cleveland read a speech to the Foreign Affairs Committee in which he stated:

> "The conduct to be pursued by this Government, in view of the present situation, does not appear to be open 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 recognise her palpable demands, and to proceed accordingly [...].
>
> 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 the Republic of Venezuela and British Guiana. The investigation conducive to this end must, of course, be made in a careful and judicial manner, giving due weight to all the evidence and all the facts which may be adduced in support of the claims of both parties.
>
> In order that this examination may be fully and satisfactorily made, I would suggest to Congress to appropriate an adequate sum to cover the expenses of a Commission, appointed by the Executive, to make the necessary investigation or report on the matter with the least possible delay. This report having been made and accepted, it will, in my opinion, be the duty of the United States to oppose by every means in their power, as to a direct attack upon their rights or 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."[382]

4.150. The way forward had already been outlined, and the planned Commission, chaired by the Honourable David J. Brewer, was set up and its work compiled in a nine-volume edition.[383] The impressive work of the Commission proved very effective in warning Great

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[382] Communication of 20 December 1894 from the Minister of Foreign Affairs, Ezequiel Rojas, to the United States Minister in Caracas, Seneca Haselton, forwarded by the latter to Secretary of State Gresham on the 21st; communication from the Venezuelan Minister in Washington, José Andrade, to Secretary of State Gresham on the 31st, p. 292.

[383] U.S.Commission on Boundary between Venezuela and British Guiana. Washington 1896-1897.

Britain that a neutral observer of the law would recognise the rights claimed for so long by Venezuela. This convinced Great Britain that it would better off manipulating an arbitration, on the basis of the Treaty of Washington on 2 February 1897, drafted entirely to sustain its baseless claim. This manoeuvre brought the Venezuelan Boundary Commission's work to a close before it proceeded to define the actual boundary line.

4.151. In addition to what has been analysed so far, it should be noted that in the years prior to the conclusion of the Arbitration Treaty, Great Britain had formulated a new territorial claim in which the boundary of the disputed territory moved further into Venezuelan territory. Great Britain's claim, identified as the *Extreme British Claim*, was then located much further west of the Essequibo than the Schomburgk line of 1841 and sought to usurp from Venezuela a significant portion of its territory (Map 16).

4.152. In short, Great Britain pursued a policy of usurping Venezuelan territory by making increasingly aggressive claims and rejecting all proposals made by Venezuela. The reason for the failure of the negotiations can be understood when one reads the insulting letter sent by Lord Salisbury to Pauncefote in 1895 in which he states that Great Britain:

> "[...] cannot consent to hear and submit to the arbitration of another power, or of foreign jurists, however eminent, claims founded on the extravagant pretensions of Spanish officials of the last century, and involving the transfer of large numbers of British subjects, who for long years have enjoyed the stable Government of a British colony, to that of a nation of a different race and language, whose political system is subject to frequent disturbances, and whose institutions do not yet afford adequate protection to life and property. No such result has ever been involved in the questions which Great Britain and the United States have consented to submit to arbitration, and His Majesty's Government are convinced that under the same circumstances the Government of the United States would equally firmly reject propositions of that nature."[384]

[384] *Blue Book 6*. pp. 325-336 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

4.153. In addition to this attitude revealing the illegality and bad faith that characterised British claims, there was the fraud committed through the manipulation of maps and the presentation to the Arbitral Tribunal of adulterated maps with the aim of consummating the aggression against Venezuela and the usurpation of its territory.

d) The manipulation of the maps

4.154. As noted above, the Schomburgk line of 1840 constituted the first ruse of the deception that Great Britain had made to Venezuela; a ruse that recognised as undisputed Venezuelan territory the whole of the upper Barima and the whole of the Cuyuní, from its sources to its mouth.

4.155. This line, which crossed the Cuyuní and the southern basin, was reproduced, with minor variations derived from new knowledge of the geography of the area, in the numerous maps published by the British Government and the Colonial Office, such as the Walker map published in 1872 or the Brown and Stanford maps published in 1875. The map published by Stanford is known as the Schomburgk map. It contains a note stating that the boundaries laid down on it "must not be taken as authoritative |...| And an engagement subsists between the Governments of Great Britain and Venezuela by which neither is at liberty to encroach upon or occupy territory claimed by both".

4.156. When the Schomburgk line began to prove insufficient for British interests, or, as Sir Edward Hertslet, librarian to the *Foreign Office*, noted in his memorandum of 1 June 1886, appeared too favourable to Venezuela,[385] the British Government and the Colonial Office decided to have the maps modified and in 1886 presented a new version of the Stanford map with the Schomburgk line modified and without the accompanying note. The map, altered in 1886, retained, however, the date of 1875, in order to hide the manipulation.

4.157. The modification of the Stanford map of 1875 and the removal of the note accompanying that map were a significant element of British fraud. It had become vital for

[385] Memorandum of Sir E. Herslet about the British Guiana maps. 1 June 1886 (**Annex 25**).

Britain to make the Schomburgk line meet its current interests, which could only be achieved by altering the line and claiming that it was now the line drawn in 1840.

4.158. The adulterated Schomburgk line was not the Prussian's work, as he had been dead for more than two decades. It incorporated the entire Cuyuni basin as British-claimed territory. Hertslet pointed out in his memorandum of 5 August 1886 that the British claim based on Schomburgk line was lacking any credibility:

> "I should say we could not submit the case to arbitration with the slightest hope of success in face of the contradictory claims which have been put forward in the English published maps, for, in addition to what has been stated above, the map was published by Mr Stanford, under the auspices of the Colonial Office and with everything upon the face of it to denote that it had official sanctions and the boundary marked thereon was approximately the same as that marked on the map which was laid before Parliament in 1840; and, therefore, embracing considerably less territory than was claimed in 1880 or in 1883; besides which it has been considered that 'the argument on the ground of strict right would be hopeless'".[386]

4.159. Before the Venezuela Boundary Commission created by the U.S. Congress, attorney James Storrow and legal counsel William Scruggs on behalf of Venezuela warned about Salisbury's lies:

> "The new line, invented or first asserted in 1886, thus appeared as if it were the original line of 1875 [...]. However, the Foreign Secretary, Lord Salisbury, referred to that line on 13 February 1890 as "the line drawn by Sir Richard Schomburgk in 1841."[387]

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[386] Transcription of the Memorandum by Sir E. Herslet, Librarian of the Foreign Office, 22 October 1886 (**Annex 28**).

[387] Further documents relating to the Question of Boundary between British Guiana and Venezuela, presented to both Houses of Parliament by Her Majesty (1896), London: Printed for Her Majesty Stationary Office, p. 9 (available at: https://books.google.co.ve/books?id=ejw8AAAAMAAJ&pg=RA1-PA9&lpg=RA1-PA9&dq=the+new+line,+invented+or+first+asserted+in+1886,+thus+appeared+as+if+it+were+the+original+line+of+1875&source=bl&ots=jesTM4HzMn&sig=ACfU3U3aqQNQzTvCyz-RYAy6Iq-

4.160. Hertslet also noted that this was a corrected map in which a note on the original map had been removed. As said above, the note from the map that had been intentionally deleted read:

> "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. The boundaries thus established between Brazil, on the one hand, and Venezuela, on the other, and the Colony of British Guiana are not, however, to be considered reliable, as they have never been adjusted by the respective Governments, and there is a compromise between the Governments of Great Britain and Venezuela by which neither of them is at liberty to invade or occupy the territory claimed by either."[388]

4.161. In Great Britain's fraudulent strategy, it was essential to eliminate any trace of the existence of the 1850 Agreement, and this affected the aforementioned note which warned of the existence of an undertaking regarding the impossibility of occupying the disputed territory.

4.162. Proof of the fraud and manipulation was provided by the jurists Storrow and Scruggs when they noted that in June 1886, Sir Robert Herbert, Permanent Under-Secretary of State for the Colonies, had, on the orders of Earl Granville, Secretary of State for Foreign Affairs, "ordered the boundaries to be corrected and all existing copies of the map to be destroyed".[389]

4.163. The British knew in 1886 that their official maps had claims so diverse and inconsistent with each other that it was impossible to justify them legally, and that a court

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z5o_8Dw&hl=en&sa=X&ved=2ahUKEwj7rvevzJ6FAxW5mIQIHTc8CGIQ6AF6BAgsEAM#v=onepage&q=the%20new%20line%2C%20invented%20or%20first%20asserted%20in%201886%2C%20thus%20appeared%20as%20if%20it%20were%20the%20original%20line%20of%201875&f=false)./

[388] Misterio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Memorandum on the Guiana Boundary Maps by Sir. E. Herslet, Bibliotecario del Foreign Office, 1886, Box: E-04 (**Annex 177**).

[389] *Ibid.*

of law could never grant these claims. The expansion of the territorial encroachment drawn on each of the lines on the map was a planned dispossession by a strong country against a weak country, and the impossibility of legally supporting the alleged expansion explained the British refusal to submit the dispute to an arbitral tribunal.

4.164. It was from 1896 that Britain decided to accept arbitration over the disputed territory as part of an overall settlement of its relations with the United States. This unthinkable situation for the British before 1896 changed their approach to the dispute. If previously they had used published maps to impose non-existent lines by the use of force, now the maps became evidence against British arguments and were proof that the British arguments were legally untenable. The historical reality is that the maps were not designed for the Tribunal but for the British aggression against Venezuela in the previous decades. Once they became public documents they could not be denied, and their adulteration concealed from the Paris Tribunal. The embarrassing situation was to be resolved before the Arbitral Tribunal by inventing the excuse that it was a mistake. It was certainly not. The Hertslet memorandum is proof of the British conscience that a territorial expansion plan supported by falsification of maps was being pursued.

4.165. Shocking as they are, these stratagems were used once again by the British to deceive the Paris Tribunal in 1899.

IV. VENEZUELA'S PROTESTS AGAINST THE ILLEGAL CLAIM TO ACQUIRE TITLE BY PRESCRIPTION

4.166. The British strategy was aimed at securing an alleged title to Venezuelan territory by prescription, which required effective occupation and the assent of the sovereign state of the territory. Neither occurred in this case.

4.167. As has already been noted, there was never any effective occupation by Great Britain of the territory that was intended to be taken from Venezuela. And although there were incursions aimed at exploiting the territory's mineral resources, Venezuela was steadfast in its opposition. Venezuela's protest against the British claims precluded any possible statute of limitations and support the thesis that Venezuela was misled about the

scope of Article IV of the Washington Treaty and that its incorporation sought to legitimise the illegal usurpation of Venezuelan territory.

4.168. An analysis of Venezuelan practice in the face of the British onslaught leaves no doubt that Venezuela constantly challenged and rejected these practices. This can be seen in the Venezuelan reactions to British boundary proposals, which are evidence of its opposition.

4.169. As already noted, Venezuela expressed its refusal to accept the 1840 Schomburgk line as the boundary between Venezuela and British Guiana, which forced Great Britain to remove the pillars and posts. The same happened with Granville's proposal of 15 September 1881. Venezuela's rejection of it on 15 July 1882 included protests and criticism of the line drawn.[390]

4.170. The proposal of a new line by Rosebery again provoked Venezuela's rejection, which is evident in the notes of its representative in London, Guzmán Blanco, dated 28 and 29 July 1886, to which reference has already been made.

4.171. The Schomburgk line set out in Salisbury's Pro Memoria of 1890 was also rejected by Venezuela in two notes, dated 13 February 1890, sent to Mr. Saint John. The first of these reads:

> "The present Government of Venezuela, a constitutional, prudent, and pacific Government which has given no cause of complaint to Great Britain, but, on the contrary, is desirous of renewing the diplomatic relations with Her British Majesty, was in hopes that the conditions imposed by Her British Majesty's Government with this object would be less severe for Venezuela than those formerly demanded of the Government representative, who in 1887, interrupted the diplomatic relations with Her British Majesty's

[390] Memorándum de Urbaneja, 15 July 1882, AHMPPRE. Archivo Histórico. Memorándum. Declara que Venezuela no acepta la proposición hecha por Granville el 15 de septiembre de 1881 y expone las razones. Sobre los límites de Venezuela y su derecho. Hace un recorrido de las negociaciones con Gran Bretaña y de la ocupación del territorio venezolano. País: EUA, N° 471, pieza 3. 1882.

> Government, and of whom Her British Majesty's Government may have cause of complaint".[391]

4.172. The same happened with Rosebery's proposal of 1893, as attested to in the Memorandum of Mr. José Andrade accompanying the note sent to Mr. Gresham,[392] in which he warns that if previous proposals had already been rejected, there was all the more reason to reject this one, and indicates that this is what Mr. Michelena did.[393]

4.173. The events preceding the severance of diplomatic relations demonstrate Venezuela's opposition to the British excesses, as evidenced by the Muñoz Tebar and Rodil Commission. When Venezuela learned of the acts of jurisdiction being carried out by the British authorities in Amacuro, Barima, Cuabana, Guariramuri and the exploitation of the gold mines located between the Cuyuni and Mazariuni rivers, Dr. Urbaneja brought it to the attention of Mr. Saint John.[394] When the latter replied that these places were British territory,[395] Venezuela asked the British Minister in Caracas for explanations and, as these did not satisfy him, the Bolivarian Republic demanded the evacuation of the occupied territory from the Orinoco to the Pomarón and the submission of the dispute to arbitration.[396]

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[391] Notes sent to Mr. Saint John, 13 February 1890 (**Annex 34**).

[392] Memorandum relating to the Question of Limits between Venezuela and British Guiana, presented to the Honorable W. Q. Gresham, Secretary of State, by José Andrade, 31 March 1894 (**Annex 39**).

[393] *Ibid.*

[394] Letter from Diego B. Urbaneja, Minister in Venezuela, to F. R. St. John in Caracas, 26 January 1887 (**Annex 31**).

[395] Letter from Chas Bruce to Manuel L. R. Andrade, Consul of Venezuela in Georgetown, 6 January 1887 (**Annex 30**); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 153-154 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

[396] Letter from F. R. St. John in Caracas to Diego B. Urbaneja, Minister in Venezuela, 11 February 1887 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 155-156 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

4.174. Venezuela took the same attitude when Great Britain denied having authorised Mr Porter's request for the construction of a lighthouse at Punta Barima[397] and when it opposed Great Britain's cynical authorisation for its construction.[398]

4.175. The moment when diplomatic relations were broken off allowed Venezuela to protest against the acts of dispossession committed by Great Britain and to draw up a list of grievances. In the note sent by Dr. Urbaneja to Mr. Saint John on 20 February 1887,[399] it is stated that:

> "Great Britain has violated the territory of Venezuela by entering it through forbidden places, by appointing Commissioners, by establishing Government offices in which the English flag flies, by seizing, trying, and punishing an employee of Venezuela, by sending there with armed police officers a judge who has notified those places to be British, decreeing prohibitions of commerce, travelling with a coastguard the space between Amacuro and Barima, comprising these rivers in the jurisdiction of the Governor of Demerara, authorising the benefit of mines included in the soil of the Republic, and exercising other acts of dominion.

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[397] Note from Dr. Urbaneja to Mr. Saint John, 31 January 1887. *Blue Book 6*, pp. 162-164 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 162-164 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

[398] Letter from F. R. St. John in Caracas to Diego B. Urbaneja, Minister in Venezuela, 7 February 1887 (Annex 32); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*. pp. 161-165 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/). The note of 31 January can also be consulted in AHMPPRE, Archivo Antiguo, Petición de Sir Robert Ker Porte, colocación de faro en Punta Barima. Desconocimiento de autoridad de Sir Ker Porte por parte de G. B. Gran Bretaña reclama derechos sobre Punta Barima. Punta Barima es propiedad exclusiva de Venezuela. Ninguna de las propuestas de Lord Aberdeen, Lord Granville y Lord Rosebery, incluyen la Isla Barima. País: Gran Bretaña, Vol. 148, Exp. 12, Folios 129-141. 1887.

[399] *Blue Book 6*, pp. 167-174 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4); *Official history of the dispute between Venezuela and Great Britain on their Guiana boundaries*, pp. 167-174 (English version available at: https://www.loc.gov/item/04010002/; Spanish version: https://www.loc.gov/item/31020869/).

Britain has arrogated to itself the right to decide for itself and before itself and on its own behalf a question that concerns it as much as Venezuela.

Great Britain has declared itself the owner of the Orinoco, the great river artery of northern South America, seizing the Barima channel, one of its mouths, and by this means the trade of vast regions belonging to several countries.

Britain has followed a course of action with Venezuela that it has condemned in others.

Great Britain has been founded to declare as its own the places where it has just settled, where its boundaries are in dispute with Venezuela.

Great Britain has violated to its advantage the agreement which it itself proposed to Venezuela on 18 November 1850, and occupied the territory guaranteed by it.

Britain intends to make the establishment of a lighthouse at Punta Barima, over which its Chargé d'Affaires on 26 May 1836 spontaneously recognised Venezuela's sovereignty, subject to conditions.

Britain does not want to apply to Venezuela the arbitration it applied to the United States of America in 1827 and 1871 to settle boundary issues, in the latter case at its repeated insistence.

Britain has been progressively increasing its advances from Essequibo to Pomaron, Moroco, Guaima, Barima and Amacuro.

Great Britain has thus violated Venezuela's rights of sovereignty and independence by depriving it of the holiest and most inviolable property of a nation, namely that of its territory."[400]

[400] *Ibid*, p. 173.

4.176. After this rupture, Venezuela continued to protest every act that were an attack on its sovereignty. Ezequiel Rojas gave a good account of these protests in the letter sent on 16 November 1894 to the Venezuelan Consul in Demerara in which he noted that:

> "As soon as the occupation of the territories stretching as far as the Cuaima, Barima and Amacuro was effected, he raised his voice in protest against the conduct of Great Britain. On December 16, 1889, he denounced before the civilised world, as an attack on the principles governing the international treatment of educated countries and as a mockery of morality and justice, Sir Charles Bruce's decree of the 4th of the same month and year, which declared Barima a British colonial port. At the same time, he reiterated his protests of 20 February 1887 and 15 June and 29 October 1888 against previous encroachments on Venezuelan territory, and did the same with regard to the act of jurisdiction which the Colony had attempted to exercise over Venezuelan land by authorising the construction of a road linking Demerara with the then Federal Territory of Yuruary. On September 1, 1890, he also lodged a formal protest against a provision issued in Georgetown by order of the Governor of Demerara, where under the pretext of establishing an additional District under the name of "Pomaron" and altering the demarcation of the District called "North-West," boundaries were fixed contrary to our law and visibly aimed at extending the radius of usurpation.
>
> The establishment of the so-called Government and Police Station in Alto Cuyuní was opposed by Venezuela by means of a protest, also solemn, which it raised before all the civilised peoples of the world on 30 December 1891, and in which it declared that the acts of Great Britain referred to in the same document were considered to have been exercised in territory whose absolute possession the Government of the Republic demanded with irrecusable historical titles and in the name of the principles of the Law of Nations.
>
> Finally, on 26 August 1893, when an *ad hoc* agent was discussing in London, on instructions from the Government of the Republic, the matter of boundaries, in search of a decent settlement, the attention of Her Majesty's Department of Foreign Affairs was drawn to the fact that plans for exploitation were announced, This territory has been maintained by Venezuela with arguments of law, which are as

> firm and valid today as at the time of its first exposition. On the following 6th October, a solemn protest was made to the aforesaid claim, since the British Government had not attended to it as was just.
>
> Never, either before or since the conduct of England in this question has shown the character of intransigence which for some time has been pointed out, has the Government of Her Britannic Majesty presented any proof or argument which could disprove a single one of the protests referred to. While England gives as reasons facts of force, Venezuela exhibits titles of high value, and, animated by the most conciliatory spirit, urges with eagerness for the termination of the dispute in a manner equally decorous to both parties. She embraces the practice of arbitration, judging it to be the most consonant with the ideas of Modern Law, and is, today as yesterday, ready to settle the vexatious boundary dispute with the Colony of Demerara, if Great Britain, more forgetful of her material resources than of her marks of a civilised and cultured Nation, does not oppose humiliating restrictions to the proposal of the Government of the Republic.
>
> The execution of the projected road from the headwaters of the Barima to the Cuyuní or the Yuruán would undoubtedly produce a collision with the Venezuelan authorities in that area, and would be the cause of new acrimony in a controversy that it is in the interest of both parties to bring to more conciliatory ground".[401]

4.177. Regarding this last claim by the Colony, Venezuela's note of protest once again makes clear Great Britain's bad faith and recalls the commitment made in the 1850 Agreement. Its text reads as follows:

> "In the periodical called the Daily Chronicle, of Demerara, British Guiana, there is a decree of the colonial governor, Sir Charles Bruce, dated December 4, 1889, in which Barima, or the great mouth of the Orinoco River, is declared to be an English colonial port, and the line known as "the Shomburgk line" is assumed to be the boundary between British and Venezuelan Guiana. Now, according to Lord Aberdeen's statement, made to Mr. Fortique, the Venezuelan

[401] *Ibid.*, pp. 278-280.

Minister in London, Shomburgk was never authorized to occupy any part of our territory, not even that inhabited by tribes of savage Indians; that the stakes and signs placed by him were only intended to indicate a line which would be the subject of future negotiation between the two nations; and that no military stations or posts were known to have been established, nor the British flag to have been hoisted over the disputed territory. This was in 1841, and the Venezuelan Government soon sought the removal of the marks and posts indicated.

Now, however, following its system of previous usurpations, the Demerara Government does not hesitate to declare Barima a colonial port, set up a police station there and take possession of the neighboring country; all without permission or license and in open disregard of all those principles of justice which govern the international relations of civilized nations.

The Government of the United States of Venezuela therefore finds it necessary to protest, and hereby formally and solemnly protests, against the acts of the Government of Demarara in declaring Barima a colonial port; and does so in the same form and manner as expressed in its protest of February 27, 1887, and of June 15 and October 29, 1888, against previous usurpations of Venezuelan territory.

It also protests against the act of jurisdiction that the same colony has recently pretended to exercise over Venezuelan land by authorizing the construction of a road that will put Demerara in the federal territory of Yuruary. That territory belongs exclusively to the Republic and is under its sole and exclusive jurisdiction, never having been considered as disputed territory between Venezuela and Great Britain.

Moreover, the last named power is prohibited from claiming or occupying it by the very terms of the agreement which it itself proposed and concluded with Venezuela in 1850 through Mr.

> Bedford Hinton Wilson, then British Chargé d'Affaires in this capital".[402]

4.178. In short, Venezuela has never ceased to express its opposition to the excesses of Great Britain, making clear the intention of the Government of the Republic never to recognize, for any reason whatsoever, the violent possession by the British of places whose dominion belongs to Venezuela.

4.179. In view of the above, the conclusion is obvious: Great Britain never had title to territorial sovereignty over the territory of Guayana Esequiba and this was made clear by President Guzmán Blanco in the communication he made to Mr. J. A. Olavarría, Chargé d'Affaires of Venezuela on 17 May 1888 in which he warned that:

> "It is thus pretended that the usurpations made on the left of the Essequibo are legitimised by Venezuela, with the abandonment of the claims up to that river, pointing out as an alinderable space what is outside of what is possessed by the English. They plead in their favour prescription; but I have made it appear that it would in this case be contrary to the treaties, and that as the Dutch or British possession has been the subject of constant complaints and claims, resisted by force of arms, supported only by the violence of the usurpers, not consented to even once, and of a date which cannot be considered but recent in the life of nations, it has not the characters of peaceful, uninterrupted, and durable which might justify it. [...] On the other hand, if the mere fact of possession is a means of acquisition, as the English have taken possession since 1884 of Barima and Amacuro and other places, and are holding on to them by force, tomorrow or another day they will maintain that the territory belongs to them because Venezuela has not thrown them out. This is all the more extraordinary because it is linked to the attempt to dispossess the Republic of what it possesses with

[402] AHMPPRE, Old Archives, Great Britain, Guyana Boundaries, 1889-1890, Vol. 153, File No. 22, folio 367-373 (available at: https://history.state.gov/historicaldocuments/frus1890/d487).

unimpeachable titles, such as the mining territory of the Yuruary."[403]

[403] AHMPPRE, Comunicación sobre el proyecto de tratado para ser presentado a Lord Salisbury. Guzmán Blanco propuso la evacuación del territorio entre el Orinoco y el Pomarón, además del arbitramiento para decidir la controversia general hasta el Esequibo (límite que sostiene Venezuela). Menciona el despojo a la fuerza de parte del territorio venezolano. País: EUA, Exp. 471, Pieza 4, Folios 20-24. 1888.

CHAPTER 5: THE BRITISH-USA SWINDLE DISGUISED AS AN ARBITRATION PROCESS LEADING TO A FRAUDULENT, ABUSIVE AND UNJUST OUTCOME

5.1. The preceding Chapter demonstrates that for sustaining a growing sovereignty claim over the Guayana Esequiba that never found any legal basis, the British Empire claimed for itself Venezuelan territory for the sole reason of its Imperial desire of territorial expansion, and that it manipulated, lied, pressured, threatened, concluded the 1850 agreement not to honour it in good faith but to mislead Venezuela's trust, all while stubbornly refusing to resort to legal arbitration where the law, only the law, would rule on the dispute. If the British finally accepted to enter into an arbitration process, it was under the U.S. pressure, and to ward off the risk of seeing the work of the Venezuelan Boundary Commission concluding, as it had to, that the "true boundary" had always been the one claimed by Venezuela.

5.2. But, as will be shown in this Chapter, accepting arbitration did not mean, for Great Britain, that it was ready to let its claim arbitrated according to international law. It had repeatedly made it very clear that any outcome which would not be in line with its interests would be rejected. The U.S., only focused on its objective which was to give substance to the Monroe Doctrine, not on the objective of securing a sound legal solution to the dispute, shown itself open to bend the arbitration process to suit with the interests of Great Britain.

5.3. As a matter of fact, the 1899 Arbitral Award, issued on the basis of the 1897 Treaty, marked the culmination of a series of "political transaction[s] carried out behind Venezuela's back and sacrificing its legitimate rights",[404] making Venezuela the victim of a corrupted arbitral process, or, in other words, of an "arbitration fraud".

5.4. The list of peculiarities that mar the entire arbitration process is, no doubt, a textbook case of what can corrupt such a process:

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[404] Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations, 14 February 1962 (**Annex 140**).

- Venezuela has been compelled to conclude a treaty that was *patently* prejudicial to its interests, retroactively retaining rules on "adverse holding" that had always been rejected as legally irrelevant by Venezuela, and that were never argued by the British, the 1850 agreement enshrining the reverse rule, namely that no Party had the intention to occupy the disputed territory;

- Venezuela has been precluded from having *any* effective role in the negotiation of the Washington Treaty.

- The arbitral proceedings, in turn, conducted on the basis of this Treaty, were marked by grave irregularities and violated essential principles of the administration of justice, resulting, in the words of a close observer, in "the general discrediting of the cause of arbitration".[405]

- As a result, Venezuela found itself to be victim of an award that has no relation whatsoever with the application of international law but represents the result of a bargaining process dictated by political considerations. Such award cannot be anything but null and void.

5.5. In several official documents, including in statements before the United Nations, Venezuela has provided a detailed and extensive account of the background to the conclusion of the 1897 Treaty and of the proceedings resulting in the Arbitral 1899 Award.[406] The rich historical analysis contained therein remains valid until today. For the sake of conciseness, this chapter will focus on some of the key episodes in the larger history of the injustice committed against Venezuela in the period between 1896 and 1899.

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[405] From Richard Olney to President Grover Cleveland (27 December 1899): Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 43 (**Annex 150**).

[406] See, among others, Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations, 14 February 1962 (**Annex 140**); Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 43 (**Annex 150**); Ministerio de Relaciones Exteriores República de Venezuela, Los límites de Venezuela con la Guayana Británica (1962); Ministerio de Relaciones Exteriores Republica de Venezuela, Reclamación de la Guayana Esequiba: documentos 1962-1981 (available at: https://peacepalace.on.worldcat.org/placehold/formData/oclcNum).

5.6. The chapter is divided into two sections. The first addresses the negotiation of the *compromis* and the conclusion of the 1897 Treaty. The second section deals with the conduct of the arbitral proceedings resulting in the Arbitral 1899 Award.

SECTION I: THE NEGOTIATION OF THE *COMPROMIS* AND THE CONCLUSION OF THE 1897 TREATY

5.7. Contrary to what a normal situation would have required, where two equally sovereign States negotiate a treaty as crucial as a treaty establishing an arbitral tribunal in charge of determining their common boundary, the 1897 Treaty was not the result of exchanges between Great Britain and Venezuela.

- Venezuela had no role in the negotiations, which were conducted *exclusively* by the United States and Great Britain.
- The result was a text that was patently prejudicial to the interests and dignity of Venezuela in respect to crucial issues, including *the composition of the future tribunal* and *the definition of the applicable law*.
- The text of the treaty, which was negotiated by United States Secretary of State, Richard Olney, on the one hand, and by Great Britain's Prime Minister, Lord Salisbury, the Secretary of State for the Colonies, Joseph Chamberlain, and Great Britain's Ambassador in Washington, Sir Julian Pauncefote, on the other, was complemented by a number of informal decisions taken by the two parties. Venezuela was never informed of these decisions, even less was it requested to consent to them.
- Finally, the consent given by Venezuela to the text agreed upon by the United States and Great Britain was far from being a free one. Acceptance of the text was the only option available to Venezuela in order to avoid being exposed to the aggressive conduct of Great Britain.

I. VENEZUELA SIDELINED FROM NEGOTIATIONS: "*UNE SITUATION QUASI-COLONIALE*"

5.8. In negotiating the Arbitration Treaty, the United States and Great Britain behaved as if Venezuela were not a sovereign State. Indeed, they took advantage of the situation of weakness in which Venezuela found itself in the last decade of the 19th century. As one authoritative scholar, Paul Reuter, observed, the conditions in which Venezuela was relegated during the negotiations of the arbitration treaty, and later before the Arbitral Tribunal, "révèlent une situation quasi-coloniale".[407]

5.9. No doubt, recourse to arbitration was a long-standing aspiration of Venezuela. As shown in Chapter 6 above, before 1896 Venezuela had repeatedly proposed to Great Britain to settle the territorial dispute by arbitration and on the basis of international law. Until that time, however, Great Britain had systematically refused such solution, or had subjected recourse to arbitration to unacceptable conditions.[408] In a letter of 26 November 1895, Great Britain's Prime Minister, Lord Salisbury, made clear that "Her Majesty's Government cannot in justice to the inhabitants offer to surrender to foreign rule".[409]

5.10. It is also a fact that Venezuela requested the protection of the United States in order to resist Great Britain's aggressive conduct and reach a peaceful solution of the territorial dispute. It was clear that the possibility of submitting the dispute to arbitration could have materialised only with the support of the United States. It was therefore natural that, when,

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[407] P. 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 Vénézuéla". in Mélanges Offerts À Juraj Andrassy. Springer, Dordrecht, p. 246. A similar view was expressed by other authors. See H. Gros Espiell, "Estudio preliminar". Academia Nacional de la Historia (1981), p. 21 ("Las condiciones en las que Venezuela consintió en hacerse representar por dos jueces norteamericanos, sin que existiera un protectorado o cualquier otra institución análoga, se encuentra muy raramente en un procedimiento arbitral y ponen de manifiesto una soberanía cuasi colonial"); C. Sosa Rodríguez, "El Acta de Washington y El Laudo de Paris". in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales, 1983, p. 146 ("Venezuela es tratada como si fuera una colonia o un país bajo mandato").

[408] On the several attempts made by Venezuela to settle the dispute by arbitration, see also Letter from Richard Olney to Thomas Bayard, 20 July 1895 (**Annex 152**).

[409] Letter of Lord Salisbury to Sir Julian Pauncefote, 26 November 1895 (available at: https://history.state.gov/historicaldocuments/frus1895p1/d530).

in 1895, the United States intervened in the dispute, Venezuela accepted, and even encouraged, its mediation.

5.11. At no time, however, had Venezuela asked the United States to negotiate the arbitration agreement on its behalf. The initiative to negotiate such an agreement was taken unilaterally by the United States, without consulting Venezuela. Nor was Venezuela consulted about the content of the agreement.

5.12. Great Britain accepted arbitration only because of the pressure put on it by the United States. In December 1895, the United States Congress had authorised the establishment of a commission "to investigate and report on the true divisional line between the Republic of Venezuela and British Guiana".[410] The establishment of such a commission represented an existential threat to Great Britain's plan to usurp the territories belonging to Venezuela. Only at that point Great Britain accepted to negotiate an arbitration agreement, as confirmed by the Secretary of State for the Colonies, Joseph Chamberlain, in February 1896. Two main reasons were at the basis of Great Britain's change of position. First, by accepting to negotiate an arbitration treaty, Great Britain hoped to put an end to the work of the commission established by Congress, as it indeed happened. *Second*, and more fundamentally, Great Britain realised that it could use arbitration as a means for pursuing its plan to usurp the territory of Guayana Esequiba.[411]

5.13. To obtain that result, it was indispensable for Great Britain to impose certain conditions concerning the composition of the future arbitral tribunal and the law to be applied. This explains why, since the beginning, Great Britain sought to negotiate the arbitration agreement exclusively with the United States. In particular, Great Britain first accepted the United States' proposal, made behind Venezuela's back, that no Venezuelan arbitrators would sit in the tribunal and then insisted in order to have this proposal

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[410] See United States 54th Congress, Act of the United States Congress, Public Act No. 1 (21 Dec. 1895), reproduced in GM, Annex 82.

[411] As observed by P. Ojer, *Sumario Histórico de la Guayana Esequiba*, Maracaibo. San Cristobal, 1982, p. 47, "bajo apariencia de arbitramento de derecho, se despejó el camino para que Gran Bretaña retuviera el territorio, marginando a Venezuela y haciendo caso omiso de sus derechos".

integrated into the arbitration agreement.[412] Keeping Venezuela outside the negotiation process and, subsequently, outside from the arbitration proceedings was for Great Britain the best guarantee for the success of its plan.

5.14. The two negotiating States were aware that, ultimately, they would be able to coerce Venezuela into accepting their conditions; they did not hesitate to exploit their situation of strength vis-à-vis Venezuela. The negotiator for Great Britain, Sir Julian Pauncefote, said it in unequivocal terms:

> "There is no danger of Mr. Olney listening for a moment to the Venezuelan howl for a modification of our terms of Arbitration".[413]

5.15. The position of the United States was enunciated in equally clear terms by the United States Secretary of State, Richard Olney:

> "Today the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. Why? It is not because of the pure friendship or good will felt for it. [...] It is because, in addition to all other grounds, its infinite resources combined with its isolated position render it master of the situation and practically invulnerable as against any or all other powers".[414]

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[412] Telegram from Lord Salisbury to Sir Julian Pauncefote, British Ambassador in Washington (5 June 1886), in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts. 1967, p. 36 (**Annex 150**). "We should also accept its application to Venezuela if. for this purpose. the United States will stand in the place of Venezuela".

[413] Private letter from Sir Julian Pauncefote, British Ambassador in Washington, to Lord Salisbury, 8 December 1886, in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 36 (**Annex 150**).

[414] Letter from Mr. Olney to Mr. Bayard, 20 July 1895 (available at: https://history.state.gov/historicaldocuments/frus1895p1/d527).

5.16. The evidence confirms that the United States and Great Britain systematically avoided to request the consent of, or to consult, Venezuela during the different stages of the negotiations.[415]

5.17. On 20 July 1895, Secretary of State Olney sent a note to Great Britain by which he forcefully requested Great Britain to submit the Venezuelan boundary question in its entirety to impartial arbitration.[416] This note represented the first act of active involvement of the United States in the territorial dispute. As already observed, the reason that prompted this initiative had nothing to do with the intention to protect Venezuela's interests. The United States seized the opportunity offered by Great Britain's aggressive conduct against Venezuela to affirm its role as emerging power. Venezuela was used as a piece of a broader negotiation process in which the main objectives were that of reaffirming the centrality of the Monroe doctrine and of promoting the project of general convention on arbitration as well as other arbitrations with different states. President Cleveland recognised this expressly:

> "I hope there are but few of our fellow-citizens who, in retrospect, do not now acknowledge the good that has come to our nation through this episode in our history. It has established the Monroe Doctrine on lasting foundations before the eyes of the world; it has

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[415] On the scandalous lack of any involvement of Venezuela in the negotiations see Academia Nacional de la Historia, "Declaración acerca del problema de los límites de Venezuela con la Guayana Británica" (1965), reported in Boletín de la Academia Nacional de la Historia, 2004, p. 167; P.F.M. De Veganuan, El Esequivo, frontera de Venezuela: documentos históricos y experiencias personales, SA Impresiones (1968), p. 171; H. Gros Espiell, "El conflicto limítrofe entre Venezuela y Guyana en un Libro Reciente", in Humanitas: Anuario del Centro de Estudio Humanísticos, 1980, p. 684; J. A. Zambrano Velasco, The Esequibo. Our Historical Claim, Imprenta Nacional (1982), p. 8; H. González Oropeza and M. Donis, Historia de las Fronteras de Venezuela, Cuadernos Lagoven (1989), p. 161; E. Herrera, Por qué se ha reducido el territorio venezolano?, Alfadil (1990), p. 75; J. C. Rey, La Reclamación Venezolana sobre la Guayana Esequiba, Instituto Internacional de Estudios Avanzados (IDEA) (1990), p. 10; M. Bello, "Formación de los límites terrestres de Venezuela", in Aldea Mundo, Revista sobre Fronteras e Integración, 2008, p. 14; R. Sureda, Venezuela y la Guayana Esequiba, in GeoVenezuela, 2008, p. 351; G.R. Salas, "Las controversias limítrofes pendientes en América del Sur. La cuestión del Esequibo", in Revista de la Facultad, Universidad Nacional de Córdoba (2011), p. 71; C.A. Briceño Monzón, La cuestión fronteriza en la conformación de la política internacional en Argentina y Venezuela: Siglos XIX-XX, Universidad Nacional de La Plata (2014), p. 277.

[416] Letter from Mr. Olney to Mr. Bayard, 20 July 1895 (available at: https://history.state.gov/historicaldocuments/frus1895p1/d527).

> given us a better place in the respect and consideration of the people of all nations, and especially of Great Britain; it has again confirmed our confidence in the overwhelming prevalence among our citizens of disinterested devotion to American honor; and last, but by no means least, it has taught us where to look in the ranks of our countrymen for the best patriotism.
>
> In these circumstances neither the character of the people claiming the soil as against Great Britain, nor the value of the lands in dispute, was of the least consequence to us; nor did it in the least concern us which of the two contestants had the best title to any part of the disputed territory, so long as England did not possess and colonize more than belonged to her-however much or however little that might be. But we needed proof of the limits of her rights in order to determine our duty in defense of our Monroe Doctrine; and we sought to obtain such proof, and to secure peace, through arbitration".[417]

5.18. This explains why, since the beginning, the United States did not contemplate to involve Venezuela in the negotiations. As remarked by a leading British historian:

> "[n]ot a word was said to Venezuela about the note, though its proposals affected her deeply. What seems to have been uppermost in Olney's mind, indeed, was not the interests of Venezuela but the interests of the United States, the vindication of the Monroe Doctrine, and, I would add, of the paramount position of the United States in the western hemisphere".[418]

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[417] S. A. Consalvi, *Grover Cleveland y la Controversia Venezuela-Gran Bretaña*, Tierra de Gracia Editores, 1992, p. 120-122 (available at : https://www.unikeslibrary.com/pages/books/5365/simon-alberto-consalvi/grover-cleveland-y-la-controversia-venezuela-gran-bretana-bretana-la-historia-secreta). The link between the solution of the Venezuelan question and the proposal of a general convention for the settlement by arbitration of all controversies between the United States and Great Britain emerged clearly from the Telegram from Olney, Department of State of the United States, to Bayard, Ambassador to London, 16 January 1896 (**Annex 57**). For the relations existing between the Venezuelan arbitration and other contemporary arbitrations, see Letter from Choate to Hay, 20 September 1899 (**Annex 172**).

[418] R. A. Humphreys. Anglo-American Rivalries and the Venezuela Crisis. *Transactions of the Royal Historical Society*, Vol. 17, 1967, pp. 131-164, at 151. On the real motivation behind the intervention of the United States see also P. Ojer. *Sumario Histórico de la Guayana Esequiba,* Maracaibo, San Cristobal. 1982, p. 40 ("los Estados Unidos se propusieron aprovechar la cuestión guayanesa pasa

5.19. As already said, in December 1895, the President of the United States, Cleveland, asked the Congress to establish a commission for determining the line of division between Venezuela and British Guyana and, "[o]nce again, Venezuela was not consulted".[419]

5.20. Negotiations of the text of the arbitration agreement only started in 1896. A first round of negotiations took place between February and June 1896. The result of this negotiation only was made available to Venezuela through the publication of the correspondence between the United States and Great Britain.

5.21. A second round of negotiations then took place in the fall of the same year. In September 1896, the Secretary of State for the Colonies, Joseph Chamberlain, who had a key role in the negotiations, made a visit to the United States and had "a private interchange of opinion" with Secretary of State Olney on the "Venezuelan question".[420] Chamberlain expressed its conviction that "neither party [the United States and Great Britain] can desire a solution which would be humiliating to the other and it must be possible to find an arrangement free from this objection".[421] Chamberlain made clear that Great Britain regarded the possibility of an arbitration based on law which could result in the recognition of Venezuela's legitimate right of sovereignty over Guayana Esequiba as an "humiliating solution". Chamberlain made also clear the conditions he regarded as indispensable to avoid that "humiliating solution": to have the United States as the only counterpart in the negotiation of the arbitration treaty and subsequently in the arbitral proceedings, and to include in that treaty rules on "adverse holding" on which Great Britain could rely to justify

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salir de su aislacionismo, y pasar al plano de gran potencia, mediante la provocación artificial a Gran Bretaña para que los tomara en cuenta y aceptara su doctrina Monroe, es decir la doctrina justificativa de su predominio exclusivo en todo el Continente"); H. González Oropeza and M. Donis, Historia de las Fronteras de Venezuela, Cuadernos Lagoven (1989), p. 93 ("Pero no se crea, como se ha sostenido en diversas oportunidades, que la intervención de Estados Unidos fue producto de la defensa de la integridad territorial de Venezuela en virtud de la Doctrina Monroe. Tampoco su preocupación por las ambiciones territoriales de Gran Bretaña. Tanto el mensaje presidencial como la Nota diplomática obedecieron a otros intereses: los Estados Unidos decidieron aprovechar el caso venezolano para salir de su política aislacionista y entrar en el escenario mundial como potencia emergente").

[419] *Ibid.*, at 155.

[420] Letter from Chamberlain to Olney, 28 September 1896 (**Annex 168**).

[421] *Ibid.*

its unfounded claims.[422] This new round of negotiation led to the adoption, on 12 November 1896, of a protocol containing the essential points of the future agreement. This second round was conducted through confidential exchanges between the negotiators. Venezuela was only informed of the conclusion of the protocol and was asked to accept it, without, in fact, being given any possibility to amend it.

5.22. The position of Venezuela during these different stages of the negotiations is carefully reflected in the message of then Venezuelan President, Joaquin Sinforiano De Jesus Crespo, to the Venezuelan Congress of 20 February 1897. He stated:

> "The first official knowledge the Executive power had of the means employed to induce our powerful adversary to accept arbitration unreservedly and unconditionally, for which Venezuela had always contended, was derived from the publication of the correspondence between the Governments at Washington and London from February to June of the past year, and which, being so favorable to this republic, was sent here to be translated into Spanish and printed. Latterly this Government, through its Legation at Washington, was consulted as to a point in relation to those negotiations for arbitration. The reply of the Venezuelan Minister of Foreign Affairs, with an opinion contrary to that which was seemingly suggested on this point, arrived in Washington at the time when the answers from Great Britain were expected as to the determinate points of the arbitration. At this juncture the Government was informed that on the 12th of November there had been signed in Washington by his Excellency Mr Olney, Secretary of State of the United States, and Sir Julian Pauncefote, Ambassador of Her Britannic Majesty in Washington, a protocol with the essential bases for a treaty between Venezuela and Great Britain, which, by means of arbitration, would put an end to the old dispute between the two nations. The bases were then submitted by the Washington Government for the consideration of this Government by means of a letter to me from his Excellency Mr Cleveland, in which he manifested the noble desire to see

[422] *Ibid.*

> accepted a compact which, in his opinion, was just and advantageous".[423]

5.23. This statement, which is reported also in Guyana's Memorial and whose correctness Guyana does not dispute,[424] confirms:

> that in the first stage of the negotiation, Venezuela was not consulted by the negotiating states and became aware of the existence of a negotiation only through the publication of the relevant correspondence;
>
> that the last document pertaining to the negotiation and made available to Venezuela was a correspondence that took place in June 1896;
>
> that Venezuela was then consulted only on one point but that its opposition in relation to that point was made irrelevant by the conclusion of the protocol of 12 November 1896;
>
> that Venezuela was not informed of the content of the negotiation which took place in the fall of that year; and
>
> that in the end Venezuela was simply placed before the alternative of accepting or not accepting the text agreed upon by the United States and Great Britain.

5.24. All this evidence speaks loudly about the lack of involvement of Venezuela in the negotiations. As it has been noted, "the United States, with British concurrence, acted on Venezuela's behalf, but Venezuela herself was not consulted, or, rather [...] she was not consulted till the very end of the negotiations, and then only perfunctorily".[425] In fact,

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[423] Message from President Joaquín Sinforiano De Jesús Crespo to Congress, 20 February 1897, reprinted in Odeen Ishmael, "Chapter 13: The Arbitral Tribunal and the Award" in Trail of Diplomacy. GNI Publications, 1998 (available at: http://www.guyananews.org/features/trail_diplomacy_pt3.html).

[424] GM, p. 188.

[425] R. A. Humphreys, "Anglo-American Rivalries and the Venezuela Crisis", in Transactions of the Royal Historical Society, Vol. 17 (1967), pp. 131-164, at p. 158. See also J. Aguilera, Las fronteras de Venezuela, Ediciones Minci (1976), p. 69 ("Investigaciones recientes han demostrado que Venezuela fue dejada de lado en el curso de las negociaciones entre Estados Unidos y Gran Bretaña, particularmente en la fase final de las mismas, que por cierto fue la más importante").

Venezuela reacted vehemently against the exclusion of Venezuelan arbitrators, as well as against the inclusions of the rule on "adverse holding". However, its efforts to obtain an amendment to the project of treaty were vain. On the one hand, the person who should have represented the interests of Venezuela in the negotiation, James J. Storrow, a U.S. lawyer who was appointed as Venezuelan representative because of his strong connection to the U.S. Secretary of State Olney, failed to defend the legitimate requests for amendments of its client and in fact acted essentially as an agent of the United States having the task of convincing Venezuela to accept the text as it was. The intense correspondence between Storrow and Olney reveals that Storrow acted constantly under the instructions of the U.S. Secretary of State, and not that of the Government of Venezuela. On the other hand, as will be shown later, the United States made clear that, without the acceptance of the text, it would not have defended Venezuela against the aggressive conduct of the Great Britain. In sum, Venezuela was in fact coerced into accepting the text as it was.

II. THE VERY IDEA OF VENEZUELAN ARBITRATORS RULED OUT

5.25. The most unfair and humiliating manifestation of this quasi-colonial treatment was the extraordinary decision to exclude the presence of any Venezuelan on the bench of the Arbitral Tribunal. Not only did Article II of the 1987 Treaty provide that the Tribunal was to be composed of two English and two American jurists, it also denied Venezuela any say as to the selection of the arbitrators in case of death, absence, or incapacity to serve of any of the four arbitrators named in that provision.

5.26. Venezuela was in fact denied its role as party to the dispute. In the words of Sir Julian Pauncefote, "the question would be arbitrated precisely as if the controversy were between Great Britain and the U.S."[426]

5.27. The way in which the decision over the key question of the composition of the Tribunal was taken is revealing of the approach followed by the two negotiating States over

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[426] Private letter from Sir Julian Pauncefote, British Ambassador in Washington, to Lord Salisbury (8 December 1896): Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 36 (**Annex 150**).

the course of the entire negotiation. The proposal was first advanced by the United States Secretary of State, Richard Olney. In a telegram of 14 January 1896, sent to the United States Ambassador in London, Thomas F. Bayard, he asked to communicate to Great Britain the following proposal: "Tribunal to consist of two members of present American Commission, of two persons chosen by Great Britain, and of a fifth agreed upon by the two Governments [...]".[427] The exceptional circumstance of the exclusion of any Venezuelan arbitrator did not escape the attention of the United States Ambassador, who immediately stated that "Venezuela does not appear to have any [...] participation, nor any voice, in the tribunal of settlement".[428]

5.28. The answer of Olney reveals how little consideration he had for Venezuela, which was nonetheless the main party concerned: "Communicate contents of my cable of fourteenth without delay, leaving British Government, if it thinks it important, to raise question of Venezuela assent".[429] Yet, the British Government, which had no consideration at all for Venezuela, did not find it important to inform it that it would have no arbitrator on the bench. As reported on 26 January 1896 by the U.S. Ambassador in London, "they [Great Britain] consider that Venezuela must be represented in arbitration, but if United States stipulate for Venezuelan concurrence, I believe that would suffice".[430]

5.29. As a result, neither the United States nor Great Britain had found it necessary to consult Venezuela of the decision to exclude Venezuelan arbitrators – a decision which was both unfair and clearly prejudicial to Venezuela's interests. As Sir Pauncefote candidly admitted, such decision was the result of "an implied understanding with us throughout the

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[427] Translation of the Cipher Telegram relating to a letter that Olney sent to Bayard, American Ambassador in London, 14 January 1986 (**Annex 55**). For the importance of this letter in showing that, since the beginning of the negotiations, Venezuela was used by the United States as a piece of a broader negotiation process in which the main objectives were that of reaffirming the centrality of the Monroe doctrine and of promoting the project of general convention on arbitration as well as other arbitrations with different States.

[428] Letter from Thomas Bayard to Richard Olney, 15 January 1896 (**Annex 56**).

[429] Telegram from Olney, Department of State of the United States, to Bayard, Ambassador to London, 16 January 1896 (**Annex 57**).

[430] Letter from Thomas Bayard to Richard Olney, 15 January 1896 (**Annex 56**).

whole correspondence and negotiation that the Arbitrators on the side of Venezuela should be American".[431]

5.30. Great Britain defended the decision on the arrogant ground that "we know of no Venezuelan jurist worthy of the name and whom we could consent to entrust with the function of Arbitrator in such a case".[432] In fact, there were plenty of distinguished Venezuelan legal scholars who could have been chosen to sit as arbitrators.[433] The real reason lies elsewhere and is revealing of Great Britain's expectations about the attitude of the American arbitrators during the arbitral proceedings.

5.31. Great Britain was aware that the United States, unlike Venezuela, had no national sensibility or interest as regards the delimitation of the contested territory, except eventually in relation to the question of the navigation of the Orinoco River. In the words of Sir Pauncefote, the position of the United States in respect of the dispute between Venezuela and Great Britain was that of a "neutral sovereign". In the same vein, the arbitrators appointed by the United States were closer to "an umpire" than that of arbitrators appointed by one of the two contending parties.[434] By contrast, the British arbitrators were appointed specifically to be open to British arguments.

5.32. In sum, it is obvious that, behind the decision to exclude any Venezuelan arbitrator, a fraudulent strategy aiming at predetermining the result of the arbitral proceedings was at play. As asked by one commentator, "would the U.S. Arbitrators representing Venezuela have proceeded in the same way, if what they had decided had been a territorial portion of their country?". It was clear that, in the eyes of the United States arbitrators and lawyers,

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[431] Private letter from Sir Julian Pauncefote, British Ambassador in Washington, to Lord Salisbury (8 December 1886): Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 36 (**Annex 150**).

[432] *Ibid.*

[433] A non-exhaustive list includes the following names: Pedro Manuel Arcaya, José Loreto Arismendi, Juan Bautista Bance, Aníbal Dominici, Ramon F. Feo, Esteban Gil Borges, José Gil Fortoul, Carlos F. Grisanti, Carlos León, Rafael Marcano Rodríguez, Cristóbal L. Mendoza, Néstor Luis Pérez, Simón Planas Suarez, José Santiago Rodríguez, Julio Cesar Salas, Alejandro Urbaneja, Guillermo Tell Villegas, Nicomedes Zuloaga Tovar. See Rogelio Pérez Perdomo, Los Juristas Académicos de Venezuela: Historia Institucional y Biografía Colectiva (2013).

[434] *Ibid.*

"after all, it was a piece of land of the 'barbarian' Venezuela that was in dispute, and it was not worth dragging serious consequences for that cause."[435] Great Britain was aware of it. It was aware that the appointment of two Venezuelan arbitrators would have made the Tribunal less malleable. Hence its interest in excluding the presence of Venezuelan arbitrators.

III. THE RETROACTIVE IMPOSITION OF A LEGAL BASIS FOR THE BRITISH UNFOUNDED CLAIM

5.33. Another manifestation of the fraudulent and unjust treatment of which Venezuela was the victim was the decision to expressly include, among the rules applicable by the Tribunal, the recognition that fifty years' occupation constituted a valid title. In fact, as shown in Chapter 7, the territory of Guayana Esequiba had never been occupied by Great Britain, which had only conducted local incursions. Yet, in the absence of any other territorial title, introducing a provision which recognized "adverse holding" as a valid title represented for the United Kingdom the only means for seeking to legitimize its usurpation of Venezuelan territory. To that end, Article IV (a) of the 1897 Treaty established that:

> "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".

5.34. This rule was clearly prejudicial to Venezuelan interests. Indeed, Venezuela had persistently opposed to recognise effective occupation, of whatever antiquity, as a valid title to the disputed territory. It had exposed its position on the matter on several occasions, including in exchanges with the United States.

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[435] R. Chalboud Zerpa, "Los límites entre Venezuela y el Estado de Guyana: Bosquejo histórico de la controversia existente", in Revista de la Facultad de Derecho de la Universidad Católica Andrés Bello (1987), p. 328 ("Hubieran procedido los árbitros norteamericanos representantes de Venezuela en la misma forma, si lo que hubiesen decidido hubiera sido una porción territorial de su país?... al fin y al cabo, era un pedazo de tierra de la Venezuela 'bárbara' lo que se disputaba y no valía la pena arrastrar graves consecuencias por esa causa").

5.35. In a letter sent to the United States Secretary of State, Richard Olney, on 5 February 1896 – a few weeks, then, after the beginning of the negotiations between the United States and Great Britain –, the Venezuelan Foreign Minister, Pedro Ezequiel Rojas, referring to the work of commission established by President Cleveland, insisted on the importance for Venezuela that "the rights of the two parties to the dispute" be deduced from "arguments of legal or historical force, instead of those based upon fortuitous circumstances or upon the fact of local occupation".[436]

5.36. At the beginning of the negotiations, the United States appeared opposed to the possibility of recognising effective occupation as a valid title. In the note sent to Great Britain on 20 July 1895, the United States Secretary of State, Olney, observed:

> "It is, indeed, intimated that the British claim to this particular territory rests upon an occupation, which, whether acquiesced in or not, has ripened into a perfect title by long continuance. But what prescription affecting territorial rights can be said to exist as between sovereign states?".[437]

5.37. In a letter sent to the British Ambassador in Washington, Sir Pauncefote, on 12 June 1896, the United States Secretary of State changed his position by proposing to leave to the tribunal to decide whether occupation was to be regarded as a valid title under international law. He suggested a text to the effect that:

> "if territory of one party be found in the occupation of the subjects or citizens of the other party, such weight and effect shall be given to such occupation as reason, justice, the rules of international law, and the equities of the particular case may appear to require".[438]

5.38. This proposal was not accepted by Great Britain, which regarded Olney's text as not yet providing sufficient guarantees for the recognition of its claims by the future

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[436] Letter from Mr. Rojas to Mr. Olney, 5 February 1896 (available at: https://history.state.gov/historicaldocuments/frus1895p2/d767).

[437] *Ibid.*

[438] Letter from Mr. Olney to Sir Julian Pauncefote, 12 June 1896 (available at: https://history.state.gov/historicaldocuments/frus1896/d182).

tribunal. To overcome the resistance of the counterpart, Secretary of State Olney changed again his position. In order to reassure Great Britain that the Arbitral Tribunal would recognise effective occupation as a valid title, and in fact rule in its favor, he advanced the following proposal:

> "Can it be assumed that Her Majesty's Government would submit to unrestricted arbitration the whole of the territory in dispute provided it be a rule of the arbitration, embodied in the arbitral agreement, that territory which has been in the exclusive, notorious, and actual use and occupation of either party for even two generations, or say for sixty years, shall be held by the arbitrators to be the territory of such party?"[439]

5.39. Effective occupation thus became the rule that should have guided the arbitrators. After further modifications made to accommodate some additional requests of Great Britain, Olney's proposal became Article IV (a) of the Arbitration Treaty, which, as seen, established that "[a]dverse holding or prescription during a period of fifty years shall make a good title". The rule was strongly contested by the Venezuelan Government, which however was not in a position to oppose its insertion in the arbitration agreement. In a pathetic attempt to convince the Government to accept the clause, Storrow presented the rule on "adverse holding" as a great success, thus revealing that his real role was that of protecting the interests of the United States, and not that of Venezuela.[440]

5.40. In sum, the United States Secretary of State did not hesitate to sacrifice the rights of Venezuela to see its title recognised, favouring the British illegitimate and fabricated claim, in order to affirm the role of the United States in the American continent. Venezuela was never informed of the change of attitude of the United States: "The bargaining took

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[439] *Ibid.*

[440] Letter of J. J. Storrow to Secretary of State Olney, 29 November 1896, Richard Olney Papers, Vol. 67, No. 11878-11887, Library of Congress, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p. 15 ("But, we said, it was not a concession. Prescription was, I thought, our strongest ground, and I wanted G.B. to agree to it; and of all possible terms, fifty years was the best for us").

place, of course, without Venezuela's acceptance (or even knowledge)".[441] Venezuela was made aware of the decision taken by the two States only at the end of the negotiations, when "it became apparent that Venezuela would have to be cajoled or coerced into signing the treaty".[442]

IV. KEY DECISIONS TAKEN BY THE UNITED STATES OF AMERICA AND GREAT BRITAIN DURING THE NEGOTIATIONS CONCEALED FROM VENEZUELA

5.41. As already observed, during the most delicate phase of the negotiation, which took place in the fall of 1896, Great Britain and the United States decided not to take public record of their exchanges and to keep their correspondence strictly confidential.

5.42. This circumstance finds confirmations in the words of the United States Secretary of State, Olney:

> "I have yours of the 25th of June and have delayed answering only to get assurance from Washington that the last thing of record relative to the British-Venezuela Boundary Dispute in the Department of State is my letter of July 13, 1896. Mr. Cridler – Third Assistant Secretary – so writes me, and his statement accords with my own recollection. When Sir Julian and myself returned to Washington in the fall of that year, the negotiations proceeded with great activity at personal and informal interviews of which I at least kept no memoranda".[443]

5.43. In a letter of 24 May 1899 to the British Ambassador, Sir Pauncefote, Olney described the second round of negotiations as follows:

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[441] E. Mondolfi, El Presidente Benjamín Harrison y la mediación de los Estado Unidos en la controversia de límites entre Venezuela y Gran Bretaña. Biblioteca de la Academia Nacional de la Historia (2000), p. 175 ("El regateo tuvo lugar, claro está, de espaldas a la aceptación (cuando no al simple conocimiento) por parte de Venezuela").

[442] George B. Young, "Intervention under the Monroe Doctrine: The Olney Corollary", in *Political Science Quarterly*, 57(1942), p. 276.

[443] Letter from Richard Olney to Benjamin Harrison, 8 July 1898, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p 23.

> "When you and I returned to Washington in the Fall of 1896 and went to work on the Venezuela business industriously and kept at it continuously. But we did so mostly by informal personal talks or, so far as the negotiations were in writing, by equally informal and private notes, none of which were regarded by me as of an official character or were allowed to go on to the files of the State Department".[444]

5.44. No explanation was given of the reason why the exchanges between the two negotiating States were kept strictly private and confidential in the most intense phase of the negotiation. The reason became clear only during the arbitral proceedings in Paris, when Great Britain made use of the confidential correspondence exchanged between Olney and Pauncefote to compel the American lawyers defending Venezuela to accept their interpretation of fundamental clauses of the 1897 Treaty.

5.45. The evidence makes clear that, during the decisive phase of the negotiation, the United States Secretary of State and the British Ambassador took a number of decisions over the interpretation to be given to the text under negotiation. These "interpretative agreements", which in fact were later treated as complementing and being an integral part of the text of the treaty,[445] were contained in the confidential correspondence exchanged between them.

5.46. As the United States Secretary of State made it clear,[446] such correspondence had to remain confidential. In fact, the Government of Venezuela was never informed about the decisions taken by the negotiating parties.[447]

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[444] Letter from Richard Olney to Sir Pauncefote, 24 May 1899, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p. 25.

[445] *Ibid.*

[446] Letter from Richard Olney to Sir Pauncefote, 24 May 1899, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, p. 25.

[447] See Academia Nacional de la Historia. "Declaración acerca del problema de los límites de Venezuela con la Guayana Británica" (1965), reported in Boletín de la Academia Nacional de la Historia, 2004, p. 169 ("Respecto de importantes cláusulas del Tratado, se le dio a Venezuela una interpretación distinta de la convenida por los negociadores") and J. A. Zambrano Velasco, The

5.47. This fact was known to English and American counsel who took part to the arbitral proceedings in Paris. At a meeting between Harrison and Webster – respectively, the United States appointed lead counsel for Venezuela and the British lead counsel – Harrison, speaking of this confidential correspondence, confessed that "he did not believe the Venezuelan Government has seen it".[448]

5.48. The two following examples are revealing as regards the impact of these informal agreements on the interpretation of the 1897 Treaty.

(i) THE CONCEALED INTERPRETATIVE UNDERSTANDING OF THE PRESCRIPTION RULE SET OUT IN ARTICLE IV OF THE 1897 TREATY

5.49. As already observed, Article IV (a) of the 1897 Treaty recognized the role of effective occupation by providing that "[a]dverse holding or prescription during a period of fifty years shall make a good title". However, this provision did not clarify when the period of prescription was meant to start. In particular, it is not clear what the relationship between Article IV and Article III of the 1897 Treaty is. Article III establishes that, as a first step in the determination of the boundary, the Tribunal had to investigate the extent of the territories belonging to the contending parties "at the time of the acquisition by Great Britain of the Colony of British Guiana", that is in 1814. Given the importance assigned by Article III to the determination of the territory belonging to each party in 1814, Article IV could reasonably be interpreted to the effect that effective occupation was a valid title only if it occurred in the period before 1814.

5.50. In its written memorial submitted to the Arbitral Tribunal, Venezuela defended the argument that Article IV must be read in conjunction with Article III, and that therefore Rules A and B of Article IV of the Treaty had no application to the period subsequent to

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Esequibo. Our Historical Claim, Imprenta Nacional (1982), p. 8 ("While these negotiations were in process, U.S. Secretary of State Olney hid from his own officials, from Venezuela's lawyers and from the Venezuelan government the sense and scope of the commitments which he had acquired with Great Britain").

[448] Letter with Annexure of Great Britain's Leading Counsel, Sir Richard Webster, to Sir Thomas Sanderson (13 June 1899), reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p. 27.

1814, when Great Britain acquired the Colony of British Guiana. In any event, since the dispute began in 1841, no good faith adverse holding or prescription can have occurred since then and, therefore, no effective occupation recorded after 1841, if any, could have had any legal effect.

5.51. In a private note of 2 February 1899, addressed to counsel for Venezuela, Mallet-Prevost, Great Britain expressed its surprise for this argument, suggesting that the position defended by Venezuela was in contrast to the interpretation of the relevant clauses as agreed during the negotiation of the 1987 Treaty. Great Britain went so far as to request the United States counsels defending Venezuela to withdraw that argument.[449]

5.52. The method of sending *ex parte* notes to counsels of an adverse Party, asking them to withdraw such or such argument, is in itself contrary to all rules of justice. Mallet-Prevost made it known in responding that not only he informed the Government of Venezuela of this request of Great Britain, but also that "the counsel for Venezuela [...] must determine for themselves what arguments may be fairly brought forward".[450] In replying to this request, Venezuela forcefully instructed the United States lawyers not to accede to this request, noting:

> "The Government of Venezuela cannot understand by what authority the British Lawyers demand the Lawyers of Venezuela to retract the points of our defence".[451]

5.53. With a letter of 22 April 1899, Mallet-Prevost accordingly refused to "withdraw our argument as to the prescriptive period".[452]

5.54. A few weeks later, the British Ambassador, Sir Pauncefote, raised the issue directly with the United States Secretary of State, Olney. He stressed that:

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[449] Letter from Mallet-Prevost to Sir Richard Webster, 22 April 1899, GM, vol. III, Annex 32.
[450] *Ibid.*
[451] Letter from Calcaño to José Andrade, 23 March 1899 (**Annex 61**).
[452] Letter from S. Mallet-Prevost to Sir Richard Webster, 22 April 1899, GM. vol. III, Annex 32.

> "the period of prescription which we had in contemplation throughout the negotiation was a period (ultimately fixed at fifty years) immediately prior to the date of the Treaty".

5.55. He also communicated that it was the intention of Great Britain to use the diplomatic correspondence exchanged at the time of the negotiation, including a note - "marked at the time 'strictly personal'" - sent by Olney to Pauncefote on 29 October 1896.[453]

5.56. Olney responded in a quite alarmed way:

> "I confess myself quite appalled at the possible and not improbable consequences of our opening up such a field of investigation and inquiry as the letter in question naturally points to".[454]

5.57. The question was settled on 13 June 1899 during a private meeting between the lead counsel of Great Britain, Sir Webster, and the American lead counsel for Venezuela, Harrison. Webster emphasised to Harrison that "the good faith of the United States, through whom the Treaty was made, was involved in the matter".[455] Harrison replied, ignoring straightforwardly the position expressly stated by Venezuela, by giving assurances that American counsel for Venezuela "would argue the case on the assumption that Great Britain was right in her contention as to the application of the fifty years rule".[456] This was indeed the position thereafter taken by the United States counsel in their oral statements before the Arbitral Tribunal.[457]

5.58. As this episode reveals, a crucial legal issue for the destiny of Venezuela's claim over the contested territory was consensually and informally settled by the United States

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[453] Letter of Former British Ambassador at Washington, Sir Julian Pauncefote, to the Former Secretary of State Olney, 12 May 1899, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, p. 24.

[454] Letter from Richard Olney to Sir Pauncefote, 24 May 1899, in *Ibid.*, p. 25.

[455] Letter with Annexure of Great Britain's Leading Counsel, Sir Richard Webster, to Sir Thomas Sanderson, 13 June 1899, in *Ibid.*, p. 27.

[456] *Ibid.*

[457] Verbatim record of the 1899 proceedings, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, pp. 28-30 (available at the Peace Palace Library).

and Great Britain without consulting or asking the consent of the Venezuelan Government, and, worst, running directly against Venezuela's position that the argument should be maintained.

5.59. This episode is worth being insisted on: Venezuela had never been informed of the correspondence exchanged between Olney and Pauncefote during the negotiation; Venezuela was not even informed of the change in legal strategy that was agreed upon by Great Britain and the United States lawyers defending Venezuela. This change was directly contrary to the instructions of the Venezuela's Government with regard to the argument concerning the period of the prescription were clear:

> "do not to withdraw the contention in any way, but to insist that it is for the Tribunal to rule on the dissent between the parties as to the meaning of the Treaty".[458]

5.60. Harrison was aware of the position of the Venezuelan Government. As he said to Webster, "[h]is client, Venezuela, would not let him make a public withdrawal".[459]

5.61. Yet, the instructions of the Venezuelan Government remained a dead letter. Harrison reassured Webster that he "could trust his word, that the Venezuelan argument would proceed upon the basis that the contention of Great Britain respecting the application of the rule was right".[460] Indeed, during the proceedings before the Arbitral Tribunal, Harrison, referring to this private correspondence, openly admitted that:

> "I would not be candid if I did not say [these personal and confidential notes] seem clearly to indicate that Mr. Olney and Sir Julian Pauncefote understood that the prescriptive period applied to the years after 1814".[461]

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[458] Letter from Calcaño to José Andrade. 7 April 1899 (**Annex 62**).

[459] Letter with Annexure of Great Britain's Leading Counsel, Sir Richard Webster, to Sir Thomas Sanderson, 13 June 1899, in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, p. 27.

[460] *Ibid.*

[461] For the relevant excerpts of the proceedings, see *ibid.*, p. 29.

(ii)THE 1850 GREAT BRITAIN/VENEZUELA AGREEMENT SET ASIDE WITHOUT VENEZUELA'S CONSENT

5.62. As explained in the previous Chapter in 1850, Venezuela and Great Britain concluded an agreement by which the two States engaged not to occupy the disputed territory. The importance of the 1850 Agreement for Venezuela was clear. By freezing the territorial claims of both parties, the agreement precluded Great Britain from claiming that the period of time after 1850 could be taken into account for the purposes of determining "adverse holding or prescription" within the meaning of Article IV of the 1897 Treaty.

5.63. During the negotiation of the arbitration treaty, the United States Secretary of State Olney was aware of the importance of the 1850 agreement for Venezuela. He discussed this issue with Mr. Storrow, the lawyer charged to represent Venezuela's interests during the negotiation. As reported by Olney himself, Olney and Storrow "considered it legally impossible that there could be any adverse holding or prescription as against the agreement of 1850". Olney also assured that the British Government had committed itself to recognise that position "in the most public and emphatic manner".[462] Storrow also observed: "I do not think that the truce of 1850 could be waived or impaired or that it ought to be".[463]

5.64. Despite the assurances given by Secretary of State Olney about the position of Great Britain with respect to the 1850 Agreement, Venezuela insisted that the arbitration treaty should include an explicit reference to that agreement. On 9 December 1896, the Minister of Foreign Affairs of Venezuela, Pedro Ezequiel Rojas, requested that the text of the protocol drafted by the United States and Great Britain be modified in order to include

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[462] Postscriptum from Richard Olney to Benjamin Harrison, Chief Venezuelan Counsel, 29 July 1898, in Ministerio de Relaciones Exteriores Republica de Venezuela in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 40 (**Annex 150**).

[463] Storrow, James to Olney, Richard, September 17, 1896. Manuscript Division, Library of Congress, Washington, D.C. Richard Olney Papers. General Correspondence and Related Material, 1830-1925 (BOX, 60-62, REEL 22), (1896: Agost 19 - Sept 29) (**Annex 176**).

a provision which read as follows: "the High Contracting Parties confirm the agreement concluded between them on 18 November and 20 December 1850".[464]

5.65. This request was rejected by the United States and Great Britain. The reason is simple: "Olney was two-faced with regard to the Agreement of 1850".[465] In fact, the United States and Great Britain had already found an agreement about the treatment to be accorded to the 1850 agreement. The terms of this agreement were contained in a "strictly personal letter" written by the United States Secretary of State, Olney, to the English Ambassador, Sir Pauncefote, on 29 October 1896. In this letter, Olney wrote:

> "It is most desirable, I think, not to give the Agreement of 1850 any status on the face of the Convention even by reference – much less by an attempt to define its scope and meaning".[466]

5.66. In Olney's letter, there is no trace of the "public and emphatic engagement" of Great Britain to recognise the effect of 1850 agreement. He simply observed: "[t]he Agreement will come, and should come, before the arbitral Tribunal in the natural course of things and will be interpreted by that Tribunal [...]".[467] Olney was behind the decision not only to eliminate from the draft treaty any reference to the 1850 agreement but also to include the provision which later became Article IV c), according to which, "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".[468] Both amendments were clearly detrimental to the interests of Venezuela. Olney proposed them

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[464] Letter from Ezequiel Rojas to José Andrade, 9 December 1896 (**Annex 59**).

[465] H. González Oropeza and M. Donis. Historia de las Fronteras de Venezuela, Cuadernos Lagoven (1989), p. 101 ("Olney tuvo al menos dos caras con respecto al Acuerdo de 1850").

[466] Strictly personal letter from Richard Olney, Secretary of State, to Sir Julian Pauncefote, British Ambassador in Washington. 29 October 1896. Ministerio de Relaciones Exteriores Republica de Venezuela in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 40 (**Annex 150**).

[467] *Ibid.*

[468] For the text proposed by Olney, see Letter from Pauncefote to Salisbury. 29 October 1896 (**Annex 169**).

in order to overcome the resistance of Great Britain, which had asked several times to limit the effect of the 1850 agreement.[469] Indeed, a few days later, the two States approved the draft text of the arbitration treaty.

5.67. Unsurprisingly, before the Arbitral Tribunal Great Britain contested that the 1850 Agreement could be of any relevance for calculating the adverse possession period under the terms of Article IV (a). It argued that "the parties very soon appear not to have agreed what is meant [by that Agreement]" and that, in any case, "before 1886, the arrangement had come to an end".[470] The lead counsel for Great Britain, Sir Webster, relied on "the fair inference to be drawn from that correspondence [between the United States Secretary of State and Great Britain's Ambassador]" to defend the view that "Rule (a) [of Article IV] was inserted in the interest of both parties to protect the rights of both parties in respect of what happened during the period immediately antecedent to this Treaty".[471]

V. THE ODIOUS DILEMMA IMPOSED ON VENEZUELA: RATIFY OR SUFFER "DANGEROUS CONSEQUENCES"

5.68. Venezuela signed the Treaty of Washington on 2 February 1897. The signature was anything but a free manifestation of consent. Venezuela has in fact been coerced into signing the treaty. In case of refusal, it would have been exposed to the risk of a military reaction by Great Britain, without any possibility of relying on the protection of the United States.

5.69. In the years preceding the conclusion of the 1897 Treaty, Venezuela had been increasingly threatened by the aggressive attitude of Great Britain. The two States were on the verge of a war that would have had catastrophic effects for Venezuela given the

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[469] Letter from Pauncefote to Salisbury, 29 October 1896 (**Annex 169**).

[470] See the intervention of the lead counsel of Great Britain, Sir Webster, in *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, vol. III-IV, Paris, 1899, pp. 741-742.

[471] *Ibid.*, vol. I, p. 25.

disparity of military power. The intervention of the United States in the dispute between Venezuela and Great Britain was also prompted by this situation of military tension.[472]

5.70. As already mentioned, the support of the United States was fundamental for Venezuela. It represented the only means to effectively contrast any military appropriation of Venezuelan territory by Great Britain.

5.71. It is therefore clear that, when the President of the United States, Cleveland, asked Venezuelan authorities to sign the unjust and unfair text drafted by Olney and Pauncefote, Venezuela was confronted with a dramatic choice. In case of a refusal to sign the treaty, Venezuela would have lost the protection of the United States and would have remained alone in responding to the aggressive attitude of Great Britain.

5.72. The existence of a threat pending on Venezuela is clearly evidenced in the message by which the Venezuela Minister of Foreign Affairs, Pedro Ezequiel Rojas, informed the Venezuelan Ambassador in the United States, José Andrade, of the Venezuelan decision to accept in principle the draft treaty submitted to it. In a letter dated 9 December 1896, Rojas wrote:

> "Although the project [of treaty] raises serious difficulties, the Government, taking into consideration, on the one hand, what it owes to the United States of America, and on the other, the dangerous consequences of the abandonment in which the refusal would place Venezuela, has decided to accept, not simply and flatly, but with certain modifications, the proposed articles, in whose preparation, unfortunately, it was not included."[473]

5.73. The "dangerous consequences" referred to by the Venezuelan Foreign Minister were a clear allusion to the risk of a military aggression incumbent on Venezuela in case of non-acceptance of the text. This is also attested by an additional request advanced by Venezuela. In a telegram sent on 7 December 1896, the United States Secretary of State

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[472] On the historical context that prompted the intervention of the United States, see Letter from Mr. Olney to Mr. Bayard, 20 July 1895 (available at: https://history.state.gov/historicaldocuments/frus1895p1/d527).

[473] Letter from Ezequiel Rojas to José Andrade, 9 December 1896 (**Annex 59**).

Olney was informed that, in exchange of the acceptance of the Treaty, Venezuela expected, "by treaty or by diplomatic correspondence through you, agreement to prevent aggressive or unfriendly acts near line of contact and also that no new mine concessions shall be granted".[474]

5.74. Venezuela's requests to modify the text negotiated between Great Britain and the United States and to obtain assurances against aggressive acts from Great Britain were flatly rejected by the United States. In a telegram sent on 12 December 1896 Olney replied:

> "Matter closed as between Great Britain and United States. Changes Treaty must be made between Great Britain and Venezuela. Would it help were it agreed by exchanges of notes accompanying treaty that British Judges should not appoint arbitrator from British Guiana and that United States Judges should not appoint arbitrator from Venezuela. Earliest practicable restoration diplomatic relations most desirable. Present Venezuelan attitude offensive – tends to block all negotiations".[475]

5.75. Secretary of State Olney's response could not be clearer. On the one hand, he humiliated Venezuela by assimilating the appointment of an arbiter from Venezuela – a sovereign State – to the appointment of an arbiter from British Guiana – a colony of Great Britain. On the other – and most importantly -, he presented in a crude way the alternative faced by Venezuela: either accepting the *pax Americana* – ratify a treaty which was so evidently adverse to Venezuela's interests and, as a sign of gratitude to the negotiating States, re-establish diplomatic relations with Great Britain – or being abandoned by the United States and remaining exposed to the reaction of Great Britain.

5.76. In sum, the non-acceptance of the Treaty would have entailed exposing Venezuela to the illegal appropriation of its territory by the United Kingdom through military means and without the protection of the United States. Given the threat it was confronting, Venezuela had no other option but to accept a treaty which was clearly prejudicial to its

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[474] Telegram received in Cipher from José Andrade to Olney, 7 December 1896 (**Annex 58**).
[475] Telegram from Olney to Storrow, 12 December 1896 (**Annex 60**).

rights.[476] The undue pressure to which Venezuela was submitted can certainly be qualified as coercion under the meaning of Article 52 of the 1969 Vienna Convention on the Law of Treaties. Under this provision, "[a] treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations". It would therefore be justified to consider the 1897 Treaty to be invalid because of coercion, the more so since the principle prohibiting the threat or use force, of which the ground of invalidity set forth in Article 52 constitutes a corollary, predates the conclusion of the Charter of the United Nations.[477]

SECTION II: THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL AND THE 1899 AWARD

5.77. The conduct of the proceedings before the Arbitral Tribunal resulting in the 1899 Award confirmed and exacerbated Venezuela's improper and unjust treatment. Having been required to accede to an arbitration agreement that prejudiced her interests, Venezuela participated in the arbitral proceedings conducted in Paris in a position of significant disadvantage. It did so nonetheless, hoping that an arbitral process conducted in line with the demands of international law would bring justice. These hopes proved in vain: the arbitral process not only did not rectify the grave irregularities that were committed during the negotiations of the 1897 Treaty; it dramatically compounded them. This was a process that was neither fair nor based on law, and that did not take due account of Venezuela's rights under international law. While the hearings were extensive and conducted in an atmosphere of nominal procedural propriety, at crucial stages, they deviated from essential

[476] On the coercion exercised on Venezuela, see A. J. Aguilera, Las fronteras de Venezuela, Grafica Continente (1976), p. 74; M. Donis, El Esequibo es nuestro: una contestación a Guyana, Konrad Adenauer Stifftung (2018), p. 55; J. Caldera Ynfante, Jesús, "El Esequibo es venezolano: El litigio estratégico de Venezuela contra Guyana en la Corte Internacional de Justicia", in Opción (2020), pp. 423-425.

[477] In particular, the existence of such fundamental principles has since long time been recognized by Latin American States. As authoritatively stated by Yepes in 1930: "le Nouveau Monde a toujours été unanime à condamner la guerre": J.-M. Yepes, "La contribution de l'Amérique latine au développement du droit international public et privé", in *Collected Courses of the Hague Academy of International Law*, Vol. 32, 1930-II, p. 743.

requirements of an arbitral process based on law. Above all, during the hearings the Tribunal manifestly exceeded its powers under the *compromis*.

5.78. The following sections begin by offering a general account of the proceedings **(I)** and highlight the parties' insistence that the dispute between them be resolved in a 'judicial' manner and in line with requirements of international law **(II)**. Against this background, they assess the outcome of the Award **(III)**, the use in the proceedings, by Great Britain, of tampered evidence **(IV)**, the conduct of the arbitrators and party representatives **(V)**, and the deliberations of the arbitrators and drafting of the Award **(VI)**.

I. THE PROCEEDINGS IN OUTLINE

5.79. The arbitral proceedings were comprised of a written and oral phase, conducted in 1898 and 1899.[478] The parties submitted written pleadings in 1898, consisting of their respective 'cases', 'counter-cases' and 'final argument', in line with Articles VII-IX of the Washington Treaty. Significantly, Venezuela's written pleadings were prepared without knowledge of the above-mentioned understandings reached between US-American and British negotiators.

5.80. Between 15 June and 27 September 1899, oral arguments were presented to the arbitral tribunal over the course of 54 sessions. Venezuela was represented by a team of mostly US-American counsel led by Benjamin Harrison, assisted by Benjamin F. Tracy, Severo Mallet-Prevost and James Russell Soley as counsel. Leading Counsel of the United Kingdom was Sir Richard Webster, Attorney General, assisted by Sir Robert Reid, G.R. Askwith, S.A.T. Rowlatt and F. Webster as counsel.

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[478] For an analysis of the proceedings see E. Núñez, *Tres momentos en la controversia de límites de Guayana: el incidente de Yuruán, Cleveland y la Doctrina Monroe*, 1962, pp. 96-101; E. Mondolfi, *El Presidente Benjamín Harrison y la mediación de los Estado Unidos en la controversia de límites entre Venezuela y Gran Bretaña*, Biblioteca de la Academia Nacional de la Historia, 2000, pp. 217-242; J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, pp. 33-77; R. Sosa, "El Acta de Washington y el Laudo de Paris", *La Reclamacion de Venezuela sobre la Guayana Esequiba*, Segunda Reimpresion, Academia de Ciencias Politias y Sociales, 2008, pp. 151-152.

5.81. The parties' arguments on points of law were detailed and broad in scope, in what Lauterpacht later described as "a lengthy legal contest on such questions as acquisition of title by occupation, discovery, and prescription, and on such procedural technicalities as the function of estoppel in relations between States".[479] In that 'lengthy legal context', as noted by Harrison, "counsel ha[d] searched the records at the Hague and at Seville and at Madrid in order to set before this Tribunal as fully as they might, the story of Spanish discovery, of the Dutch war, of the Dutch settlement in Guiana, of the Treaty of Münster, and all the long story between the years 1648 and 1814."[480]

II. THE PARTIES' INSISTENCE ON "AN ABSOLUTELY IMPARTIAL, JUDICIAL TRIBUNAL"

5.82. During the pleadings, the U.S. and British lawyers not only set out the parties' positions as to the course of the boundary, but also specified their understanding of the mandate of the tribunal. The respective statements are significant, as they illustrate the importance both sides attached to the need for an award based upon law, and for a tribunal operating as a judicial tribunal. Both sides were emphatic that this was not a matter of choice for the tribunal, but a defining feature of its competence, which did not extend to considerations of political expediency.

5.83. Venezuela's view on the matter reflected its general approach to the arbitral process, which – despite all its many flaws, and as noted above – it considered to be its only chance to defend its position, as an independent republic facing a powerful imperial State set on a course of territorial expansion in violation of standards of international law and justice. Venezuela's insistence on the legal foundation of the arbitration concerned both the decision-making process and the role of the arbitrators. Even before the beginning of the proceedings, the Venezuelan foreign minister, Pedro Ezequiel Rojas, had clarified that he would not countenance "the result of an arbitration decision where the arbitrator receives the authority of a friendly adjuster, and pursuant thereto adjudicates territories to

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[479] H. Lauterpacht, "The Function of Law in the International Community", *British Contributions to International Law*, 1933, p. 157.

[480] Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela. Proceedings, Verbatim Record, p. 3087 (available at the Peace Palace Library).

one of the litigants of the both". Rather, "Venezuela has urged arbitration, but judicial, as the only one compatible with the Constitutional provisions which prohibit the alienation of any part of her territory (...)".[481]

5.84. In its written case, Venezuela noted that:

> "Venezuela has no direct representative on this Tribunal; and, by this fact, it is more nearly assimilated to the great courts of justice from which the idea of representation is wholly absent. No other international tribunal has presented this feature. They have been too much the conferences of representatives, rather than the consultations of judges, to whom the parties are quite indifferent. The one tends to unsatisfactory compromises, the other to decrees that establish rights. In the very constitution, therefore, of this Tribunal, we have the strongest appeal to the sense of impartial justice and the surest ground of hope that the judgment may confirm the faith of those who believe that it is possible to bring the nations to a bar that will treat them with the same impartiality that is shown to individual litigants. When that confidence is fully established, the era of universal peace will be near."[482]

5.85. At the end of the oral hearing, Venezuela's lead counsel once more emphasised the need for a judicial process and contrasted it to forms of dispute settlement in which arbitrators acted as representatives of parties. He explicitly distinguished two different modes of settling international controversies, noting that "if th[e] process of settling international difficulties is to commend itself to the nations, it can only be by setting up for the trial of such questions an absolutely impartial, judicial Tribunal. If conventions, if accommodations, and if the rule of give-and-take are to be used, then let the diplomatists settle the questions. But when these have failed in their work, ... it seems to me necessarily

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[481] Letter from Rojas to Olney, 28 March 1896 in Notes from the Venezuelan Legation in the United States to the Department of State, 1835-1906, Roll 7, Vol. 7, April 19, 1893 - March 28, 1896, The United States National Archives and Records Administration (NARA), Microcopy No. T-93, Roll 7, Vol. 7, April 19, 1893 - March 28, 1896.

[482] Boundary between the Colony of British Guiana and the United States of Venezuela, Case of the United States of Venezuela, 1898, p. 765.

to imply the introduction of a judicial element into the Tribunal."[483] These notions, far from being abstract, should guide the settlement of the boundary question opposing Great Britain and Venezuela, he continued, stressing that "these nations have adopted that [judicial] basis in the constitution of this Tribunal":[484]

> "[T]he purpose of this Treaty Arbitration was to bring in just this judicial element, and to exclude the representative element which has appeared in many former arbitrations [...] There is no Venezuelan here. This latter provision distinctly excludes the idea of representation, for when that idea is allowed, the representation is direct and equal. Venezuela, then, Mr. President, comes to this tribunal as to a great court. She gives to each member of it her fullest confidence, and submits her case to be judged upon the principles of international law and the rules of the treaty, and not to be compounded or compromised upon suggestions of political expediency."[485]

5.86. Again, these were not statements made out of a sentiment of politeness. They reflected Venezuela's view of the tribunal's mandate under the 1897 Treaty of Washington. Significantly, Venezuela's view was shared by Great Britain. This appears clearly from the British statements during the pleadings.

5.87. During the oral proceedings, Sir Richard Webster put matters in the clearest of terms: like his Venezuelan counterparts, he described the tribunal as a "judicial Tribunal" and insisted on the need for a decision that reflected the principles of the treaty. In his express terms: "[t]he tribunal is not here to draw compromise lines".[486] As Venezuela, Great Britain was emphatic that its appeal was to "principles of law and of justice and of equity" – "to those principles alone I appeal". And further: "it would be a death blow to

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[483] Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela. Proceedings. Verbatim Record. p. 2982 (available at the Peace Palace Library).
[484] *Ibid.*, p. 2983.
[485] *Ibid.*, p. 2984.
[486] *Ibid.*, p. 731.

arbitration if it is to be imagined that by making a claim to territory to which they have no legal title, a nation can get a slice of it".[487]

III. THE AWARD OF 3 OCTOBER 1899

5.88. On Wednesday, 27 September 1899, the tribunal's President, the jurist Fyodor de Martens, closed the oral hearings.[488] On the sixth day after the closure of the hearings (a weekend included), the tribunal had completed its award and presented it to the Parties' representatives. It was an award without reasoning whose substantive part consisted of two sections: (i) two paragraphs reflecting the tribunal's position on the boundary; and (ii) a further paragraph setting out a regime of navigation on the rivers Amakuru and Barima, two tributaries of the Orinoco.

5.89. The tribunal's decisions on these questions were prefaced by one paragraph in which the tribunal described its approach in the following terms:

> "[T]he said Arbitrators have duly entered upon the said Arbitration, and have duly heard and considered the oral and written arguments of the Counsel representing respectively Her Majesty the Queen and the United States of Venezuela, and have impartially and carefully examined the questions laid before them, and have investigated and ascertained the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana".

5.90. The bulk of the tribunal's decision on the boundary described the course of the boundary in the following terms:

> "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

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[487] *Ibid.*, p. 865.

[488] For details see R. Badell, *Venezuela's Claim to the Essequibo Territory*, Academia de Ciancias Politicas y Sociales, 2023, p. 121; J. Gillis Wetter, *The International Arbitral Process: Public and Private*, pp. 78-83.

> source, and from that point to the junction of the River Haiowa with the Amakuru, and thence along the mid-stream of the Amakuru to its source in the Imataka Ridge, and thence in a south-westerly direction along the highest ridge of the spur of the Imataka Mountains to the highest point of the main range of such Imataka Mountains opposite to the source of the Barima, and thence along the summit of the main ridge in a south-easterly direction of the Imataka Mountains to the source of the Acarabisi, and thence along the mid-stream of the Acarabisi to the Cuyuni, and thence along the northern bank of the River Cuyuni westward to its junction with the Wenamu, and thence following the mid-stream of the Wenamu to its westernmost source, and thence in a direct line to the summit of Mount Roraima, and from Mount Roraima to the source of the Cotinga, and along the mid-stream of that river to its junction with the Takutu, and thence along the mid-stream of the Takutu to its source, thence in a straight line to the westernmost point of the Akarai Mountains, and thence along the ridge of the Akarai Mountains to the source of the Corentin called the Cutari River".

5.91. The implications of this lengthy description of the course of the boundary were as follows: Great Britain would have title just under 160,000 km² of the territory in dispute, an area roughly the size of Bangladesh, and twice as large as the combined territories of Belgium, The Netherlands and Luxemburg. Venezuela was awarded title to a total area of 15,000 square kilometres, including Point Barima at the mouth of the Orinoco river and a stretch of territory of circa 50 miles to the east, to Punta Playa, the latter around circa 10,000 square kilometres. The award satisfied Great Britain's expansionist policies almost completely, as it was awarded more than 90% of the Venezuelan territory it had progressively claimed since 1841.

5.92. In the words of one of the arbitrators, pronounced immediately following the reading of the award, "[i]f [...] judged from the standpoint of the Venezuela claims" this outcome was "disastrous".[489] The President of the tribunal agreed, noting that "the British

[489] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

got the lion's share" and "nearly all they demanded".[490] However, this assessment was borne out not simply by comparing the size of territory awarded to Great Britain and Venezuela, respectively. Two additional points are worth noting.

5.93. First, the award gave Great Britain control over the gold mines in Guiana, which had driven its aggressive policy of territorial expansion.[491] The Tribunal's President's assessment is telling: The British, he noted:

> "should be extremely pleased with the decision by which they got all the gold mines".[492]

5.94. By contrast, another arbitrator described the inland area to the south of the Barima river, making up the bulk of the territory awarded to Venezuela, as "principally low-lying swamp – largely covered by the sea at High Tide".[493] In other words, the largest part of the territory awarded to Venezuela was land to which Great Britain's officials "attache[d] no importance",[494] and which a newspaper commentator would describe in the following terms: "The territory that the Award granted to Venezuela is not worth a five-pound bill".[495] A comment by Sir Richard Webster shows that this assessment was shared by Great Britain: "As to the effect of the award, it was perfectly true that we did lose a small piece

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[490] Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899, AVPR, opis 787, delo 9, ed.k hr. 1-7 (**Annex 149**). Commentators agree with this assessment, see for example J.A. Braveboy-Wagner, *The Venezuela-Guyana Border Dispute*, 1984, p. 106; H. Gros Espiell, "El Conflicto Limitrofe entre venezuela y Guyana y un libro recente", *Humanitas 21*, 1980, p. 684; Estudio preliminar, *Academia Nacional de la Historia*, 1981, p. 21; R. Badell, *Venezuela's Claim to the Essequibo Territory*, Academia de Ciancias Politicas y Sociales, 2023, p. 121; P. Ojer, *Sumario Histórico de la Guayana Esequiba*, Maracaibo, San Cristobal, 1982, p. 49.

[491] During the negotiations of the 1897 Treaty, both sides were aware of maps showing the location of gold mines in the disputed territory. In fact, a map showing the different "gold centres" in included among the Richard Olney papers in the U. S. Library of Congress holdings: U. S. Library of Congress, Manuscript Division, Richard Olney Papers, Reel 25.

[492] Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899, AVPR, opis 787, delo 9, ed.k hr. 1-7 (**Annex 149**).

[493] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

[494] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**) (referring to the views of Mr Everard in Thurn, British official and explorer of Guiana and later governor of the Fiji islands).

[495] Cite in R. Badell, *Venezuela's Claim to the Essequibo Territory*, Academia de Ciancias Politicas y Sociales, 2023, p. 125.

of territory at the mouth of the Orinoco, called Barima Point, which was, apart from the sentimental aspect of the question, really of no importance to us. What was of vital importance to this country was the preservation of the waterways by Great Britain for the commerce of the world. Those waterways were far more important to Great Britain than any question of a few miles of swamp (...)".[496]

5.95. Second, while the award recognised Venezuela's title to the mouth of the Orinoco, the tribunal's decision on this point reflected the Parties' pleadings on the matter. As noted by Lord Russell, during the proceedings, Great Britain had "explicitly admitted that the Orinoco was Venezuelan",[497] and thus effectively conceded this part of the disputed territory.[498] The most relevant part of the territory awarded to Venezuela "inevitably had to be recognized as Venezuelan on the simple and preclusive ground of an admission by Great Britain".[499]

5.96. Both considerations affirm the assessment, by one of the arbitrators, that this was a "disastrous" outcome for Venezuela: not only did the Tribunal award the European imperial power country the "lion's share" of the territory disputed with a Latin American republic not considered worthy of being represented on the tribunal. What is more, the limited Venezuelan gains in the process were either of limited relevance or had previously been conceded by the British. To the extent that the Award reflected a 'compromise' (as discussed below), it was a deeply imbalanced one, reflecting (just like the 1897 Arbitration

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[496] The Venezuelan question, The Standard London, 15 February 1900 (**Annex 174**).

[497] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

[498] This in fact appears from the British written Counter-Case in which it had recognized that "The Spaniards entered, explored, settled, and effectively defended the Orinoco", see Boundary between the Colony of British Guiana and the United States of Venezuela, Counter-Case of the Government of Her Britannic Majesty (Paris 1898), 28. Venezuela did not fail to note this concession (see Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela. Proceedings (Verbatim Record), e.g. at pp. 928, 942, 1127, 2595, 3123, 3203-3204) (available at the Peace Palace Library). During the oral proceedings, Great Britain was forced to defend the (untenable) claim that the Barima and Akamura rivers were not tributaries of the Orinoco, and thus not covered by its admission: see e.g. ibid., at 235, 799-802.

[499] J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p. 48.

Treaty) dramatic power imbalances between the litigants and based on a deeply irregular process.

IV. A DEEPLY IRREGULAR PROCESS

5.97. For all its nominal propriety, the Award was based on an irregular process that did not reflect the parties "strongest appeal to the sense of impartial justice".[500] As will be discussed below, the Tribunal was not guided by any sense to deliver justice based on law, let alone the rules of applicable international law prescribed by the 1897 Treaty. What is more, the conduct of the arbitral process was irregular, notably as regards the use of tampered maps and the relationship between arbitrators and counsel.[501]

5.98. As regards the former aspect, Chapter 6 has given an account of Great Britain's deliberate use of falsified maps to support its policy of territorial usurpation. More specifically, it has been shown how, in the run-up to the arbitral proceedings, Great Britain had tampered with official maps depicting the official British position on the territory disputed with Venezuela. It did so by presenting maps claiming large swathes of Venezuelan territory as official maps and falsely asserting that these maps were based on Schomburgk's surveys – which, *per se*, were not representing any legal assessment of the territorial divide, but came to be cited as the first line claimed by the British, before extending it always further west. As has also been shown, this involved the suppression of language from maps that could have undermined British claims – in particular the reference to the 1850 Agreement and its legal effect.

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[500] Boundary between the Colony of British Guiana and the United States of Venezuela, Case of the United States of Venezuela, 1898, p. 765.

[501] For an analysis of the different pieces composing the "procedural fraud" that took place in Paris, see, in addition to the authors already cited in this chapter, H. Cabrera Sifontes, *La verdad sobre nuestra Guayana Esequiba*, Monte Ávila Editores, 1988, p. 139 ff.; J. Sucre Reyes, *El despojo del siglo: la Guayana Esequiba*, Publicaciones Seleven, 1981; M. A. Carrillo Zamora, "La impugnación internacional del laudo arbitral por fraude procesal: especial referencia a la reclamación venezolana sobre el territorio de la Guayana Esequiba", *Revista de derecho público*, 2023, p. 89 ff.; A. R. Brewer-Carías, *Derechos de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales, 2023, p. 130 ff.

5.99. During the arbitral proceedings, the maps falsely ascribed as official and based on Schomburgk's work, played a central role. To illustrate, in the transcript of the oral proceedings, 'Schomburgk' appears 920 times. British counsel of course did not claim that Schomburgk himself could allocate territory but claimed the mantle of his authority. Lord Reid's statement is illustrative:

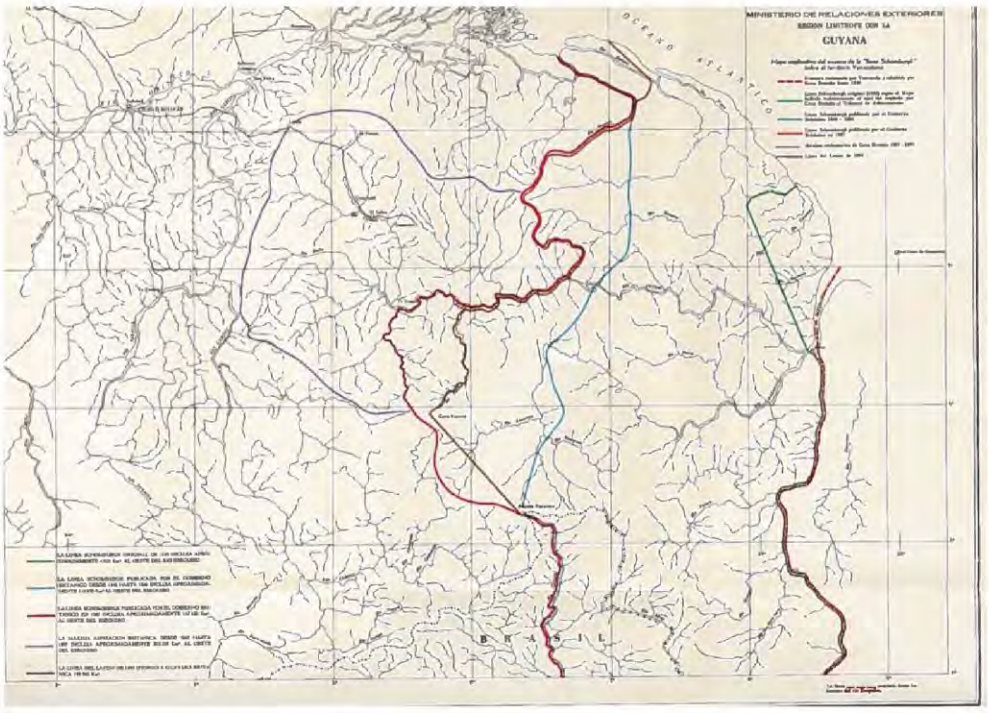
> "Schomburgk went and he marked out what was clearly the true Schomburgk line, and here I may be permitted to observe that Schomburgk was a gentleman who served Great Britain as a gentleman and a man of honour, and whom we desire to speak of with the utmost respect, but we have never claimed this boundary is the true boundary merely because Schomburgk drew it. What we do claim is that Schomburgk described and wisely drew what in fact was the true boundary."[502]

5.100. But as is clear from Lord Reid's statement, far from distancing itself from its falsification of maps, Great Britain persisted in relying on improper evidence, conjured up from the late 1880s as part of Great Britain's expansionist strategy to support extreme British claims on Venezuelan territory. As is clear from the Award, this strategy ultimately proved successful.

5.101. The following map highlight that the Award in essence followed the alleged 'Schomburgk line' – drawn in fact years after Schomburgk's death, as conjured up by Great Britain. It also indicates that in only two respects, the award departs from the fictious line,

[502] Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela, Proceedings, Verbatim Record, p. 2368 (available at the Peace Palace Library).

namely the territories to the east of Punta Barima (described by Lord Russell as "principally low-lying swamp"[503]) and to the west of the Marazuni river.[504]



5.102. In his assessment of the Award, Lord Russell made the point with clarity: "the result is a signal vindication of Schomburg's ability and fairness. In two points only is there any departure from his line".[505] His assessment is echoed in the summary of the British senior lawyer and agent: According to Sir Richard Webster, "[t]he history of [the] arbitration showed [...] that Schomburgk´s investigations were absolutely justified by history".[506] In his summary of the decision, the British agent, Buchanan, succinctly noted

[503] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

[504] See Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967 (**Annex 150**).

[505] *Ibid.*

[506] The Venezuelan question, The Standard London, 15 February 1900 (**Annex 174**).

that the award "follows the Schomburgk line".[507] The "signal vindication", far from endorsing "Schomburgks ability and fairness", reflected a successful exercise in tampering with crucial pieces of evidence.

5.103. Quite apart from its reliance on tampered maps, the arbitral proceedings were irregular also in that they involved improper contacts between counsel and arbitrators.

5.104. This irregularity is particularly stark because it went against the parties' insistence on a judicial process. "[T]he purpose of this Treaty Arbitration was to bring in just this judicial element, and to exclude the representative element", explained the American lead counsel, Benjamin Harrison, and in so doing formulated the expectations of the parties, further emphasising that the idea of arbitrators representing a party in the arbitral proceeding was impossible to countenance, for the simple reasons that "|t|here is no Venezuelan here".[508] The documentary record indicates that this expectation was not heeded. It indicates that there were contacts between the arbitrators and the parties' legal teams that went far beyond routine interactions that are part of any arbitration proceeding. Two points stand out.

5.105. For one, the British viewed the arbitrators as a point of contact to place and solicit information about matters debated between the parties. This appears clearly from two letters written by the British lead counsel, in the middle of the oral proceedings.[509]

5.106. The first letter was written by Sir Richard Webster to Lord Salisbury, in response to a note in which Lord Salisbury had insisted the British representatives make no concessions on the question of Point Barima (which the tribunal had discussed in previous

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[507] Letter from Buchanan, 5 October 1899 (**Annex 66**). Commentators agree with this assessment: see for example C. L. Joseph, "The Venezuela-Guyana Boundary Arbitration of 1899: An Appraisal: Part II", Caribbean Studies, Vol. 10, No. 4, January 1971, p. 67 ("The award closely followed the Schomburgk line").

[508] Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela. Proceedings, Verbatim Record, pp. 2982-2984 (available at the Peace Palace Library).

[509] For criticism of the award on this point see also R. Badell, *Venezuela's Claim to the Essequibo Territory*, Academia de Ciencias Politicas y Sociales, 2023, p. 185.

sessions, and to which it would return). In his response, dated 19 July 1899, Sir Richard Webster assured Lord Salisbury that he did "not propose to make any concessions":

> "I was however anxious to obtain the guidance and approval of yourself [...] in the event of questions being put to me by members of the Tribunal. [...] If I have any reason to believe the Tribunal is against me on this part of the case, I shall endeavour to let the British arbitrators know our view of the position".[510]

5.107. The British lead counsel's announcement is to be seen in light of a further letter, sent to the Secretary of State for the Colonies, Joseph Chamberlain, on 19 July 1899. In this second letter, the British lead counsel equally affirmed that he had no "intention of making any offer to the other side" concerning the question of Point Barima. As in his response to Lord Salisbury, he had merely sought "to get your [Chamberlain's] guidance and to let you know my mind, so that I might be prepared should the Tribunal put any questions to me publicly or privately." This was followed by the following paragraph:

> "If I find it necessary to take 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 some member of the Tribunal it is desirable that our arbitrators should appreciate our views."[511]

5.108. The two letters, written by the senior counsel to the senior British authorities in charge of the arbitral process, offer relevant insights into the conduct of the arbitral proceedings and the approach adopted by the tribunal. To begin with, it appears from the letter to Chamberlain that the tribunal might put questions to counsel 'publicly *or privately*'. Both letters state expressly that the British lead counsel would not hesitate to share *with the British arbitrators* the strength the British government's view on a legal question placed before the tribunal for an impartial assessment and binding decision. It is also clear that such information would not be shared through the regular interaction in the proceedings, but 'privately', which in the context must mean in direct discussion between

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[510] Letter from Sir Richard Webster to Lord Salisbury, 19 July 1899 (**Annex 63**).

[511] Letter from Sir Richard Webster to Joseph Chamberlain, 19 July 1899 (**Annex 64**).

Sir Richard Webster and the British arbitrators. Lastly, the final paragraph of his letter to Chamberlain suggests under which circumstances Sir Richard Webster would approach the British arbitrators, namely when the discussions during the oral hearing made it "desirable that our Arbitrators should appreciate our views."[512]

5.109. Sir Richard Webster's intention could hardly be formulated more clearly. The letters of Great Britain's lead counsel reflect proceedings where the arbitrators are considered as representatives of a side – 'our arbitrators' – that could be approached privately by "their side, and trusted to receive information about Great Britain's strongly-held position on legal issues that were sub judice".

5.110. The British lead counsel's desire to approach 'our arbitrators' privately and advise them of crucial British concerns paint a picture of an arbitral process conducted in a highly irregular manner.[513]

V. THE ARBITRATOR'S DELIBERATIONS AND THE AWARD'S DRAFTING

5.111. The preceding sections highlighted one aspect of the Tribunal's decision-making process. Troubling as it was, there is more: the fact that U.S. Arbitrators sought advice on how to cast their vote, evidencing a wholly unusual and improper process of crude bargaining and coercion that ended (as discussed more fully below) with the President using an antisemitic slur to describe the conduct of other arbitrators, and leaving some arbitrators disillusioned with arbitration as a means of dispute resolution.[514] Yet while the record of mutual incriminations is significant, there is, by contrast, no hint that the Tribunal applied the rules set out in the 1897 Treaty to reach a decision based on law.

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[512] *Ibid.*

[513] Wetter aptly notes that the meetings described by Mr. Mallet-Prevost "add another dark dimension to the proceedings in the Venezuela-Guyana case": J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p. 349.

[514] Reuter speaks of a "marchandise purement politique": see P. 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", *Mélanges Offerts à Juraj Andrassy*, Springer, Dordrecht, p. 237. See further P. Ojer, *Sumario Histórico de la Guayana Esequiba*, Maracaibo, San Cristobal, 1982, p. 51.

5.112. Instead, the arbitrators rushed to a decision. As noted above, after lengthy written pleadings, the parties had presented their oral arguments in "a lengthy legal contest"[515] comprising 56 sessions, running to 3200 pages of transcript. Perhaps anticipating a 'lengthy legal contest' bearing on complex matters, Article X of the Treaty of 1897 stipulated that the Tribunal would render its decision, "if possible [...] within three months from the close of the argument on both sides".

5.113. In the event, after the close of the session of 27 September 1899, the tribunal saw fit to resolve the various complex legal issues in the space of less than six days, before pronouncing its unreasoned award on mid-day of 3 October 1899. These six days included a weekend during which at least one arbitrator was "away from Paris", while the President, in his diary, anticipated he would "leave [...] to Baden- Baden".[516]

5.114. The unreasoned award contains no trace of any form of debate about the strength of the legal arguments advanced in the context. There is no evidence whatsoever, in the text of the Award, that legal rules and principles, or that their weighing and balancing, played any role in the decision-making of the Tribunal. To illustrate, nowhere does the Award refer to Article IV of the Washington Treaty, and the words 'law', 'rule', 'international law', or any similar terms do not appear in the decision.

5.115. The documents produced by participants directly involved in the decision-making process (or exposed to it, such as Mr. Mallet-Prevost) do not suggest that legal considerations played any relevant role. Rather, they clarify that the unreasoned award was the result of a process of crude 'give-and-take' driven by extra-legal considerations and the Tribunal's President's determination to procure a unanimous award "at all costs". This is clearly brought out by the diary entries and private correspondence of the arbitrators and

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[515] H. Lauterpacht, "The Function of Law in the International Community", *British Contributions to International Law*, 1933, p. 149.

[516] Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens. 4 June 1899-3 October 1899, AVPR, opis 787, delo 9, ed.k hr. 1-7 (**Annex 149**).

close observers, which – while reflecting deep personal animosities and containing *ad hominem* attacks – overlap in material aspects.[517]

5.116. Mr. Mallet-Prevost's account of his meeting with the U.S. arbitrators has been reproduced already. For present purposes, its description of the Tribunal's President's approach to decision-making is central. It records Arbitrator Brewer as stating:

> "Martens has been to see us. He informs us that Russell and Collins are ready to decide in favor of the Schomburgk Line, which starting from Point Barima on the coast would give Great Britain the control of the main mouth of the Orinoco; and that if we insist on starting the line on the coast at the Moruca River he will side with the British and approve the Schomburgk Line as the true boundary."[518]

5.117. Arbitrator Brewer's account then indicates Martens' 'anxiety' to produce a unanimous decision, and the length to which he was prepared to go to secure it:

> "However [...] Martens is anxious to have a unanimous decision; and if we [the two U.S. Arbitrators] will agree to accept the line which he proposes he will secure the acquiescence of Lord Russell and Lord Collins and so make the decision unanimous.' What Martens then proposed was that the line on the coast should start at some distance southeast of Point Barima so as to give Venezuela control of the Orinoco mouth; and that the line should connect with the Schomburgk Line at some distance in the interior leaving to Venezuela the control of the Orinoco mouth and some 5,000 square miles of territory around that mouth".

5.118. The statement is clear that, in his 'anxiety' to ensure a unanimous award, the Tribunal's President threatened the two US-American Arbitrators with endorsing a decision that would have offered Great Britain the main mouth of the Orinoco River. By contrast, were the US-American Arbitrators to accept the so-called 'compromise' granting

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[517] See further P. Ojer, *Sumario Histórico de la Guayana Esequiba*, Maracaibo, San Cristobal, 1982, p. 51; R. Badell, *Venezuela's Claim to the Essequibo Territory*, Academia de Ciancias Politicas y Sociales, 2023, pp. 187-193.

[518] Memorandum of Mr. Severo Mallet-Prevost, reproduced in the *American Journal of International Law*, 1949, p. 529.

Great Britain 90% of the disputed territory, de Martens would extract a concession from the two British arbitrators.

5.119. Lord Russell's account clarifies how this limited concession was extracted from the British arbitrators. It appears in clear terms from Lord Russell's letter sent to Lord Salisbury immediately following the Award, which corroborates Mallet-Prevost's account, and which describes the Tribunal's President's *modus operandi* in the following terms:

> "I must say here that in one very important respect L. J. Collins and I were grievously disappointed by the attitude assumed by Mr. de Martens. [...] [H]aving expressed his opinion on the governing principle in favour of the British contention, he, instead of applying that principle rigidly and fearlessly, seemed to cast about for lines of compromise and to think that it was his duty, above all else, to secure, if he could, a unanimous award. I am sorry to be obliged further to say that he intimated to L. J. Collins, in a private interview, while urging a reduction of the British claims, that if we did not reduce them he might be obliged in order to secure adhesion of the Venezuelan Arbitrators to agree to a line which might not be just to Great Britain. I have no doubt he spoke in an opposite sense to the Venezuelan arbitrators, and fear of possibly a much worse line was the inducement to them to assent to the Award in its present shape. However this may be I need not say the revelation of Mr. de Martens state of mind was most disquieting."[519]

5.120. Lord Russell's account could not be clearer in describing how the Tribunal's President brought about the so-called compromise. Just as he had threatened the American arbitrators to bring about a total British victory were they not to endorse his approach, so he threatened the two British arbitrators with endorsing Venezuela's position were they not to agree to a 'reduction' of the British claims. What is more, in light of the memorandum produced by Mr Mallet-Prevost, it is clear that Lord Russell was right to surmise that the President 'spoke in an opposite sense' to the American arbitrators, pressuring them into accepting his award. Arbitrator Brewer equally noted that only "by the greatest conciliation and mutual concessions |... | a compromise was arrived at"; and offered insights into some

[519] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

of the extra-legal considerations that seemed to have guided the tribunal members: "Being asked whether political considerations influenced the award, justice said he could not admit that, as such an admission would reflect on the judges, but there was no doubt, that the present insurrection in Venezuela, and the consequent feeling of instability weighed to a certain extent in the balance".[520]

5.121. Significantly, de Martens' diary entries confirm the account of the British and American arbitrators. They are candid in their admission of how the President managed to obtain the unanimous award that he so strongly favoured. The key passage recounting the decision-making process is worth quoting in full. Having failed to persuade the British and American arbitrators to agree, the President "decided to get down to this issue in a diplomatic way":

> "I went to Chief Justice Fuller and persistently urged him to make one more small concession. The old man was very fond of me and promised to speak to his colleague Brewer. I then went to Lord Collins and explained to him that the British also had to make another concession. But Collins, with whom I had hitherto been on better terms, flatly refused and said he preferred a simple majority (considering me on his side) to unanimity for further concessions. The next day, early on Monday morning, I went again to see Brewer and persuaded him. I learned from him that dearest Fuller had been with him the night before for two hours, and after much deliberation they agreed to make a new concession. I was very glad and considered that the basis for an agreement had been found. I went again to Lord Collins, but found him even less accommodating than the day before. But then I explained to him that England was not interested in forcing me over to the American side. This made him think. I told Fuller and Brewer that if they did not make a concession, then I would be forced *à contre coeur* to side with the English, because I could not wish and allow a scandal, i.e. a situation where the tribunal could not decide the case because the 4 arbitrators cannot agree among themselves, and the super-arbitrator refuses to cast his vote!

[520] Letter from Choate to John Hay, 1 November 1899 (**Annex 173**).

> I did not speak to Lord Russell on Sunday because he was not in Paris. But Lord Collins, at my request, told him all about these negotiations. These conversations, and in particular the fear that Lord Collins communicated to him that I would go over to the American side, simply pissed him off." [521]

5.122. Reflecting on the eventual outcome, the President noted that the British arbitrators had "bargained like *zhids*" (a racist Russian term used to describe Jews), but that he had "literally forced them to be more flexible": "it was obvious that if the British had not agreed to my compromise, I would have joined the Americans rather than them."[522]

5.123. The account emerging from the diaries of de Martens and the accounts of Lord Russell and Mr. Mallet-Prevost/Judge Brewer is further corroborated through statements made by observers and participants closely involved in the arbitral process, and made in the immediate aftermath of the award. These came from every party to the arbitral process (American and British counsel, Venezuelan observers) as well as from members of the tribunal; and they expressed bewilderment at the way the award was 'produced'. The following are illustrative.[523]

5.124. Lord Russell's private secretary, JR Block, who had followed the proceedings closely, had a single line in his diary on the day the Award was finalised, 2 October 1899, "Venezuela. Martens' deal [has] given us victory".[524]

5.125. In a minute dated 4 November 1899, Charles Alexander Harris, of the British Colonial Office, who had been seconded to work on the boundary arbitration, offered an

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[521] Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens. 4 June 1899-3 October 1899, AVPR, opis 787, delo 9, ed.k hr. 1-7 (**Annex 149**).

[522] *Ibid.*

[523] For other relevant statements and reactions to the Arbitral Award see also E. Mondolfi, *El Presidente Benjamín Harrison y la mediación de los Estado Unidos en la controversia de límites entre Venezuela y Gran Bretaña*, Biblioteca de la Academia Nacional de la Historia, 2000, pp. 217 ff; M. Donis, *El Esequibo es nuestro: una contestación a Guyana*, Konrad Adenauer Stifftung 2018, p. 20 ff.

[524] Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967 (**Annex 150**).

equally pithy assessment: referring to the arbitration, he noted that "[t]he thing was a farce".[525]

5.126. Members of Venezuela's counsel team agreed with this assessment and offered further context. In an interview with *The Times* of London, conducted immediately after the rendering of the award, General Harrison and Mr. Mallet-Prevost elaborated on the role of law and diplomacy in the decision-making process. They were quoted as follows:

> "The President of Tribunal had in his closing address today commented on the unanimity of the present judgment and referred to it as a proof of the success of the arbitration. It did not, however, require much intelligence to penetrate behind this superficial statement and see that line drawn was a line of compromise and not a line of right. If the British contention had been right, the line should have been drawn much further west. If it had been wrong, then it should have been drawn much further east. There was nothing in the history of the controversy, nor in fact in the legal principle involved, which could adequately explain why the line should be drawn as it was now found. So long as arbitration was to be conducted on such principles it could not be regarded as a success, at least by those who believed that arbitration would result in an admission of legal rights and not in compromises really diplomatic in their character. Venezuela had gained much, but she was entitled to much more, and if the arbitrators were unanimous it must be because their failure to agree would have confirmed Great Britain in the possession of even more territory".[526]

5.127. General Harrison who (as he would later note) had devoted "two years" to the matter, offered further comment. In a letter penned to W.H. Dodge a few months later, he did not hesitate to describe the award as a "robbery" and rejected any idea that it could have been brought about by a "judicial spirit":

> "As to Lord Russell's advice that a judicial spirit be exercised in these matters, I have only to say that neither he nor his British

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[525] Minute, 4 November 1899, in COVRI White paper, p. 63 (available at: http://covri.com.ve/wp-content/uploads/2020/12/White-Paper-COVRI-3.pdf).
[526] *The Times*, in *Ibid*, pp. 61-62.

> associates practised that good doctrine. I could tell, but will not write, some incidents that would surprise you. I believe that it is possible for an American judge, and perhaps for judges of some other nations, to exercise that judicial spirit in international controversies; but I do not believe it is possible for an Englishman. In controversies between individuals the English courts are conspicuously fair and independent, but when it comes to a question of extending the domain of Great Britain, and especially when gold-fields are involved, it is too much to hope. The decision in the Venezuelan case, as a compromise, gave to Venezuela the strategic points but robbed her of a great deal of territory which I do not question would have been given to her by an impartial judicial tribunal. The modern European idea is that there is nothing illegal or even immoral in the appropriation of territories of weaker states".[527]

5.128. As regards the decision-making process, Harrison's "experience at Paris [...] led him to a very emphatic opinion that any form of arbitration agreement [...] constituted as the Venezuelan was, will necessarily result in a compromise instead of an actual judicial determination of the treaty line".[528] In a later comment, Benjamin Harrison went further in assessing how the decision had been brought about, and was clear about the guiding principles:

> "the case was practically decided by Professor de Martens, the Russian member of the Arbitral Tribunal, without regard to the determining principles of law and without regard to the facts. [...] He judged the case as one to be resolved as a political expedient, and not as something to be decided according to law. It is difficult to suppose that he was free to consider the Russian interests. A decision in favor of Great Britain could not but be expected to foster sentiments of friendship towards Russia by the English, whose navy was the most powerful in the world. Venezuelan friendship was too insignificant a matter to care about. It is true that the United States of America belonged to one of the world powers; but he had no

[527] Harrison, in *Ibid*, pp. 62-63.

[528] Letter from Choate to John Hay, 1 November 1899 (**Annex 173**).

> interests to stake. The matter was only of practical interest to Venezuela".[529]

5.129. Harrison's assessment was shared by Mr. Mallet-Prevost who, writing in late October 1899, described the pressure brought to bear on U.S. arbitrators in the following terms:

> "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 consideration 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. [...] The result is, in my opinion, a blow to arbitration".[530]

5.130. Significantly, contemporary accounts reflect that the perception of General Harrison and Mr. Mallet-Prevost was shared by the American arbitrators sitting on the tribunal: "Fuller and Brewer returned to the country quite sick of arbitration": this is how former U.S. Secretary of State and senior diplomat and legal adviser, John W. Worster, is quoted by Secretary of State Richard Olney in a letter to President Cleveland.[531] In the same letter, Olney recounts Mallet-Prevost's "intense wrath and bitterness of soul at the course and decision of the arbitral tribunal" and his assessment that "both the Chief Justice [Fuller] and Brewer are down on arbitration as a mode of settling international disputes unless some new safeguarding of the rights of Parties can be provided".[532] Tellingly, when discussing the procedure for settling the Alaska boundary, U.S. American negotiators flatly

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[529] Harrison. as quoted in the memorandum of August L. Mason. reproduced in Benjamin Harrison Papers, *Volwiler Collection of Harrisoniana*, Series 15, Library of United States Congress, Washington, cited in COVRI paper, p. 64 (available at: http://covri.com.ve/wp-content/uploads/2020/12/White-Paper-COVRI-3.pdf).

[530] Mallet-Prevost, memorandum to Burt, Ministerio de Relaciones Exteriores Republica de Venezuela. Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 42 (**Annex 150**).

[531] Olney to Cleveland, Ministerio de Relaciones Exteriores Republica de Venezuela: Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 42 (**Annex 150**).

[532] *Ibid.*

rejected British proposals to agree on an arbitration treaty based on the model of the 1897 Paris Agreement.[533]

5.131. Based on these accounts, crucial aspects of the tribunal's decision-making process can be established beyond doubt. They can be summarised in four points:

- *First*, the tribunal took less than six days to produce its Award.
- *Second*, the Award provides no evidence on how the line drawn in it was agreed upon. Neither the text of the Award nor the documentary evidence indicates how the Tribunal understood its tasks mentioned in Article III of the 1897 Treaty and what rules of law enumerated in Article IV it applied.
- *Third*, the contemporary documentary evidence produced by participants and close observers bears out that (as noted by a commentator) de Martens "saw the two American arbitrators and Lord Justice Collins separately, stating that unless they voted affirmatively on a compromise boundary designed by de Martens, he would join his vote to those of the other two arbitrators with the effect of making Venezuela or Great Britain, as the case might be, lose substantial territory [...] It [...] appears that all of [the other arbitrators] felt constrained to accept the line proposed by the President".[534]
- *Fourth*, significant contemporary evidence, emanating from members of the tribunal and participants, suggests that de Martens' approach was perceived as a deliberate choice to render a political or diplomatic decision rather than a legal one.

VI. A FRAUDULENT, ABUSIVE AND UNJUST PROCESS THAT CANNOT BE THE BASIS EITHER OF A VALID AWARD OR OF MUTUALLY ACCEPTABLE AND SATISFACTORY SOLUTION

5.132. The facts summarised in the preceding sections yield an historical truth: under the guise of an arbitral process, Great Britain managed to secure large swathes of territory,

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[533] See for example Letter from Choate to John Hay, 1 November 1899 (**Annex 173**).

[534] J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications, New York, 1979, p. 348.

which it had come to claim without any legal basis in the course of the second half of the 19th century. Contemporary international observers had little doubt as to the expansionist British Empire's attitude and approach. Andrew Carnegie's observation, offered in 1896, is astute:

> "[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 over valuable gold deposits and actually places Britain on the banks of the Orinoco".[535]

5.133. What Carnegie could not have foreseen is that the arbitral tribunal eventually accepted by Great Britain would 'ratify' the territorial usurpation – which even in the late 19th century, could not have been brought about by conquest – almost in toto: with the exception of the banks of the Orinoco, on which the British claim had effectively been given up, the tribunal's award was indeed "disastrous"[536] for Venezuela.

5.134. As shown throughout this Chapter, this was not an arbitral process worthy of its name, or remotely respecting internationally agreed standards. Rather, Venezuela was presented with a deeply unequal treaty negotiated behind its back that set up a tribunal that flouted basic requirements of international justice.

5.135. Venezuelan reactions to the outcome were characterised by a mixture of shock, suspicion and realist resignation. In a letter to the Minister of Foreign Affairs, Venezuela's agent, José María de Rojas, qualified the decision as "derisory and a manifest injustice" and "inexplicable surprise" brought about by the actions of the President of the Tribunal, Mr. de Martens, and added "[w]hat we may never know is Mr. de Martens' motive for

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[535] A. Carnegie, "The Venezuelan Question", *The North American Review*, Vol. 162, No. 471, 1896, pp. 133-134.

[536] Letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

proceeding in this way".[537] Venezuela's envoy to Great Britain, Jose Andrade, equally confirmed that "[t]he Award does not appear to be based on reason and justice", noting that "the Venezuelan arbiters only gave their adhesion in order to avoid an ever greater flouting of the essential attributes of any faultless judgment".[538]

5.136. The circumstances obtaining in 1899 made it impossible for Venezuela to challenge the award. The full details of the tribunal's decision-making process had yet to be revealed; they would become clear only some decades later. Moreover, when Great Britain quickly proceeded to establish boundary posts at Punta Playa, the geopolitical situation rendered it simply unthinkable that Venezuela could oppose to the execution of the Award. Acts of coercion by foreign powers – such as those later culminating in the Venezuelan crisis of 1902-1903, in which European powers, including Great Britain, subjected Venezuela to a crushing naval blockade to enforce their alleged claims – were the rule. In ordinary circumstances, such acts reduced dramatically the room for manoeuvre enjoyed by a Latin American Republic at the turn of the 20th century. In the case of Venezuela, the room for manoeuvre was non-existent, squeezed as it was between the pressure exerted at the same time by Great Britain and the United States.

5.137. Once those circumstances had changed, Venezuela articulated its claims, and established that indeed, "[t]he award was the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights", resulting in a decision that took "no account [...] of the specific rules of the arbitral agreement or of the relevant principles of international law."[539] Venezuela's claim led to the conclusion of the Geneva Agreement that now imposes on the parties to find a mutually acceptable and satisfactory solution to their territorial dispute.

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[537] Letter from Rojas to the Foreign Officer Minister of Venezuela, 4 October 1899 (**Annex 65**).

[538] Letter from José Andrade to General J. Calcaño, Minister of Foreign Affairs of Venezuela, 7 October 1899 (**Annex 68**).

[539] Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations, 14 February 1962 (**Annex 140**).

5.138. As demonstrated in the next chapter, this evidence clearly supports Venezuela's historical claim that the 1899 Award is null and void. More broadly, the evidence clearly shows to what extent Venezuela was the victim of a fraudulent, abusive, and unjust process.

5.139. In this respect, the facts reported in the present chapter – to the extent that they show the prejudice suffered by Venezuela as a consequence of this process – are crucial for assessing what could be a mutually acceptable and satisfactory solution, as required by the Geneva Agreement. It is clear that a deeply flawed and invalid award cannot be the basis of a mutually acceptable and satisfactory solution. Since the evidence clearly supports the invalidity of the Award, this is sufficient to reject Guyana's claim to sovereignty over the entire contested territory.

5.140. Irrespective of the invalidity of the Award, it is also clear that a territorial delimitation which is the result of a fraudulent, abusive and unjust process can in no way represent the basis of a mutually acceptable and satisfactory solution. Also, in this case, therefore, Guyana's claims must be rejected.

CHAPTER 6: THE INVALIDITY OF THE 1899 AWARD

6.1. The fraudulent, abusive, and unjust practices described in Chapter 6 cannot but lead to an inevitable conclusion: the 1899 Arbitral Award is null and void. Because of its nullity, it cannot determine the course of the boundary between Venezuela and Guyana, nor serve as a basis for a mutually acceptable solution of the territorial controversy that led to the adoption of the Geneva Agreement of 1966 and the joint communiqué of 14 December 1965 signed between the United Kingdom, Venezuela with the presence of British Guiana, now the Co-operative Republic of Guyana.

6.2. The present chapter sets out Venezuela's longstanding position that the 1899 Arbitral Award is null and void. It does so in two steps:

6.3. Section I outlines the legal rules governing the invalidity of arbitral awards. It also summarizes the applicable rules governing the burden and standard of proof in disputes about the validity or invalidity of awards.

6.4. Section II demonstrates that the grave irregularities that took place in the process resulting in the 1899 Arbitral Award, looked at separately and when considered together, vitiate the Award, which is invalid for three alternative reasons: (A) because it was rendered on the basis of an invalid Treaty; (B) because the Award failed to state the reasons on which it was based; and (C) because the Tribunal manifestly exceeded its powers conferred upon it by the Treaty. These three elements, which are analysed here in concrete terms, are key components of the configuration of a fraudulent procedure – a fraud consummated with the award - characterised by simulations, undue and extortive pressure, prevarication, deceit, abuse of power and falsehoods of all kinds.

I. THE LAW ON THE NULLITY OF ARBITRAL AWARDS AND ITS APPLICABILITY TO THE 1899 AWARD

(i) THE NULLITY OF ARBITRAL AWARDS IN INTERNATIONAL LAW

6.5. Arbitral awards are final and binding only if they satisfy the conditions for their validity provided under international law. In the absence of one of these conditions, they do not produce legal effect. If an award is null, it does not have the force of *res iudicata*.

6.6. The possibility of nullifying arbitral awards is inherent in the very nature of arbitration. The power of an arbitral tribunal to render a binding award relies on the agreement of the parties as contained in the arbitral *Compromis*. If that *Compromis* is invalid or if the arbitral tribunal does not conform to the rules agreed upon by the parties in the *Compromis*, a party is entitled to invoke the nullity of the award. As Judge Lachs put it, "[i]t is the inherent right of any party to proceedings, let alone a government with a nation's permanent interests to defend, to seek to have the result declared a nullity if it is convinced that the decision taken is basically flawed. This is so even in respect of decisions characterized as final [...]".[540]

6.7. Being an inherent right of any party to proceedings, there is no need that the *Compromis* expressly recognises the possibility of nullifying the award. Nor does the fact that the *Compromis* contains a clause establishing that the award is "binding and final" precludes the possibility of nullifying the award. Only a "valid" award can be considered to be "binding and final".[541]

6.8. This also applies to the 1899 Arbitral Award. Article XIII of the 1897 Treaty provides that the award is to be considered "as a full, perfect, and final settlement of all the questions referred to the Arbitrators". This provision simply establishes the mutual

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[540] *Arbitral Award of 31 July 1989*, Separate Opinion of Judge Lachs, *I.C.J. Reports 1991*, p. 92.

[541] See, among others, Rundstein, "La Cour permanente de Justice internationale comme instance de recours", in *Recueil des cours*, 1933-1, p. 18 ("si le 'texte' se prononce sur le caractère définitif et sans appel d'une sentence, il serait inadmissible de conclure que chaque décision arbitrale, *parce qu'elle est définitive*, soit, de ce chef, et en vertu d'une présomption 'légale' dispensant de toute preuve contraire, absolument *valide* en tant qu'acte juridique liant les Parties").

engagement of the parties to consider the award to be "final". It does not address the question of its validity or nullity. Guyana's argument that Article XIII of the 1897 Treaty precludes any challenge against the 1899 Arbitral Award is therefore groundless.[542]

6.9. Theory and practice widely confirms that any party to proceedings has the inherent right to invoke the nullity of an award and that, in case of nullity, "the State concerned is not bound to carry it into effect".[543] It would be very easy to make a long list of citations from "judicial decisions" and from "the teachings of the most highly qualified publicists of the various nations" recognising the existence under international law of a number of grounds of nullity of arbitral awards. Given the large agreement existing over this issue and for the sake of brevity, a reference to a few of the most significant cases and texts will be sufficient.

6.10. In 1804, the nullity of an award for excess of power by the arbitral tribunal was emphatically affirmed by Commissioner Gore. In his opinion in the *Betsey* case, he observed that international law, English common law, and common sense dictated that "une partie n'est pas liée par la décision des arbitres lorsque l'espèce ne rentre pas dans les termes du compromis: une telle décision est une lettre morte; ce n'est pas une décision."[544]

6.11. In August 1875, the *Institut de droit international* adopted the Draft Regulations for International Arbitral Procedure. This text, which represents the first authoritative attempt at codifying the principles governing international arbitration, included a provision on the nullity of arbitral awards. Article 27 provided as follows: "The arbitral award is null

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[542] For this argument, see GM, pp. 154-155, para. 6.17.

[543] Commentary on the Draft Convention on Arbitral Procedure Adopted by the International Law Commission at its Fifth Session, UN doc A/CN.4/92, p. 105 ("Theory and practice abundantly demonstrate that when one or more of the fundamental conditions for the validity of an award are lacking, the State concerned is not bound to carry it into effect").

[544] Affaire du Betsey (cap. Furlong), 24 February 1804. De Lapradelle et Politis. *Recueil des arbitrages internationaux*, Pedone, Paris, 1905, Vol. 1, 69.

in case of an invalid *compromis*, or in case of excess of authority, or of proved corruption of one of the arbitrators, or of essential error".[545]

6.12. In 1910, the arbitral tribunal in the *Orinoco Steamship* annulled for excess of powers an award rendered in 1904 by Umpire Barge in the claims opposing the Orinoco Steamship Company against Venezuela. The Protocol conferring jurisdiction to the tribunal, concluded in 1909 between the United States and Venezuela, asked the tribunal to decide whether the 1904 award was void "under the principles of international law". In particular, the Protocol expressly mentioned the existence of "causes which by universal jurisprudence give rise" to the nullity of an award, including "an excessive exercise of jurisdiction", "the corruption of the judges", and "an essential error in the judgment".[546]

6.13. In 1958, the International Law Commission adopted the *Model Rules on Arbitral Procedure*. Article 35, dealing with the nullity of arbitral awards, provides as follows: "The validity of an award may be challenged by either party on one or more of the following grounds: a) that the tribunal has exceeded its powers; b) that there was corruption on the part of a member of the tribunal; c) that there has been a failure to state the reasons for the award or a serious departure from a fundamental rule of procedure; d) that the undertaking to arbitrate or the *compromis* is a nullity".[547]

6.14. This brief overview of significant episodes in the history of arbitration is sufficient to conclude that under international law arbitral awards have always been regarded as being inherently subject to nullity. Moreover, there has been always wide agreement about the grounds that may justify the nullity of arbitral awards.

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[545] Institut de droit international, *Draft Regulations for International Arbitral Procedure*, available at https://www.idi-iil.org/en/publications/i-projet-de-reglement-pour-la-procedure-arbitrale-internationale/.

[546] Protocol of an Agreement Between the United States of America and the United States of Venezuela for the Decision and Adjustment of Certain Claims, Signed at Caracas on 13 February 1909, 11 RIAA 234.

[547] *Yearbook of the International Law Commission 1958*, vol. II, p. 83.

(ii) THE POSSIBILITY OF NULLIFYING ARBITRAL AWARDS WAS GENERALLY RECOGNISED WHEN THE 1899 ARBITRAL AWARD WAS RENDERED

6.15. The 1899 Arbitral Award between Great Britain and Venezuela was rendered twenty-four years after the adoption by the *Institut de droit international* of the Draft Regulations for International Arbitral Procedure. Ten years later, the United States and Venezuela – that is, the State which negotiated, and one of the States who concluded, the 1897 Treaty – stipulated an agreement expressly recognising "principles of international law" on the nullity of arbitral awards and "causes which by universal jurisprudence give rise" to such nullity. There is no doubt, therefore, that, when the 1897 Treaty was concluded and the 1899 Arbitral Award was rendered, there was wide recognition that an arbitral award could be nullified under international law.

6.16. Remarkably, in its oral submissions in the *Orinoco Steamship* case the United States even referred to the possibility of the 1899 Arbitral Award being declared null for excess of power. The United States observed that, in case of nullity, neither Great Britain nor Venezuela would have been bound by the award.[548] This observation, made by the State who negotiated the 1897 Treaty, is revealing of how at that time States were aware of the existence of grounds of nullity in international law. It is probably also revealing of the doubts already existing about the validity of the 1899 Award.

6.17. In its Memorial, Guyana appears to suggest that, when the 1899 Award was rendered, international law did not admit the possibility of nullifying arbitral awards.[549] Guyana's argument relies essentially on the fact that neither the 1899 Hague Conference nor the 1907 Hague Conference led to the adoption of common rules dealing with the grounds of nullity of awards or with a procedure for nullifying awards, despite certain

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[548] Argument of the United States of America on Behalf of the Orinoco Steamship Company against the United States of Venezuela (1910), p. 67 ("Can it be suggested that either Great Britain or Venezuela would have been bound to submit to the result of this arbitration if the arbitrators had declined to regard fifty years of possession as conclusive evidence of title and had proceeded to decide, for instance, that it required one hundred years' possession to give title or that no title based on prescription growing out of possession could be recognized in international law? The question answers itself").

[549] GM, paras 6.47-6.49.

States had advanced proposals to that effect. According to Guyana, this circumstance would demonstrate that at that time there was no general agreement about the grounds of nullity or the possibility itself of nullifying awards under international law.

6.18. The fallacy in this argument had already been emphasised by a number of authors. As observed by Brierly in 1928, the history of The Hague Conferences gives no support to the view that, at that time, international law did not admit the possibility of nullifying arbitral awards. The fact that no rules on the nullity of awards were approved by the Conference was only dictated by the circumstance that "the Conference, deeming it impracticable to propose a satisfactory *procedure* for adjudicating on allegations of nullity, thought it best to say nothing about the *substantive law* of nullity".[550]

6.19. Most importantly, this argument had already been advanced without success before the International Court of Justice in the *Arbitral Award of the King of Spain* case. The case concerned an award rendered in 1906 on the basis of a *compromis*, the 1894 Treaty between Honduras and Nicaragua, that, like the 1897 Treaty between the Great Britain and Venezuela, had expressly recognised that the award was final and did not contain any reference to the possibility of invoking its nullity. Relying on the results of the two Hague Conferences, Honduras argued that international law did not admit the possibility of nullifying the award unless the *compromis* admitted such possibility.[551] Nicaragua objected

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[550] Brierly, 'The Hague Convention and the Nullity of Arbitral Awards', in *British Yearbook of International Law*, 1928, p. 116. See also Fauchille, *Traité de droit international public*, 8th ed., Paris, 1926, p. 566; Raestad, 'Le recours à la Cour Permanente de Justice international contre les sentences des tribunaux d'arbitrage internationaux pour cause d'incompétence et d'excès de pouvoirs, in *Revue de droit international et de législation compare*, 1932, p. 307.

[551] Plaidoirie de M. Guggenheim (Honduras), in *Case concerning the Arbitral Award made by the King Of Spain on 23 December 1906 (Honduras v. Nicaragua), I.C.J*, Pleadings, Vol. II, p. 60 ("Déjà l'article 81 de la convention de La Haye de 1907 pour le règlement pacifique des différends internationaux n'est pas parvenu à indiquer les griefs de nullité opposables à une décision arbitrale, à la seule exception du recours en révision à la suite de la découverte d'un fait nouveau. Dans ces conditions, on est arrivé à la conclusion que, hors d'un compromis particulier, il n'est pas possible d'invoquer un motif de nullité de la sentence").

that The Hague Conventions had never intended to deny the possibility of nullifying arbitral awards.[552]

6.20. By accepting to establish whether the 1906 Award of the King of Spain "proved to be a nullity having no effect" on ground of excess of jurisdiction, essential error and lack or inadequacy of reasons,[553] the Court in fact endorsed the position of Nicaragua on this point. By so doing, the Court's judgment in the Arbitral *Award of the King of Spain* authoritatively confirms that arbitral awards rendered at the turn of the twentieth century were clearly subject to nullity under international law. Moreover, the Court implicitly recognised that excess of jurisdiction, essential error and lack or inadequacy of reasons were grounds of nullity under international law and that they could be applied for assessing the validity of the 1906 Award. There is no reason for considering that the same is not true as regards the 1899 Arbitral Award.

II. THE CONSEQUENCE OF THE FRAUD: THE INVALIDITY OF THE 1899 AWARD

6.21. The facts set out in Chapter 5 highlight the serious and manifold deficiencies affecting the 1899 Award. They also illustrate that the fraud committed against Venezuela was a composite act, consisting of a series of interlinked actions and facts, whose combined effect was to deprive a sovereign country of its territory and to cloth this in the form of an arbitration procedure. As discussed in the following sections, even taken individually, many of these actions and facts would result in the invalidity of any award including the Arbitral Award of 1899.

6.22. This section will present the grounds vitiating the 1899 Award that verify its nullity under international law. The existence under international law of such grounds of nullity is so unanimously recognised by authors and in international practice that there is no need to

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[552] Plaidoirie de M. Rolin (Nicaragua), *ibid.*, p. 334 ("personne, parmi les auteurs, n'a jamais attribué à ce texte de la Convention de La Haye [..] la portée de biffer l'éventualité de nullité de sentences arbitrales dans le droit international").

[553] *Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960, I.C.J. Reports* 1960, p. 214.

provide an extensive demonstration. Nor is there any need to respond to Guyana's argument that the grounds of invalidity applicable to the 1899 Arbitral Award can only be the grounds recognised under international law at the time when the award was rendered.[554] There is no doubt, as Guyana itself concedes,[555] that the grounds of nullity invoked by Venezuela as vitiating the 1899 Award exist today as they existed at the end of 19th Century. There is thus no question of intertemporal law at issue in the present case.

6.23. Reflecting the legal regime governing the invalidity of arbitral awards, the subsequent analysis is divided in three sections.

a) Section 1 demonstrates that the 1899 Award is invalid because it was rendered on the basis of an invalid Agreement.

b) Section 2 demonstrates that the 1899 Award is invalid because it failed to state the reasons on which it was based.

c) Section 3 demonstrates that the 1899 Award is invalid because, in rendering it, the Tribunal manifestly exceeded its power under the 1897 Washington Treaty.

6.24. Significantly, each of these three alternative grounds renders the 1899 Award null and void. That said, in engaging with sections 1-3, Venezuela would like to stress the interrelated nature of the different grounds of invalidity, and the need to consider them holistically, bearing in mind their combined effect. Put simply, since its publication over 120 years ago, the 1899 Award has been attacked from multiple angles and decried as "une marchandage purement politique"[556], an "act of injustice being perpetrated"[557], "una expresión de prepotencia y arbitrariedad colonialista".[558] The central question facing the

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[554] GM, paras 6.43-6-49.

[555] *Ibid.*, para 6-49.

[556] P. 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*. in *Mélanges Offerts à Juraj Andrassy*, Springer, Dordrecht, p. 238.

[557] J. Gillis Wetter, *The International Arbitral Process: Public and Private*, p. 350.

[558] H. Gros Espiell, "Federico Martens, John Westlake y el laudo de 1899", in Boletín de la Academia Nacional de Historia 1983, p. 1029.

Court is whether an Award displaying so many defects can be upheld as valid. The subsequent sections demonstrate why it cannot.[559]

(i) THE INVALIDITY OF THE 1897 TREATY

6.25. The first ground for nullity is the invalidity of the *compromis*. This ground is expressly provided in Article 27 of the 1875 Draft Regulations for International Arbitral Procedure.[560] Article 35 of the International Law Commission's *Model Rules on Arbitral*

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[559] In several official documents, including in statements before the United Nations, Venezuela has provided a detailed and extensive demonstration of the grounds of nullity affecting the 1899 Award. They include the following: Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations (14 Feb. 1962), reprinted in U.N. General Assembly, Fourth Committee, 16th Session, Information from Non-Self-Governing Territories transmitted under Article 73 of the Charter, U.N. Doc A/C.4/536 (15 Feb. 1962) (**Annex 140**); Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 43 (**Annex 150**); Question of Boundaries between Venezuela and the and the Territory of British Guiana: Statement of His Excellency, Dr. Marcos Falcon Briceno, Minister for External Relations of Venezuela, at the 348th Meeting of the Special Political Committee on 12 November 1962 (**Annex 143**); Ministerio de Relaciones Exteriores Republica de Venezuela, Reclamación de la Guayana Esequiba: documentos 1962-1981 (1981), available at the Peace Palace LibraryA non-exhaustive list of works on the grounds of invalidity of 1899 Award includes the following work: Academia Nacional de la Historia, "Declaración acerca del problema de los límites de Venezuela con la Guayana Británica" (1965), reported in *Boletín de la Academia Nacional de la Historia*, 2004, p. 167ff.; P.F.M. De Vegamian, *El Esequivo, frontera de Venezuela: documentos históricos y experiencias personales*, SA Impresiones (1968), p. 195 ff.; J. G. Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications (1979), pp. 1-350; P. Ojer, *Sumario histórico de la Guayana Esequiba*, Colección Sumario (1982), p. 50 ff.; C. Sosa Rodríguez, "El Acta de Washington y El Laudo de Paris", in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales (1983), p. 149 ff.; H. González Oropeza and M. Donis, *Historia de las Fronteras de Venezuela*, Cuadernos Lagoven (1989), p. 164 ff.; J. Sucre Reyes, *El despojo del siglo: la Guayana Esequiba*, Publicaciones Seleven (1981), p. 10 ff.; R. Sureda, *Venezuela y la Guayana Esequiba*, in *GeoVenezuela*, 2008, p. 351; C.A. Briceño Monzón, *La cuestión fronteriza en la conformación de la política internacional en Argentina y Venezuela: Siglos XIX-XX*, Universidad Nacional de La Plata (2014), p. 286 ff.; M. Donis, *El Esequibo: una reclamación histórica*, Universidad Católica Andrés Bello (2016), p. 104 ff.; W. Dávila Barrios (ed.) *Libro Blanco: La reclamación venezolana del territorio Esequibo*; H. Faúndez Ledezma, R Badell Madrid (eds), *La Controversia del Esequibo*, Editorial Jurídica Venezolana (2022), p. 283 ff.; R. Badell Madrid, *La reclamación de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023); A. R. Brewer-Carías, *Derechos de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023), p. 130 ff.

[560] Institut de droit international, *Draft Regulations for International Arbitral Procedure*, (available at: https://www.idi-iil.org/en/publications/i-projet-de-reglement-pour-la-procedure-arbitrale-internationale/).

Procedure establishes that the award is invalid if "the undertaking to arbitrate or the *compromis* is a nullity".[561] As the binding force of the award is based on the agreement of the parties as set out in that *compromis*, it follows logically that if the *compromis* is invalid, the award cannot produce any legal effect.

6.26. The evidence presented in the previous chapters demonstrates that the 1897 Treaty is invalid for error (a) or/and fraud (b).[562] As recognised by Guyana,[563] the conditions for determining the invalidity of a treaty as a consequence of error or fraud are set forth in, respectively, Articles 48 and 49 the 1969 Vienna Convention on the Law of Treaties. These provisions reflect rules of customary international law. Venezuela also affirms that such invalidity conditions can be found in international law and law in general, particularly criminal law knowledge and possible overlaps with the law of treaties.

6.27. Now, from the perspective of international law, the key element of any legal act, and in particular for the law of treaties, is the manifestation of will. In this regard, article 7 states that:

> "for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if: (a) he produces appropriate full powers; or (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers".

6.28. In other words, there are two distinct scenarios, one formal and the other implied. The first case does not pose any problem, except in cases of falsification of the act in the granting of powers. However, the second case may cause difficulties, in particular if the representation was valid, but the agent acted in bad faith, or in complex moments regarding the legitimacy of the person exercising the representation and did so to the detriment of the

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[561] *Yearbook of the International Law Commission 1958*, vol. II, p. 83.

[562] As to the invalidity of the Treaty as a consequence of the coercion exerted on Venezuela, see Chapter 7, paras. 64-72.

[563] GM, p. 175, para. 7.5.

principal. Hence, an excusable error may occur in favour of the State invoking nullity, depending on the particular situation of each case.

6.29. In the unique case of the Treaty of Washington of 1897, two rather heterodox and irregular situations occurred, one being that the negotiator of the Treaty turned out to be a representative of a foreign state: Richard Olney. The existence of any special power to legitimise his intervention for the negotiation of the Treaty is not precisely known (therefore, it is a presumed representation). The problem is that the negotiation was detrimental to Venezuela, which means that the formation of the representative's will was affected in its essence and constituted a fraudulent conspiracy, as there was fraudulent intent to induce an essential error in the Venezuelan representative (ambassador) when he signed the treaty, given that artifice and deception were present to facilitate the fraud.

6.30. Although the 1897 Treaty was signed by José Andrade, Venezuela's representative to the United State, he referred to the President of the Republic at the time, Joaquín Crespo, that Venezuela had been marginalised from the negotiation process and in the integration of the Paris Tribunal. Therefore, Venezuela was unable to appoint arbitrators. This situation was enough to make clear the trace of injustice and perspicacity in the consummation of the fraudulent Award of 1899.

6.31. The United States and Britain not only limited themselves to excluding Venezuela from the negotiation process but kept some crucial decisions strictly confidential. The level of confidentiality was attested to by the fact that even the relevant documents were not allowed to "pass into the archives of the State Department".

6.32. This Counter-Memorial show the fraudulent actions of the main negotiators of the Washington Treaty of 1897 with respect to the exclusion of Venezuelans in the arbitration, in addition to other relevant aspects no less important, such as: (a) the exclusion of the agreement reached by the exchange of notes of 1850 (*status quo*); (b) the ruse of a forged 50-year statute of limitations in favour of the usurper of the territory; (c) the relevant exclusion of the motivation of the award, which was crucial for the due substantiation of the arguments of the parties and the law invoked; d) the way in which *uti possidetis* was to be interpreted, as a general principle, which was relativised and would not be a valid

premise for determining the dividing line; e) the enshrinement of three rules in the articles of the treaty that contradict the general principle of *uti possidetis*, which gave rise to a serious exceptional right against the stability of the sovereignty of the territory whose dispute the United Kingdom had forged; f) a strange rule on prescription was enshrined, where alleged political domination is equivalent to acquisitive prescription, whereas universally the rule is different: time and peaceful possession are equivalent to prescription. Certainly, the architects of these fraudulent conversations were Mr. Julian Pouncefote, Mr. Salisbury and Mr. Olney, which led to the fraud.

6.33. Thus, the error caused to the detriment of Venezuela by means of fraudulent deceit can be inferred from what is expressed in the provisions of the 1969 Convention in its double dimension, both in terms of the subject-matter or object of the treaty. Hence, Article 48 states: "[a] State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty". In the case of consent affected by an error, the error must be excusable, that is to say, the person affected could not at any time have foreseen the error which had occurred.

6.34. In any case, when the Vienna Convention focuses on error, it is concerned with consent. Therefore, the rule in Article 48 specifies: a) a defect in its consent to be bound by the treaty and b) it constituted an essential basis of its consent to be bound by the treaty. In short, the error must arise from an essential assumption, where there is a misconception about a matter that was believed to be true, for example, negotiations, declarations, documents, traditions, conduct or actions. In the case of the 1897 Washington Treaty, the consent formally given by Venezuela is a necessary consequence of deception, deceit or artifice (creation of a dispute and covert conversations to facilitate fraud) which were the means used to deceive, as well as a forced situation orchestrated by the chief negotiator of the treaty, the U.S. official, Mr. Olney. Grotius said that the right of the parties must always be protected to give free and voluntary consent, which did not happen.

6.35. Thus, fraud in treaty law is centred on ill intent or malice, just as it is a rule of law in general to qualify the intention or will directed towards an unlawful end and which criminal law qualifies with greater unlawfulness when that end serves conduct that in the abstract, is criminally reprehensible. Specifically, when one of the parties directs its action in two concrete situations, a) deceit or fraudulence and b) implicit or explicit (extortive) violence (fraudulent fraud and extortive fraud), which can be understood either as an influence of the action itself or out of just fear of being exposed to a greater evil. Both situations have to do with consent to be bound. The first is the most common, as it involves fraudulent actions, such fraudulence may be constitutive in that one party believes that the other party is negotiating in good faith, which is the sensible thing to do, when in fact it is not, and thus seeking to make the injured party fall into an error which is also entirely excusable. The Convention in Article 49 states: "|i|f a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty." It would seem that the defect referred to in the Convention, in the first instance, would be fraud or deception, which produces in the other state a conduct prejudicial to its interests which, being essential, there is no doubt about the invocation of nullity.

6.36. The Convention adds other fraudulent cases in relation to representation when it is subject to two illegal situations, such as: corruption of the negotiating official and coercion that may be exercised on the official. Article 50 of the Convention states: "[i] the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty." It is striking that both the American (Olney) and Anglo-Saxon (Salisbury and others) representatives were involved in a way that deviated from their functional duties as officials, which resulted in an act of fraudulent corruption to the detriment of Venezuela.

6.37. The other situation that can be invoked for the purposes of nullity is coercion or violence (extortive fraud). As mentioned above, violence can be direct and can seek to obtain consent by affecting the subject's willingness to give consent. For this reason, Article 51 of the Convention establishes: "|t|he expression of a State's consent to be bound by a

treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect." It is obvious that no previous fraudulent conduct affecting consent can be valid and affects the universality of the whole treaty. For this reason, Article 52 of the Convention states: "[a] treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."

6.38. In the specific case of the Venezuelan situation in 1899 with regard to the Treaty of Washington of 1897, the arbitration award, as a consequence of it, and the subsequent execution, were affected by openly fraudulent activities, as has already been sufficiently stated; not only with regard to fraud in the creation of the Treaty and its contents (the British authorities at the time, together with certain American officials, especially the diplomatic representation of the State Department, made it appear that they were acting in good faith), but also with regard to the issues dealt with and the corruption of the arbitrators, as well as the subsequent enforcement of the Award, which was marked by coercion, despite the special circumstance that the 1897 Treaty constituted a violation of essential rules of domestic law. Therefore, the situation experienced by Venezuela at the time of the 1899 Arbitral Award was that of a victim of fraudulent (criminal) actions by all the members of the Arbitral Tribunal or Commission, the American officials and British Foreign Department and its authorities who, taking advantage of their warlike power as the world's leading power, sought to harm the fundamental and territorial interests of the Venezuelan nation.

6.39. The ILC pointed out in its report that in attempting to answer the question of violent coercion, it is defined as the threat or use of armed force or whether it involves or encompasses all forms of coercion. Finally, says the Commission, the Conference adopted, as an annex to its Final Act, a *Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties*, in which it pronounced a solemn condemnation of the resort to the threat or use of pressure in any form, whether military, political or economic, by a State in order to coerce another State to perform an act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and the freedom of consent.

6.40. Moreover, the fraudulent conduct of the two negotiating States is confirmed by their subsequent conduct. Despite all the confidentiality surrounding the correspondence between the parties, Britain - without encountering any real opposition from the United States - did not hesitate to openly refer to its existence and content during the proceedings before the arbitral tribunal. Once Venezuela ratified the Treaty, all reasons for strict confidentiality suddenly disappeared.

6.41. In sum under the foregoing analysis, it can be affirmed that the conditions were and are present to consider the 1897 Treaty invalid for fraud. First, the fraud came from one negotiating party, Great Britain, with the complicity of the chief representative of the United States (Richard Olney) who acted as the representative of the United States. Secondly, the fraud was a determining factor in inducing Venezuela to accept the Treaty, since the fraudulent conduct affected the crucial issue concerning key aspects of the dispute which, properly analysed, constituted an inexcusable prejudice to Venezuelan interests. Third, Venezuela was not and could not have been aware of the fraudulent conduct of Britain and the United States (good faith prevailed). For all these reasons, the 1897 Treaty is invalid and has no effect, as well as the consequent result of the arbitration, namely the void award of 3 October 1899.

6.42. It is imperative to emphasise what the International Law Commission has said: "fraud, when it occurs, strikes at the root of an agreement" because it "destroys the whole basis of mutual confidence between the parties". It is difficult to see what mutual trust can exist when negotiating states resort to confidential correspondence in the way that the United States and Britain did.

a) Error in substance applicable to the 1897 Washington Treaty in its content: Substantive error in the rules

6.43. Article 48 (1) of the Vienna Convention provides as follows: "A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty".

6.44. In the present case, the error by concealment in question related to the calculation of the period of prescription provided under Article IV of the 1897 Treaty. During the negotiation of the Treaty, the United States and Great Britain agreed upon the interpretation to be given to this key provision of the Treaty, without informing Venezuela of this fact. The effect of such conduct was a misrepresentation of the real meaning of the provision, which clearly affected "the reality of the consent supposed to have been given" by Venezuela.[564]

6.45. Thus, Venezuela gave its consent to the Treaty on the erroneous assumption that the period for the computation of the statute of limitations was different and that any occupation after 1850 would constitute a usurpation without legal value.[565]

6.46. The position of Venezuela on this issue was clearly articulated by its Minister of Foreign Affairs in 1965. The Treaty of Washington is invalid because "the correspondence exchanged between the United States and Great Britain during the decisive period of the negotiation (September to November 1896) was concealed from Venezuela until 1899, in other words, two years after the signature of the Treaty".[566]

6.47. As widely demonstrated in Chapter 5, while the Treaty does not clarify when the period of prescription was meant to start, Great Britain and the United States had confidentially agreed that factual occupation was able to generate a valid title even if it had taken place in the period after 1814. They also agreed that the 1850 Agreement concluded between Venezuela and Great Britain did not necessarily represent an impediment for taking into account situations of factual occupation which occurred after 1850.

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[564] *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Preliminary Objections, Judgment of 26 May 1961, I.C.J. Reports 1961*, p. 30.

[565] See the Vol. 11 of the proceedings, pp. 3096-3097, where Harrison stated that : "now comes into play the 1850 Agreement by which, as we stated, there was a mutual occupation of the territory, a joint jurisdiction in which neither had an adverse position any longer, but had it with the consent of the other and which, of course, according to the rules of international law cut off the statute of limitations and this discussion of the period [...]" (available at the Peace Palace Library).

[566] Dr. I. Irabarren Borges. *Statement made by Dr. Ignacio Irabarren Borges, Venezuelan Foreign Minister, to the Ministerial Conference Held in London (9 December 1965)*, GM, Vol. IV, Annex 76.

6.48. The two States never informed Venezuela of these decisions. Venezuela therefore gave its consent to the Treaty on the mistaken assumption that the period for the calculation of prescription was a different one. This is demonstrated by the fact that, when presenting its arguments before the Arbitral Tribunal, Venezuela argued, in the first place, that Article IV (a) of the 1897 Treaty had no application to the period subsequent to 1814 and, secondly, that in any case the 1850 Agreement precluded Great Britain to claim that the period of time after 1850 could be taken into account for the purposes of determining prescription. It was only during the oral phase of the proceeding before the Arbitral Tribunal that Great Britain made use of the confidential correspondence between the United States Secretary of State, Olney, and the English Ambassador, Pauncefote, to argue that, on both issues, the position of Venezuela was erroneous since it did not conform to what the United States and Great Britain had agreed upon about the relevant period for the calculation of the prescription.

6.49. There is little doubt that the conditions set forth in Article 48 of the Vienna Convention are met. Firstly, Article 48 requires that the error relates to a "situation which was assumed by [the consenting] State to exist at the time when the treaty was concluded". As just shown, when Venezuela concluded the 1897 Treaty, its consent was clearly based on a mistaken assumption about the relevant period for the calculation of the prescription under Articles III and IV, as well as on the binding nature of the 1850 agreement.

6.50. Secondly, Article 48 requires that the mistaken situation "formed an essential basis of [the State's] consent to be bound by the treaty". As established in Chapter 7, the question of whether prescription was to be regarded as a valid title for claiming the contested territory was crucial for settling the territorial dispute. On several occasions, Venezuela had made clear its opposition to recognise *de facto* occupation as a valid title. The determination of the relevant period for the calculation of the prescription constituted therefore an essential issue for Venezuela, as it represented the only guarantee for limiting territorial claims, such as those advanced by the United Kingdom, which were based exclusively on the *de facto* occupation of the territory. From the beginning of the negotiations, the UK stated that it would not cede territory where there were British subjects. In this sense, for the British, rule (a) and (c) meant that occupied territories would

not be part of the arbitration. Both rules were proposed by the U.S. It is clear that the Venezuelans had a different interpretation from that of the negotiators – yet, this was not out of naivety but because they took Olney's word for it, who in turn had made a commitment to the contrary to the British.[567]

6.51. Thirdly, and lastly, under Article 48, error cannot be invoked by a State "if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error". Venezuela did not contribute to the error nor could have avoided it. As observed by the International Law Commission, in ordinary circumstances, "treaty making processes are such as to reduce to a minimum the risk of errors on material points of substance".[568] The treaty-making process leading to the conclusion of the 1897 Treaty was by no means an ordinary process. Venezuela was intentionally left outside of the negotiation process. It was not consulted nor informed of the development of the negotiation. Given these circumstances, it was simply impossible for Venezuela to be on notice of a possible error or to contribute to it.

b) Fraud: Invalidity for lack of factual and legal basis (reasons)

6.52. In addition to error, another basis for holding the Treaty invalid is fraud. It has been observed that it may sometimes be difficult to distinguish between error and fraud, since in fact "fraud (ie error induced by the actions of another party) constitutes a species of the genus error".[569] While error provides a sufficient ground for invalidating the 1897 Treaty, it is submitted that the conditions for considering it invalid because of fraud are also met.

6.53. Article 49 of the Vienna Convention provides as follows: "If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty".

6.54. The United States and Great Britain did not limit themselves to excluding Venezuela from the negotiation process. They kept some crucial decisions strictly

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[567] The Venezuelan Question, London Time, Tuesday, November 10, p. 1896.

[568] *Yearbook of the International Law Commission*, 1966, vol. II, p. 243.

[569] See E. Wyler, R. Samson. 'Article 48', in O. Corte, P. Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary*, Oxford : Oxford University Press, 2011, p. 1130.

confidential. The level of confidentiality was attested by the fact that the relevant documents were not even allowed "to go on to the files of the State Department".[570]

6.55. It is difficult to explain why the parties followed this course of conduct if not for the reason that they wanted to leave Venezuela in the dark about the content of their decisions. They were aware of the importance attached by Venezuela to the issue of prescription and feared the resistance that Venezuela might have opposed to further concessions aimed at facilitating the recognition of *de facto* control as a valid title for claiming sovereignty over the territory in dispute. In order to induce Venezuela to accept the treaty, they chose not to address these controversial issues directly in the text of treaty, preferring instead to conclude informal and confidential arrangements.

6.56. The fraudulent conduct of the two negotiating States is confirmed by their subsequent conduct. Despite all the confidentiality surrounding the correspondence between the parties, Great Britain – without meeting real opposition from the United States – did not hesitate to openly refer to its existence and content during the proceedings before the arbitral tribunal. Once Venezuela had ratified the Treaty, all the reasons for the strict confidentiality suddenly disappeared.

6.57. According to the International Law Commission, "fraud, when it occurs, strikes at the root of an agreement" because "it destroys the whole basis of mutual confidence between the parties".[571] It is hard to see what mutual confidence can exist when negotiating States have recourse to confidential correspondence in the way in which the United States and Great Britain did.

6.58. The conditions for considering the 1897 Treaty invalid because of fraud are met. First, the fraud emanated from a negotiating party, Great Britain, with the complicity of the United States. Secondly, the fraud was a determining factor in inducing Venezuela to accept the Treaty, as the fraudulent conduct affected the crucial issue concerning the determination of the relevant period for the calculation of the prescription. Third,

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[570] Letter from Richard Olney to Sir Pauncefote (24 May 1899), in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications: New York, 1979, p. 25.
[571] *Yearbook of the International Law Commission*, 1966, vol. II, p. 244.

Venezuela was not aware, and could not be aware, of the fraudulent conduct of Great Britain and the United States. For all these reasons, the 1897 Treaty is to be regarded as null and void.

(ii) INVALIDITY FOR ABSENCE OF REASONS

6.59. The Award rendered on 3 October 1899 did not state the reasons on which the Tribunal had based its decision. This circumstance is sufficient for concluding that the Award is null and void. As stated in the Report prepared by the Experts nominated by the Venezuelan Government, "the Arbitral Tribunal which dictated the verdict in the British-Venezuelan border conflict did not comply with its duty, and therefore, giving a decision without the corresponding statement of reasons, did not proceed in accordance with the norms of international law. Therefore, the decision of the Arbitral Tribunal lacks any validity in international law".[572]

6.60. The duty to state the reasons for an award is universally recognised. The existence of such a duty was also widely acknowledged when the 1899 Arbitral Award was rendered. Article 23 of the 1875 *Draft Regulations* provided that "[t]he arbitral award must be reduced to writing, and contain a statement of reasons, unless that is dispensed with under the stipulations of the compromis".[573] The duty of arbitrators to reason their awards was

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[572] Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 14, para. 17 (**Annex 150**). See further P. Ojer, *Sumario histórico de la Guayana Esequiba*, Colección Sumario (1982), p. 50; C. Sosa Rodríguez, "El Acta de Washington y El Laudo de Paris", in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales (1983), p. 159-160; H. González Oropeza and M. Donis, *Historia de las Fronteras de Venezuela*, Cuadernos Lagoven (1989), p. 164; J. Sucre Reyes, *El despojo del siglo: la Guayana Esequiba*, Publicaciones Seleven (1981), p. 56; A. Brewer-Carías, *Derechos de Venezuela sobre el territorio Esequibo: la nulidad del laudo arbitral de 1899 y las falsedades en la memoria de Guyana ante la Corte Internacional de Justicia* (Academia de Ciencias Políticas y Sociales 2023), pp. 139-142; R. Badell Madrid, *La reclamación de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023), pp. 166-171; Sucre Reyes, *El despojo del siglo: la Guayana Esequiba*, Publicaciones Seleven (1981), p. 56.

[573] Institut de droit international. *Draft Regulations for International Arbitral Procedure*, available at https://www.idi-iil.org/en/publications/i-projet-de-reglement-pour-la-procedure-arbitrale-internationale/.

"définitivement consacrée par le droit international positif"[574] at the 1899 Hague Conference. According to Article 52 of the Convention for the Pacific Settlement of International Disputes, "[t]he Award, given by a majority of votes, is accompanied by a statement of reasons".[575] As observed by Pierantoni in 1898, "[l]es motifs en fait et en droit, s'ils sont une garantie exigée par la loi de procédure, sont un besoin de la société international".[576]

6.61. If stating the reasons for the award is a duty, failure to state such reasons is a ground for nullity of the award. Article 35 of the 1958 *Model Rules* is clear in this respect: the award is a nullity if "there has been a failure to state the reasons for the award".[577]

6.62. This Court has recognised that failure to state the reasons is a ground for nullity of an award. It has also admitted that the existence of such ground of invalidity was generally recognised at the time when the 1899 Award was rendered. In the case concerning the *Arbitral Award made by the King of Spain*, Nicaragua claimed the nullity of an award rendered in 1906 on the ground of the lack and inadequacy of reasons in support of the conclusions arrived at by the arbitrator. While the Court arrived at the conclusion that Nicaragua's claim was without foundation,[578] its reasoning relied on the assumption that this ground of nullity applied to an award rendered in 1906. The Court's judgment thus stands in clear opposition to Guyana's argument that failure to state the reasons was not a ground of invalidity when the 1899 was rendered.[579]

6.63. Nothing in the 1897 Treaty could be interpreted as dispensing the Tribunal with the obligation to state the reasons. To the contrary, the fact that the arbitral tribunal was

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[574] Castberg, 'L'excès de pouvoir dans la justice internationale', (1931) 35 *Recueil des cours*, p. 389.
[575] See the text at: https://docs.pca-cpa.org/2016/01/1899-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf.
[576] Pierantoni, "La nullité d'un arbitrage international" (1898) 30 *Revue de Droit International et de Législation Comparée*, p. 459.
[577] *Yearbook of the International Law Commission 1958*, vol. II, p. 83.
[578] *Arbitral Award made by the King of Spain on 23 December 1906*, Judgment, I.C.J. Reports 1960, p. 216.
[579] GM, para. 8.33.

under a duty to state the reasons can be inferred from a number of features characterising the 1897 Arbitration Treaty.

6.64. The first feature concerns the composition of the Tribunal. Indeed, the choice of the individuals who acts as arbitrators provides an indication about the intention of the parties with regard to the requirement of stating the reasons for the award. In the early practice of international arbitration, the rare cases of awards without motivation were generally justified by the fact that the arbitrator was a sovereign or the president of a State. In such cases, the failure to state the reasons might be expected by the parties, being a means for protecting the dignity and the political authority of the individual they had chosen as arbitrator.[580]

6.65. The composition of the Tribunal which rendered the 1897 leaves no doubt about the intention of the parties. Article II of the 1897 Treaty provided that "The Tribunal shall consist of five jurists". The importance attached to the legal expertise and background of the five selected arbitrators shows that the parties expected a decision explaining in legal terms the reasons behind the territorial delimitation. There is no need for highly qualified jurists if the objective is to have an award in the form of an oracle.

6.66. Another factor to be taken into account relates to the criteria chosen by the parties for deciding the dispute. When the *compromis* gives a wide margin of discretion to the arbitrator about the rules to be applied for deciding upon the dispute or when it authorises the arbitrator to decide *ex aequo et bono*, the trust placed in the authority of the arbitrator makes it less evident the need to provide the reasons at the basis of the decision. In such cases, the tribunal may be regarded as having being dispensed by the parties with the obligation to state the reason. As Paul Reuter put it, "on pouvait comprendre que pour un

[580] See Balasko, *Causes de nullité de la sentence arbitrale en Droit international public*, Pedone, 1938, p. 127 ("lorsque des souverains rendaient les sentences, ils s'abstenaient d'exposer les motifs de leur décision par crainte que leur propre raisonnement ne pût être invoqué contre eux-mêmes, pour échapper aux critiques").

arbitre, appelé par les parties à statuer *ex aequo et bono* soit réservé le droit de ne pas motiver sa sentence".[581]

6.67. The 1897 Treaty did not fall into that category of arbitration agreement. The Treaty furnished detailed instructions as to the rules to be applied by the tribunal for delimiting the territory in dispute. Article III required the Tribunal to investigate "the extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain" in 1814. Article IV provided a precise list of the rules "which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case". Having set these strict conditions governing the work of the tribunal, it cannot reasonably be expected that the parties did not intend to require the Tribunal to give reasons for its decision. This conclusion is further supported by Article X of the Treaty, which provides that "[t]he decision of the Tribunal shall, *if possible*, be made within three months from the close of the argument on both sides" (emphasis added). It would make little sense to give to the arbitrators a deadline of three months, with the possibility of extending it if necessary, if the Tribunal was only required to formulate an award without any reasoning.

6.68. The motivation of the awards is a fundamental means for controlling whether the award was rendered in full conformity of the *compromis*. The motivation allows the parties to appreciate and control what are the rules of law applied the arbitrator, what the facts on which it relied and what the evidence establishing these facts, or what the weight assigned to the arguments of each party. The fact that an award is accompanied by an adequate motivation is the best guarantee that the Award has been rendered in accordance with the instructions provided by the parties in the *compromis*.

6.69. In sum, when the arbitrators are selected by the parties because of their reputation as legal scholars, the *compromis* provides rigid instructions as to the rules of law to be applied by them, and the tribunal is given several months for rendering its decision, failure to state the reasons is hard to justify. In this respect, by no means can it be inferred from

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[581] P. 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*, in *Mélanges Offerts À Juraj Andrassy*, Springer, Dordrecht, p. 240.

the text of the 1897 Treaty that the parties intended to dispense the tribunal with its obligation to state the reasons for the Award. On the contrary, the content of the Treaty confirms that the Tribunal was under such obligation.

6.70. Finally, at the time when the Arbitral Award was rendered, the practice widely supported the existence of an obligation of stating the reasons. Absence of reasons was a rare exception. To prove the contrary, Guyana refers to four unmotivated awards rendered in the period between 1893 and 1904.[582] It is sufficient to rapidly examine these four cases, and to compare them to the case between Venezuela and Great Britain, to realise that they confirm, rather than contradict, what has been just said. In two cases – the *Cerruti Case* and the *Argentine-Chile Case*, the award was rendered by, respectively, the United States President Cleveland and by King Edward VII, and and in both cases the *compromis* gave wide discretion to the arbiter about the determination of the grounds for decision. In the *Cerruti Case*, for instance, President Cleveland based its unmotivated decision on the fact that the *compromis* had vested in him "full power, authority and jurisdiction to do [...] all things without any limitations whatsoever which, in [his] judgment, might be necessary or conducive to the attainment in a fair and equitable manner of the ends and purposes the agreement is intended to secure".[583] In the *Bering Sea Fisheries Case* and in the *San Domingo Improvement Company Claims* Case, both of which, to be said incidentally, in fact contain a succinct statement of reasons,[584] no clear indications was given to the arbitral tribunal about the legal principles to be applied for deciding the dispute. Article II of the 1892 Treaty between Great Britain and the United States on the arbitration respecting the seal fisheries in Behring's Sea simply required that the arbitrators "shall proceed impartially and carefully to examine and decide the questions that have been or shall be

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[582] GM, para. 8.31.

[583] See UNRIAA, vol. XI, p. 394.

[584] Significantly, this fact did not escape the attention of Martens, who, acting as delegate of Russia at the 1899 Hague Peace Conference, referred to the arbitration in the *Bering Sea Fisheries Case* for supporting his opposition to the obligation to state the reasons for an award ("he [De Martens] cites cases of arbitration such as those of the *Alabama* and the Bering Sea Fisheries in which certain members of the tribunal refused to affix their signatures to the award because it stated the reason thereof"). *The Proceedings of the Hague Peace Conferences*, New York, Oxford University Press, 1920, p. 748.

laid before them".[585] Finally, it is significant that, in commenting these awards, some scholars raised the question of their invalidity because of the absence of reasons.[586]

6.71. For all these reasons, it can be safely concluded that, by not stating the reasons on which its decision was based, the Tribunal not only breached an obligation which could be inferred from the terms of the 1897 Treaty. It also breached an obligation which existed under general international law. This circumstance alone is sufficient to render the Arbitral Award of 3 October 1899 null and void.

6.72. Before moving to the next section, it is important to emphasise that failure to state the reasons, beside being an autonomous ground of nullity, may also be revealing of an attempt to conceal other defects of the award. In particular, it may conceal an excess of power. In fact, by leaving the award unmotivated, the arbitrator creates the conditions for circumventing the difficulty of explaining the decision on the basis of a rigorous application of the rules imposed by the *compromis*.

6.73. At the time when the Award was rendered, the risk of using the lack of motivation as a means for escaping the limits of the *compromis* had already been denounced by several scholars. Commenting the unmotivated decision in the *Cerruti* case, rendered in 1894, Pierantoni criticised the arbitrator who, "se rendant compte de la difficulté d'expliquer sa décision sur la base du droit, [...] s'en est volontairement abstenu en s'appuyant sur les pleins pouvoirs".[587] As suggested by Pierantoni, absence of reasons, seen in context, may reveal that decision was not taken on the basis of the law. In this sense, absence of reasons may become an evidence proving the excess of power vitiating an award.

6.74. Remarkably, it was the President of the Arbitral Tribunal, Friedrich De Martens, who, in very clear terms, recognised that the obligation to motivate an award limited, if not excluded, the possibility of an arbitrator departing from the strict respect of the conditions

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[585] See UNRIAA, vol. XXVIII, p. 267.

[586] See, for example, with regard to the award in the *Cerruti case*, Pierantoni, "La nullité d'un arbitrage international", 1898, 30, *Revue de Droit International et de Législation Comparée*, pp. 458-459.

[587] Pierantoni, 'La nullité d'un arbitrage international', p. 189, para. 30; *Revue de Droit International et de Législation Comparée*, p. 459.

imposed by the *compromis*. Even more remarkable, however, is the fact that it was precisely for that reason that De Martens strongly opposed any attempt to recognise the existence, under general international law, of an obligation of motivation. Acting as a delegate of Russia at the 1899 Hague Peace Conference, De Martens voted against the provision which later became Article 52 of the Convention for the Pacific Settlement of International Disputes. In a meeting which took place on 26 June 1899, he explained his opposition as follows:

> "in an international conflict arbitrators are not only judges; they are also representatives of their Governments. To require them to state the reasons for their decisions would be to impose upon them one of the most delicate of obligations, and perhaps even to embarrass them seriously, if their judicial consciences do not find themselves in accord with the requirements of their Governments or the sensibilities of public opinion in their countries. It is indeed going too far to require an impartial arbitrator to condemn his own government. Must we also require him to justify himself expressly and thereby aggravate this condemnation? If the arbitral decision contains only a few sentences all of the arbitrators without regard to their nationality may sign it".[588]

6.75. At the meeting of 30 June 1899, De Martens expressed again its opposition against the obligation of motivation. He stated: "While this obligation to state the reasons for the award would no doubt be an advantage from a legal view-point, it would be a hindrance from a practical view-point".[589]

6.76. These statements are shocking for the message they convey and for when they were made. De Martens openly defended the idea that an arbitrator also acts as a representative of his State of nationality; that his loyalty to the mandate conferred to him by the parties in dispute may not be easy to reconcile with the loyalty he had to provide to the interests of his State; that, as a consequence, compromises are inevitable; and that the more practical way for having an award which, by concealing the compromises, could be accepted by all

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[588] See, *The Proceedings of the Hague Peace Conferences*, New York, Oxford University Press, 1920, p. 740.
[589] *Ibid.*, p. 748.

the arbitrators is to exclude any obligation to motivate the award, even though – as he admits – such solution would not be "an advantage from a legal view-point". De Martens made this declaration when oral hearings before the Arbitral Tribunal were still ongoing and only a few weeks before the Tribunal rendered its final award.[590]

6.77. Moreover, Mr. Martens in his personal diary acknowledges:

> "Finally, in French, I expressed my thanks to the French government for the hospitality extended to the tribunal and explained the special significance of the decision which was adopted unanimously (which had never happened before!) and which applied for the first time the rules of procedure adopted by the Hague Convention."[591]

6.78. It referred specifically to the Hague Convention of July 1899, unknown, by the way, to a majority of countries which did not participate and, for that matter, especially Venezuela less so, and which then, in 1907, was present at the Conference held in The Hague. However, although this Convention did not establish the nullity of the arbitration award due to defects, it did establish the necessary motivation of the award in its Article 52, Martens erred and what we see in his (unanimous) award is a compromise on the "Anglo-American" issue, as he himself called it.

6.79. It should be added that so necessary and important was the motivation that Mr Martens dares to point out with evident disregard for the rights of other countries and for what belonged to Venezuela that: "I [Mr. Martens] stated my views on all the main questions, denied the monstrous right of discovery and occupation of Spaniards and Americans (probably referring to Venezuela) demonstrated the lack of definition of the

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[590] It has been rightly observed that, precisely for the views he expressed and for the different roles he simultaneously played, "Martens was not the right person to act as an impartial third party in his role as an arbitrator of law". See H. Faúndez Ledezma, "La Controversia del Esequibo y el fantasma de Federico de Martens", in *Revista de Derecho Público de Venezuela* (2022), p. 18 ("Martens no resultaba ser la persona idónea para actuar como un tercero imparcial, en su función de árbitro de Derecho"). See further R. Badell Madrid, *La reclamación de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023), pp. 172-175; M. Falcón Briceño, Origines de la actual reclamacion de la Guayana Esequiba, Boletín de la Academia de Ciencias Políticas y Sociales, número 91, Caracas, 1983, pp. 67-68.

[591] **(Annex 149)**.

frontier in the Treaty of Wesfalia[592] and said that |...| the Essequibo and the Orinoco could probably be recognised as a condominium of Spaniards and Dutchmen". This assertion deserves to be analysed in detail.

6.80. The strong note sent by Olney (American Secretary of State) to Bayard, for Bayard to read out to Salisbury (Prime Minister) on 20 July 1895, is in the following terms:

> "|t|he dispute |says Olney|, is of ancient date and began at least as early as the time when Great Britain acquired by the treaty with the Netherlands of 1914 " the establishments of Demerara, Essequibo, and Berbice" From that time to the present the dividing line between these "establishments" (now called British Guiana) and Venezuela has never ceased to be a subject of contention. The claims of both parties, it must ve conceded, are of a somewhat indefinite nature. On the one hand Venezuela, in every constitution of government since she became an independent State, has declared her territorial limits to be those of the Captaincy General of Venezuela in 1810. Yet, out of "moderation and prudence,", it is said, she has contented herself with claiming the Essequibo line – the line of the Essequibo River, that is – to be the true boundary between Venezuela and British Guiana. On the other hand, at least an equal degree of indefiniteness distinguishes the claim of Great Britain".[593]

6.81. Olney says there is no basis for considering British aspirations just. Britain remained indifferent until 1840, when it commissioned Schomburgk to fix the line.

> "If it was expected that Venezuela would acquiesce in this line, the expectation was doomed to speedy disappointment. Venezuela at once protested and with such vigour and to such purpose that the line was explained to be only tentative – port of a general boundary scheme concerning Brazil and the Netherlands as well as Venezuela

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[592] Of highly unusual relevance was the British counter-argument given before the Paris tribunal, according to the Venezuelan memoir submitted in 1898: "Great Britain has the right to retain any territory which she has possessed, or which has been subject to her exclusive political domination, for a period of 50 years, even if the result would be to give to Great Britain territory which had never been Dutch and might even have been Spanish for some time". In Colección Frontera 9, Arbitramiento, p. 22. This reflects that Martens was following this line, and was ultimately what happened without saying so in the corpus of the arbitration award.

[593] **(Annex 152)**.

– and the monuments of the line set up by Schomburgk were removed by the express order of Lord Aberdeen."[594]

6.82. The paradoxical nature of Olney's comment fades away later in the construction of the Washington treaty of 1897 and the Arbitral Award of 1899. As rightly recalled at the 348th session of the Special Political Committee on 12 November 1962 by H.E., Dr. Marcos Falcón, then Minister of Foreign Relations of Venezuela:

> "In private letters to friends, Harrison declared [...]: I shall tell you but not in writing exactly what happened. They did not wish to disclose the true mystery which, for various reasons, surrounded this arbitral award.

6.83. When Mallet-Prevost returned to New York in 1899, that is shortly after the handing down of the award in Paris, he met in that city with the former United States Secretary of State, Mr. Olney, who referred to this interview in a letter addressed to Cleveland. He said:

> (*Continued in English*)
>
> "I have not seen you since the award in the Venezuela Boundary case. Upon his return to New York, Mr. Mallet-Prevost, Venezuela's junior counsel, was anxious to tell me how the thing went and why it went as it did. On one of my New York visits I asked him to dine --- with the result that he consumed less food than time and that the feast was not so much a flow of solid or liquid refreshment as of intense wrath and bitterness of soul at the course and decision of the arbitral tribunal. I refrain from going into particulars because no doubt you have already heard them from some other source. The worst result to be feared apparently is not the loss of territory to Venezuela, but the general discrediting of the cause of arbitration. According to my informant, both the Chief Justice and Brewer are down on arbitration as a mode of settling international disputes unless some safeguarding of the rights of parties can be provided. Ex-Secretary John W. Foster,

[594] *Ibid.*

> with whom I dined here the other day, said Fuller and Brewer had come home pretty sick of arbitration."[595]

6.84. Everything reveals that rather than a question of law it was a compromise concerning the Paris arbitration.

6.85. De Martens' statement is highly revealing of the way in which the Tribunal he presided operated. Indeed, as will be shown in the next section, the 1899 Arbitral Award provides a clear illustration of how the failure to state the reasons was instrumental in allowing the Tribunal to render a decision without respecting the clear terms of the 1897 Treaty. As observed by an eminent author, "the lack of legal motivation of the 1899 Award was the way Martens found to impose a solution that was not strictly legal".[596]

(iii) NULLITY DUE TO FUNCTIONAL EXCESS OR EXCESS OF POWER OF THE ARBITRATORS

6.86. The Award of 3 October 1899 is invalid. It is invalid because the Tribunal, in rendering it, manifestly exceeded its power.[597] The account of pertinent facts given in Chapter 7 makes abundantly clear that it did so in manifold ways. More specifically, in rendering the 1899 Award, the arbitral Tribunal:

- failed to respond to one of the questions put to it in Article III;
- failed to apply the Rules it was tasked to apply under Article IV, or ignored the meaning of the rule without giving any reasoning whatsoever;
- acted inconsistently with Article V, which required the tribunal to act impartially;

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[595] (**Annex 143**, pp. 19-20).

[596] H. Gros Espiell, "Federico Martens, John Westlake y el laudo de 1899", in *Boletín de la Academia Nacional de Historia* 1983, p. 1017.

[597] On this see further R. Badell Madrid, *La reclamación de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023), pp. 157-166; J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications: New York, 1979, pp. 343-350; P. Ojer, *Sumario histórico de la Guayana Esequiba*, Colección Sumario (1982), pp. 50-51.

- acted inconsistently with the scope of its powers, as defined in Articles I and III, by deciding matters falling outside of the Washington Treaty; and ultimately,
- acted inconsistently with its duty to render an award based on international law.

6.87. Nullity on the grounds of excess of powers or excess of authority (functional excess or misuse) is "the oldest and most universally recognized ground for nullity".[598] It is universally recognized because, under a cardinal rule of international law, the authority of international courts and tribunals depends on the consent of parties: nullity is the remedy for a tribunal overstepping the limits of its authority, as set out expressly or implicitly in the *compromis*. The Court has described this in the following terms:

> "[W]hen States sign an arbitration agreement, they are concluding an agreement with a very specific object and purpose: to entrust an arbitration tribunal with the task of settling a dispute in accordance with the terms agreed by the parties, who define in the agreement the jurisdiction of the tribunal and determine its limits. In the performance of the task entrusted to it, the tribunal 'must conform to the terms by which the Parties have defined this task'"[599]

6.88. In light of the evidence mentioned above, there can be no doubt that – to the extent that the matter should be considered relevant - international law at the turn of the 20th century recognised the possibility of annulling awards for excess of power. The *Orinoco Steamship* case[600] is an example in point. It is also worth noting that, as early as in 1910, Fiore had noted that '[l]a *communis opinio* des juristes est donc que la sentence arbitrale n'a aucune valeur quand l'arbitre n'a pas observé les prescriptions du compromis ou quand il s'est arrogé une juridiction qui n'y était pas stipulée.'[601]

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[598] See Commentary on the Draft Convention on Arbitral Procedure Adopted by the International Law Commission at its Fifth Session. UN doc A/CN.4/92, p. 107.

[599] *Arbitral Award of 31 July 1989*, ICJ Reports 1991, 53, para. 49 (citing *Delimitation of the Maritime Boundary in the Gulf of Maine, Judgment, I.C.J. Reports* 1984, p. 266, para. 23).

[600] *Orinoco Steamship Company Case (Annulment)*, 1910, RIAA, p. 238.

[601] Fiore, *La sentence arbitrale*, p. 248.

6.89. As observed by Judge Weeramantry, insisting that tribunals act within the bounds of their authority is central to the administration of international justice: "proper respect for international arbitration involves not only respect for the award but also respect for the *compromis* which provides the foundation on which the award stands".[602]

6.90. Whether a tribunal rendering an award has acted within the limits of its power, is (in the words of the ILC), "in essence, a question of treaty interpretation [...], which is to be answered by a careful comparison of the award [...] with the relevant provision of the *compromis*."[603] In assessing what the tribunal is required to do under the *compromis*, much will turn, as the Court's decision *Arbitral Award of 31 July 1989* indicates, on what a tribunal could plausibly consider its task to be, having regard to general principles governing the interpretation of treaties. These general principles require "arbitrators [to] examine [...] with the utmost care, the substance of their mandate and the limits of their authority" so as to ensure that "their interpretation must be anchored to the realities of the context".[604]

6.91. Excess of power may manifest itself in different forms. In principle, it covers any breach of rules contained in the *compromis*, as well as any breach of the limits inherent in the arbitral function performed by the arbitrators. Balasko's summary is instructive. He refers to:

> "toute violation, toute méconnaissance, tout dépassement ou toute omission des dispositions de l'accord d'arbitrage, toute violation de la limite de la fonction juridictionnelle par le tribunal arbitral compétent ... que cette limite soit tracée explicitement par les parties litigantes, ou implicitement acceptées out admises par elles, comme

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[602] *Arbitral Award of 31 July 1989*, Dissenting opinion of Judge Weeramantry, I.C.J. Reports 1991, p. 152.

[603] ILC, Draft Convention with Commentaries, p. 108.

[604] *Arbitral Award of 31 July 1989*. Diss. Op. Weeramantry, p. 134.

> inhérentes essentiellement à la nature et au but de la fonction juridictionnelle".[605]

6.92. International practice and jurisprudence have distilled different manifestations of excess of power, reflecting the different "terms agreed by the parties" and their way of defining "the jurisdiction of the tribunal and determin[ing] its limits".[606] Noting that "excess of jurisdiction may, of course, assume a variety of forms", Hersch Lauterpacht identifies the two such manifestations, namely instances in which the arbitrator "adjudged on a matter not submitted to him, or [...] disregarded the sources of law which he was instructed to apply."[607] In the same vein, a tribunal's failure to pronounce on issues submitted to it is generally seen as a particular category of disregarding the sources of law which it is instructed to apply: a tribunal failing to carry out its duties under a *compromis* falls "short of performing that which it should have performed and in this way act[s] as it was not entitled to act", failing to "respect for the *compromis* which provides the foundation on which the award stands".[608]

6.93. As will be discussed in the following, the Tribunal established under the Washington Treaty committed excesses of power falling into each of these categories: it 'adjudged on matters not submitted to [it]', failed to pronounce on issues that were submitted to it, and it 'disregarded the sources of law which [it] was instructed to apply'.

6.94. These excesses are all the more glaring because the Treaty of Washington, as discussed more fully below, defined the mandate of the Tribunal with precision.

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[605] Balasko, *Causes de nullité de la sentence arbitrale en Droit international public* (Pedone, 1938), p. 153. For similar pronouncements see Guggenheim, 'La validité et la nullité des actes juridiques internationaux, Recueil des cours, 1949, p. 218 (l'excès de pouvoir résulte du fait que "le Tribunal a appliqué une règle non conforme aux dispositions du compromis").

[606] *Arbitral Award of 31 July 1989*, ICJ Reports 1991, p. 53, para. 49.

[607] Lauterpacht, 'The Legal Remedy in Case of Excess of Jurisdiction' (1928) 9 BYIL, pp. 117-118.

[608] *Arbitral Award of 31 July 1989*, Diss. Op. Weeramantry, at 158 and 152; and see the majority judgment, at paras. 50-51. In line with this, as noted by Judge Anzilotti, for a tribunal to "confine itself to answering a part of" the questions posed to it, would be an "abuse of its powers": *Customs Regime between Germany and Austria, Advisory Opinion* (1931) PCIJ Ser A/B, No 41, p 37, Anzilotti individual opinion, at p. 69.

First, Article III of the Treaty defined the scope of the Tribunal's task: and determined the questions to be decided the arbitrators. The Tribunal thus had to decide these questions: *all* of these questions, and *only* these questions.

Second, by means of Article IV, the Washington Treaty specified rules for the performance of the Tribunal's task: that is, the Treaty determined the applicable law to the dispute. It was not open to the Tribunal to decide on any other basis, than on the Rules stipulated in the Treaty.

Third, by Article V, the arbitrators were required to perform their task, and apply the applicable law, impartially: that is, by avoiding any bias towards one of the parties, nor indeed engage in any behaviour that may affect the perception of their neutrality towards the parties and its task.

Finally, the Washington Treaty, as confirmed by the negotiations and in the oral proceedings, required the Tribunal to decide on the basis of law. It was not open to the Tribunal to reach a decision on *any* other basis, not equity, not compromise, not political expediency.

6.95. The brevity of the Award evidences the Tribunal's deliberate disregard for these prescriptions. Its text, and the credible evidence that has come to light since the Award was rendered, demonstrates that the Tribunal did not evaluate "the substance of [its] mandate", let alone do so "with the utmost care".[609] Rather, it went rogue, seeking to somehow resolve the matter submitted to it, delivering what it considered to be a convenient and expedient decision that was reached without respect for the terms of reference prescribed by the parties. As a result, the Award is invalid on the basis of excess of powers.

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[609] *Arbitral Award of 31 July 1989*. Diss. Op. Weeramantry, p. 134.

a) The Tribunal failed to perform the task entrusted to it by Article III of the Washington Treaty

6.96. To begin with, the Tribunal failed to perform its task under Article III of the Washington Treaty, thus failing to discharge a duty imposed on it by the compromis.[610]

1. The Tribunal's task as defined in Article III

6.97. Article III defined the task of the Tribunal in the following terms:

> "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."

6.98. As stated above, although this rule was detrimental to Venezuelan rights over the territory, a proper interpretation and application of the treaty would have provided a more objectively balanced solution. For, in the absence of any legal basis and in a clear exercise of excessive power, the imbalance was made present to favour the position of one of the parties (the United Kingdom).

6.99. In this provision the parties clearly specified two questions the Tribunal was required to answer, separated by a comma and the beginning of a new clause. First, the Tribunal was required to determine the extent of the territories belonging, or lawfully claimed by, either the Netherlands or Spain at the time of Britain's acquisition of Guyana in 1814. Second, the tribunal was to identify the boundary-line between British Guiana and Venezuela.

6.100. These were connected, but separate, questions. The first required the Tribunal to decide whether of Spain or the Netherlands possessed title to (and thus 'could lawfully claim') the territory of the Essequibo, and the extent of that title, as of 1814. The answer to

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[610] See further J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications: New York, 1979, pp. 344-345.

this question was a crucial step in performing the task assigned to the Tribunal, for it was well established at the time that States could not cede territory over which they had no title. The second question required it to delimit the boundary between Venezuela and the United Kingdom. Crucially, the Tribunal was required to do *both* things. Article III was clear that the Tribunal "*shall* ascertain" the title and its extent *and* also "*shall* determine" the boundary.

6.101. Other provisions of the Washington Treaty confirm that the Tribunal was expected to reply to these two questions, rather than to one. Thus, Article V required the Tribunal to "proceed impartially and carefully to examine and decide the *questions* that have been, or shall be, laid before them", and later states that "all *questions* considered by the Tribunal" shall be decided by majority.

6.102. This is further corroborated by the proceedings before the Tribunal. As has already been noted, the parties spent significant time on the proper understanding of Article III, and on the Tribunal's task in this respect. The gist of President Harrison's argument is worth restating in this context, as it illustrates the importance accorded to Article III in the proceedings:

> "[T]hat clause [Article III] introduces the Netherlands and Spain. It does not declare simply that they shall find the boundary between the existing claimants, but they are to ascertain the extent of the territories belonging to or that might lawfully be claimed by the Netherlands or the Kingdom of Spain by the time of this acquisition [in 1814]. Now, Mr. President, there is a duty laid upon this Commission to do that; a duty that the Tribunal cannot put off, manifestly. The duty was not laid upon the Tribunal for nothing. It was not intended that when you had laboriously gone through this long historical inquiry and had traced the title of the Netherlands and had traced the title of Spain down to 1814, a period when the titles had each a new representative, and then when you had gone through all that, to throw it to the winds. A large part of the evidence that has been accumulated here looks to that question. The counsel have searched the records at the Hague and at Seville and at Madrid, in order to set before this Tribunal as fully as they might, the story of Spanish discovery, of the Dutch war, of the Dutch settlement in

> Guiana, of the Treaty of Münster, and all the long story between the years of 1648 and 1814."[611]

6.103. Lord Russell also summarized the significance of Article III in the following terms:

> "the fundamental question was - had Spain acquired the right to Guiana by discovery followed by possession of such a kind and extent to give her complete title. If this were established the result would be that Great Britain could only succeed as to such territory as the Dutch and Great Britain actually possessed - acquired by conquest or by adverse possession from Spain".[612]

6.104. That the duty to ascertain the respective titles of the Netherlands and Spain as at 1814, was not 'laid upon the Tribunal for nothing', but had a distinct relevance, also followed from the nature of the questions asked by Article III. The first concerned the question of title over the territory. The second concerned the question of delimitation of the boundary between Venezuela and Great Britain. In Daniel Bardonnet's explanation, in disputes as to title:

> "la contestation porte sur un territoire tout entier; elle porte sur l'attribution en souveraineté d'une entité ou d'une masse territoriale donnée. [...] [U]n tel conflit, envisagé à l'état pur, c'est- à-dire en l'absence de tout problème spécifique de délimitation, «met pleinement en jeu le statut général de l'entité ou de la masse territoriale en question".[613]

6.105. These are different from delimitation disputes. In these cases:

> "Il ne s'agit plus, dans les différends de cette sorte, de définir et de fixer le statut d'une entité ou d'une masse territoriale donnée, il s'agit, comme l'a relevé Charles De Visscher, «de procéder à un choix entre des lignes susceptibles de la diviser, en d'autres termes,

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[611] Verbatim Record, p. 3087 (available at the Peace Palace Library).

[612] Lord Russell, letter to Salisbury, 7 Oct 1899, in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications: New York, 1979, p. 126.

[613] Bardonnet, "Les frontières terrestres et la relativité de leur tracé (Problèmes juridiques choisis)" (1976) 153 *Recueil des cours*, p. 13, para. 48.

d'opter entre deux interprétations différentes d'une même frontière»; le problème se ramène à la détermination de la ligne divisoire."[614]

6.106. Each of the two questions posed to the Tribunal, on title and on delimitation, required different assessments and, indeed, separate decision, for the rules and principles, as well as the evidence, applicable to each may be distinct. In the explanation furnished by Sir Robert Jennings and Sir Arthur Watts, disputes about title concern "the fact and mode of acquisition of territorial title", whereas boundary disputes concern "the proper interpretation of some instrument, award or adjudication, or course of historical development, that is claimed to have established the boundary of the territory in question".[615]

6.107. Finally, the Tribunal was expected to answer *both* questions. Nothing in the language of Article III allowed the Tribunal scope to choose whether to answer all questions and, if so, which question to answer. To use an expression from the Court's judgment in *Arbitral Award of 31 July 1989*, these were "successive questions which were not made conditional on each other"[616] both of which the Tribunal needed to respond to. In these circumstances, for the Tribunal to "confine itself to answering a part of" the questions posed to it, would be an "abuse of its powers", to paraphrase Judge Anzilotti.[617]

6.108. In sum, the parties had asked the Tribunal to answer two successive questions, which were not made conditional on each other. The first question concerned title to the territory as of 1814, the second question concerned the delimitation of the territory. These two questions were, moreover, to be answered in accordance with Articles IV and V of the Washington Treaty. Article IV stipulated the applicable law, and Article V required the Tribunal "to proceed impartially and carefully to examine and decide" the questions asked of it.

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[614] *Ibid.* p. 13, paras. 48-49.

[615] Jennings & Watts, *Oppenheim's International* Law, 9th éd., OUP 1996, pp. 668-669.

[616] Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal), para 50.

[617] *Customs Regime between Germany and Austria, Advisory Opinion* (1931) PCIJ Ser A/B, No 41, p. 37, Anzilotti individual opinion, at p. 69.

2. The Tribunal's failure to respect the terms of Article III

6.109. The Tribunal failed to discharge its duty with respect to the question of title over the Esequibo region by either the Netherlands or Spain at the time Great Britain acquired British Guyana in 1814. As noted above, this question was explicitly set out in Article III of the Washington Treaty, which mentioned it as a dedicated – in fact the first – step to be taken by the Tribunal.

6.110. The Tribunal addressed this question in a short sentence. It asserted that it had:

> "investigated and ascertained the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana".

6.111. This is a not an answer to the first question: it is a mere restatement of the text in Article III. It is simply astonishing that, despite the importance placed by the parties on this first question, as the extracts from the proceedings just quoted show, the Tribunal completely omitted to consider it. There is no explanation of the decision, and certainly no engagement with the evidence put forward by the parties. Indeed, there is no *decision* on the question of title as at 1814. The Tribunal was asked to decide, on the basis of the law and the evidence, which of the two States possessed title over the territory: it was required, under Article V, to reach a *conclusion* after a "careful consideration and examination" of the law and the facts. Nothing in the Award reflects an engagement with the applicable law, with the law in general, or the evidence put forward by the parties: there is no evidence whatsoever of 'careful consideration and examination'. The Tribunal did not so much answer the question: it merely restated it. The Award reads as if (adapting President Harrison's words) the first question mentioned in Article III had been "laid upon the Tribunal for nothing".[618]

6.112. The Tribunal, in other words, asserted a power to choose which of the two questions from the Treaty it would answer, in clear violation of Article III. In this sense,

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[618] Harrison. Verbatim Record. p. 3087 (available at the Peace Palace Library).

the Award of 3 October 1899 reflects an approach that is different from that before the Court in the *Case Concerning the Arbitral Award of 31 July 1989*, rendered by the tribunal established by Guinea-Bissau and Senegal, whose validity was challenged before the Court. Article 2 of the 1985 Arbitration Agreement between the Guinea-Bissau and Senegal had asked the tribunal to:

> "decide in accordance with the norms of international law on the following questions
>
> 1. Does the Agreement concluded by an exchange of letters on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?
> 2. *In the event of a negative answer to the first question*, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"[619]

6.113. In the case of the *Arbitral Award of 31 July 1989*, the tribunal had reached the view that, having responded positively to the first question, it did not need respond to the second question. In its judgment in the *Arbitral Award of 31 July 1989* case, the Court found that, in light of the text of Article 2 of the agreement, it was within the tribunal's power to determine that the conditions for it to respond to the second question were not met. Omitting to answer the second question, contrary to Guinea-Bissau's contention, was not a failure to comply with the *compromis*.[620]

6.114. The present case is strikingly different in at least three respects. First, Article III of the Washington Treaty required the Tribunal to answer two separate questions, and it did so without conditions. By contrast, Article 2 of the Agreement between Guinea-Bissau and Senegal subordinated the second question to the first one. As explained by the Court:

> "Article 2 of the Arbitration Agreement presented a first question concerning the 1960 Agreement, and then a second question relating

[619] Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal), p. 58, para. 14 (Emphasis added).
[620] *Ibid.*, p. 71-70, paras. 52 and 50.

> to delimitation. A reply had to be given to the second question "in the event of a negative answer to the first questions". The Court notes that those last words, which were originally proposed by Guinea-Bissau itself, are categorical."[621]

6.115. In assessing the validity of the arbitral award of 31 July 1989, the Court contrasted this wording with cases where the *compromis* tasked a tribunal to answer "successive questions which were not made conditional on each other".[622] The Washington Treaty belongs to this second set of cases: it asked the Tribunal to address two successive questions, and these questions were not made conditional on each other. Article III specified the Tribunal's task as the ascertainment of title *and* to the delimitation of the boundary: in the terms of Article III the Tribunal "shall" do both of these things. The Tribunal established by the Treaty of Washington – unlike that established by Guinea Bissau and Senegal – enjoyed no discretion in determining whether to answer the questions put to it.

6.116. Third, while the approach of the tribunal established by Senegal and Guinea-Bissau may have been controversial, the tribunal made clear that it had exercised its powers. It stated expressly that, in view of its response to the first question, it need not respond to the second.[623] The Court noted in its judgment that it seemed difficult to criticise the tribunal for having failed to discharge its duty under the *compromis*. After all, the tribunal in that case *considered and decided* not to address the second question and explained the reasons for this omission. It had, in other words, made plain its approach and in the award of 31 July 1989, set out its response – a response that may not have convinced both parties (and was accordingly scrutinised), but that embodied the tribunal's decision in accordance with the task as specified in the *compromis*.

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[621] *Ibid*, p. 70, para. 50.

[622] *Ibid*.

[623] Para. 87 of the *Arbitral Award of 31 July 1989*: "Bearing in mind the above conclusions reached by the Tribunal and the wording of Article 2 of the Arbitration Agreement, in the opinion of the Tribunal it is not called upon to reply to the second question. [...] Furthermore, in view of its decision, the Tribunal considered that there was no need to append a map showing the course of the boundary line."

6.117. The Tribunal established under the Washington Treaty, by contrast, gave *no* decision. At no point did the Tribunal indicate how the boundary, as drawn in the Award, would relate to the title over the "territories belonging to or that might lawfully be claimed by the Netherlands or the Kingdom of Spain" in 1814. Nothing in the Award indicates how the Tribunal had viewed the task of ascertaining title, and its relationship to the requirement to draw a boundary: there is no evidence that the tribunal had "addressed its mind"[624] to the question. This is not just an omission: it is a complete failure to perform the first task entrusted to by Article III. It is a "serious dereliction of [the Tribunal's] duties … and no doubt … a valid ground for a nullity claim".[625]

b) The Tribunal failed to comply with the requirements of Article IV of the Washington Treaty on the applicable law

6.118. In addition to failing to perform (part of) its mandate, the Tribunal failed to comply with the requirements of Article IV of the Washington Treaty, which had defined the applicable law.

6.119. It is well established that a tribunal's failure to apply the rules stipulated in the *compromis* – the "disregar|d| |for| the sources of law which |a tribunal| was instructed to apply" in Lauterpacht's phrase[626] - amounts to an excess of powers. In the decision in the *Orinoco Steamship case*, rendered a decade after the 1899 Award, the tribunal held that:

> "excessive exercise of power may consist, not only in deciding a question not submitted to the Arbitrators, but also in misinterpreting the express provisions of the Agreement in respect of the way in which they are to reach their decisions, notably with regard to the legislation or the principles of law to be applied".[627]

6.120. In Balasko's leading treatise, the point is made with abundant clarity:

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[624] Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal), Weeramantry dissenting opinion, p. 162.
[625] J. Gillis Wetter, *The International Arbitral Process: Public and Private*, 1979, p. 345.
[626] Lauterpacht, 'The Legal Remedy in Case of Excess of Jurisdiction' (1928) 9 BYIL, pp. 117-118.
[627] *Orinoco Steamship Company Case (Annulment)* (1910) RIAA, pp. 238-239.

> "Lorsque le compromis d'arbitrage formule les principes ou les règles de fond à appliquer par le tribunal arbitral pour résoudre le litige qui lui est soumis, ces règles forment des limites explicites, tracés par la volonté commune des parties, qui s'imposent au tribunal [...]"[628]

6.121. A review of the relevant jurisprudence and commentary yields three preliminary points that are relevant for present purposes.

First, in assessing whether a tribunal had "disregarded the sources of law which [it] was instructed to apply", a reviewing body is not engaging in an appeals process addressing the outcome of the award. The central question is not whether the tribunal reached the *right* decision, but whether in reaching that decision the tribunal respected the mandate given to it by the *compromis*. What is reviewed, in short, is *how* the Tribunal reached its decision.

Second, whether a tribunal had failed to discharge its duty turns on an interpretation of the *compromis*, and what it requires the arbitral tribunal to do. In this respect, it is clear that the parties can provide the tribunal with 'terms' of different levels of detail: some define the task of tribunals in a highly prescriptive manner, others leave discretion to the arbitrators.

Third, in considering whether a tribunal had "conformed to the terms by which the Parties have defined [its] task",[629] the reasoning of a decision is crucial, as it is meant to reflect a tribunal's decision-making process and to identify the factual and legal premises of a decision and communicate those to the parties. As has been noted in the context of ICSID annulment decisions, tribunals must give meaningful effect to the rules defining their task: the reasoning of an award cannot be "limited to *postulating* [...] the existence of a principle", but must actually "demonstrate" that it the tribunal had been guided by it.[630] For this reason, the question whether a tribunal had discharged its duty (or failed to do so) has usually been addressed through a close scrutiny of the reasoning of decisions. Conversely, where this is not possible (with respect to un-reasoned awards), a tribunal's failure to set

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[628] Balasko, *Causes de nullité*, p. 157.

[629] *Gulf of Maine, I.C.J. Reports 1984*, p. 266, para. 23.

[630] *Klöckner v Cameroon*. Decision on Annulment, 3 May 1985, para. 79.

out the reasons for its decision has in and of itself been considered indicative of a failure to comply with the requirement to apply the rules as stipulated by the *compromis*. A lack of reasoning conceals the *method* through which the tribunal approached its task, a method which the parties sought to regulate expressly and specifically, mandating the tribunal to decide in a particular manner, namely on the basis of international law.

1. The Tribunal's task as defined in Article IV

6.122. Article IV identified the Rules that the Tribunal was to apply in performing the tasks identified in Article III:

> "In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to a 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 recognize 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."

6.123. In this provision, the parties formulated clear and express terms that were to guide the Tribunal "[i]n the performance of the task entrusted to it".[631] As has been noted in Chapter 7, the United States and Great Britain, behind Venezuela's back, had reached a secret understanding on the understanding of Rule (a), concerning the 'cut-off point' for extinctive prescription. But notwithstanding this improper *fait accompli*, Article IV had specified *how* the Tribunal was to make its decision and prescribed the method by which it was to reach a conclusion.

6.124. The text of Article IV specified the approach of the Tribunal in four ways:

- The chapeau tasked the Tribunal to apply the rules specified in Article IV, which were to be "taken as applicable to the case", as well as principles of international law "not inconsistent therewith";
- Rule (a) clarified that prescription or adverse holding for more than 50 years was to make 'good title'.
- Under Rule (b), the Tribunal could give effect to any rights or claims resting on other valid legal grounds under international law, "not in contravention with" Rule (a).
- Rule (c) empowered the Tribunal to give effect to occupation, to adjust the boundary as much as "reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require".

6.125. Article IV also stipulated a priority among these rules. Rule (a) was to be applied with priority to Rule (b). Rule (c) was then to be applied to adjust the boundary found by application of Rules (a) and (b), but only in particular circumstances: where citizens of one of the two parties found themselves on the 'wrong side of the line'. In these cases, an adjustment to the line found by application of Rules (a) and (b) could be made on the basis of "reason, justice, the principle of international law, and the equities of the case". By default, the Tribunal was mandated by the chapeau of Article IV to apply other rules of

[631] *Gulf of Maine, I.C.J. Reports 1984*, p. 266, para. 23.

international law, insofar as they were not inconsistent with the three Rules specified in that provision.

6.126. Article IV of the Washington Treaty shows that that the parties kept the Tribunal on a 'short leash', providing them with "des règles fort précises" with regards to both the law to be applied and the method to be followed.[632] This understanding is reflected in Balasko's assessment which views the Washington Treaty as an example of treaty giving express directives and contrasts it to "less precise" provisions.[633]

6.127. As is clear from the account given in Chapter 7, these rules were central to the parties' arguments. These discussions made plain how seriously the parties took the Washington Treaty's provisions on applicable law; and how much depended on their proper construction – from Venezuela's detailed argument on the relationship between Articles III and IV to the British lead counsel's firm statement that "I do not want prescription".[634]

2. The Tribunal's failure to apply the Rules stipulated in Article IV

6.128. The Tribunal, in a short passage, asserted the following:

> "And whereas the said Arbitrators have duly entered upon the said Arbitration, and have duly heard and considered the oral and written arguments of the Counsel representing respectively Her Majesty the Queen and the United States of Venezuela, and have impartially and carefully examined the questions laid before them, and have investigated and ascertained the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana".

6.129. As is apparent from the text of the Award, the Tribunal completely ignored the Rules stipulated in Article IV, it completely ignored the parties' extensive arguments and

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[632] P. Reuter, p. 238.

[633] Balasko, *Causes de nullité*, p. 157.

[634] Verbatim Record, p. 2964 (available at the Peace Palace Library).

exchanges on the proper interpretation and application of these rules, and of the applicable law more generally. Adapting the above-quoted passage of an ICSID Annulment Committee, the Arbitral Tribunal "limited [itself] to *postulating*" adherence to the applicable law clause, but did not make any attempt to "demonstrate" that it had been guided by it.[635]

6.130. The short paragraph does not reveal what the Tribunal understood its task to be under the *compromis*, or how it interpreted the applicable rules. There is no information or explanation as to *how* the tribunal reached its decision, nor what provisions of the Washington Treaty were ostensibly to serve as a basis for it. Was the decision based purely on prescription? What was the role of other relevant – and not inconsistent – international law rules underwriting potential other claims or rights to the territory? Did the tribunal consider possession and, if so, did it adjust the boundary in light of reason, equity, justice, or principles of international law, or a combination thereof? What sorts of considerations did it take into account in performing this task? What other rules of international law – if any – did the Tribunal apply to determining the extent of the territory of the Netherlands or Spain it stood in 1814? This paragraph does not address, or even mention, the specific provisions of Article IV. Indeed, the Award as a whole does not mention the words 'prescription', 'possession', 'international law', or even the words 'law' or 'rules'. It does not show any 'careful consideration and examination' of the rules applicable to the dispute, nor of their application to the facts of the case.

6.131. This failure to state the reasons for its decision in the Award – in addition to being an independent ground for annulment – also evidences the Tribunal's failure to discharge its duty under the *compromis* to apply the law stipulated by the parties. In fact, it is impossible to avoid the conclusion that the Tribunal rendered an un-reasoned award precisely to obscure the grounds on which it had reached a decision. Pierantoni's critique of the *Cerruti case*, is apposite: "se rendant compte de la difficulté d'expliquer sa décision sur la base du droit, [le tribunal] s'en est volontairement abstenu en s'appuyant sur les pleins pouvoirs". As suggested by Pierantoni and Balasko, absence of reasons, in this

[635] *Klöckner v Cameroon*. Decision on Annulment, 3 May 1985, para. 79.

context may amount to excess of power 'by omission'. Assessed against the standards formulated by the Court, the published Award of 1899 does not reflect any awareness on the part of the Tribunal that it would have to investigate the "substance of [its] mandate" [636] or that it would have to "conform to the terms by which the Parties have defined this task".[637]

c) The Tribunal acted inconsistently with the scope of its powers, as defined in Articles I and III, by deciding matters falling outside of the Washington Treaty

6.132. The Tribunal not only failed to discharge duties imposed upon it by the Washington Treaty. Despite rendering an extremely brief award, the Tribunal managed to clearly exceed its powers by deciding matters that it had no competence to decide under the Washington Treaty.[638]

6.133. That this form of excess of power renders an award null and void is universally admitted. The ILC notes succinctly that "The Roman Law maxim *arbiter nihil extra compromissum facere potest* has been adopted in international law".[639] International practice provides many examples of this basic proposition, including in relation to disputes that predated the 1899 Award: the fate of the 19th century decisions in the *Isla de Aves*[640]

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[636] *Arbitral Award of 31 July 1989*, Diss. Op. Weeramantry, at p. 134.

[637] *Gulf of Maine, I.C.J. Reports 1984*, p. 266, para. 23.

[638] See further C. Sosa Rodríguez, "El Acta de Washington y El Laudo de Paris", in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales (1983), p. 155; R. Badell Madrid, *La reclamación de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023), pp. 162-166; J. Gillis Wetter, The International Arbitral Process: Public and Private, vol. III, Oceana Publications: New York, 1979, pp. 345-346; Ojer, Sumario histórico de la Guayana Esequiba, Colección Sumario (1982), pp. 52-53.

[639] ILC, Draft Convention with Commentaries, p. 107.

[640] In their *compromis* in the *Isla de Aves case*, Venezuela and the Netherlands tasked the arbitrator to resolve "[l]a question du droit de domination [*dominio*] et de souveraineté [*soberania*] de l'île Aves". In her award of 30 June 1865, Queen Elizabeth II of Spain, having discharged this task, but also decided to award compensation to Dutch citizens for the loss of fishing rights around the island. This was considered to be an excess of power (De Lapradelle and Politis and viewed it as a "grave violation": *Recueil des arbitrages internationaux* (Pedone 1905) vol 2, 420). Significantly, the Dutch and Venezuelan governments subsequently resolved their dispute through an exchange of letters, which recognised Venezuela's sovereignty but maintained fishing rights of Dutch nationals: see 5 *Moore's Arbitrations*, p. 5040.

and *Cerruti*[641] cases are illustrative; in both instances, the parties agreed to re-open dispute settlement procedures because the arbitrators had gone beyond the *compromis*. The underlying proposition – that an arbitrator commits an excess of power when "adjudg[ing] on a matter not submitted to him"[642] – cannot seriously be doubted.

1. The Tribunal's competence as defined in Articles I and III

6.134. The Washington Treaty clearly defined the Tribunal's competence in its 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."

6.135. Article III, as cited already, required the Tribunal to "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 *second*, to "determine the boundary-line between the Colony of British Guiana and the United States of Venezuela."

6.136. These provisions empowered the Tribunal, just as much as they limited its competence. As regards the latter aspect, Article I clarified that the Tribunal had no power to decide matters involving third States, not parties to the Washington Treaty. What is

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[641] In the *Cerruti case*, U.S. President Cleveland, as arbitrator, was asked to identify claims of Mr. Cerruti that were properly to be adjndicated by an international tribunal, and to decide upon these claims. In the award of 2 March 1897, President Cleveland awarded compensation to Cerruti, and *also* decided that Colombia was bonnd to guarantee and protect Cerruti from all liability arising from all debts of the Cerruti firm, of which he was director as well as partner. Commentators like Pierantoni, Borel and Ralston criticised the excess of power (stating that "la décision sur ce point sort complètement des limites de l'action arbitrale": see Pierantoni, 'La Nullité d'un Arbitrage International' (1898) 30 *RDILC* 445, 459-460; and further Borel, 'Les voies de recours contre les sentences arbitrales' (1935) 52 *Recueil des cours* I, 60; Ralston, 'International Awards' (1928) 15 Virginia Law Review 1, 9 (as an example of the tribunal 'having exceeded the terms of the *compromis*'). Subjected to Italian threats of force, Colombia agreed to another round of arbitration, designed to whitewash the initially excessive decision, and eventually was forced to honour the debts of Cerruti's company.

[642] Lauterpacht, "The Legal Remedy in Case of Excess of Jurisdiction", 1928, BYIL, Vol. 117, No. 9, p. 118.

more, Article III not only required the Tribunal to answer to questions (which, as noted above, it did not do), but also precluded it from addressing other questions.

6.137. The Tribunal professed faith to this mandate in the very title of the Award, which describes the decision as one concerning "the Boundary between the Colony of British Guiana and the United States of Venezuela". But this faith was only apparent, for the Tribunal made two determinations that did *not* concern the boundary between British Guiana and Venezuela: it determined the boundary with third States, and it imposed a regime of navigation on the rivers Amakura and Barima. Both determinations clearly went beyond the Tribunal's powers as set out in Articles I and III of the Washington Treaty.

2. The Tribunal's failure to respect the limits of its competence defined by Articles I and III

6.138. More specifically, the Tribunal went beyond the limits of its competence in two ways.

6.139. First, the Award allocated territories to British Guiana that, at the time, were disputed between the United Kingdom and Brazil. The Award's relevant passage is this:

> "[T]he boundary-line between the Colony of British Guiana and the United States of Venezuela is as follows: — |...|
>
> 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."

6.140. This 'overreach' clearly could not be based on the *compromis*. Aware of this obvious problem, the Tribunal included a clause that sought to preserve the possibility of a future boundary determination between the Venezuela and Brazil, and the United Kingdom and Brazil, noting that "the line of delimitation fixed by this Award shall be subject and without prejudice to any questions [...] 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". These attempts were insufficient, and did

not placate the third country immediately affected, viz. Brazil, which firmly protested against the effects of the Award. It is telling that, in a later British-Brazilian arbitration, the arbitrator took for granted that the 1899 Award "deciding the boundary between Great Britain and Venezuela, *adjudged* to the former the territory which constitutes the subject of the [British-Brazilian] dispute".[643]

6.141. That the Award had interfered with Brazil's territorial interests was a standard feature of early discussions of the decision. Early commentary noted that the Tribunal "a certainement étendu sa mission, puisque le Brésil n'était pas partie à la convention d'arbitrage [...], qu'il n'était représenté dans le tribunal et ne lui avait pas donné mandat de statuer sur une question qui l'intéressait."[644] Pointing to the above-quoted saving clause included in the Award, certain observers sought to 'explain away' the Tribunal's extension of its mandate by suggesting that, as regards Brazil, the Award "n'a donc que la valeur d'une indication".[645] But it was undeniable that the tribunal had gone beyond its mandate. These same observers had to concede the Tribunal had "a dépassé son mandat", but sought to excuse it nonetheless: the Tribunal had done so "dans une intention louable".[646] But this was hardly convincing: leading commentators like Ernest Nys remained highly critical of the Award, describing the transgression of Brazil's interests as "une grossière erreur".[647]

6.142. The Brazilian government agreed. Not only had it asserted its interests in the disputed territories prior to the beginning of the arbitral proceedings. Once the 1899 Award had been rendered, it protested against the Tribunal's transgressions in a circular note of 7 December 1899, which gave expression to its profound "surprise" at the fact that "le Brésil était éliminé de la carte de la région de l'Amazone su rune étendue indéfinie".[648]

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[643] *Guiana Boundary Case* (Brazil/Great Britain) (1904) XI RIAA 11, p. 22 (emphasis added).
[644] 'Chronique des faits internationaux : Sentence arbitrale du 3 octobre 1899', 1901, *RGDIP*, Vol. 9, No. 71, p. 79.
[645] *Ibid.*
[646] *Ibid.*, pp. 79-80.
[647] Nys, 'La revision de la sentence arbitrale', 1910, RDILC, Vol. 12, No. 596, p. 614.
[648] Ministry of Foreign Affairs, Circular of 7 December 1899 (cited in Wetter III, p. 171).

6.143. Quite apart from pronouncing on rights of third States, the Tribunal went beyond its powers in another, *second*, respect: as the Tribunal also prescribed how the parties were to conduct themselves within their territories, and limiting their right of territorial sovereignty. The central passage is contained in the last substantive paragraph of the 1899 Award:

> "[T]he 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 the Republic of 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 the Republic of 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."

6.144. As is clear from the wording of this passage, the Tribunal saw fit to impose upon the parties a regime for the governance of the Amakuru (Amacuro) and Barima (Barimi) rivers, both of them tributaries of the Orinoco. This regime, like those established for other rivers, 'internationalised' and opened the two rivers to navigation by all nations. As standard river regimes, it limited the rights of sovereigns to impose duties on ships navigating the rivers, in effect requiring equal treatment of ships of the other side. The language of the Award clearly reflected the arbitrators' familiarity with standard concepts of 19th century river governance.

6.145. By setting out a regime for the Amakura and Barima rivers, the Tribunal clearly went beyond the task entrusted to it by the *compromis*. As Guyana notes, "the [Washington] Treaty did not expressly require the Tribunal to determine the question of freedom of navigation in respect of the rivers which traverse the parties' territories or which form part

of their common boundary".[649] Contrary to Guyana's argument, the imposition of an internationalised river regime was not "directly related to the delimitation of that boundary", or "a necessary and integral aspect of the boundary delimitation".[650] Three points can be made:

First, nothing precluded the Tribunal from drawing the boundary line and then leaving each party to administer the territory allocated to it without limitations concerning the management of rivers. Guyana's assertion of a 'necessary link' is plainly wrong, and nor can it plausibly claim that the river regime was 'integral' to the boundary determination, i.e. a "necessary and important as part of a whole".[651]

Second, Guyana's attempt to bring the excessive decision within the remit of the *compromis* is contradicted by the approach adopted by the parties during the proceedings. Neither of them addressed the question in their pleadings, nor made submissions on it: the final paragraph of the Award was added at the Tribunal's own initiative.

Third, the Tribunal's approach (and Guyana's attempt to gloss over the excess of power) cannot be reconciled with the jurisprudence of the Court based on special agreements.[652] The Court is regularly entrusted by parties to determine title to territory or to delimit territorial boundaries. But, unlike the Tribunal established under the Washington Treaty, it takes great care not to overstep the limits of its jurisdiction conferred by the parties. To illustrate, when Malaysia and Singapore requested the Court to determine sovereignty over the islands of Pedra Branca, Middle Rocks and South Ledge,[653] the Court took great care to clarify that on the basis of the *compromis*, it had no power to delimit the maritime spaces of the two parties:

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[649] GM, paras. 8.50.

[650] GM, paras. 8.50-8.51.

[651] See https://dictionary.cambridge.org/dictionary/english/integral.

[652] Guyana relies on the Court's judgment in the *Construction of A Road case* (Nicaragua v Costa Rica) in support of the opposite proposition. But since the Court's jurisdiction in that case was based on a broad compromissory clause, viz. Art XXXI of the Pact of Bogota, it is hardly instructive for a discussion of the scope of jurisdiction under a *compromis*.

[653] Article 2 of the Special Agreement, *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment (2008) ICJ Rep, pp. 12, 1, para 2.

> "The Court recalls that in the Special Agreement and in the final submissions it has been specifically asked to decide the matter of sovereignty separately for each of the three maritime features. At the same time the Court has not been mandated by the Parties to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question."[654]

6.146. Similarly, when exceptionally the Court has pronounced on navigation rights in the context of territorial disputes, it has been extremely careful to explain its exercise of jurisdiction on the basis of the wording of the *compromis* and the parties' understanding. This is notably borne out by the judgment in the *Kasikili/Sedudu case*, in which, having determined the course of the boundary, the Court went on to hold that the nationals of both States would enjoy free navigation along the Chobe river.[655] This approach was justified by reference to the terms of the *compromis*, which not only referred (like the Washington Treaty) to the delimitation of a boundary, but asked the Court to decide on the "legal status" of the *Kasikili/Sedudu* island – which (as noted by Judge Fleischauer) could be understood to "comprise[] the determination of the legal status of the waters around" the island.[656] Moreover, unlike in the case between Venezuela and Great Britain, Botswana and Namibia when agreeing to settle their dispute had specifically mentioned the freedom of navigation on the Chobe river.[657] As the Court and individual judges noted, the parties' agreement and positions taken during the proceedings informed the interpretation of the *compromis* and justified a pronouncement on freedom of navigation.[658]

6.147. In light of these considerations, the Tribunal's imposition of a river regime was indeed, as noted by a commentator, a "blind, unauthorised excursion into an area wholly outside the conception of the draftsmen of the Treaty, the parties and their counsel".[659] It

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[654] *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment (2008), I.C.J. 12*, p. 101, para. 298.

[655] *Kasikili/Sedudu Island (1999) ICJ Report*, pp. 1045, 1108. para 104.

[656] *Ibid.*, Judge Fleischhauer dissenting opinion, p. 1205.

[657] *Ibid., I.C.J Report*, pp. 1045, 1106.

[658] *Kasikili/Sedudu Island (1999) ICJ Rep 1045*, pp. 1106-1108, paras 102-103; and *further Kasikili/Sedudu Island (1999) ICJ Rep 1045*, Judge Kooijmans, p. 1148, para. 22.

[659] Wetter III, pp. 345-346.

did serve a useful purpose, though, at least for one party.[660] In his letter to Lord Salisbury of 7 October 1899, penned four days after the Award, the British-appointed arbitrator, Lord Russell, emphasised the importance of the Tribunal's 'excursion' into the field of navigational rights: the Award, he noted, had put the United Kingdom in a better position than it would have been under any of the prior British offers for a negotiated boundary. "Venezuela gets much less", he went on to write, than under the offers that had been made by Lord Aberdeen and Lord Roseberry, and

> "about the same territory as Lord Granville's offer would have given her in '80 [1880]. But Lord Granville's offer did not stipulate for that which is, by the Award, secured by Great Britain – viz. the free navigation of the Barima and Amakura as approaches to and exits from the Orinoco".[661]

6.148. Whatever motivation may have guided the Tribunal, is clear that its "excursion" was "unauthorised" – unauthorised by the *compromis* and not covered by the parties' consent, amounting to a plain excess of power.

d) The Tribunal failed to act impartially, as required by Article V of the Washington Treaty

6.149. In addition to its failure to exercise jurisdiction (only) where required, and its failure to apply the applicable law determined by the parties, the Tribunal also violated its duty to act impartially. Impartiality is one of the most fundamental duties of arbitrators. This duty is implicit in the arbitral function and was, moreover, expressly stipulated in Article V of the Washington Treaty.

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[660] Indeed, as observed by I. B. Römer, "La reclamación sobre el territorio Esequibo y la plataforma Deltana", in J. A. Albornoz Oliver, P. Apolinar Rojas, F. Eudes Mujica B. (eds.), *El derecho internacional en tiempos de globalización. Libro homenaje a Carlos Febres Pobeda*, Publicaciones Vicerrectorado Académico (2006), p. 434, "a more reasonable explanation as to what led the arbitrators to violate the terms of the arbitration and the most elementary legal principles in such a manner" was "the geopolitical importance of the Orinoco for England and the United States" ("una explicación más razonable sobre qué llevó a los árbitros a violentar de tal manera los términos del arbitraje y los más elementales principios jurídicos .. la importancia geopolítica misma del Orinoco, para Inglaterra y Estados Unidos").

[661] See letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

6.150. The requirement that arbitrators must act impartially has been recognised for a long time. Already in the 19th century, it was understood that impartiality was a cardinal feature of the arbitral function.[662] Failure to act impartially, as Pradier-Fodéré noted, constituted a ground of nullity.[663] These implicit duties could, and often were, expressly included in the parties' arbitration agreements (as it was in the 1897 Treaty of Washington). Where this was the case, the arbitrators' failure to act with their duty of impartiality constituted *also* a violation of, or a deviation from, the *compromis* and, as such, amounted to an excess of powers. This is made clear in Goldschmidt's report of 1875 to the *Institut de Droit International*, which stated that an award could be annulled "si les règles de procédure … expressément prescrits à l'observation du tribunal arbitral dans le compromis […] ont été manifestement négligés ou violés".[664]

6.151. Establishing a violation of the condition of impartiality does not require showing that the arbitrator was *actually* not impartial. It is instead sufficient for that there is a "justifiable doubt" of impartiality of the arbitrator(s) in question. This is the standard referred to in the UNCITRAL Arbitration Rules,[665] as well as the SCC Arbitration Rules,[666] and has been applied in ICSID annulment proceedings,[667] whether as a ground of annulment of to justify arbitrator challenges. Doubts as to impartiality are justifiable when (as noted in a recent challenge decision):

> "they give rise to an apprehension of bias that is, to the objective observer, reasonable. Actual bias or partiality need not be established. […] [I]t is the reasonableness of the fear or apprehension

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[662] See for example Calvo, *Le droit international théorique et pratique* (5th edn, 1896), vol III, p. 485 para. 1774.

[663] Pradier-Fodéré, *Traité de droit international public* (1894), vol 6, p. 433.

[664] Goldschmidt, 'Projet de règlement pour tribunaux internationaux (1874) 6 RDILC pp. 441, 446-447.

[665] Art 11, UNCITRAL Arbitration Rules (with article 1, paragraph 4, as adopted in 2013 and article 1, paragraph 5, as adopted in 2021).

[666] Art 18, SCC Arbitration Rules (2023).

[667] EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v Argentine Republic (ICSID Case No. ARB/03/23), Decision on Annulment, 5 February 2016, paras 107-116, and 134; Eiser Infrastructure Limited and Energía Solar Luxembourg Sarl. v Kingdom of Spain (ICSID Case No. ARB/13/36), Decision on Annulment, 11 June 2020, para. 45.

> of bias on the part of the claimant - its justifiable character - that is required to be established".[668]

6.152. A comparable standard was applied in 19th century practice. The treatment of possibly tainted decisions rendered by the *Venezuela-US Claims Commission* of 1866 is instructive. Venezuela protested seven of the 24 awards rendered by the Commission, on the grounds that, in these seven case, there had been collusion between counsel and one of the arbitrators.[669] The U.S. accepted that the allegations against a sub-set of the awards had cast doubt on the propriety of the arbitrators' conduct throughout the proceedings, and the parties eventually agreed to set aside all of the awards made by the Commission (even those ones in respect of which no specific allegations of fraud had been made) and re-submit them for decision to a new tribunal.[670]

1. Article V of the Washington Treaty required the Tribunal to act impartially

6.153. Against this background, it is significant that Article V of the Washington Treaty required the Tribunal to "proceed impartially and carefully to examine" the two questions posed to it in Article III, in light of the rules stipulated by the parties in Article IV.

6.154. These were not empty words, but reflected the parties' desire (and Venezuela's hope) for an unbiased decision that would uphold standards of international law and justice – particularly important to Venezuela that was opposed to an expansionist imperial power.

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[668] Challenge Decision of 11 January 1995, (1997) XXII Yearbook of Commercial Arbitration 227, 234. See also: *Gallo v Canada*. Decision on the Challenge to Mr J Christopher Thomas QC, 14 October 2009, PCA, para. 19.

[669] For details see 2 *Moore's Arbitrations*, 1662-1664: In a unanimous resolution of both the U.S. Congress and Senate, the Houses found that there had been "serious charges impeaching the validity of and integrity of the proceedings" of the 1866 Commission, and that the evidence taken by the House of Congress had "tend[ed] to show that such charges [were] not without foundation" (see ibid., 1664). The Committee of Foreign Affairs of the U.S. Congress considered 'the alleged Commission [to be] a conspiracy; its proceedings were tainted with fraud. That fraud affects its entire proceedings.' As a result, the proceedings were 'diseased throughout, and there [was] no method known to the committee by which to separate the fraudulent part from the honest part and establish any portion in soundness and integrity' (*ibid.*, 1663).

[670] Stowell and Munro, *International cases*, vol 1, p. 73.

General Harrison emphasised the importance of the arbitrators' impartiality during the proceedings:

> "It seems to me that, if this process of settling international difficulties is to commend itself to the nations, it can only be by setting up for the trial of such questions an absolutely impartial, judicial Tribunal ... It seems to me, Mr President, that anticipating what seemed to be so prominent in this discussion at the Hague, these nations have adopted that basis in the constitution of this Tribunal."[671]

2. The evidence shows the Tribunal's impartiality was compromised

6.155. The evidence discussed in Chapter 7 shows that the Tribunal's members did not adhere to the parties' demand for impartiality. As has been indicated, contemporary documents suggest that counsel for the UK viewed the British ('our') arbitrators not as impartial, but as part of the British side. Sir Richard Webster's candid admission that he would not hesitate to have private meetings with 'our own arbitrators' to inform them of British legal positions, is worth restating. This is clear from the above-quoted letter sent by the British lead counsel to Joseph Chamberlain, Secretary of State for the Colonies, in which Sir Richard noted that:

> "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 of the part of some member of the Tribunal it is desirable that our arbitrators should appreciate our views."[672]

6.156. Similarly, in a letter to Lord Salisbury, dated 19 July 1899, Sir Richard indicated that

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[671] Boundary between the Colony of British Guiana and the United States of Venezuela, Fiftieth Day's Proceedings (19 Sept. 1899), p. 2982, GM, Vol. IV, Annex 111.

[672] Letter from Sir Richard Webster to Joseph Chamberlain, 19 July 1899 (**Annex 64**).

> "If I have reason to believe the Tribunal is against me on this part of the case, I shall endeavor to let the British Arbitrators know our view of the position".[673]

6.157. As regards the U.S. Arbitrators, suffice it to mention again the fact that, on the eve of a potential 'disastrous' award, they reached out to Venezuelan counsel and met with them: as detailed in chapter 7, in the course of a meeting, the U.S. Arbitrators not only gave the Venezuelan side a detailed account of the Tribunal's potential outcomes and *modus operandi*, but also sought advice on how they should deal with the dilemma presented to them – advice eventually received from the counsel team led by General Harrison.

6.158. As discussed below, these facts reflect a failure of the Tribunal to comply with its central obligation, namely to reach a decision based in law. For present purposes, they are sufficient to raise justifiable doubts as to the impartiality of the arbitrators. Any reasonable observer would readily apprehend a risk of bias in circumstances in which there existed communications between one of the parties to the arbitration and their party-appointed arbitrators, covering substantive matters placed before the tribunal.

e) The Tribunal failed to comply with its duty to render a decision based on law

6.159. The Tribunal exceeded its powers in a further respect, namely by failing to render an Award based on law as required by the *compromis*. This is the most fundamental defect affecting the Tribunal's decision, supported by accounts of individuals directly involved in the decision-making process and reflected in objective features of the Award. It is fundamental because it reflects many of the more particular defects identified in the preceding sections, and yet goes beyond them.[674]

6.160. It goes beyond them because the duty of tribunals to render decisions based on law is an essential aspect of the function of binding dispute settlement. By 1899, it was beyond

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[673] Letter from Sir Richard Webster to Lord Salisbury, 19 July 1899 (**Annex 63**).

[674] See further A. R. Brewer-Carías, *Derechos de Venezuela sobre el territorio Esequibo*. Academia de Ciencias Políticas y Sociales (2023), p. 123-132; J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications: New York, 1979, pp. 347-350; M. Falcón Briceño, Origines de la actual reclamacion de la Guayana Esequiba, Boletín de la Academia de Ciencias Políticas y Sociales, número 91, Caracas, 1983, p. 68.

dispute that, unless parties to an arbitration expressly authorised a tribunal to base its decision on other considerations, the tribunal's decision was to be reached on the basis of law: "[L]e principe est que le tribunal arbitral chargé de fonction juridictionelle doit appliquer la règle de droit".[675] The leading authorities of the late 19th century thus insisted on the distinction between arbitration and diplomatic means of dispute resolution, clarifying that "Les arbitres ne sont pas des médiateurs".[676]

6.161. The duty to render decisions based on law did not reduce arbitrators to the mechanic application of predetermined rules of law. Of course, they retained judicial discretion that could be exercised in their decisions. However, such judicial discretion (as Lauterpacht would note) was "circumscribed by the duty to apply the existing law",[677] and thus "governed by law".[678] A tribunal's balancing of conflicting principles, its weighing of the evidence, and the potential choice they may make between conflicting principles, must still be made "only after conscientious and exhaustive scrutiny", and it must be accompanied by "a consciousness of duty performed".[679]

1. The Washington Treaty required the Tribunal to render an Award based on law

6.162. The Washington Treaty reflected the Parties' insistence that the dispute be resolved on the basis of law – a point that the parties stressed during the proceedings. Four aspects of the Washington Treaty are worth recalling:

First, as discussed above, the parties presented the Tribunal, in Article III, with two questions that it was expected to respond to.

Second, as discussed above, in Article IV(a)-(c), the parties defined, with significant detail, which rules the Tribunal should apply to reach its decision: this included concrete

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[675] Balasko, *Causes de nullité*, p. 172.
[676] Bonfils, p. 253.
[677] Lauterpacht, *The Development of International Law by the International Court of Justice* (Praeger, 1958), p. 399.
[678] *Ibid.*
[679] *Ibid.*, p. 396.

references to particular rules (eg presciption), as well as directions concerning the priority among the different Rules.

Third, the parties, in Rule IV(c), empowered the Tribunal to resort to considerations of "reason, justice, [...] and the equities of the case", but circumscribed this narrowly – identifying a particular context and conditions, so that considerations of equity, reason and justice, in effect would serve to mitigate consequences of a particular drawing of the boundary. By implication, outside this setting, the Tribunal was required to be guided by rules of international law.

Fourth, in the chapeau to Article IV, the parties envisaged a decision based on "principles of international law" that the Tribunal deemed applicable, but limited this by stating that these could only be applied if they were "not inconsistent" with the particular Rules stipulated in IV(a)-(c).

6.163. The overall conclusion derived from these provisions is that the parties defined the Tribunal's "terms of reference"[680] carefully and with precision, insisting on the need for a decision based in law.

6.164. As noted above, this understanding was reinforced firmly during the oral proceedings. As regards Great Britain, Sir Richard Webster was emphatic that he was addressing a "judicial Tribunal" that was "not here to draw compromise lines". In his phrase, "it would be a death blow to arbitration if it is to be imagined that by making a claim to territory to which they have no legal title, a nation can get a slice of it".[681]

6.165. As for Venezuela, the focus on a decision based in law was if anything more pronounced, not the least because Venezuela was afraid of a compromise that would merely favour the stronger power in the dispute. General Harrison's warning against decisions based on political expediency and give-and-take is worth recalling. As noted above, General Harrison distinguished two different modes of settling international controversies, noting that "if th[e] process of settling international difficulties is to commend itself to the

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[680] *Gulf of Maine, ICJ Reports 1984*, p. 266, para. 23.

[681] Verbatim Records. p. 731 and 865 (available at the Peace Palace Library).

nations, it can only be by setting up for the trial of such questions an absolutely impartial, judicial Tribunal. If conventions, if accommodations, and if the rule of give-and-take are to be used, then let the diplomatists settle the questions. But when these have failed in their work, |...| it seems to me necessarily to imply the introduction of a judicial element into the Tribunal." These were not abstract notions, but – he continued – guided the settlement of the boundary question opposing Great Britain and Venezuela, as "these nations have adopted that |judicial| basis in the constitution of this Tribunal"[682]:

> "|T|he purpose of this Treaty Arbitration was to bring in just this judicial element, and to exclude the representative element which has appeared in many former arbitrations [...] There is no Venezuelan here. This latter provision distinctly excludes the idea of representation, for when that idea is allowed, the representation is direct and equal. Venezuela, then, Mr. President, comes to this tribunal as to a great court. She gives to each member of it her fullest confidence, and submits her case to be judged upon the principles of international law and the rules of the treaty, and not to be compounded or compromised upon suggestions of political expediency".[683]

6.166. The record leaves no doubt that the parties expected a decision which, while making allowance for some discretion and compromise, was "governed by law" and was accompanied by "conscientious and exhaustive scrutiny".[684]

2. **The Tribunal failed to render an Award based on law**

6.167. From the text of the Award, as well as the documentary record, it is clear that the Tribunal failed to render a decision based in law. This is the necessary implication of the evidence discussed in Chapter 7 and in the preceding sections of the present Chapter. Two key points can be made.

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[682] *Ibid.*, p. 2983 (available at the Peace Palace Library).

[683] *Ibid.*, p. 2984 (available at the Peace Palace Library).

[684] Lauterpacht. *The Development of International Law by the International Court of Justice* (Praeger, 1958), p. 399.

6.168. To begin with, the Award contains not a trace of legal reasoning.

6.169. The Tribunal asserted that it had:

> "duly heard and considered the oral and written arguments of the Counsel representing respectively Her Majesty the Queen and the United States of Venezuela, and have impartially and carefully examined the questions laid before them, and have investigated and ascertained the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana".

6.170. But this assertion is just that: an assertion, and it does not bear out Guyana's claim that the Tribunal "applied the legal standard advocated by Venezuela".[685] Guyana relies on the parties' pleadings to show the ample legal arguments brought before the Tribunal. But this merely accentuates how obviously the Tribunal fell short of its duty to render a decision 'governed by law'.

6.171. In fact, contrary to Guyana's claim, there is no evidence, no trace whatsoever, in the text of the Award that legal rules and principles, or that their weighing and balancing, played any role in the decision-making of the Tribunal. Nowhere does the Award refer to Article IV of the Washington Treaty, and the words 'law', 'rule', 'international law', or any similar terms do not appear in the decision. There is no mention of prescription, or occupation, or critical date, or any of the legal concepts and doctrines of the law on acquisition of territory, extensively debated by the parties.

6.172. The breadth and complexity of the legal materials, as well as the evidence, put to the Tribunal was emphasised by both parties. U.S. President Harrison, on behalf of Venezuela, explained that Venezuela had "present[ed] a full and complete discussion of every question of law and fact that we thought was in the case".[686] Sir Richard Webster, on

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[685] GM, p. 73, para. 3.54.

[686] Boundary between the Colony of British Guiana and the United States of Venezuela, Fiftieth Day's Proceedings (19 Sept. 1899), pp. 2984-2985 (Harrison). GM, Vol. IV, Annex 111. (cited in GM, at 70.)

behalf of Great Britain, also acknowledged observed that there was a "very vast mass of matter [...] discussed and [...] presented to the Tribunal".[687] Lauterpacht would later aptly describe the proceedings before the Tribunal as 'a lengthy legal contest on such questions as acquisition of title by occupation, discovery, and prescription, and on such procedural technicalities as the function of estoppel in relations between States'.[688]

6.173. None of this 'lengthy legal contest' is reflected in the Award – rushed out within less than a week, and on the basis of meetings that (as noted above) were not necessarily attended by all members of the Tribunal. The text of the Award reveals nothing approaching a legal process: not the length of pleadings, not the breadth or complexity of the legal principles and evidence involved. The Tribunal did not place on record which legal considerations, or indeed any of the *other* considerations referred to in Article IV(c), if any, guided it in reaching its decision.[689] Adapting terms used by the Court, the Award does *not* "make it possible to determine [...] the reasons why the Tribunal decided [the way it did]".[690] On its face, nothing in this Award gives the reader the impression that the decision was based on legal considerations.

6.174. The documentary record elucidating the Tribunal's decision-making process corroborates this assessment.

6.175. Writing about the Award in the 1950s, Arthur Nussbaum reported that "[t]o the surprise of everyone, the tribunal did not give any reason for the decision which aroused much resentment in Venezuela".[691] While this may have been surprising at the time, evidence that has come to light since the Award was issued reveals that the absence of any legal reasoning, of any mention of law, at all, in the Award, should not have been so surprising after all. For the Tribunal's decision was *not* based on law. The decision, as

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[687] *Ibid.*

[688] Lauterpacht. *The Function of Law in the International Community* (Clarendon 1933), p. 157.

[689] Indeed, Lauterpacht refers exclusively to the pleadings and materials of the arbitration to make his point, not to the award.

[690] Arbitral Award of 31 July 1989, pp. 53, 68, para. 43.

[691] Nussbaum, 'Frederic de Martens Representative Tsarist Writer on International Law' (1952) 22 Nordic Journal of International Law, pp. 51, 58.

Guyana admits, was the product of compromise.[692] Crucially, it was the product of compromise *only*, and of one that was not 'governed by law,' but by political expediency – precisely the criterion decried by the parties, and one that would lead the Tribunal to favour the more powerful litigant, rendering a dramatically unbalanced decision.

6.176. The Tribunal's decision-making process out in some detail in Chapter 5[693] reveals a clear picture of the key factors that led the Tribunal to reach its decision. Three points are worth reiterating:

6.177. First, the evidence makes abundantly clear that during the deliberations, the Tribunal's President had separate discussions with the party-appointed arbitrators, indicating to them that unless they accepted a boundary line put forward by him, he would side with the other party's position. This is clear from the memorandum of Mallet-Prevost, the letter of Lord Russell and the diary of De Martens himself. The central sections, which are as candid as they are damning, are as follows:

6.178. Recalling the events of a few days earlier, Lord Russell stated that de Martens "intimated to LJ Collins, in a private interview, while urging a reduction of the British claims, that if we did not reduce them he might be obliged in order to secure adhesion of the Venezuelan Arbitrators to agree to a line which might not be just to Great Britain. I have no doubt he spoke in an opposite sense to the Venezuelan arbitrators, and fear of possibly a much worse line was the inducement to them to assent to the Award in its present shape."[694]

6.179. Mallet-Prevost's memorandum recounts Arbitrator Brewer's statement to the fact that: "'Martens has been to see us. He informs us that Russell and Collins are ready to decide in favor of the Schomburgk Line, which starting from Point Barima on the coast

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[692] GM, pp. 255-259.

[693] See chapter 7, paras. 119-143. See further A. R. Brewer-Carías, *Derechos de Venezuela sobre el territorio Esequibo*, Academia de Ciencias Políticas y Sociales (2023), p. 123-132; J. Gillis Wetter, *The International Arbitral Process: Public and Private*, vol. III, Oceana Publications: New York, 1979, pp. 347-350; M. Falcón Briceño, Origines de la actual reclamacion de la Guayana Esequiba, Boletín de la Academia de Ciencias Políticas y Sociales, número 91, Caracas, 1983, p. 68.

[694] See letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

would give Great Britain the control of the main mouth of the Orinoco; and that if we insist on starting the line on the coast at the Moruca River he will side with the British and approve the Schomburgk Line as the true boundary.' ... However [...] Martens is anxious to have a unanimous decision; and if we |the two U.S. Arbitrators| will agree to accept the line which he proposes he will secure the acquiescence of Lord Russell and Lord Collins and so make the decision unanimous.'"[695]

6.180. Dr. Martens' private diary affirm the essentials recounted by Lord Russell and Mr. Mallet-Prevost/Arbitrator Brewer. Having failed to persuade the British and American arbitrators to agree, the President "decided to get down to this issue in a diplomatic way":

> "I went to Chief Justice Fuller and persistently urged him to make one more small concession. The old man was very fond of me and promised to speak to his colleague Brewer. I then went to Lord Collins and explained to him that the British also had to make another concession. But Collins, with whom I had hitherto been on better terms, flatly refused and said he preferred a simple majority (considering me on his side) to unanimity for further concessions. The next day, early on Monday morning, I went again to see Brewer and persuaded him. I learned from him that dearest Fuller had been with him the night before for two hours, and after much deliberation they agreed to make a new concession. I was very glad and considered that the basis for an agreement had been found. I went again to Lord Collins but found him even less accommodating than the day before. But then I explained to him that England was not interested in forcing me over to the American side. This made him think. I told Fuller and Brewer that if they did not make a concession, then I would be forced *à contre coeur* to side with the English, because I could not wish and allow a scandal, i.e. a situation where the tribunal could not decide the case because the 4 arbitrators cannot agree among themselves, and the super-arbitrator refuses to cast his vote!
>
> I did not speak to Lord Russell on Sunday because he was not in Paris. But Lord Collins, at my request, told him all about these

[695] Mallet-Prevost Memorandum, in Schoenrich. 'The Venezuela-British Guiana Boundary Dispute' (1949) 43 AJIL, pp. 523, 530.

> negotiations. These conversations, and in particular the fear that Lord Collins communicated to him that I would go over to the American side, simply pissed him off."[696]

6.181. Second, it is clear from these statements that, in his attempt to procure a unanimous award 'at all costs', the Tribunal's President was not guided by considerations of law. In his diary, de Martens describes his approach as 'a diplomatic way'; in his perceived need to obtain 'concessions', there is not a hint of legal argument. As noted by Lord Russell, the President seemed to be guided, not by legal considerations of law, but "seemed [...] to think that it was his duty, above all else, to secure, if he could, a unanimous award".[697] The three first hand accounts indeed bear out a commentator's verdict: "It is |...| inherently evident that that Professor de Martens did not arrive at his compromise line by a process of legal reasoning which he was prepared to expound, or of which he was convinced, for if that were so, he could not have threatened to join one extreme award line or the other".[698]

6.182. Third, it is equally clear that, while the pressure exercised by the Tribunal's President did ostensibly produce the desired result (i.e. a unanimous decision), the Award could not reflect the legal reasoning of the Tribunal members. Both Lord Russell and Lord Collins, and Arbitrators Fuller and Brewer, felt required to accept an Award that set a line they did not consider to be justifiable as a matter of law. In fact, Arbitrators Fuller and Brewer made their vote in favour dependent on the approval by counsel: in effect, two American arbitrators, without consulting the Venezuelan government, decided to vote for an Award as directed by another American, General Harrison – who saw no alternative to accepting an 'iniquitous' result.

6.183. The verdict of close observers confirms this: as noted above, even British officials (who would have been content with the outcome) did not hesitate to describe the approach as 'trickery' and a 'farce'; subsequently, commentators would speak of the 'unjudicial'[699]

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[696] See Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899. AVPR, opis 787, delo 9, ed.k hr. 1-7 . p. 11 (**Annex 149**).

[697] See letter from Lord Russell to Lord Salisbury, 7 October 1899 (**Annex 67**).

[698] Wetter III, p. 348.

[699] Dennis, p. 722.

manner of reaching the decision and described it as a "marchandage purement politique" (Paul Reuter).[700]

6.184. To summarise, the evidence clearly bears out the correctness of Reuter's assessment. This assessment is supported by the Award as drafted – from which legal reasoning is absent. It is also supported by the positive documentary evidence of how the Award was drafted: given the time that has lapsed since 3 October 1899, one cannot fail to be astonished at how clearly the tribunal's decision-making process was driven by exactly the consideration that the parties sought to exclude – political expediency, crude give-and-take, diplomacy and pressure – replacing legal considerations as the benchmark of decision-making.

f) Interim conclusion: manifold excesses of power

6.185. The preceding sections reveal manifold, and at times astonishing, excesses of power committed by the Tribunal. To recall, under the Washington Treaty, the Tribunal was required to settle the dispute between Venezuela and the United Kingdom, in respect of the Essequibo region. Its task was clearly defined by Articles I and III: to delimit the boundary between the two countries, and to do this in two steps, first ascertaining title over the territory as at 1814, and second to determine the boundary line. The parties specified the rules to be applied by the Tribunal in Article IV, as well as the order of priority among them, clearly intending that the Tribunal would approach its task as a *legal* one: that the Tribunal, on other words, issue a decision governed by law. The parties anticipated that some adjustments to the boundary would be necessary, and made specific provision for this in Rule (c) of Article IV: giving the Tribunal some legally-bounded discretion in this respect. The parties expected the Tribunal carefully to assess the questions posed to it, and to proceed impartially as made clear in Article V.

6.186. The Tribunal failed in each of these respects. It ignored one of the two questions Article III expressly asked it to address, but then went on to decide matters that the parties

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[700] Reuter (1968). 238. Falcón Briceño speaks of 'blackmail' ('chantaje'): M. Falcón Briceño, Origines de la actual reclamacion de la Guayana Esequiba, Boletín de la Academia de Ciencias Políticas y Sociales, número 91, Caracas, 1983, p. 68.

had not only not posed to it – but that had not been in their contemplation at all: navigation of the rivers Amakura and Barima. What is more, straying from the limits imposed by the consent of the parties in Article I, the Tribunal pronounced on the legal position of a third State: Brazil. In reaching its decision, the Tribunal completely disregarded the carefully drafted and extensively debated Rules in Article IV. Indeed, it disregarded the parties' wishes to obtain a decision based on law: unanimity in the Award was, at least for the President of the Tribunal, the paramount consideration which must take priority 'above all else' including the clearly expressed will of the parties. Finally, members of the Tribunal seemed indifferent to the duty of impartiality, entertaining communications with the parties that had appointed them on substantive matters concerning the dispute.

6.187. The law on excess of powers is clear and well-established, with a long-standing history. It was clear and well-established at the time of the Award. Arbitral tribunals exist exclusively because of and entirely within the consent of the parties as expressed in their arbitration agreements and with its full guarantee. "Les arbitres", according to Méringhac's account given in 1895, "doivent rester strictement dans les limites de leurs attributions et, en dehors d'elles, ils n'ont aucune qualité."[701] Any violation or non-observance of, deviation from, or failure to abide by the explicit requirements included in the parties' agreement amounts to an excessive exercise of its powers: because outside of the bounds of their agreement, the arbitrators 'n'ont aucune qualité'.

6.188. The Tribunal's excesses of power are plain to see, and could be identified "with certainty and immediacy, without it being necessary to engage in elaborate analyses".[702] The evidence that exists concerning the conduct of those involved in the proceedings, and deliberations, corroborate these excesses which are plain from the text of the Award. From not deciding questions expressly asked of it, to deciding questions *not* asked of it, to deciding on matters affecting States not parties to the *compromis*. From ignoring the expressly stipulated applicable rules mandated by the parties, to ignoring the law entirely, to settling on a compromise line 'above all else'. From failing to observe the duty of

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[701] Mérignac, *Traité théorique et pratique de l'arbitrage international*, Larose, 1895, pp. 284-285.
[702] *Dogan v Turkmenistan*, Decision on Annulment, 15 January 2016, para. 103 (internal citations omitted); *Mitchell v. DR Congo*, Decision on Annulment, 1 November 2006, para. 20.

impartiality, to the well-documented undue pressures from the President of the Tribunal to achieve a unanimous decision.

6.189. While bearing on different aspects of the Tribunal's mandate, these excesses are interconnected manifestations of the same underlying failure of the Tribunal: its attitude of disregard for the clear boundaries and limitations imposed on its powers by the parties. The precise manifestation of each of the Tribunal's failures is formally and substantively unimportant. What matters, adapting arguments by U.S. counsel in the *Orinoco Steamship case*, is 'the fact that the arbitrators have been guilty of "a plain departure from the terms of the reference" (Twiss), or of "a palpable disregard of the terms of the submission" (United States Case)', which is important, and which invalidates the award, not the precise character of the departure.'[703]

6.190. It would be difficult to imagine *any* arbitral decision that had so spectacularly failed in its compliance with the parties' agreement. An Award tainted so obviously would not be allowed to stand today; it should be unthinkable that it should be allowed to stand merely because of the date when it was issued. The law at the time recognised invalidity for excess of powers, and the practice showed that awards *were* set aside on this basis. For these reasons, the award, as Venezuela has maintained for many decades, the 1899 Award is null.

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[703] Oral argument. *Orinoco Steamship*, p. 66.

CHAPTER 7: THE PATH TOWARD THE AMICABLE RESOLUTION OF THE CONTROVERSY UNDER THE GENEVA AGREEMENT OF 1966

I. INTRODUCTION

7.1. Guyana devotes a considerable number of pages trying to convince the Court that the 1899 Award has been seen as a "victory" by Venezuela from 1899 up to the 1950's. This is probably because Guyana is aware that, in the case of the *Arbitral Award by the King of Spain*, the Court had seemed to pay attention to some expression of satisfaction regarding the award at stake in that case.[704] Yet, in the present case, it is simply historically erroneous to assert that Venezuela asserted "satisfaction" after the 1899 Award had rejected nearly all its legitimate and legally-grounded sovereignty claims. As a matter of fact, this Arbitral Award has always created bitterness and a sense of complete injustice **(II)**.

7.2. For a long time, Venezuela could not challenge the Award, although it was deeply unjust, fraudulent and without legal basis. Some features of this Award were surely alarming since, on its face, the 1899 Award appeared as an arbitrary and purely political ratification of the British unfounded claims. Yet, the evidence of fraud was not available to Venezuela. Moreover, faced with a situation of structural coercion from outside, as evidenced by the naval blockade of the Republic by several powers in 1902 and the ill-fated gunboat policy, Venezuela was not in a position to challenge the 1899 Arbitral Award.

7.3. Since 1949, with the release of the Mallet-Prevost Memorandum.[705] the anomalies, manipulations and falsifications that led to the Award came to light. All the pieces of the puzzle assembled perfectly and pointed to the complete nullity of what came to be confirmed as a sham arbitral award. On this basis, Venezuela presented its claim of territorial dispossession arising from the Award before international institutions from the early 1950's, and before the United Nations from the early 1960's. This claim by Venezuela

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[704] *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*, pp. 206-208, 210-212.

[705] O. Schoenrich, "The Severo Mallet-Prevost Memorandum", *The American Journal of International Law*, Vol. 43, No. 3, July 1949 in *Claim to Guayana Esequiba Documents 1962-1981*, Caracas, 1981, pp. 141-142 (available at Peace Palace Library)

opened the way to the conclusion of the Geneva Agreement of 1966, by which Venezuela and Guyana started to tread towards an amicable and practical settlement of the territorial controversy **(III)**.

7.4. In the Geneva Agreement, Guyana acknowledged the existence of Venezuela's contention that the 1899 Award is null and void and accepted as legitimate the maintenance of this contention in consenting to engage into a process aiming at resolving the controversy through a practicable solution acceptable to both Parties. Guyana now cynically and surprisingly argues in its Memorial that Venezuela cannot maintain its argument because there is an alleged "prolonged acceptance" of the 1899 Award on its part, or that such alleged conduct had the effect of "curing" the nullity of the Award. Both allegations are far-fetched and without legal merit.

7.5. There is no acquiescence upon which Guyana can rely to advance its claim before the Court. This is because:

- *First*, such an argument was never invoked until Guyana's Memorial **(IV, A)**.

- *Secondly*, the alleged prolonged acceptance invoked by Guyana has never existed **(IV, B)**.

II. THE RECEPTION OF THE 1899 ARBITRAL AWARD

7.6. It is wholly inaccurate to state, as Guyana does cynically on the basis of quotations made out of context,[706] that Venezuela welcomed the Arbitral Award of 1899 with satisfaction, or that "there was no indication of any dissatisfaction with the Award by Venezuela or its ally".[707]

[706] GM, Annex 3. See also GM, paras. 1.29, 4.2, 4.4, 4.5, 4.6, 9.8.
[707] GM, para. 4.9.

7.7. To the contrary, Venezuela has never been "satisfied" to be deprived by way of an unjust and fraudulent arbitral award of what it perfectly knew, as brilliantly argued by its lawyers, was *its* territory.[708]

7.8. In a letter sent to the Minister of Foreign Affairs the day after the decision was rendered, Venezuela's agent, José María de Rojas, characterised the decision as "derisory and a manifest injustice".[709] Ambassador Andrade, the representative of Venezuela in London, concluded bitterly about the Award that:

> "the right of Venezuela to a great part of the territory which has been left under the dominion of Great Britain was absolutely clear",
>
> and that:
>
> "the Award does not appear to be based on reason and justice, as Mr. de Martens affirmed in his closing speech, and the Venezuelan arbiters only gave their adhesion in order to avoid an even greater contempt of the essential attributes of any faultless judgment".[710]

7.9. On 27 December 1899, former U.S. Secretary of State Richard Olney wrote to U.S. President Cleveland the following about what was immediately seen as a disastrous award:

> "The worst result to be feared, apparently, is not the loss of territory to Venezuela but the general discrediting of the arbitration case. According to my informant, both the Chief Justice and Brewer are against arbitration as a mode of settling international disputes unless some new safeguarding of the rights of the parties can be provided.

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[708] *Ibid.* For an extensive analysis of the attitude of Venezuela in the months immediately following the Award see in particular F. M. De Vegamian, *El Esequivo, frontera de Venezuela: documentos históricos y experiencias personales*, Raycar, SA Impresiones, 1968, pp. 200-208.

[709] Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 20, para. 24 (**Annex 150**).

[710] GM, Annex 3, Vol. II (Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs, 7 October 1899).

> Ex-Secretary John W. Foster, with whom I dined here the other day, said Fuller and Brewer had come home pretty sick of arbitration."[711]

7.10. To recall, Brewer and Fuller were the two arbitrators appointed by the United States. As such, they were the direct witnesses of what this award truly was. And as said by Olney to Cleveland, they were "pretty sick of arbitration", precisely after what they had witnessed during the deliberation of the 1899 Award.

7.11. *This is the way* the Award was received, far from what Guyana depicts as a claimed "victory". The President of Venezuela, quoted by Guyana (without providing the source),[712] considered that the Award had amounted to a restitution to Venezuela of only "a part of its territory that had been usurped" by Great Britain, obviously considering that justice had not been properly done.[713]

7.12. Guyana quotes Venezuela's American counsel just after the Award was rendered.[714] But it does so in a biased and manipulated manner. In fact, a review of the reference as a whole shows that the Venezuelan representative criticised the arbitral tribunal for being a tribunal of political and diplomatic compromise rather than a tribunal of law. In his own terms:

> "The president of the tribunal, the Venezuelan representative added, had commented in his closing speech today on the unanimity of the present award, and referred to it as a proof of the success of the arbitration. However, it did not require much intelligence to penetrate behind this superficial statement and see that the line drawn was a line of compromise, and not a line of law. If the British argument had been correct, the line should have been drawn much further west. If it had been wrong, it should have been drawn much further east. There was nothing in the history of the dispute or, indeed, in the legal principle involved that could adequately explain

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[711] Library of Congress. Richard Olney Papers, Vol. 12. pp. 455-457; quoted in Statement of His Excellency. Dr. Marcos Falcon Briceno, Minister for External Relations of Venezuela, at the 348th Meeting of the Special Political Committee on 12 November 1962, p. 20 (**Annex 143**).

[712] GM, para. 4.7.

[713] *Ibid.*

[714] *Ibid.* para. 4.8.

> why the line should be drawn as it now stood. As long as the arbitration is conducted based on such principles, it cannot be considered a success, at least by those who believe that arbitration should result in an admission of legal rights, and not in compromises of a truly diplomatic character. Venezuela has gained much, but it was entitled to much more, and if the arbitrators were unanimous, it must have been because their failure to agree would have confirmed Britain in the possession of still more territory."

7.13. Guyana tries to undermine in advance these remarks by contending that "[t]he United States took Venezuela's side in the dispute, based on its 'Monroe Doctrine', by which it opposed territorial claims by European colonial powers in the Americas".[715] But this is, once again, a complete misleading presentation of the historical facts.

7.14. The United States intervened in the controversy for its own benefit, committing a grave and inexcusable wrong by subrogating the interests of its "defendant" to its own, and also because it was outraged by the "continuous growth of the undefined British claim". As evidence of this, for example, "Lord Aberdeen himself in 1844 proposed a line beginning at the River Moroco, a distinct abandonment of the Schomburgk line".[716]

7.15. President Cleveland did not "side with Venezuela" in the controversy, contrary to Guyana's contention. As Olney explained, the United States was accepting the idea that Britain could obtain recognition of its manifestly unfounded claim, to the extent that British gain would not be seen as the result of a forceful invasion and conquest.

7.16. In fact, any objective observer would have concluded that Great Britain had no title at all to the territory west of the Essequibo River, and that its policy was to "annex cartographically" an always larger territory in order to reach the Orinoco. A look at the successive maps manipulated by Great Britain perfectly illustrates this policy.

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[715] GM, para. 1.8.

[716] Letter from Richard Olney to Thomas Bayard. 20 July 1895 (**Annex 152**).

7.17. One element to note is that Britain was still a major power on the international scene at the time and resisting its unfounded claim exposed Venezuela to the use of force, as it had done in the recent past.

7.18. Moreover, as President Cleveland recalled, during the negotiations leading to the Washington Treaty, for a long time Great Britain refused arbitration because it feared that an award rendered according to international law might be made in favour of Venezuela, which would have been inacceptable for the British Crown.[717] As recalled by Marcus Baker in 1900: "It came to be seen that a finding adverse to Great Britain would produce an awkward situation".[718] Ultimately, Great Britain accepted an arbitration process only when it was certain that it would end up in its favour. It is in this context that Secretary of State Richard Olney, in the name of U.S. President Cleveland, described the British claim and how it could be accommodated by the United States:

> "Great Britain, however, has always and continuously refused to arbitrate, except upon the condition of a renunciation of a large part of the Venezuelan claim and of a concession to herself of a large share of the disputed territory. [...] the British demand that her right to a portion of the disputed territory shall be acknowledged before she will consent to an arbitration as to the rest seems to stand upon nothing but her own *ipse dixit*. She says to Venezuela, in substance: 'You can get none of the debatable land by force, because you are not strong enough; you can get nothing by treaty, because I will not agree; and you can take your chance of getting a portion as I may designate.' It is not perceived how such an attitude can be defended nor how it is reconcilable with that love of justice and fair play so eminently characteristic of the English race. It in effect deprives Venezuela of her free will and puts her under virtual duress. The territory acquired by reason of it will be as much wrested from her by the strong hand as if occupied by British troops or sieged by British fleets. It seems therefore quite impossible that this position of Great Britain should be assented to by the United States, or that, if such position be adhered to with the result of enlarging the bounds

[717] *Ibid.*

[718] M. Baker. *The Anglo-Venezuelan boundary dispute 1849-1903*, Washington, Judd & Detweiler, 1900 (available at: https://archive.org/details/cu31924021109529).

> of British Guiana, it should not be regarded as amounting, in substance, to an invasion and conquest of Venezuelan territory".[719]

7.19. Indeed, this was, as Venezuela later found, the sole object of the U.S.-sponsored arbitration process that culminated in the 1899 Award: to grant Britain, but not by the use of force (as this would have been contrary to the Monroe Doctrine), most of the Venezuelan territory that Britain coveted but to which it never had legal title.

7.20. On the other hand, Venezuela's claims against the nullity and invalidity of the arbitral award were also frustrated in an imperialist period in which the Republic of Venezuela was immersed in a situation of structural coercion.

7.21. Indeed, the meaning of a State's conduct depends on the circumstances and conditions in which it occurs. Venezuela argues, supported by legal principles and the jurisprudence of the International Court of Justice, that the existence of conditions is necessary to ensure the possibility of exercising the free expression of its will[720] and that those conditions were in no way present for Venezuela in the period immediately preceding the Award, at the time the 1899 Award was rendered, nor in the years immediately following, since throughout that period the Republic of Venezuela was systematically threatened from the outside by the then powerful and bullying British Empire.

7.22. Threats to Venezuela by Britain, and also by other empires and powers of the time, are very numerous and prove the situation of structural coercion. By way of illustration, of particular note is the infamous and detestable "gun-boat diplomacy", which was characterised by the threat or use of military force to try to impose the interests of foreign powers on Venezuela. This term, in other words, defines military interventions and the imposition of conditions unfavourable to Venezuela, which affected its autonomy. This was the case, for example, with the coercion exercised through the naval blockade for the collection of certain claims against Venezuela in 1902.

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[719] *Ibid.*, p. 345. See also, Letter from Richard Olney to Thomas Bayard, 20 July 1895 (**Annex 152**).
[720] *Frontier Dispute, (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986, p. 554, para. 80* ("the idea of acquiescence, which presupposes freedom of will [...]").

7.23. But coercion can be explained more broadly, as has been demonstrated in this Counter-Memorial, in relation to the British strategy of usurpation of Venezuelan territory, the culmination of which is verified in the signing of the Treaty of Washington of 2 February 1897, which Venezuela was forced to ratify under threat of "dangerous consequences", and in the fraudulent Award of 3 October 1899. Mr. Olney himself put it very clearly: the British Crown "actually deprives Venezuela of its free will and places it under virtual duress. The territory acquired by reason of it will be wrested from her as much by the strong hand as if it were occupied by British troops or sieged by British fleets".[721]

7.24. Such structural coercion must also be considered a legitimate basis for rejecting the force and validity of Guyana's arguments on acceptance and acquiescence, falsely attributed to the Bolivarian Republic of Venezuela.

III. THE PATH TOWARD THE 1966 GENEVA AGREEMENT

7.25. The Mallet-Prevost Memorandum of July 1949, in disclosing a "fait nouveau", changed everything. Before the Mallet-Prevost Memorandum, Venezuela had been unaware of the Award's "inner history", as Foreign Minister Falcon Briceño called it in a Statement of 12 November 1962, during a meeting of the Special Political Committee of the UN General Assembly.[722] But, from that moment, Venezuela knew that, on the basis of a defective arbitral award, it had been the victim of the outrageous theft of a territory on which it had an undisputable title.

7.26. Venezuela first brought its claim before the OAS in 1951 and 1954, very shortly after the Mallet-Prevost Memorandum had come to light.

7.27. In 1951, during the Fourth Meeting of Consultation of the Ministers of Foreign Affairs of the American Countries, Venezuela's representative stated that:

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[721] *Ibid.*, p. 345. See also Richard Olney to Thomas Bayard, 20 July 1895 (**Annex 152**).

[722] Question of Boundaries between Venezuela and the Territory of British Guiana: Statement of His Excellency, Dr. Marcos Falcon Briceno, Minister for External Relations of Venezuela, at the 348th Meeting of the Special Political Committee on 12 November 1962 (**Annex 143**).

> "In the opinion of the Government of Venezuela, no changes of status which 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".[723]

7.28. At the Tenth Inter-American Conference, in 1954, the legal consultant to the Venezuelan Ministry of Foreign Affairs, stated that:

> "In the particular case of British Guiana, the Government of Venezuela declares that no change of status which may occur in that neighbouring country can prevent the National Government from pressing its just demand that the harm sustained by the Nation when its border line with British Guiana was demarcated should be redressed by an equitable rectification of the frontier, in view of the unanimous feelings of the Venezuelan people and the special circumstances prevailing at the time. Hence, no decision on the subject of colonies adopted at the present Conference can adversely affect Venezuela's rights in this respect, nor can it be interpreted in any way as a waiver of those rights".[724]

7.29. In March 1960, a member of the Venezuelan Congress submitted to a parliamentary delegation of the United Kingdom the Venezuelan plea that:

> "A change of status in English Guiana cannot invalidate the fair aspirations of our people to be redressed, in an equitable manner and by amicable understanding, the major harm that the nation sustained under the unjust award of 1899".[725]

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[723] Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations, 14 February 1962 (**Annex 140**).

[724] *Ibid.*

[725] *Ibid.*, p. 25.

7.30. Guyana cynically maintains that these claims were not based on the rejection of the validity of the Award of 1899, but merely affirmed Venezuela's aspiration for an equitable rectification.[726] Guyana then contends that Venezuela raised its claim "for the first time" in 1962.[727] It also contends that, until then, Venezuela had acknowledged the "legality of the Arbitral Award".[728]

7.31. Yet, these contentions are backed by no official Venezuelan statement from the 1950's recognising the validity of the 1899 Award. Rather, Guyana relies on an unsigned "Memorandum of Conversation" from the U.S. Department of State, reporting that a minister counsellor of the Venezuelan Embassy in Washington "explained that Venezuela did not question the validity of the Arbitral award".[729] It goes without saying that, given his rank a minister counsellor of the Embassy of Venezuela in Washington D.C., he has no authority to define Venezuela's official international position in relation to an issue affecting the territorial integrity. Guyana also refers to a Policy Statement prepared by the United States Department of State in 1951, in which there is nothing resembling Venezuela's acknowledgement of the validity of the Award, contrary to what Guyana asserts.[730]

7.32. Secondly, it is untenable to contend, as Guyana does, that Venezuela somehow ratified the legal validity of the Award during the 1950's. The fact that, from 1951 onward, Venezuela officially claimed that there was a need for an "equitable rectification", that "harm" was sustained, that this harm should be "redressed", and that Venezuela had all the rights to claim so, was nothing else than the outcome of the nullity of the Award. Venezuela would have had no basis to assert those claims if the Arbitral Award of 1899 was not considered null and void and if Great Britain had not noted this.

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[726] GM, paras. 4.54-4.57; 9.9.
[727] GM, paras. 5.11, 9.13.
[728] GM, para. 9.10.
[729] Memorial of Guyana on jurisdiction and admissibility, Vol. II, Annex 16.
[730] GM, para. 9.11.

7.33. In the context of the process of decolonization of British Guiana, Venezuela raised its claim before the United Nations, the body of competent jurisdiction to hear it. To this effect, the Permanent Representative of Venezuela addressed a letter to the Secretary-General of the United Nations on 14 February 1962, in which he stated:

> "Inasmuch as there is a dispute between my country and the United Kingdom concerning the demarcation of the frontier between Venezuela and British Guiana and since, for that reason, my Government feels obliged to reserve its position on the matter and to explain the situation to the United Nations, I should be grateful if you would circulate this letter and the memorandum annexed thereto to the Members of the United Nations for their information."[731]

7.34. The memorandum attached to this letter did present Venezuela's position in detail.[732]

7.35. The United Kingdom's initial position was laid out on 13 February 1962 by Ambassador Colin Crowe, in the context of the United Nations' 349th Meeting of the Special Political Committee.[733] This position was, patently, poorly argued and relied on manifestly wrong assertions. For example, Ambassador Crowe affirmed that the Schomburgk line represented "the precise limits of the former Dutch possessions where all trace of Spanish influence was absent",[734] which was pure invention. The three Dutch possessions were tiny and had nothing to do with the vast territory of Guayana Esequiba west of the Essequibo River. In fact, the three Dutch settlements of Berbice, Essequibo and Demerara are precisely defined by the western boundary of each of these rivers, that is, the Berbice River, the Demerara River and the Essequibo River, with any Dutch acquisitions ending there, as thousands of maps of the time show. Such settlements are the origin of the territory of Guyana and nothing more.

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[731] Memorial of Guyana on jurisdiction and admissibility, Vol. II, Annex 17, p. 1, para. 2.

[732] *Ibid.*

[733] Agenda Item 88: Question of Boundaries between Venezuela and the Territory of British Guiana (continued), 13 November 1962 (**Annex 145**).

[734] Memorial of Guyana on jurisdiction and admissibility, Vol. II, annex 24, p. 3.

7.36. From there, the Parties agreed that their experts should look for evidence substantiating further Venezuela's claim.[735] They found such evidence.

7.37. Venezuela's position on the nullity of the award came to be further confirmed by the additional solid evidence found between 1963 and 1965 by Venezuelan experts, the Jesuits Hermann González Oropeza and Pablo Ojer. This evidence, freshly found and compiled, provided conclusive proof of the fraud sustained by Venezuela, which had been deceived and deprived of its legitimate territory by the 1899 Arbitral Award.

7.38. Guyana has provided the Report submitted by the Venezuelan Experts to the National Government on the Issue of the Boundaries with British Guiana (18 Mar. 1965) in annex 74 of Vol. IV of its Memorial on the merits. But it is only an extract. Indeed, it does not provide the most interesting evidence upon which the Report is based.

7.39. The evidence shows that the British Foreign Office was perfectly aware that the Schomburgk line was not representing anything close to "the undoubted" right of the British Crown. In the document titled "minutes by Lord Stanley, Colonial Office Secretary, London", dated 7 September 1841, the British side clearly admitted that:

> "Mr. Schomburgk does not provide any data upon which he assumes the limits claimed by him, to be, as he designates them more than ever, the 'undoubted' right of the British Crown".[736]

7.40. In the same vein, in a Confidential Memorandum from the British Foreign Office, dated 24 November 1857, the British side admitted that:

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[735] On the role and meetings of experts, see Memorandum of Venezuela, pp. 8-12.

[736] Minutes by Lord Stanley, Colonial Office Secretary, London, 7 September 1841, Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 34 (**Annex 150**).

> "it certainly appears to be doubtful whether our rights are so free from doubts as to make it advisable to claim the boundary as laid down by Sir R. Schomburgk".[737]

7.41. The Venezuelan experts also brought first hand evidence that the British did tamper the maps they used before the Arbitral Tribunal.

7.42. They found and provided the very frank testimony of Hertslet, from the Foreign Office, who perfectly knew that the British territorial claim was based on noting something close to a legal claim, and admitted that the British case:

> "is a poor one".[738]

7.43. He also admitted that the British side:

> "could not submit the case to arbitration with the slightest hope of success given the contradictory claims which have been put forward in the English published maps".[739]

7.44. Hertslet also frankly admitted that:

> "the argument based on the grounds of strict right would be hopeless [...]".[740]

7.45. Any honest reading of the entire expert report would admit without any doubt the reality of the British territorial swindle, quite eloquently illustrated on a sketch map prepared by the experts, showing the successive British claims based upon tampered British maps.[741]

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[737] Confidential Memorandum from the British Foreign Office, dated November 24, 1857, Bodleian Library (Oxford), Mss. Clarendon Deposit C/275, Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 34 (**Annex 150**).
[738] Letter from Sir Hertslet to Mr. Jervoise, 14 June 1886, Public Record Office (London) F.O. 80/309, Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 35 (**Annex 150**).
[739] Extract of the Memorandum by Sir E. Herslet, Foreign Office, 5/VIII/1886 (**Annex 27**).
[740] *Ibid.*
[741] *Ibid.*

7.46. At this point, the British Government became manifestly less sure of its case, and prudently sought to set aside the question of the invalidity of the 1899 Award, changing course in favour of a negotiated and practical solution to the territorial controversy that would be acceptable to both Parties, which became a source of embarrassment for the British Crown.

IV. GUYANA'S CONTENTION REGARDING VENEZUELA'S ALLEGED "PROLONGED ACCEPTANCE" OF THE 1899 AWARD CONTRADICTS THE GENEVA AGREEMENT'S OBJECT AND PURPOSE, AND IS OF NO AVAIL TO GUYANA

7.47. Guyana argues in Chapter 4 of its Memorial, that, for decades after 1899, Venezuela had accepted the award and adhered to the line described by the arbitrators. Guyana further lists a series of acts and statements that it qualifies as acceptance of the 1899 Award and the natural implementation of its demarcation, improperly called the "1905 Boundary Agreement",[742] later drawing the "legal consequences" from Venezuela's alleged acceptance of the Award before 1962. Guyana notably insists on "Venezuela's knowing and prolonged acceptance of the Award",[743] and concludes that Venezuela allegedly lost its right to claim that the Award is invalid, or that Venezuela's prolonged acceptance would somehow "cure any defect" that would invalidate the 1899 Award.

7.48. This contention is unsustainable because it is in direct contradiction with the object and purpose of the Geneva Agreement, under which the Parties have an obligation to settle the dispute "that has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the border between British Guiana and Venezuela is null and void" (Art. I of the Geneva Agreement). It follows that the Geneva Agreement fully validates – indeed, as premise and as its very *reason d'être* – the confirmation and Venezuela's right to contend that the Award of 1899 is null and void and proceed to demand the consequences that its text specifically mandated as to the practical and mutually acceptable settlement on

[742] GM, paras. 4.59 and 9.17.
[743] GM, para. 9.17.

the territorial dispute. Therefore, Guyana cannot succeed in depriving Venezuela of its right to maintain its contention.

(i) THE PRECLUSIVE EFFECT DERIVING FROM GUYANA AND ITS PREDECESSOR'S PROLONGED CONSENT TO DEAL WITH VENEZUELA'S CONTENTION THAT THE 1899 AWARD IS NULL AND VOID

7.49. Before this case was unilaterally filed, neither the United Kingdom nor Guyana had ever suggested that Venezuela's alleged acquiescence or prolonged acceptance of the 1899 Award boundary line could deprive Venezuela of its right to substantiate the material justice enshrined in the mandate to reach a mutually acceptable solution or that this alleged prolonged acceptance had the legal effect of "curing" the Award's nullity. Even less has it been suggested that this effect "emerged" in disregard of the Geneva Agreement and the various decades of it being applied. The Geneva Agreement commits Guyana to the contrary: in concluding it, Guyana plainly recognised Venezuela's rejection of the 1899 Arbitral Award and of the boundary line deriving from it and gave effect to this rejection by committing itself to search for a practicable solution acceptable by both Parties.

7.50. This is confirmed by the fact that, in the context of the Geneva Agreement, acquiescence was never discussed, not when the Parties negotiated the Geneva Agreement or when they enforced it. Venezuela's alleged acquiescence was never a matter at issue, not in the Port of Spain Protocol, nor in the bilateral negotiations or in the Good Offices process undertaken by the United Nations Secretary-General. It was first raised by Guyana before the International Court of Justice, after decades of silence, in a desperate and legally baseless attempt to advance its untenable position.

7.51. Indeed, neither the United Kingdom nor Guyana have put forward or alleged the supposed acquiescence as a defence or opposition to the claim filed before the United Nations in 1962 by Venezuela. No document, without exception, shows any allegations whatsoever by the United Kingdom or British Guiana of Venezuela's acquiescence. On the contrary, what is clear is that the UK and Guyana would never have signed the Geneva

Agreement if they had not ascertained the validity of the Venezuelan claim, let alone committed themselves to a mutually acceptable settlement.

7.52. Furthermore, in December 1965 there was a meeting of ministers in London between Venezuela, the United Kingdom and British Guiana, now Guyana, and the minutes of the meeting shows no evidence of acceptance by Venezuela of the subject matter of the Arbitral Award or the resulting boundary.[744] To the contrary, in a joint communiqué dated December 14th, 1965, the United Kingdom committed, *inter alia*, to seek practical, satisfactory and acceptable solutions to the Venezuelan claim.

7.53. Moreover, during the 53 years following the beginning of the talks on the issue of the invalidity of the 1899 Arbitral Award and the boundary question, and the 49 years following the entry into force of the Geneva Agreement, Guyana and the United Kingdom have never tried to oppose to Venezuela its alleged acquiescence of the 1899 Award or of the resulting boundary. There is not a single word referring to that subject matter prior to the case submitted by Guyana, and more precisely prior to its Memorial of 2022. Therefore, Guyana may not raise these allegations by reason of its long-standing acceptance.

7.54. Venezuela contends that this prolonged silence regarding any alleged Venezuela's acquiescence, together with the clear commitment enshrined in the Geneva Agreement to pursue a practicable solution acceptable to both Parties, has the legal effect of confirming Guyana's consent to find such a solution, and of precluding Guyana from now rejecting the mere idea of finding such a solution by claiming that the Court must refuse to give legal effect to the nullity of the 1899 Award, because this nullity would have been "cured" by the alleged Venezuela's acceptance.

7.55. For the same reason, the rule of estoppel clearly precludes Guyana from trying to oppose to Venezuela an alleged prolonged acceptance. According to the Court:

> "the 'essential elements required by estoppel' are 'a statement or representation made by one party to another and reliance upon it by

[744] See Minutes of London Preliminaries to the Geneva Agreement, 9 December 1965 (**Annex 85**).

> that other party to his detriment or to the advantage of the party making it"".[745]

7.56. When examining whether the conditions laid down in the Court's jurisprudence for an estoppel to exist were present with regard to the boundary dispute between Cameroon and Nigeria, the Court stated:

> "An estoppel would only arise if by its acts or declarations Cameroon had consistently made it fully clear that it had agreed to settle the boundary dispute submitted to the Court by bilateral avenues alone. It would further be necessary that, by relying on such an attitude, Nigeria had changed position to its own detriment or had suffered some prejudice".[746]

7.57. In the present context, the United Kingdom before Guyana's independence, and then Guyana since its independence, have consistently made it fully clear that Venezuela's alleged prolonged compliance with the 1899 Award and the resulting boundary would not be opposed to Venezuela. It is on this basis that Venezuela has supported and recognised Guyana's independence. It is on this basis that Venezuela signed the Geneva Agreement. And it is on this basis that Venezuela has for decades engaged in a long process aiming at finding a practicable solution to the controversy acceptable to both Parties.

(ii) THERE HAS BEEN NO SUCH PROLONGED ACCEPTANCE

7.58. Again, Venezuela could not have challenged the Award, even though it was profoundly unjust, fraudulent and without legal basis. Some features of this Award were, of course, alarming since, on the face of it, the 1899 Award appeared to be an arbitrary and purely political ratification of unfounded British claims. However, the evidence of fraud was not available to Venezuela. Moreover, amidst foreign structural coercion, as evidenced by the naval blockade of the Republic by several powers in 1902 and the ill-fated gunboat

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[745] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports* 1990, p. 118, para. 63.

[746] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, Preliminary Objections, 11 June 1998, para. 57.

policy, Venezuela was not in a position to challenge the 1899 Arbitral Award. Therefore, prolonged acceptance cannot be claimed or argued.

7.59. This conclusion about the absence of any relevant acquiescence applies both with respect to the 1905 demarcation and to the boundaries negotiated with Brazil, as will be explained in Sub-Section (*a*), and to the conduct attributable to Venezuela from 1899 to 1962, as further developed in Sub-Section (*b*).

a) Guyana's failed theories about a demarcation agreement in 1905 and about the land boundaries with Brazil

7.60. Guyana asserts that, shortly after the release of the 1899 arbitral Award, the Parties entered into a process of demarcation that resulted in the 1905 Boundary Agreement, and that this 1905 Agreement stands independently from the 1899 Award. Therefore, even if the 1899 Award were indeed null and void, the boundary established under the 1905 Agreement would stand,[747] as if the 1905 Agreement were a treaty establishing such a boundary.

7.61. Nevertheless, as the International Court of Justice rightly observed in *Libya v Chad*, the:

> "[u]se of the term 'demarcation' creates a presumption that the parties considered the definition of the frontiers as already effected".[748]

7.62. In the same vein, the Court recalled in *Cameroon v. Nigeria* that it:

> "had occasion to state in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad) (I.C.J. Reports 1994,* p. 28, para. 56), the delimitation of a boundary consists in its 'definition', whereas the demarcation of a boundary, which

[747] GM, para. 9.5.

[748] *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, 3 February 1994, para. 56.

> presupposes its prior delimitation, consists of operations marking it out on the ground."[749]

7.63. In this case, the demarcation process was based on the fact that the demarcation had already been affected by the 1899 Award. There was therefore no need to "agree" on anything else than on what this Award was supposed to mean on the ground. And as is clearly stated in all relevant documents, and as repeatedly acknowledged by Guyana,[750] the 1905 Demarcation Agreement is merely a technical exercise of construction of the Arbitral Award of 1899 for materialising in as much as possible its findings on the ground.

7.64. Thus, Guyana's contention that even if the 1899 Award is null and void, the 1905 Demarcation Agreement would still provide the legal definition of the boundary is clearly erroneous. Again, since the demarcation of a boundary "presupposes its prior delimitation", it follows that no demarcation can survive the nullity of the prior delimitation. Therefore, from the moment the 1899 Award was deemed null and void, the demarcation agreement was of no avail.

7.65. The same holds true concerning Guyana's contention regarding "Venezuela's Demarcation of its Boundary with Brazil and the Tri-Junction Point with Brazil and British Guiana in Strict Conformity with the 1899 Award and 1905 Agreement".[751] With this contention, Guyana seems to suggest that the relations between the Parties and Brazil, when it comes to their boundaries, were respectful of the 1899 Award.

7.66. But, first, there is reference neither to the 1899 Award nor to the 1905 demarcation in the Agreement between Venezuela and Brazil, contrary to what Guyana suggests.[752]

7.67. Second, the Brazil's boundary issue clearly illustrates that the arbitrators who signed the 1899 Award were only prepared to satisfy Great Britain's most baseless claims,

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[749] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, 10 October 2002, para. 84.
[750] GM, paras. 4.10, 4.14, 4.18, 4.20, 4.22.
[751] *Ibid.*, pp. 103-110.
[752] *Ibid.*, para. 4.35.

and, as a consequence, that their Award was alien to any sound legal consideration. Indeed, the Award provides that the southernmost part of the boundary runs 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".[753]

7.68. However, Venezuela had simply no territorial claim over most of the territory west of the line running south of Mount Roraima. Indeed, Venezuela had signed a boundary Treaty with Brazil in 1859 adopting a line based upon the water divide of the Amazon and Orinoco rivers, therefore leaving to Brazil most of the territory west of the line drawn south of Mount Roraima by the 1899 Award.

7.69. Thus, in relation to Brazil, the 1899 Award was simply erroneous and lacked any sort of international legal grounds. This was confirmed by the "Award of his Majesty the King of Italy with regard to the boundary between the colony of British Guiana and the United States of Brazil" of 6 June 1904.[754] This Award regarding Great Britain and Brazil stated:

> "the arbitral Judgment of the 3rd October, 1899, delivered by the Anglo-American Tribunal, which, when deciding the boundary between Great Britain and Venezuela, adjudged to the former the territory which constitutes the subject of the present dispute, cannot be cited against Brazil, which was unaffected by that Judgment".[755]

7.70. It is worth noting that this 1904 Award highlighted that the 1899 Award regarding the boundary between Great Britain and Venezuela had been rendered by an "Anglo-American Tribunal" —no doubt an anomaly.

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[753] Arbitral Award of 3 October 1899 (Guyana v. Venezuela).
[754] The Guiana Boundary Case (Brazil, Great Britain), 6 June 1904, RIAA, Vol. XI, pp. 11-23.
[755] *Ibid.*

7.71. Furthermore, the 1904 Award found, contrary to the 1899 Award, that there was nothing of such a nature as to grant under international law legal title to Great Britain in the territory south-west of Mount Roraima adjudged to it by the 1899 Award. To wit:

> "That it does not appear from the documents produced to Us, which have been weighed and duly considered, that there are historical and legal claims on which to found thoroughly determined and well-defined rights of sovereignty in favour of either of the contending Powers over the whole territory in dispute, but only over certain portions of the same".[756]

7.72. Thus, while Guyana contends that the border affairs with Brazil somehow reinforce its claim, they rather confirm the nullity of the 1899 Award.

b) There is no Venezuelan acquiescence

7.73. Guyana cannot seriously argue that Venezuela's stance prior to 1949 precludes it from claiming that the Award is null and void. Indeed, Guyana contends that a State's acceptance of an Arbitral Award only "cure[s] any alleged defect that should have been apparent to any outside observer already in 1899".[757] And, of course, what Mallet-Prevost, and the evidence found in London by Venezuelan experts during the four years of intense negotiation with the United Kingdom revealed decades later, was not "apparent to any outside observer".

7.74. Thus, Guyana's comparison of Venezuela's claim with Nicaragua's claim in the case of the *Arbitral Award by the King of Spain* is of no avail. Nicaragua challenged the award in this case shortly after its pronouncement and, in contrast with this case, did not articulate its claim upon finding new facts. And of course, such finding can justify a new claim, including a claim that an award that had been considered valid by then is null and void. Guyana's theory of acceptance based on Venezuela's stance before 1949 is therefore of no avail in this case.

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[756] *Ibid.*

[757] GM, para. 9.7.

7.75. Likewise, Guyana's persisting contention that "Venezuela's conduct for more than 60 years" should be regarded as "prolonged acceptance" makes no sense.[758] As a matter of fact, until the 1950's, Venezuela was not cognisant of the circumstances under which the 1899 Award was granted. Notwithstanding, Guyana may not oppose Venezuela's right to contend that the 1899 Award is defective.

7.76. As for the period following 1949, as shown above, Guyana wrongly contends that Venezuela somehow kept silent, or even conducted itself until 1962 "as if the Award was perfectly valid".[759] Even if Venezuela had waited until the 1960's for formulating its claim before the United Nations, it would not be tantamount to an acquiescence of the Award despite its nullity.

7.77. Obviously, even if not expressly speaking of nullity of the 1899 Award, Venezuela's claims from 1951 onward can certainly not "presuppose clear and consistent acceptance" of the 1899 Award, and they could certainly not be construed, in good faith, as acceptance of the Award, no matter the nullity thereof.

7.78. Moreover, Venezuela's position over time has been consistent on this subject matter as it has continuously sought to highlight the injustices of the 1899 Award, namely as: the composition of the tribunal, which included no Venezuelan arbitrators;[760] the fact that the Award granted almost all of the British claims;[761] the disregard of the arbitration rules contained in the 1897 Treaty of Washington;[762] the inexistence of any rationale behind the arbitrators' decision[763] –a rule fundamental to any award or judgment, to the extent of being included in the ultimate peaceful settlement instrument at that time, i.e., the Hague Convention of 1899, which states that an award must be "accompanied by a statement of reasons,"[764] and a requirement of the essence for the Court's procedure in the

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[758] *Ibid.*, para. 9.17.
[759] GM, para. 9.7.
[760] Memorial of Guyana on jurisdiction and admissibility, Annex 19, para. 24, p. 5.
[761] *Ibid.*, para. 25, p. 5.
[762] *Ibid.*, paras. 26-33, pp 5-7 and paras. 49-50, p. 11.
[763] *Ibid.*, para. 50, p. 11.
[764] 1899 Convention for the Pacific Settlement of International Disputes, Art. 52.

sense that any judgment "shall state the reasons on which it is based";[765] and of course, the deals inside the Tribunal, as disclosed by Mr. Severo Mallet-Prevost in the *American Journal of International Law* in July 1949.[766] Nonetheless, Venezuela has always strived for a "friendly solution to the problem".[767]

7.79. Last but not least, by signing the Geneva Agreement, the Parties created a new legal situation governed by the Agreement, which recognises the existence of a territorial dispute, as confirmed by the ICJ's decision of 18 December 2020, which is required to be amicably resolved in a manner acceptable to both Parties. In view of the binding obligations of the Parties to find a mutually satisfactory solution to a territorial dispute, no question of prolonged acquiescence or acceptance may be opposed to Venezuela.

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[765] Statute of the Court, Art. 56, para. 1.

[766] Memorial of Guyana on jurisdiction and admissibility, Annex 19, paras. 34-49, pp. 7-11.

[767] Memorandum of Venezuela, p. 8; Question of Boundaries between Venezuela and the Territory of British Guiana: Statement of His Excellency, Dr. Marcos Falcon Briceno, Minister for External Relations of Venezuela, at the 348th Meeting of the Special Political Committee on 12 November 1962, p. 25 (**Annex 143**).

CONCLUSIONS

1. As shown, there is no basis for the Court to hear the claim unilaterally instigated by Guyana. Venezuela is one of the 119 States that do not recognize the obligatory jurisdiction of the Court. True to its historical position. Nor has Venezuela given express consent to submit the territorial controversy over Guayana Esequiba to the jurisdiction of the Court. Article IV of the Geneva Agreement does not in any way constitute a commitment clause.

2. In proceeding with this process, the Court has erroneously attributed jurisdiction to itself in violation of the Geneva Agreement and international law. The falsification of an alleged consent of Venezuela artificially extracted by the Court in its 2020 judgment, attempts to strip Venezuela of its sovereignty and illegally violates its jurisdictional immunity, its right to due process and its rights as a Nation. The submission of this document implies neither recognition of the jurisdiction and competence of the Court to hear the territorial dispute over Guayana Esequiba, nor of the decision it may adopt on this matter.

3. Similarly, there is no doubt that the territorial dispute over Guayana Esequiba can and must be resolved only under the Geneva Agreement, that is, through a practical, acceptable, and satisfactory settlement for the parties. This Agreement is in force and is the normative framework that must be complied with in good faith by the parties, as a mechanism for peaceful, political and diplomatic negotiation. The discussion on the validity or invalidity of the Arbitral Award was buried with the signing of the Geneva Agreement and the subsequent practice of the parties in execution of that international treaty.

4. In this sense, it is clear that Guyana's unilateral request is a desperate action that responds to the interests of the energy transnationals to seize the great wealth of the disputed area, with the support of the government of the United States of America. It is also the latest proof of a repeated breach of the commitments made upon the signing of the Geneva Agreement. They seek to use the Court as a tool to obtain the title of sovereignty that Guyana has never had and will never have.

5. In view of the above, the Court has no role to play in the resolution of the territorial dispute. It is bound by law to respect the in-force status and validity of the Geneva Agreement,

under which the parties must reach a practical and mutually acceptable settlement. Its involvement in the substance of the matter could disturb peace and stability in the region, thus affecting the most laudable objectives of the United Nations system and of the International Court of Justice itself.

6. Also, with this Counter-Memorial, it has been demonstrated that Guyana has lied to the Court and to the world. Venezuela has incontrovertible historical title to the territory of Guayana Esequiba. Moreover, Guyana is simply heir to a historical colonial dispossession carried out by the United Kingdom, only to satisfy its expansionist vocation and seize the immense wealth of Venezuela.

7. The content of this document shows that the United Kingdom artificially constructed a territorial controversy with Venezuela and then stripped it of 15% of its territory through a fraudulent arbitration process. This objective could only be achieved with the complicity of the United States of America, within the framework of an agreement on the distribution of zones of influence between colonialist powers. 125 years later, Guyana is trying to replicate history by simulating a legal dispute through its unilateral request to turn a fraudulent, irrational, criminal and outdated award into the title it has never had and has never been able to justify or sustain.

8. The foundational basis of the arbitral process, namely the Washington Treaty of 1897, is clearly fraudulent. This treaty was built behind Venezuela's back and was imposed on it through the veiled threat of the use of force. The result was an unequal treaty, profoundly unjust, and the original source of the invalidity of the criminal award of 1899.

9. Against this background, there is no doubt that the arbitral award of 1899 is null and void. Its legal source, the composition of the tribunal, its lack of motivation and the excess of power that has been clearly demonstrated, make this award one of the most scandalous outrages against a Latin American Republic in two centuries and the worst expression of territorial plunder committed by the British Empire in its history.

10. Finally, Guyana's claims to prevent Venezuela from upholding the nullity of the 1899 award are unfounded. The structural coercion exercised by the United Kingdom initially

prevented Venezuela from speaking up against an arbitration fraud in the midst of opprobrious aggressions against the country, victim of gunboat diplomacy, the flag of colonialist barbarism characterized by the sowing of unequal treaties in its expansionist impulse throughout the planet. In addition, both the negotiation process and the signing and subsequent implementation of the Geneva Agreement render Guyana's desperate thesis in favour of territorial dispossession inadmissible.

11. The 1899 Award was buried and cured by the virtuous Geneva Agreement, a legal instrument used to finally heal the wounds caused by the imperial territorial dispossession committed by the United Kingdom. Guyana must observe and comply with this legal instrument. There is no other way or shortcut.

SUBMISSIONS

For the above-mentioned reasons, notwithstanding its historical stance of not recognition of the jurisdiction of the International Court of Justice and reserving the right to complete, expand or amend the following submissions,

The Bolivarian Republic of Venezuela hereby requests the Court to:

(1) Abstain from intervening in the territorial controversy between Venezuela and Guyana on Guayana Esequiba and from interfering with the obligations arising from the 1966 Geneva Agreement regarding the settlement of said dispute in an amicable, satisfactory and acceptable manner to the Parties, by means of peaceful, political and diplomatic negotiations.

(2) In consequence, refuse to hear and dismiss the Co-operative Republic of Guyana's claims.

Samuel Reinaldo Moncada Acosta
Agent of the Bolivarian Republic of Venezuela

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APPENDIX: THE TERRITORY OF GUAYANA ESEQUIBA AND ITS CURRENT STATE

I. INTRODUCTION

1. The territory subject to the controversy is the Venezuelan State of Guayana Esequiba, which measures approximately 159,500 square kilometres and accounts for almost 15% of the surface area of the Bolivarian Republic of Venezuela. It is situated west of the Essequibo River, delimited to the south-west by the border with Brazil, to the north by the Atlantic Ocean and to the north-west by the southern limit of the Venezuelan states of Bolívar and Delta Amacuro.

2. The territory of Guayana Esequiba is currently administered by the Co-operative Republic of Guyana (Guyana), which exercises control over it. This current *de facto administration and control* by Guyana in no way amounts to a lawful exercise of sovereignty and is without prejudice to Venezuela's legitimate claim to the territory. Pursuant to Article V of the Geneva Agreement, none of the acts taken by Guyana as an administrator constitutes a basis for asserting or supporting Guyana's claim to territorial sovereignty or create sovereign rights over this territory; nor can they constitute a basis for denying Venezuela's historic territorial claim. Venezuela expressly referred to this provision on the day of Guyana's independence, when it "recognize[d] as territory of the new State [of Guyana] that which is located east of the right bank of the Essequibo River, and reiterate[d] before the new country, and before the international community, that it expressly reserve[d] its rights of territorial sovereignty over the entire zone to the left margin of the aforementioned river", namely "the territory of the Guayana Esequiba".[1] In the following months, Venezuela expressly reserved its sovereign rights to the territory of Guayana Esequiba before the Security Council[2] and the General Assembly of the United Nations.[3] Venezuela also opposed the unilateral granting of logging and mining

[1] Memorandum of Venezuela, Annex, pp. 38-39.
[2] *Ibid.*, p. 39.
[3] *Ibid.*

concessions by Guyana on the territory of Guayana Esequiba[4] from its inception, making clear that the Geneva Agreement preserved its rights to the territory of Guayana Esequiba.[5] Its position has never changed since.

3. It is crucial to recognise that Guayana Esequiba belongs to Venezuela, which, as its true sovereign, has made every effort to secure the preservation of its ecosystems and every element that makes up the environment, as well as the well-being of its people. By contrast, after nearly six decades of administration by Guyana there is no doubt left as to Guyana's willingness to exploit and exhaust the territory's natural elements at any cost, with absolute disregard for the destructive consequences of its actions on the environment, in blatant violation of the rights of the local indigenous populations and of its international obligations.

II. THE TERRITORY OF GUAYANA ESEQUIBA

4. The territory of Guayana Esequiba forms part of a much wider natural region known as the Guiana Shield or Guiana Highlands. Shields are very stable sections of the Earth, with a geological composition which has changed little over time and with little seismic activity. The Guiana Shield is irregularly shaped and covers an area of 1,100,000 square kilometres. As can be seen on Figures 2.1.a. and 2.1.b., it encompasses the southeast of Venezuela, including Guayana Esequiba, together with the territories of Guyana, Surinam and French Guiana, as well as the north of Brazil and a small portion of Colombia. The Venezuelan States of Amazonas and Bolivar as well as the southern part of Delta Amacuro, adjacent to Guayana Esequiba, also form part of the Guiana Shield. The shield

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[4] See *e.g.* P. Torrealba, *A un siglo del despojo. Esequibo, la historia de una reclamación*, Caracas, Editorial Arte, 2004.

[5] See *e.g.* the press release of the Ministry of Foreign Affairs in which it is stated that Venezuela does not recognise purported concessions in Guayana Esequiba, 15 May 1968 (**Annex 99**). See also R. Sureda Delgado, *La Guayana Esequiba: dos etapas en la aplicación del Acuerdo de Ginebra*, UCV y Academia Nacional de Historia, Caracas, 1990, pp. 67-68.

is an ecological and geographical continuum, the major part of which is covered by jungle or primary tropical rainforest.[6]

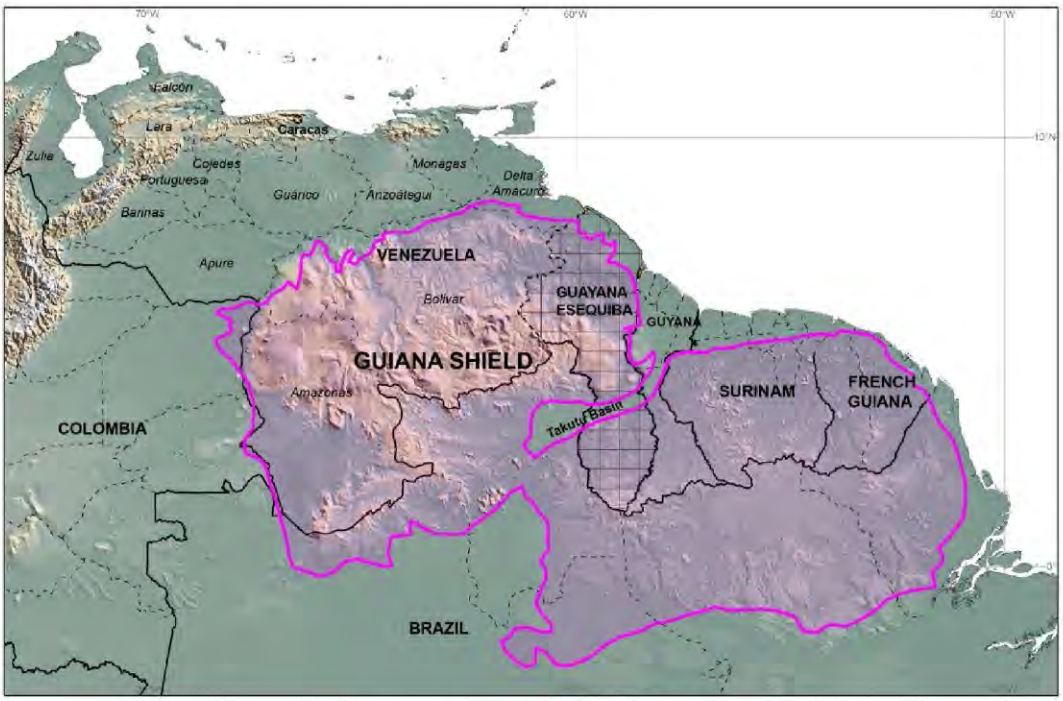

Figure 2.1a. The Guiana Shield
(topography from GTOPO30)

[6] See D. de Barandiarán, "La Guayana Esequiba, su tierra y su gente (breve sintesis)", *in* Boletin de la Academia Nacional de la Historia, Vol. LXXXIV, January, February, March 2001, N°333, pp. 156-158; S. Molina Duarte, "Venezuela y la cuenca del gran Caribe", 2008 (available at https://bibliofep.fundacionempresaspolar.org/media/1076/gv_t9_c78_p298_341_lres_single_preview.pdf). On the states Bolivar, Amazonas and Delta Amacuro, see also R. Pérez-Hernández, D. Lew, "Las clasificaciones e hipótesis biogeográficas para la Guayana venezolana", *Interciencia*, Vol. 26, N° 9, 2001 (available at https://www.redalyc.org/pdf/339/33906002.pdf).

Figure 2.1b. Geological relief Map of northern South America showing the Guiana Shield in pink[7]

5. Guayana Esequiba rests on the remnants of the bare shield of the ancient supercontinent of "Gondwana", one of the oldest and most primitive continental blocks on Earth, which dates back to when South America, Africa, Australia, Antarctica, the Arabian Peninsula, India and Madagascar were united. It is formed of crystalline granites and gneisses, forming an area of highlands, slightly interrupted at the latitude of 4°N, in a rift zone known as the Takutu basin. The rocks of the Guiana Shield host the diamonds, gold and other semi-precious metals that make up most of the mineral resources of Guayana Esequiba.

6. To the west, between the 4°N and 6°N, bordering the state of Bolívar, are the mountains of Pakaraima, equivalent to the Roraima Formation in the Venezuelan State of

[7] Gómez, J., Schobbenhaus, C. & Montes, N.E., compilers. 2022. Geological Relief Map of South America 2022. Scale 1:5 000 000. Commission for the Geological Map of the World (CGMW), Colombian Geological Survey, and Geological Survey of Brazil, Paris (available at https://doi.org/10.14682/2022GRMSA).

Bolivar (see Figure 2.2). Mount Roraima, which rises to 2,850 metres above sea level, goes from west to east in descending steps until arriving in the vicinity of the Essequibo, at 100 metres above sea level. To the south, at the border with Brazil, are the mountains of Kamoa, which reach a maximum of 558 metres above sea level. To the north, the extension of the Imataca mountain range continues until Guayana Esequiba, forming the Kauramembu Range constituted of small hills of 200 to 300 metres above sea level. In the north of the territory is a zone of younger sediments derived from marine and deltaic processes.

7. The territory of Guayana Esequiba is divided into five natural regions:[8]

- The region of Tepuyes and Gran Sabana, which constitutes 20.4% of the territory and forms part of one continuous natural region, the rest of which is situated in the south-western part of Venezuela's state of Bolívar (and occupies 30,000 km^2 thereof). This region is mountainous with tabular reliefs of different levels of erosion, with heights ranging from 600 to 2,810 metres above sea-level, and valleys created by numerous rivers.

- The peneplain of the south of Rupununi (Penillanura del Sur de Rupununi), which constitutes approximately 25% of the territory and is situated between the Takutu Basin in the north and the Brazilian border in the south. This area is characterised by lower reliefs – ranging from 100 to 1,500 metres above sea level – and is home to the Kanuku mountains, which are carved and split in

[8] F. Morales, "Geografía física del territorio en reclamación: Guayana Esequiba", *Fondo Editorial Humanidades*, 1999, pp. 57 ff. See also O.J. Marquez, *La Venezolanidad del Esequibo. Reclamación, desarrollo unilateral, nacionalidad de los Esequibanos*, Caracas, 2002, pp. 61-62, which refers to four natural regions: the coastal zone (zona costera), the intermediate zone (zona intermedia), the Cordillera Pacaraima, and the southern zone made of the Rupununi Savannahs, crossed over by the Kanuku mountains. See also D. de Barandiarán, "La Guayana Esequiba, su tierra y su gente (breve síntesis)", *in* Boletin de la Academia Nacional de la Historia, Vol. LXXXIV, January, February, March 2001, N° 333, pp. 145-154. For a full geographical sketch of the disputed territory, see Venezuela-British Guiana Boundary Arbitration, The Case of the United States of Venezuela before the Tribunal of Arbitration To Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, Vol. I, New York, 1898, pp. 13-34 (available at https://archive.org/details/venezuelabritis01venegoog/page/n6/mode/2up).

two by the rivers Rupununi and Ireng, tributaries of the river Branco, which in turn is a tributary to the river Negro sub-basin.

- The peneplain of the north (Penillanura del Norte), which corresponds to around 40% of the territory and is at low altitude, almost entirely below 150 metres above sea-level. It is delimited by the coastal plains in the north, the Takutu Basin Rift in the south and the region of Tepuyes and Gran Sabana in the west. Like the region of Tepuyes and Gran Sabana, the Penillanura del Norte forms part of a greater natural region, a large part of which is situated in uncontested Venezuelan territory, namely in the states Bolivar and Delta Amacuro.

- The Takutu Depression occupies 5.7 % of the territory subject to the controversy and separates the peneplains of the north and of the south of Rupununi. The river Ireng flows westwards along its northern edge in part, towards the River Negro Basin. It is an area of flat to gently undulating relief forming a slightly depressed area between the Kanuku and Pakaraima Mountains. In the rainy season due to its flat-lying nature it is prone to flooding. Rivers in the west flow westwards towards the Amazon Basin, those in the east towards the Essequibo.

- The Coastal Plain corresponds to around 8.9% of the territory in controversy. It is a low-lying area extending 30-70 km inland from the coast and composed of sands, clays, and continental and marine debris with a warm and rainy climate. It is on these fertile soils that the vast majority of the population of Guayana Esequiba is living.

8. The low elevation of the territory means that 87.6% of the land is characterised by a humid tropical climate. The higher elevations and northwest-southeast orientation of the Tepuyes and Gran Sabana region favour the interception of northeasterly winds approximately between November and March, which leads to increased rainfall in a large

part of this region and in the peneplain of the north. During the same period, the Takutu Depression is prone to droughts.[9]

[9] F. Morales. "Geografía física del territorio en reclamación: Guayana Esequiba", *Fondo Editorial Humanidades*, 1999.

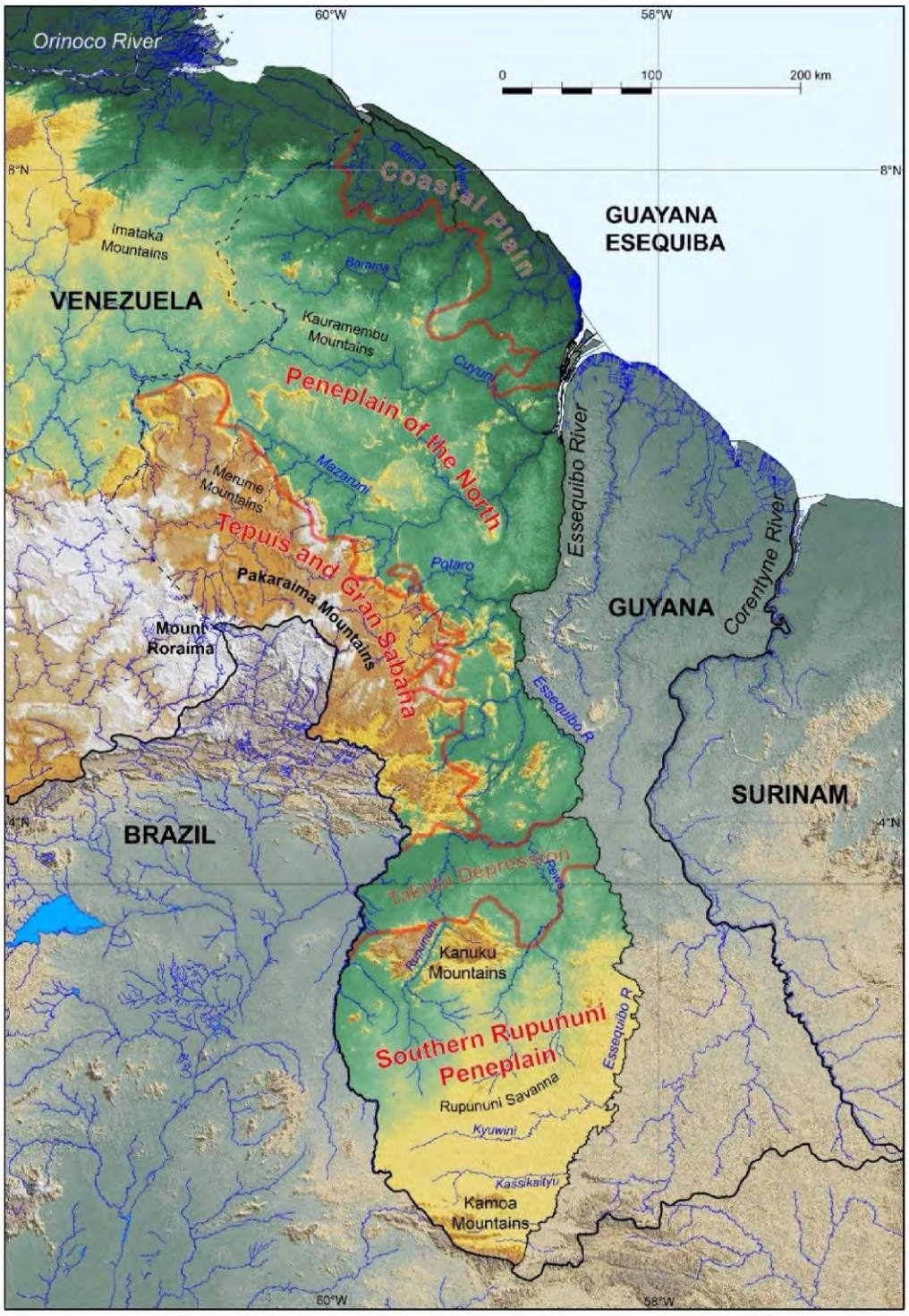

Figure 2.2. Major topographic features of Guayana Esequiba
(topography from SRTM30 data, available from NASA/USGS)

9. 96.3% of the territory of Guayana Esequiba is made of natural vegetation (Figure 2.3), with 14% of the territory being savannahs and 72% covered by primary rainforest, montane forest, seasonal forest, dry evergreen forest, marsh forest and swamp forest,[10] crossed by a number of rivers up to 1000 kilometres long, presenting characteristics specific to the region including a vast quantity of rapids, waterfalls, river islands and natural river channels.[11]

10. The exact extent of the natural wealth of Guayana Esequiba is difficult to assess.[12] It is one of the regions of highest biodiversity in the world,[13] and it is estimated to host between 7,000 and 10,000 plant species, including 1,700 types of trees, but also nearly 1,500 species of vertebrates, 730 species of birds and more than 400,000 species of

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[10] F. Morales, "Geografía física del territorio en reclamación: Guayana Esequiba", *Fondo Editorial Humanidades*, 1999, pp. 164 ff. See also O.J. Marquez, "La Venezolanidad del Esequibo. Reclamación, desarrollo unilateral, nacionalidad de los Esequibanos", Caracas, 2002, pp. 62-63, which describes the diverse forest cover of Guayana Esequiba.

[11] G. Melun, M. Le Bihan, "Histoire et impacts environnementaux de l'orpaillage en Guyane. Clefs de compréhension des tensions actuelles", *Office français de la biodiversité,* 2020, p. 6 (available at https://oai-gein.ofb.fr/exl-php/document-affiche/ofb_recherche_oai/OUVRE_DOC/60505?vue=ofb_recherche_oai&action=OUVRE_DOC&cid=60505&fic=PUBLI%2FR21%2F45.pdf). On the characteristics of the rivers and watercourses of Guayana Esequiba, see also: D. de Barandiarán, "La Guayana Esequiba, su tierra y su gente (breve síntesis)", *in* Boletín de la Academia Nacional de la Historia, Vol. LXXXIV, January, February, March 2001, N°333, pp. 158-161; Ing. For. Inocencio Soto, "Los ríos de la Guayana Esequiba venezolana y su potencial", 26 February 2023 (available at https://fr.scribd.com/document/677341597/Los-Rios-de-La-Guayana-Esequiba-Venezolana-y-Su-Potencial).

[12] On the topic and more generally on the geography and physical characteristics of Guayana Esequiba, see *e.g.*, I. Sequera de Segnini et al., "Venezuela y su espacio fronterizo, El problema del Esequibo", *La Universidad*, Facultad de Humanidades y Educación, Instituto de Geografía y Desarrollo Regional, Caracas, 1985.

[13] On the importance of the Guiana Shield as an "ecoregion", see *e.g.* P. Haden, "Forestry Issues in the Guiana Shield Region: a Perspective on Guyana and Surinam", *in* European Union Tropical Forestry Paper 3, Overseas Development Institute, London, European Commission, Brussels, 1999, p. 10 (available at https://odi.org/en/publications/forestry-issues-in-the-guiana-shield-region-a-perspective-on-guyana-and-suriname/), stating that "the size and pristine nature of [the Guiana Shield's] tropical forest is unique: it is an area of opportunity for conservation and sustainable development".

insects.[14] Specialists consider that one hectare of forest in the Guiana Highlands could host as many different tree species as the whole of Europe.

[14] G. Melun. M. Le Bihan. "Histoire et impacts environnementaux de l'orpaillage en Guyane. Clefs de compréhension des tensions actuelles", *Office français de la biodiversité*, 2020, p. 6 (available at https://oai-gem.ofb.fr/exl-php/document-affiche/ofb_recherche_oai/OUVRE_DOC/60505?fic=PUBLI/R21/45.pdf).

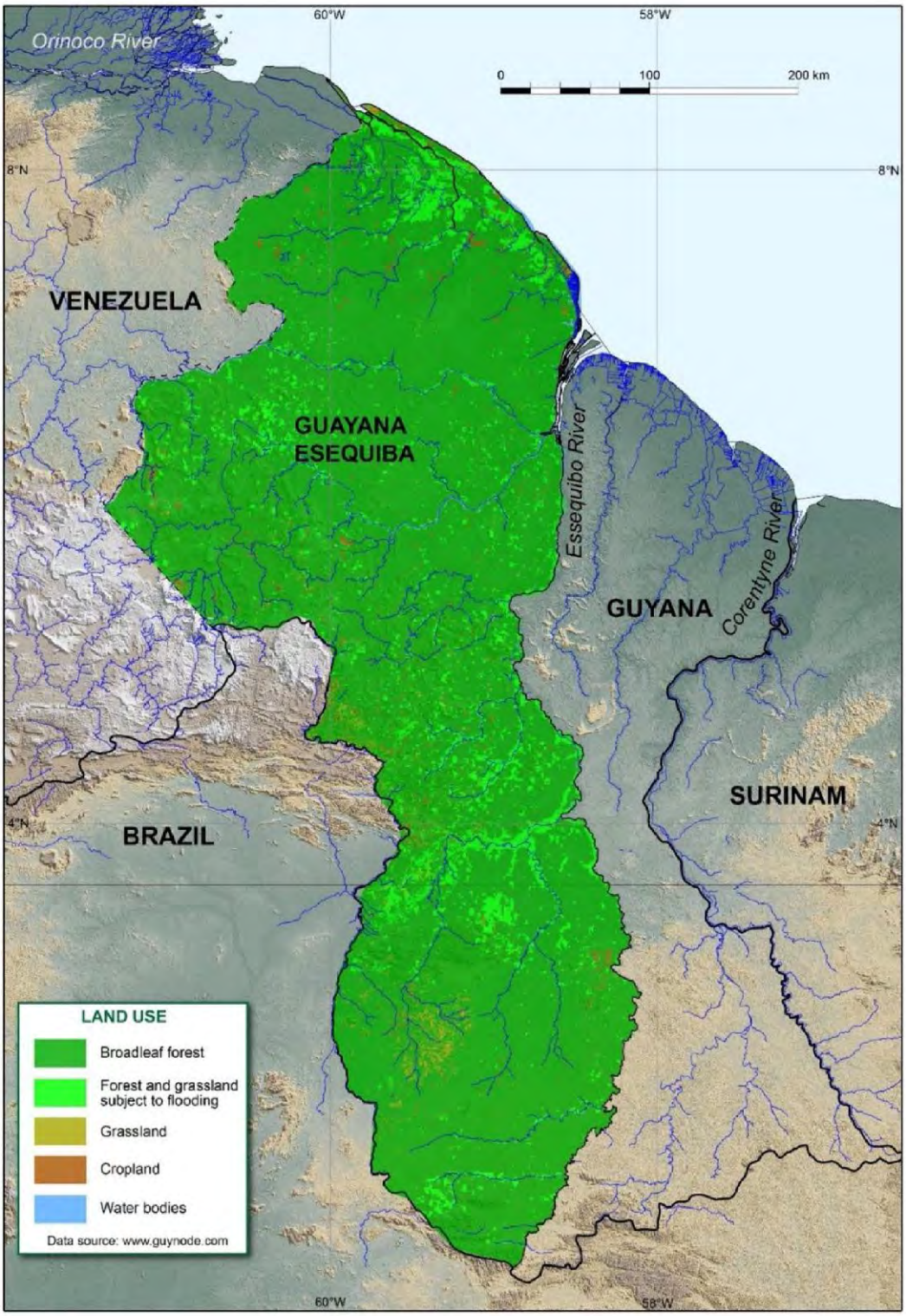

Figure 2.3. Land use of Guayana Esequiba

11. The Prologue to Bellin's "Geographic Description of Guyana" describes the territory as follows:

> "Gold, silver, copper, quicksilver, iron, antimony, sulphur, nitro, lead, magnet, and marbles of all kinds and colours abound in this country: there are diamonds, rubies, emeralds, amethysts, garnets, alabaster, rock crystal, and all other precious stones and minerals, besides the fishing of precious pearls, which is done in various parts. In the countryside all kinds of grains, fruits, legumes, herbs, plants and flowers of Europe are produced; such as cocoa, cinnamon, pepper, sarsaparilla, vanilla, grana, tobacco, a thousand species of balsams, palo from Brazil, from Campeche…, very fragrant incense, gums, barks, resins and medicinal herbs. The number of cattle is incredible, and the race or caste of horses and mules of Europe deserves singular estimation. In its forests, tigers, leopards and bears abound; in the rivers there are lizards or caimans, and a thousand species of fish; and in the fields there are many vipers and snakes, of so many sizes, qualities, shapes and colours, that it is unspeakable, as well as other poisonous insects and animals."[15]

12. In addition to the incredible fauna and flora and to the vast reserves of gold present in Guayana Esequiba,[16] bauxite, manganese,[17] coltan, silver and uranium[18] have also been

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[15] S. Bellin, Descripción geográfica de la Guayana, Prologo por Caupolican Ovalles, Ediciones de la Presidencia de la Republica, Caracas, 1986.

[16] See *e.g.*: WTO Trade Policy Review Guyana 2007: Joint Meeting Venezuela-Guyana for Economic and Oil Cooperation, 3-4 April 1986, p. 2. 4 (**Annex 128**).

[17] I. Vargas-Arenas, "Guayana: la historia del Nuevo Dorado", en A. Mejías Guiza, C. Teresa García (eds.), *Antropologías hechas en Venezuela*, Vol. I. Asociación Latinoamericana de Antropología, Red de Antropologías del Sur, 2020, p. 296.

[18] Véase, por ejemplo, "Company finds some five million pounds of uranium in Guyana", *Kaieteur News*, 23 de enero de 2009 (disponible en: https://www.kaieteurnewsonline.com/2009/01/23/company-finds-some-five-million-pounds-of-uranium-in-guyana/); "El hallazgo de uranio podría ser un nuevo punto de partida para Guyana", *Guyana Chronicle*, 14 de abril de 2010 (disponible en: https://guyanachronicle.com/2010/04/14/uranium-find-could-be-new-breaking-ground-for-guyana/). Véase también: "Guyana's Extractive Industry Sector (EIS), A Synopsis of Issues and Recommendations for the mining sector as a Sustainable Element of Guyana's Low Carbon Development Strategy (LCDS)", julio de 2013, pp. 11-13 (disponible en: http://awsassets.panda.org/downloads/extractive_industries_sector_final_report_1.pdf).

discovered in the area.[19] The presence of significant reserves of oil and natural gas is also suspected in the Takutu Basin, some of which are already subject to exploration and/or exploitation plans by transnational corporations.[20]

13. It is because of these exceptional environmental features, and more particularly because of the territory's incredible wealth in natural resources, that the then British colonisers first started to covet it.[21] Today, it is still this wealth that has attracted illegal mining activities and mining corporations operating in the region, under licences granted by the Guyanese Government.[22] Unfortunately, even though Guyana recently established

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[19] O.J. Marquez, "La Venezolanidad del Esequibo. Reclamación, desarrollo unilateral, nacionalidad de los Esequibanos", Caracas, 2002, p. 64.

[20] See *e.g.* "Venezuela pudiera perder gran riqueza natural de la Guayana Esequiba", *Vitalis* (accessible at https://vitalis.net/actualidad-ambiental/venezuela-riqueza-natural-guayana-esequiba/); "Investors eying Takutu Basin for oil exploration", *Guyana Chronicle*, 17 February 2022 (accessible at https://guyanachronicle.com/2022/02/17/investors-eyeing-takatu-basin-for-oil-exploration/); "Growing interest by oil companies in re-exploring Takutu Basin", *News Guyana*, 17 February 2022 (accessible at https://www.inewsguyana.com/growing-interest-by-oil-companies-in-re-exploring-takutu-basin/#:~:text=There%20has%20been%20growing%20interest,under%20discussion%20by%20the%20Government).

[21] See, *e.g.* The Case of the United States of Venezuela before the Tribunal of Arbitration To Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, Vol. III, New York, 1898 (available at https://archive.org/details/venezuelabritis03venegoog/page/n154/mode/2up), Annex N° 668; "Extract from the Official Report, dated July 25, 1895, on the Gold Mining Industry in British Guiana". See also: H. González Oropeza, *Una historia de nuestra frontera oriental: las colonias holandesas en Guayana "cambian de dueño" 1975-1814*, Caracas, Academia Nacional de Historia, 2014, p. 19; M. Martínez, "Visión geográfica e histórica de las fronteras de Venezuela y Guyana", *Revista Geopolítica Natal*, Vol. 7, 2016, pp. 117-120; P. Ojer, *Sumario histórico de la Guayana Esequiba*, Maracaibo, San Cristóbal, Colección Sumario, 1982, pp. 19-20, 25; A. Rojas, *Los límites de Venezuela con la Guayana Británica*, Ministerio de Relaciones Exteriores, Caracas, 1962, pp. 15-16; C. Rondón, *Desde el Orinoco hasta el Esequibo*, Caracas, Congreso de la República, 1973, pp. 24 ff and 46, observing that "British Guyana, like other British colonies, was reduced to the primitive role of source of raw materials and market for goods and other industrial products"; I. Thurn, F. Everard, *The boundary between British Guiana and Venezuela*, Venezuela, 1879 (available at https://archive.org/details/boundarybetweenb00imth); V. Zambrano, *The Essequibo: our historic claim*, Caracas, 1982, p. 7. On further considerations explaining the importance of the territory in the eyes of the British colonisers, see *e.g.*: J. Aguilera, *Las fronteras de Venezuela*, Venezuela Ediciones Minci 2015 Nuestro Esequibo, Ministerio del Poder Popular para la Comunicación y la Información, 1976, pp. 64-65.

[22] On the continuous role played by the constant search for appropriation of the natural wealth of Guayana Esequiba, see *e.g.*: D. Alvarez, "El Esequibo es territorio Venezolano", *Enlace Científico*, 16, No. 13, 2015, pp. 87-100. See also M. Martínez, "Visión geográfica e histórica de las fronteras

purportedly protected areas (Figure 2.4), these areas are totally inadequate to protect the environment of Guayana Esequiba from these activities, resulting in excessive resource extraction activities that have irreparably damaged the environment of the area.[23]

de Venezuela y Guyana", *Revista Geopolítica Natal*, Vol. 7, 2016, which highlights Venezuela's protests against the granting of mining and logging concessions in Guayana Esequiba in the XXth and XXIst centuries (available at https://issuu.com/publicacionesuptacb/docs/enlace_cient_fico_volumen_13_uptacb_cbfa4744f68839).

[23] GIS Datasets and maps of Guyana (available at www.guynode.com). To compare with the extent to which Venezuela has declared protected zones, see Embassy of Venezuela, Protected zones in Venezuela (available at https://www.embajadadevenezuela.org/generalidades/areas-protegidas/).

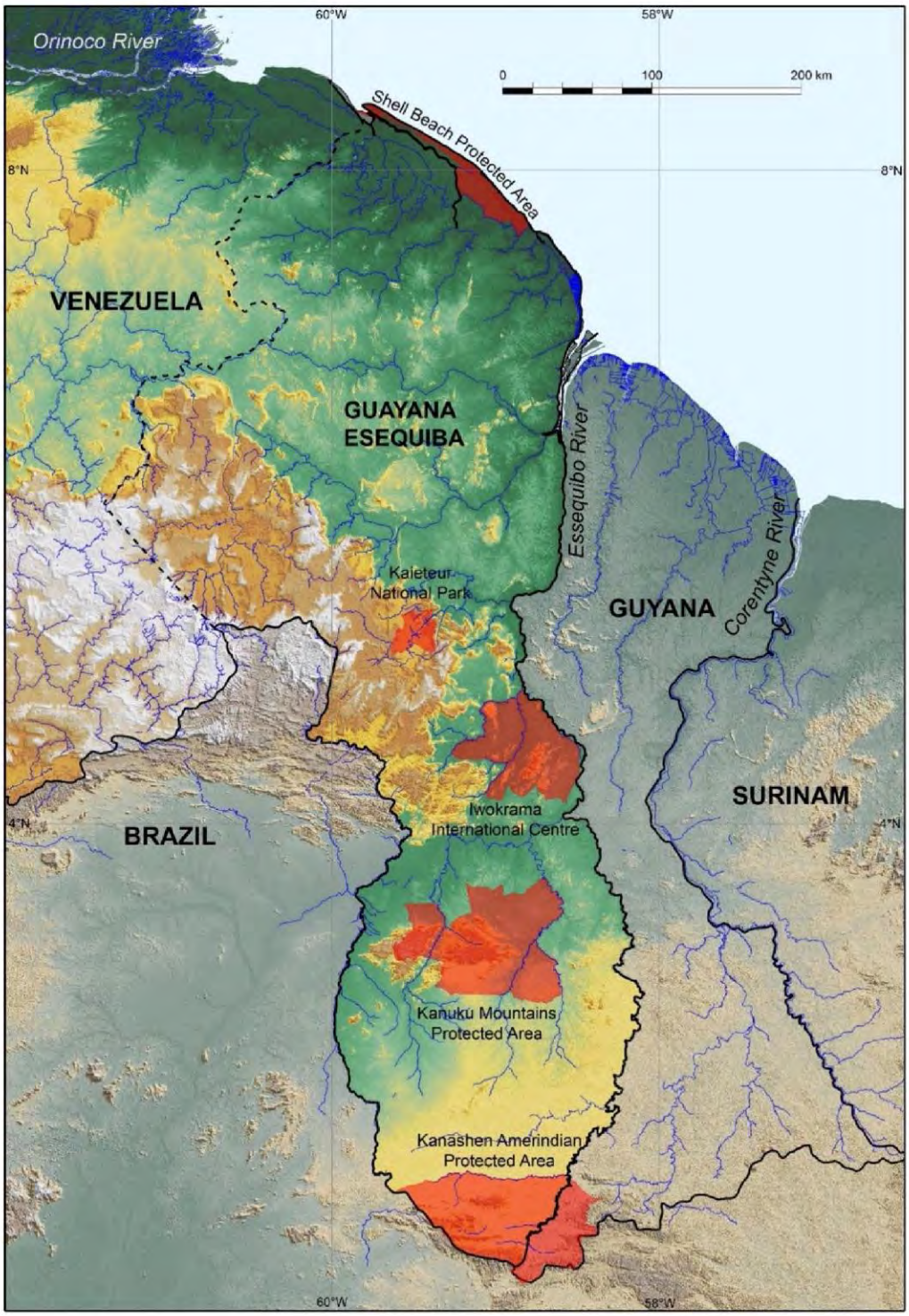

Figure 2.4. Recently declared protected areas in Guayana Esequiba.
(data source: www.guynode.com)

14. The Protected Areas Commission established by Guyana's Protected Areas Act 2011[24] has not addressed these deficiencies. In fact, only one protected area was declared since the Commission became operational in 2012.[25] On 28 March 2024, the Human Rights Committee expressed its concern at the environmental damage caused by mining activities under Guyana's watch; it highlighted the lack of enforcement of environmental regulations by Guyana and the inefficiency of Guyana's Environmental Protection Agency.[26]

III. THE POPULATION OF GUAYANA ESEQUIBA

15. The total population of Guayana Esequiba is around 125,000 inhabitants. This number takes into account the last census published by Guyana, and conducted in 2012,[27] which showed a negative birth rate resulting from a population drop as compared to the earlier census of 2002.[28] This estimation is in line with the World Bank's note, according to which 90% lives in the narrow coastal plain,[29] and it is confirmed by various sources.[30]

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[24] Guyana's Protected Areas Commission is supposedly in charge of establishing, promoting and expanding Guyana's national protected areas system. See Protected Areas Commission, "About Us", at https://www.pac.gov.gy/about-us-2/#:~:text=In%202011%20the%20PA%20Act,global%20importance%20including%20climate%20regulation. However, its action falls far below what is required to protect the environment of Guayana Esequiba.

[25] Out of the five protected areas recognised by Guyana in Guayana Esequiba, one was declared prior to Guyana's independence, one was declared in 1996, two in 2011 and one in 2017. Information specific to these protected areas can be found on the Protected Areas Commission's website at https://www.pac.gov.gy

[26] Human Rights Committee, Concluding observations on the third periodic report of Guyana, UN Doc. CCPR/C/GUY/CO/3, 28 March 2024, para. 26.

[27] Guyana conducted another census in 2022. Venezuela is not in a position to comment on the results as the census has not been published.

[28] The results of both censuses are available at https://statisticsguyana.gov.gy/census/.

[29] See World Bank, 'The World Bank in Guyana', Overview (available at https://www.worldbank.org/en/country/guyana/overview#1)

[30] See *e.g.*: Orinoco Tribune, 'Veuezuela Deploys Identification Personnel in Tumereno to Grant IDs to Essequibo Residents', 12 December 2023, avalaible at https://orinocotribune.com/venezuela-deploys-identification-personnel-in-tumeremo-to-grant-ids-to-essequibo-residents/; Le Monde avec AFP, 'Essequibo: le Guyana et le Venezuela s'accordent « pour ne pas utiliser la force », mais campent sur leurs positions', 15 December 2023, available at https://www.lemonde.fr/international/article/2023/12/15/essequibo-le-guyana-et-le-venezuela-s-

The number of 235,928 claimed by Guyana in its Memorial[31] and allegedly based on the census conducted under Guyana's administration in 2012 is clearly erroneous and grossly misleading, as it corresponds to the sum of the alleged population of six purported Guyanese regions, three of which are not entirely located within the disputed territory. In particular, the inclusion in the account of the whole of the more densely populated region of Essequibo Islands – West Demerara (unilaterally proclaimed by Guyana) is manifestly erroneous.[32] Claiming that the population of "the Essequibo region" – which is the name given by Guyana to the disputed territory[33] – is "235,928, or nearly one third of Guyana's entire population"[34] is yet another misrepresentation of the facts by Guyana.

16. As indicated above, the most significant part of the territory's diverse population is concentrated in the northern coastal area,[35] with a smaller proportion of the population, constituted essentially of indigenous communities, living further in the interior, near the Pacaraima mountains and in the south of the territory.[36] The density of population in all the areas of the interior is less than 1 person per square kilometre (see Figure 2.5).

17. Nevertheless, the interior of Guayana Esequiba is home to numerous indigenous peoples and communities which have lived there since way before colonial times, conserving and promoting their customs, and passing them on from generation to

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accordent-pour-ne-pas-utiliser-la-force-mais-campent-sur-leurs-positions_6205961_3210.html; BBC News Mundo, '3 claves para entender la escalada de tensión entre Venezuela y Guyana por el disputado territorio del Esequibo (y cual es la respuesta internacional)', 8 December 2023, available at https://www.bbc.com/mundo/articles/cxx18pjld55o#:~:text=El%2520Esequibo%2520concentra%2520seis%2520de,los%2520800.000%2520habitantes%2520del%2520pais

[31] Guyana's Memorial on the Merits, Vol. I, para. 2.23.

[32] The final results of the 2012 census conducted by Guyana are available at https://statisticsguyana.gov.gy/wp-content/uploads/2019/10/Final_2012_Census_Count-1.pdf

[33] Guyana's Memorial on the Merits, Vol. I, para. 2.2.

[34] Guyana's Memorial on the Merits, Vol. I, para. 2.23.

[35] World Bank, 'The World Bank in Guyana', Overview (available at https://www.worldbank.org/en/country/guyana/overview#1)

[36] According to the Committee on Economic, Social and Cultural Rights, Amerindian people constituted 73.5% of the population of the hinterlands areas in 2015. See Economic and Social Council, Committee on Economic, Social and Cultural Rights, "Concluding observations on the combined second to fourth periodic reports of Guyana", UN Doc. E/C.12/GUY/CO/2-4, 28 October 2015, para. 42.

generation.[37] Most of these indigenous peoples speak a language Caribe: this is the case of the Pemón, Akawaio, Kariña, Patamona, Macuxi, Wai Wai y Yekuana people. Others, such as the Lokono (arawako), the Wapishina and the Warao people, speak Arawak or have a linguistically independent language.

[37] The Ministry of Amerindian Affairs of Guyana has registered 112 indigenous communities, 102 of which live in Guayana Esequiba. See Instituto Geográfico de Venezuela Simón Bolívar, 2024, "Breve descripción de la Geografía Humana de la Guayana Esequiba", Caracas, Dirección de Proyectos Especiales, 2024.

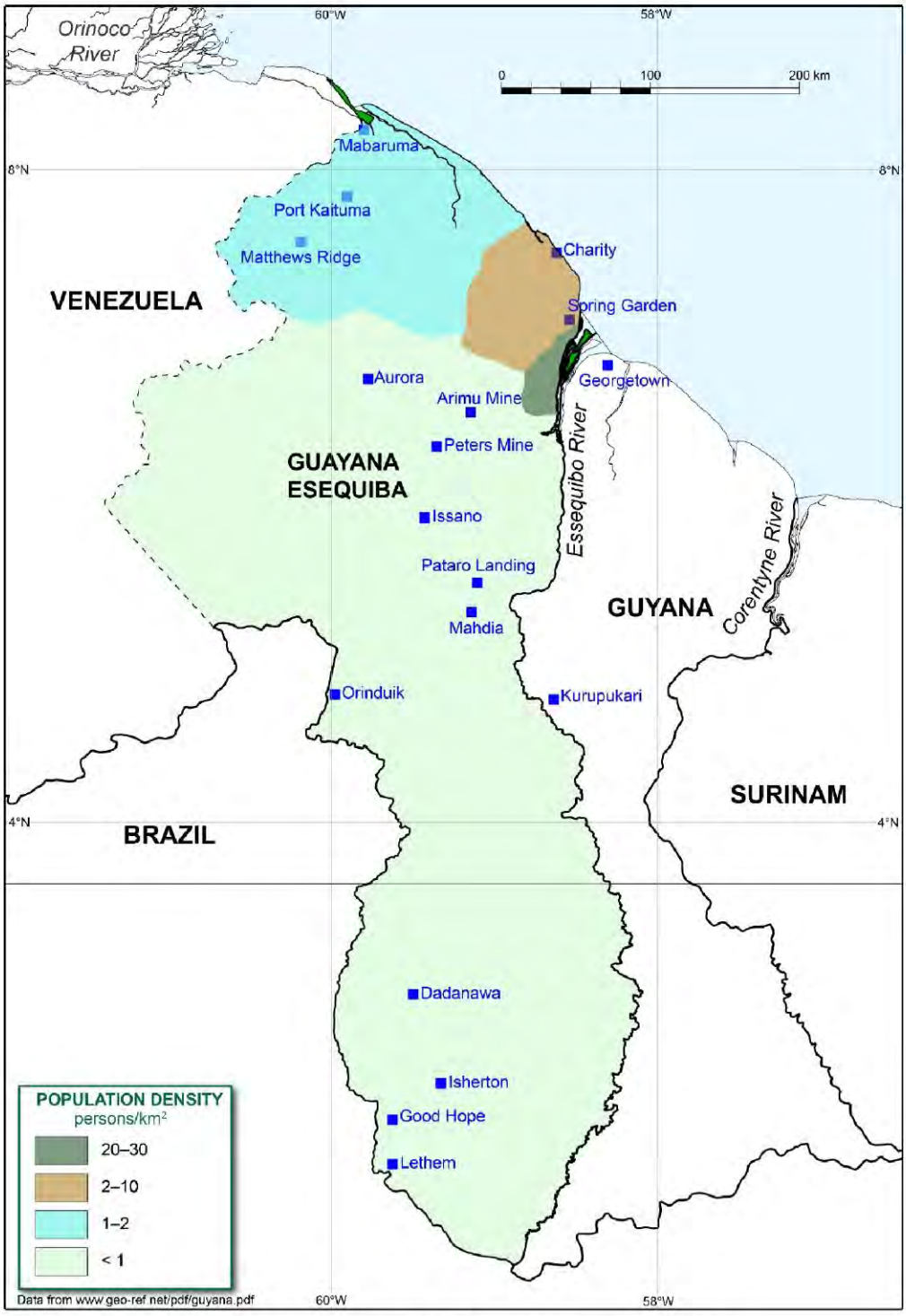

Figure 2.5. Population density in Guayana Esequiba
(after www.geo-ref.net/pdf/guyana.pdf)

18. The documentation presented by Venezuela before the Paris arbitral tribunal in 1899 attests in particular to the fact that the indigenous people living on the territory are the original inhabitants and owners of Guayana Esequiba.[38] In 1883, the population of the northwestern part of the territory, situated between the Pomeroon river and the Orinoco, was described in the following terms:[39]

> "The population of the whole district is very scanty, and is very scattered. Most of the inhabitants are Red men – True Caribs chiefly on the Barama and upper Barima, Ackawoi on the Morooka and upper Waini, Arawaks on the Morooka, and many Warraus everywhere at the mouths of the rivers".[40]

19. Traditionally and historically, indigenous communities have lived peacefully in the broader area constituted of Guayana Esequiba and of the southern Venezuelan States of Delta Amacuro, Bolivar and Amazonas.[41] In particular, the indigenous people from the Akawaio, Arawak (Lokono), Pemón, Arekuna, Kariña, Warao, Macuxi, Patamona,

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[38] On this point, see also: I. Thurn, F. Everard, *The boundary between British Guiana and Venezuela*, Venezuela, 1879 (available at https://archive.org/details/boundarybetweenb00imth). See, further, G. Salas, "Las controversias limítrofes pendientes en América del Sur. La cuestión del Esequibo", *Revista de la Facultad de Derecho, 2(2),* 2011, p. 68 (available at https://revistas.unc.edu.ar/index.php/refade/article/view/6280). The author highlights that achieving the peaceful and mutually acceptable settlement of the territorial controversy through negotiations is of the highest importance for the essential interests of the population (see p. 77). See also P. F. Cayetano de Carrocera, "Las Misiones en Venezuela. Síntesis histórica", *in* Boletín de la Academia Nacional de la Historia, N° 197, January-March 1967, which addresses the links between the first missionaries in Venezuela and the indigenous communities. On the treatment of the indigenous communities by the United Kingdom in the 19th century, see M. Menezes, *British policy towards the Amerindians in British Guiana 1803-1873*, Guyana, The Caribbean Press, 1977.

[39] The Case of the United States of Venezuela before the Tribunal of Arbitration To Convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897. Vol. III. New York, 1898 (available at https://archive.org/details/venezuelabritis03venegoog/page/n154/mode/2up), Annex N° 628: E.F. im Thurn, "The Northwest District in 1883". See also Annex N° 664 and 665 of the same volume.

[40] *Ibid.*

[41] On the link between geographical factors and the administration of the territory, and the presence of indigenous communities in Guayana Esequiba, see *e.g.*: M. Bello, "Formación de los límites terrestres de Venezuela", *Aldea Mundo, Revista sobre Fronteras e Integración*, Año 13, N° 26 (2), 2008 (available at https://www.redalyc.org/pdf/543/54315493002.pdf). On the links between Venezuela and Guayana Esequiba, see *e.g.*: P. Torrealba, *A un siglo del despojo. Esequibo, la historia de una reclamación*, Caracas, Editorial Arte, 2004.

Wapishana and WaiWai communities are sister communities which share cultural ties and live on both sides of the *de facto line*.

20. Indigenous people represent the majority of the population living inland; as the original owners of the territory they must fully participate in the decision-making impacting their ancestral lands. However, because of Guyana's illegal and environmentally destructive activities in the area, it is common for the people of Guayana Esequiba to cross the de *facto line* to reach the state of Bolivar, whether it is to work, to go to school, or to access public services.

21. Guyana has turned a blind eye to the catastrophic destruction of the environment of Guayana Esequiba, including the pollution of the territory's watercourses, as a consequence of the excessive exploitation of the territory's natural resources. Logging and mining concessions have been granted to large corporations on land pertaining to indigenous communities, and the people opposing mining activities carried out in their lands have faced threats, harassments and acts of violence. It must also be emphasised that the people of Guayana Esequiba have not received economic or social benefits from the activities taking place on their territory, and have instead suffered from poverty and social exclusion. Moreover, Guyana should tell the world the truth about how, despite the dozens of years in which it has allowed or participated in the depredation of Guayana Esequiba, none of the profit obtained by transnational mining has been reverted, not even to the human and social development of the Guyanese people themselves, whose birth rate was the only one in America that was reversed for almost the entire twentieth century, and whose human development index has been one of the lowest, if not the lowest of the whole of South America.

22. Since the conclusion of the Geneva Agreement in 1966 and the increasingly unfavourable policies adopted by Guyana, Venezuela has consistently opposed the destruction of the territory's environment and multiplied its initiatives to support the population of Guayana Esequiba, which it considers to be Venezuelan for reasons of historical sovereignty. Venezuela's best efforts to cooperate and promote the development

of its territory have not stopped in the past six decades, in stark contrast with the focus adopted by Guyana. Guyana's narrative, according to which Venezuela has suddenly been reviving an old territorial claim because of the discovery of oil fields off the coast of Guayana Esequiba in 2015, is pure propaganda.

COUNTER-MEMORIAL OF VENEZUELA

VOLUMEN II

INTERNATIONAL COURT OF JUSTICE

ARBITRAL AWARD OF 3 OCTOBER 1899

(GUYANA V. VENEZUELA)

Counter-Memorial of the Bolivarian Republic of Venezuela

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8 April 2024

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TREATIES AND AGREEMENTS

Annex 1

Treaty of Peace between Philip IV, King of Spain, and the United Provinces of the Low Countries, Munster, 30 January 1648.

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 476, pp. 4-21)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 474.

By order of their High Mightinesses the Lords the States General:
(Signed)
C. AERTSSEN.
(Having a seal of red wax and white silk cord.)

No. 475.

Extracts from Continuation of Charter of West India Company, July 4, 1647.

[Reprinted from Blue Book, No. 3, p. 56.]

* * * * * *

That having further considered the affairs and constitution of the West India Company of this country, and having also in mind the fact that the welfare of the inhabitants of the same is principally based upon the navigation, trade and commerce which from time immemorial have been carried on by this country and have gradually increased with other countries of Europe, Asia, Africa, and America:

* * * * * *

We, in the exercise of our discretion and authority, did, on the 22nd March last prolong and renew for the period of twenty-five consecutive years, commencing the 1st day of the month of January of this current year, 1647, the Charter of the aforesaid Company, dated the 3rd June, 1621, with amplification of the 10th June, 1622, together with that of the 13th February, 1623, and the Agreement of the 21st June, 1623.

No. 476.

TREATY OF MUNSTER.

A Treaty of Peace Between Philip IV., King of Spain, and the United Provinces of the Low Countries, Made at Munster the 30th of January, 1648.

In the name, and to the glory of God, be it known to all men, that after the long course of bloody wars, which have so many years afflicted the people, subjects, kingdoms and countries in the obedience of the Lords, the King of Spain, and the States General of the United Provinces of the Low Countries; the said Lords, the King and States being touched with Christian compassion, and desirous to put an end to the public calamities, and a stop to the deplorable consequences, incon-

No. 476.

veniences, damages and dangers, which the farther continuance of the said war of the Low Countries might produce and draw after them, by extending even to other the most distant countries, states, lands and seas; and in order to change the pernicious effects thereof into those most desirable ones of a good and sincere pacification on both sides, and the sweet fruits of an entire and firm repose and quiet, for the comfort of the said people and states under their obedience, and the restitution of past damages, for the common good not only of the Low Countries, but even of all Christendom; praying and beseeching all other christian princes and potentates to suffer themselves to be prevailed upon by the grace of God, to have a compassion for, and aversion to the miseries, ruins, and disorders which this present scourge of war has made us feel so long and so severely: In order to obtain so good an end, and so desirable an issue thereof, the said Lords, the King of Spain, Don Philip IV. and the States General of the said United provinces of the Low Countries, have constituted and appointed, viz. the said King has deputed, &c., don Gasper de Braccamonte and de Guzman, Count of Penaranda, Segnor of Aldea Seca la Fontera, Knight of the order of Alcantara, perpetual administrator of the commandry of Daymiel, of the order of Calatrava, gentleman of his Majesty's bedchamber, Ambassador Extraordinary to his Imperial Majesty, and first Plenipotentiary for the treaty of a general peace, and Messire Anthony Burn, Knight of his Catholic Majesty's council of state, and supreme counsellor of the affairs of the Low Countries, and of Burgundy, and his Plenipotentiary at the treaty of a general peace. And the said Lords the States of the United Provinces of the Low Countries have appointed and deputed the Sieur Baltot de Gent, Lord of Loenen, and Meynerswick, Seneschal and Diikgrave of Bommel, Tieler and Bommeler-Weerden, deputy from the nobility of Guelder to the assembly of the Lords, the States General; the Sieur John de Mathenesse, Lord of Mathenesse, Riviere Oppmeer, Souteveen, &c., deputy in the ordinary council of Holland and West Frieseland, and at the assembly of the Lords the States General from the Nobility of the said province, counsellor and heemrade of Schieland; Messire Adrian Paw, Knight, Lord of Heemstede, Hoogersmilde, and first president, counsellor and master of the accounts of Holland and West-Friezeland, and deputy at the assembly of the Lords the States General from the said province; Messire John de Knuyt, Knight, Lord of Old and New Vasmar, the first representative of the nobility in the states and councils of the country and Admiralty of Zeland, first counseller to his Highness the Prince of Orange, deputy in ordinary at the assembly of the Lords the States General, the Sieur Godart de Reede, Lord of Neederhorst, Verdeland, Cortehoef, Overmeer, Hostwaert, &c., president in the assembly of the nobility of the province of Utrecht, and deputy on their part at the assembly of the Lords the States General;

the Sieur Francis de Donia, Lord of Hinnema, Heilsun, deputy in the assembly of the Lords the States General from the province of Frieseland; the Sieur William Ripperda, Lord of Hengeloo, Boxbergin, Bobuloo and Russenbergh, deputy from the nobility of the province of Over-Yssel, at the assembly of the Lords the States General; the Sieur Adrian Kland van Stedum, Lord of Nittersum, &c., deputy in ordinary from the province of the city of Groninghen and Ommelande to the assembly of the Lords the States General; all of them ambassadors extraordinary in Germany, and Plenipotentiaries from the said Lords the States General at the treaties for a general peace; all warranted by sufficient powers, which shall be inserted at the end of these presents: who being assembled in the City of Munster in Westphalia, by common consent appointed to be the place of treaty for the general peace of Christendom, by virtue of the said powers, and for and in the name of the said Lords, the King and States, have made, concluded and agreed to the following articles:

I. In the first place the said Lord the King declares and acknowledges, That the said Lords the States General of the Low Countries, and all the respective provinces thereof, together with all the associated countries, towns and lands thereto belonging, are free and sovereign states, provinces and countries, upon which, or their associated countries, towns or lands abovesaid, the said Lord the King has no manner of pretensions; and that neither at this time, nor *in futurum*, he shall ever make any pretensions to them for himself, or for his heirs and successors: and that in consequence hereof he is content to treat with the said Lords and States, even as he does at present, and agree upon a perpetual peace, on the conditions after-written and declared, viz.:

II. That the said peace shall be good, firm, faithful and inviolable: and that from henceforth shall cease all acts of hostility, of whatsoever nature they be, between the said Lords the King and the States General, as well by sea and other waters, as by land, in all their kingdoms, countries, lands and dominions, and for all their subjects and inhabitants, of what quality or condition soever they be, without any exception either of places or persons.

III.—Each shall remain effectively in the possession and enjoyment of the countries, towns, forts, lands and dominions which he holds and possesses at present, without being troubled or molested therein, directly or indirectly, in any manner whatsoever, wherein the villages, burghs, hamlets and flat country thereupon depending or understood to be comprehended. And next the mayoralty of Boisleduc, as also all the lordships, castles, towns, villages, hamlets and flat country depending upon the said city and mayoralty of Boisleduc, the city and marquisate of Bergen-op-zoom, the city and barony of Breda, the city and jurisdiction of

Maestricht, as also the county of Vroonhoff, the town of Grave, the county of Kuyk, Hulst, and the bailage of Hulst and Hulster Ambacht, situated upon the south and north of Guelder, and likewise the forts which the said Lords the States possess at present in the country of Waes, and all the other towns and places which the said Lords and States hold in Brabant, Flanders and elsewhere, shall remain to the said Lords and States, in all the same rights, and parts of sovereignty and superiority, just in the same manner that they hold the provinces of the United Low Countries. But then it must be observed that all the rest of the said country of Waes, excepting the said forts shall belong to the said Lord the King of Spain. As to the three-quarters of the Over-Maze, viz.; Fauquemont, Dalem and Roleduc, they shall remain in the State they are in at present; and in case of dispute or controversy, the matter shall be referred to the chambremy-partie, or the indifferent and disinterested court, whereof mention shall be made afterwards.

IV.—And the subjects and inhabitants of the countries of the said Lords, the King of Spain and the States, shall entertain all good correspondence among themselves, without shewing any resentment of the offences and damages they may have sustained heretofore; they may likewise remain in and frequent one another's countries, and there exercise their traffic and commerce in all safety, as well by sea and fresh waters, as by land.

V.—The navigation and trade to the East and West Indies shall be kept up and comformably to the grants made or to be made for that effect; for the security whereof the present treaty shall serve, and the Ratification thereof on both sides, which shall be obtained; and in the said treaty shall be comprehended all potentates, nations, and people, with whom the said Lords the States, or members of the East and West India Companies in their name, within the limits of their said grants, or in friendship and alliance. And each one, that is to say, the said Lords the King and States respectively, shall remain in possession of and enjoy such lordships, towns, castles, fortresses, commerce and countries of the East and West Indies, as well as of Brazil, and on the coasts of Asia, Africa and America respectively, which the said Lords the King and States respectively hold and possess, in this being specially comprised the spots and places which the Portuguese since the year 1641, have taken from the said Lords the States and occupied: comprising also the spots and places which the said Lords the States hereafter without infraction of the present treaty shall come to conquer and possess. And the directors of the East and West India Companies of the United Provinces, as also the servants and officers, high and low, the soldiers and seamen actually in the service of either of the said Companies, or such as have been in their service, as also such who in this country,

or within the district of the said two companies, continue yet out of the service, but who may be employed afterwards, shall be and remain to be free and unmolested in all the countries under the obedience of the said Lord the King in Europe; and may sail, traffic and resort, like all the other inhabitants of the countries of the said Lords and States. Moreover it has been agreed and stipulated, That the Spaniards shall keep their navigation to the East Indies, in the same manner they hold it at present, without being at liberty to go further; and the inhabitants of those Low Countries shall not frequent the places 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, the King and States respectively, shall forbear sailing to, and trading in any of the harbours, places, forts, lodgments or castles, and all others possessed by the one or the other party, viz., the subjects of the said Lord the King shall not sail to, or trade in those held and possessed by the said Lords and States, nor the subjects of the said Lords and States sail to or trade in those held and possessed by the said Lord the King. And among the places held by the said Lords the States, shall be comprehended the places in Brazil, which the Portuguese took out of the hands of the States, and have been in possession of ever since the year 1641, as also all the other places which they possess at present, so long as they shall continue in the hands of the said Portuguese, anything contained in the preceding article notwithstanding.

VII.—And because there will be required a pretty long time to give notice to those who are without, or beyond the limits aforesaid, with their forces and ships, to desist from all acts of hostility; it has been agreed, That within the limits of the grant formerly made to the East India Company of the Low Countries, or to be continued to them; the peace shall not commence sooner than a year after the date of the conclusion of the present treaty; and as to the limits of the grant formerly made by the States General, or to be continued to the West India Company, That in the said places the peace shall not commence sooner than six months after the aforesaid date: but then it must be observed. That if advice of the said peace shall have come from the public to those limits respectively earlier than the aforesaid time, from the minute of that advice all hostility shall cease in those parts; but if after the term of a year and of six months respectively, any act of hostility be committed within the limits of the aforesaid grants, all damages occasioned thereby, shall be repaired without delay.

VIII.—The subjects and inhabitants of the countries of the aforesaid Lords, the King and the States trading to one another's countries shall not be obliged to pay greater duties and imposts, than the respective

subjects natives of the countries; so that the inhabitants and subjects of the United Low Countries shall be and remain to be exempted from certain duties of twenty per cent. or from such lesser, greater, or any other duty as the said Lord the King has raised and imposed during the twelve years truce, or should endeavor or be inclined to raise or impose afterwards, directly or indirectly, upon the inhabitants and subjects of the United Low Countries, or lay upon them over and above what he does upon his own subjects.

IX.—The said Lords, the King and States shall not raise, without their respective limits, any duties or gables for entry, parting, or any other account, upon the commodities in their carriage, either by land or water.

X.—The subjects of the said Lords, the King and the States, shall respectfully in one another's countries enjoy the ancient privilege of the customs, whereof they have been in peaceful possession before the commencement of the war.

XI.—Society, conversation, and commerce among the respective subjects shall not be hindered; and if any hindrances or impediments happen, they shall be really and effectually removed.

XII.—And from the day of the conclusion and ratification of this peace, the King shall cause the raising of all customs, which before the war, were under the jurisdiction, and within the district of the United Provinces, to cease upon the Rhine and the Maese, as also the custom of Zeeland; so that that custom shall not be raised by his Majesty, either in the City of Antwerp or elsewhere; provided and on condition that from the aforesaid day, the States of Zeeland shall reciprocally take upon themselves, and first of all pay from that same day the annual rents which were mortgaged upon the said customs before the year 1572 (whereof the proprietors have been in possession, and received the rent thereof since before the commencement of the said war); which the proprietors of the other customs above said, shall also do.

XIII.—The white boiled salt coming from the United Provinces into those of his said Majesty shall be there received and admitted, without, being charged with higher duties than bay-salt, and the salt of the provinces of his said Majesty, shall likewise be admitted and received in those of the said Lords and States, and shall be there sold, without being charged with a higher duty than the salt of the said Lords and States.

XIV.—The rivers of the Escaut, as also the canals of Sas, Zwyn, and other mouths of rivers disemboguing themselves there, shall be kept shut on the side of the Lords the States.

XV.—The ships and commodities entering into and coming out of the harbours of Flanders, shall be respectively charged by the said Lord, the

King with all such imposts and duties, as are laid upon commodities going and coming along the Escaut, and other canals mentioned in the preceding article. And the tax of the aforesaid equal duty shall be agreed afterwards betwixt the respective parties.

XVI.—The Hans Towns, with all their citizens, inhabitants and subjects, as to the navigation and traffic in Spain, the kingdoms and estates of Spain shall enjoy all the same rights, franchises, privileges and immunities, which by the present treaty are granted, or shall afterwards be granted for and with relation to the subjects and inhabitants of the United Provinces of the Low Countries. And the said subjects and inhabitants of the United Provinces of the Low Countries shall reciprocally enjoy all the same rights, franchises, immunities and privileges, whether for the establishing of consuls in the capital and maritime towns of Spain and elsewhere, where it shall be needful, or likewise for merchants, factors, masters of ships, mariners or others; and in the same sort as the said Hans towns in general or in particular have formerly obtained and enjoyed, or shall and enjoy afterwards, for the security, benefit and advantage of the navigation and trade of their towns, merchants, factors, commissioners and others thereupon depending.

XVII.—The subjects and inhabitants of the countries of the said Lords and States, shall also have the same security and freedom in the countries of the said Lord the King, that has been granted to the subjects of the King of Great Britain, by the last treaty of peace, and secret articles made with the constable of Castile.

XVIII.—The said Lord the King shall make, on the first opportunity, all necessary provision, that honorable places may be appointed for the interment of the bodies of such subjects of the Lords, the States, as shall happen to die in any place under the obedience of the said Lord, the King.

XIX.—The subjects and inhabitants of the countries of the said Lord, the King, coming into the countries and lands of the said Lords, the States, shall be obliged, with regard to the public exercise of religion, to govern and behave themselves with all modesty, without giving any scandal in word or deed, or uttering any blasphemies; and the same shall be done and observed by the subjects and inhabitants of the countries of the said Lords, the States, coming into the lands of the said Lord, the King.

XX.—The merchants, masters of ships, pilots, seamen, their ships, merchandises, commodities, and other goods belonging to them, may not be seized and arrested, either by virtue of any general or particular commission, or for any other cause whatsoever, nor upon the account of war or otherwise, nor even under pretext of employing them for the preser-

vation and defence of the country. However, we do not here mean to comprehend the seizures and arrests of justice in the ordinary methods upon account of debts, proper obligations and valid contracts of those upon whom such seizures shall have been made; in which case actions and suits shall be carried on according to right and reason.

XXI.—Certain judges shall be appointed on both sides in equal number, in form of the Chambre Mipartie, who shall sit in the Low Countries, and in such other places as shall be found convenient and proper, and that everywhere, sometimes under the obedience of the one, and sometimes of the other, according as shall be agreed by mutual consent; which judges appointed on both sides, shall (conformably to the commission and instruction that shall be given them, and upon which they shall make oath according to a certain form to be settled on both sides for that effect) have regard to the negotiations of the inhabitants of the said provinces of the Low Countries, and to the burdens and duties which of both sides shall be laid upon merchandises; and if the said judges perceive that any excesses are committed on either side, or of both sides, they shall regulate and moderate the said excesses.

Moreover the said judges shall examine into disputes touching a failure in the execution of the treaty, and the contraventions thereof, which from time to time may happen in the countries on this side, as also in the distant kingdoms, countries, provinces and Islands of Europe; and shall summarily and fully determine thereon and decide as they see agreeable and conformable to the treaty the sentences and determinations of which judges shall be executed by the ordinary judges of the place where contravention shall have been committed, upon the persons of the contraveners, according as occasion and circumstances shall require; nor must the said ordinary judges neglect to do the said execution, or suffer it to be neglected, but repair the contraventions within the space of six months after they the said ordinary judges shall have been hereto required.

XXII.—And if any sentences or judgments should pass upon the person of any of either party, whether in a civil or criminal matter, they must not be put in execution against the persons of the condemned, nor against their goods. Nor shall any letters of mark or reprisal be granted, but upon cognizances of the cause, and in cases allowed by the Imperial laws and constitutions, according to the order by them established.

XXIII.—It shall not be lawful to come ashore, enter or stop at the ports, harbours, shallows or roads of one another, with men of war and soldiers, in such number as may cause suspicion, without the leave and permission of him to whom the said ports and harbours, shallows and

roads belong, unless they are forced in by storm, or obliged thereto through necessity, or to avoid the dangers of the sea.

XXIV.—Such whose goods have been seized and confiscated upon occasion of the war, or their heirs, or such as have an interest therein, shall recover and take possession of the said goods, by their own private authority, and in virtue of this treaty, without being obliged to have recourse to justice, notwithstanding all fiscal incorporations, engagements, treaties, agreements, and transactions, or any renunciations that may have been put in the said transactions, to exclude from part of the said goods those persons to whom they belonged: and all and every the said goods and rights which, agreeable to the present treaty, are to be restored or ought to be restored reciprocally to the first proprietors, or their heirs, &c., may be sold to said proprietors, without having need of any particular consent for that effect. And next, the proprietors of rents, which shall be appointed by the Fisques, in lieu of the said goods, and the proprietors of rents and actions with which the Fisques are burthened respectively, may dispose of them by sale or otherwise, as of their other proper goods.

XXV.—This shall also take place in the profits arising to the heirs of the late Lord, Prince William of Orange, even with regard to the rights which they have in Salines in the county of Burgundy, which shall be remitted and given over to them, with the woods thereon depending, in case it be not found that they have been bought and paid for by his said Majesty.

XXVI.—In which are also meant to be comprehended the other goods and rights in the counties of Burgundy and Charolois; and that which has not been yet restored according to the treaty of the 9th of April, 1609, and of the 7th of January, 1610, respectively, shall as soon as possible be restored *bona fide* to the proprietors, their heirs or assigns, on both sides.

XXVII.—In like manner are meant to be comprehended the goods and rights, which after the expiration of the twelve years truce, were, btenc y sene of the great council of Malines, to the prejudice of the Fisque, adjudged to the late John Count of Nassau, or in any other manner whereby the said Count got possession thereof, in any places or seignieuries where these goods and rights may lie, and by whomsoever they may be possessed; which sentence, by virtue of the present treaty, is, and shall be held as not given, and all other acquisitions of the aforesaid possession is and shall be annuled.

XXVIII.—And as to the process of Chastel Belin entered in the lifetime of the late Lord the Prince of Orange, before the great council of Malines, against the Procurator-General of the said Lord the King;

since the said process was not judged in a year after the suit which commenced upon it, as was promised in the XIVth article of the said twelve years truce; it is concluded, That immediately after the conclusion of the ratification of the present treaty, the Fisque, in the name of his Majesty, or in the name of any other whatsoever, shall effectually quit all pretensions to all and every the goods demanded in the said process, by whom or by what right whatsoever they may have been possessed, and shall renounce in the name, and by the persons aforesaid, all actions and pretensions which the said Fisque may have or pretend to have in any wise upon the said goods, to be really and effectually claimed, and taken into free and full possession from this present by the said Lord the Prince of Orange, his heir and successors, &c., presently after the conclusion and ratification of this treaty, by virtue thereof and without having recourse to justice; or condition, That the fruits and profits, together with the taxes thereof until the conclusion of the said present treaty, shall remain to the benefit of the Fisques.

XXIX.—If any difficulty should arise concerning the restitution of the goods and rights that are to be restored, the judge of the place shall cause restitution to be made without delay, and take the shortest course towards it; nor shall it be lawful for him to delay restitution upon pretext of the non-payment of the capitation or otherwise.

XXX.—The subjects and inhabitants of the United Low Countries may, every where in the lands under the obedience of the said Lord the King, employ such advocates, procurators, notaries, solicitors and agents as they shall think proper, whereto they shall be appointed by the ordinary judges, when it shall be needful, and the said judges shall be required. And on the other hand, the inhabitants and subjects of the said Lord the King coming into the countries of the said Lords the States shall have the same assistance.

XXXI.—If the Fisque has sold any of the goods of either side, those to whom they would appertain by virtue of this treaty, shall be obliged to be satisfied with the interest at the rate of 16 per cent. to be paid every year by those who possessed the said goods; otherwise it shall be lawful to come upon the fund and inheritance that was sold. Let it be well observed. That instead of the goods sold, rents redeemed, or any other such like, letters patent shall be passed by, and in the name of the Fisques respectively, for the benefit of the proprietors, their heirs and assigns, which shall serve as a declaratory proof in conformity to the treaty; together with an assignation of annual payment upon a receiver in the province in which the sale of redemption shall have been made; which receiver shall be there named, and the price shall be calculated conformably to the first public sale, or otherwise as the law shall

ordain; the first year of which annuity shall commence a year after the date of the conclusion and ratification of the present treaty.

XXXII.—But if the said sales should be made by law for good and lawful debts of those to whom the said goods belonged before the confiscation; it shall be lawful for them or their heirs to recover them upon paying the price of them within a year, reckoning from the date of the present treaty, after which time they cannot be received; and the said recovery and redemption being made by them they may dispose of them as they please, without being obliged to obtain any other permission.

XXXIII.—However, it is not meant here that this recovery should be allowed with regard to houses in towns that have been sold on this occasion, because of the great inconvenience, and considerable loss which the purchasers would suffer thereby, upon the account of the changes and reparations they may have made in the said houses, whereof a detail would be too long and difficult.

XXXIV.—And as to reparations and meliorations of other goods sold, the recovery of which is allowed, in case they are pretended to have been made, the ordinary judges of the place shall cause justice to be done upon cognizance of the cause, by making the mortgaged funds and inheritances stand good, and answer for the sum that has been laid out upon the meliorations; but it shall not be lawful for the said purchasers to use the right of retention, in order to be paid and satisfied therefor.

XXXV.—All goods and right; kept secret, movables, immovables, revenues, actions, debts, credits, and others which shall have been seized by the Fisque, without due cognizance of the cause before the day of the conclusion and ratification of this treaty, shall remain at the free and full disposal of the proprietors, their heirs or assigns, with all the fruits, revenues, incomes and profits thereof: as also neither those who shall have concealed the said goods and rights, nor their heirs, may be molested upon this occasion by the respective Fisques; but the proprietors and their heirs shall with respect to them have the benefit of law against all persons whatsoever, as they may for their own proper goods.

XXXVI.—The trees cut down after the day of the conclusion of this treaty, and which were yet standing upon that very day, as also the trees sold, which shall not be yet cut down at the day of the said conclusion, shall remain to the proprietors, notwithstanding the said sale; nor shall they be obliged to pay any price for the same.

XXXVII.—The fruit, rents, farms and revenues of the seignieuries, lands, tents, houses, fisheries and incomes, and other appurtenances which conformably to the treaty are to be restored; if they arise after the

day of the conclusion of this treaty, they shall remain for the whole year to the proprietors and their heirs.

XXXVIII.—The farms of goods confiscated or registered (altho' they may have been granted for many years) shall expire the very year of the conclusion of the treaty, according to the custom of the respective places where the said goods are, and the farms arising after the day of the conclusion of the treaty, as is said, shall be paid to the proprietors. But then, if the farmer of the said goods shall have been at any charges for the growth of the said year, the said expenses shall be reimbursed to the farmer by the proprietors, according to the custom or discretion of the judges of the place where those goods are.

XXXIX.—The sale of goods confiscated or registered, after the conclusion of the treaty, shall be held null and void ; as also sales made before the conclusion of the said treaty, contrary to the capitulations and agreements made particularly with any towns, shall be null and void.

XL.—The houses of particular persons, restored or to be restored conformably to the treaty, shall not be reciprocally burthened with garrisons, or any other thing in any manner, nor charged higher than the houses of the other inhabitants of a like condition.

XLI.—None of either side shall be hindered directly or indirectly from changing the place of his abode, provided he pays the proper duties ; and if any hinderances should be done after the treaty, they shall be readily removed.

XLII.—If any fortifications or public edifices or works have been made on either side, with permission and authority of the superiors in the places whereof restitution is to be made by the present treaty ; the proprietors thereof shall be obliged to be satisfied with the estimate which shall be made by the ordinary judges, as well of the said places as of the jurisdiction of the same, unless the parties agree it among themselves ; and satisfaction shall likewise be made to the proprietors for the goods applied to the making fortifications, raising public works, and building religious houses.

XLIII.—As to the goods of churches, colleges and other religious places within the United Provinces, which were formerly members of the churches, benefices and colleges under the obedience of the said Lord the King, so much of them as have not been sold before the conclusion of the present treaty, shall be returned and restored to the owners, and they may take possession of them by their own private authority, and without the assistance of law, according to what has been said above ; but as to such as have been sold before the said time, or given in payment by the States of any of the provinces, the income thereof shall be paid yearly at the rate of 16 per cent. by the province that shall have made such sale

or given the said goods in payment, and assigned also in such sort as that they may be sure of having it; and the same shall be done and observed by the said Lord the King.

XLIV.—As touching the pretentions and interests which the Lord, the Prince of Orange, might have to the parts where he is not in possession; it shall be agreed by a separate treaty, to the satisfaction of the said Lord the Prince of Orange: but as to the goods and other effects, whereof the said Prince is in possession by the grant and concession of the said Lords, the States General, in the Bailiage of Hulster-Ambacht and elsewhere, of which the said Lords, the States, have sometime ago given him the confirmation; all the said places shall remain absolutely in full property for his own benefit, and that of his heirs and successors; so that there shall be no pretentions upon the said goods by virtue of any articles of the present treaty.

XLV.—As to what concerns certain other points, besides those mentioned in the preceding article, which have been treated and agreed separately, and signed in two writings, one on the 8th of January and the other on the 27th of December, 1647, for, and in the name of the said Lord, the Prince of Orange; the said writings, and the whole contents thereof, shall have their effect, and be confirmed, fulfilled and executed according to their form and tenor, neither more nor less than if all the said points in general, or everyone of them in particular were word for word inserted in this present treaty; and that notwithstanding all the other clauses in the present treaty contrary thereto, from which we mean to derogate, and it is expressly derogated by the present article; and which clauses, with regard to the contents of the last two writings, are and shall be held as not made, and shall not hinder or delay in any manner the effect, accomplishment and execution of the said two writings of the 8th of January, and 27th of December, 1647.

XLVI.—Those to whom the confiscated goods are to be restored, shall not be bound to pay the arrearages of the incomes, burdens and duties specially affecting them and assigned upon them, for the time that they have not been in possession of them; and if they be sued and put to trouble for them on either side, they shall be absolved: in case it be truly found that all the goods of any one of either side have been confiscated and registered, so that it was not in his power to pay the annuity or interest arising during the confiscation or registration, he shall not only be exempted from the real charges and annuities in conformity to the treaty, but also from the general and personal charges of the said revenues and interests arising during the said time.

XLVII.—Nor shall there be any claim or pretention to goods sold or granted in order to commence an action about them, but only to the

debts for which the possessors stand obliged by the treaties made upon that matter, together with the interest of the entry money, which shall be at the rate of four per cent.

XLVIII.—The judgments given for goods and rights confiscated to the parties who have had the cognizance of the Judges, and who have been legally defended, shall stand good, and the condemned shall not be admitted to offer anything against them, but in the ordinary methods of proceeding.

XLIX.—The said Lord the King quits and renounces all pretentions of redemption, and all other rights and pretentions that he might have or pretend to have in any wise upon the city of Grave, the country of Kuyk, its appurtenances and dependencies, the antient Barony of Brabant, formerly engaged to the late Lord the Prince of Orange, the redemption and recovery of which engagement has been quitted and turned into property, and yielded for the benefit of the late Lord Prince Maurice in December 1611, by the Lords the States General of the United Low Countries, as Sovereigns of the said city of Grave, and country of Kuyk, according and in conformity to letters patent thereupon dispatched; and in virtue of which conversion and cession of said Lord the Prince of Orange, his heirs and successors, shall from this present always enjoy the full and entire property of the said town and country of Kuyk, their appurtenances and dependencies.

L.—The said King likewise quits and renounces all and every the rights and pretentions, either of property, cession or otherwise, which he could in any manner pretend upon the town, county and seignieury of Lingen, and the four villages and other rights thereto appertaining, as also upon the towns and seignieuries of Bevergarde and Cloppenburg, and all other pretentions against anyone whatsoever; that so they may really, effectually and forever remain to the said Lord the Prince of Orange, his heirs and successors, in full right the property, conformably to the letters of donation and investiture granted by the Emperor Charles V. on the 3rd of November, 1546, and according to the transaction afterwards made between the Count of Buren and the Count of Tecklenburg on the 5th of March 1548, and finally, in consequence of the cession made thereupon in November 1578, which the said Lord the King, so far as concerned him, hath confirmed, and doth confirm by the present treaty.

LI.—The said Lords, the King and the States shall appoint, each of them in their place, officers and magistrates for the administration of justice and government in the towns and garrisons, which by this present treaty are to be given up to the proprietors in possession.

LII.—The upper quarter of Guelder shall be exchanged for an equiv-

alent; and in case that equivalent cannot be agreed upon, the matter shall be referred to the Chambre Mipartie, to be there decided within six months after the conclusion and ratification of the present treaty.

LIII.—The said Lord the King obliges himself effectually to procure the continuation and observation of the neutrality, amity, and good neighborhood of his Imperial Majesty and the Empire with the said Lords the States; to which continuation and observation the said Lords the States likewise oblige themselves reciprocally; and the conformation thereof must be made by his Imperial Majesty within two months, and by the Empire within a year after the conclusion. and ratification of the present treaty.

LIV.—The movables confiscated, and the profits from thence arising before the conclusion of the present treaty, shall not be liable to any restitution.

LV.—The movable actions which by the said Lords the King and the States shall have been granted for the benefit of particular debtors before the conclusion of the present treaty, shall be extinct on both sides.

LVI.—The time that shall have elapsed during the war begun in the year 1607, and continuing till the beginning of the twelve years truce, as also the time elapsing from the expiration of the said truce till the conclusion of this treaty, shall not be reckoned, so as thereby to do any prejudice or damage to anyone whatsoever.

LVII.—Such who have retired to neutral countries during the said war, shall enjoy the benefit of this treaty, and may live where they please, or return to their former dwellings, there to live in all safety, provided they observe the laws of the country; nor may their goods be seized, or they deprived of the possession of them, on account of their having lived in any place whatsoever.

LVIII.—No new forts may be made in the Low Countries on either side, nor may any new canals be made, or dikes thrown up, whereby the one or the other party may be kept off or beat back.

LIX.—Neither the Lords of the House of Nassau, nor Count John Albert of Solms, Governor of Maestricht, may be prosecuted or molested in their persons or goods for any debts contracted by the late Lord William Prince of Orange, from the year 1567, till his decease, nor for any arrears due during the seizure and registration of the goods therewith burdened.

LX.—If any contravention should be made to the treaty by private persons without the command of the said Lords, the King and the States, the damage shall be repaired in the same place where the contravention shall have been made, if the contraveners are taken up there, or in their habitation; but they must not be prosecuted elsewhere in

their persons or goods in any manner whatsover, nor shall it be lawful to come to arms, or break the peace on that occasion ; but it shall be allowable, in case of manifest denial of justice, to do themselves right by letters of mark or reprisal, in the usual manner.

LXI.—All disinherisons and dispositions made in the heat and fury of war shall be declared null, and held as not made ; and by such disinherisons made in the heat of war are meant such as either proceeded from the war, or depended thereupon.

LXII.—The subjects and inhabitants of the countries of the said Lords the King and the States, of whatever quality or condition they be, are declared capable of succeeding to one another, as well without as with a will, according to the customs of the places ; and if any successions of legacies have formerly fallen to any of them, they shall be maintained and preserved in their right thereto.

LXIII.—All prisoners of war shall be delivered up, of both sides, without paying any ransom, and without any distinction or reserve of prisoners, who have served out of the Low Countries, and under other standards and colors than those of the said Lords the States.

LXIV.—The payment of arrears of contributions, which shall remain unpaid from the conclusion of the treaty, for the persons and goods of both sides, shall be regulated and determined by those of both sides who shall have the superintendence of contributions.

LXV.—And whatever shall be proposed or alleged on either side, by word of mouth or by writing during the negotiation, shall not be turned or interpreted to the advantage or prejudice of any directly or indirectly ; but as well the said Lords, the King and the States General and particular, as all Princes, Counts, Barons, gentlemen, citizens, and other inhabitants of the respective kingdoms and countries, of whatever quality, state or condition they be, shall continue in their rights, according to the tenor of the treaty, and the conclusion thereof.

LXVI.—The respective inhabitants and subjects of the said Lords the King and the States shall really enjoy the effect of the 5th article of the twelve years truce now expired, and also the effect of the 10th article of the following agreement of the 7th of January 1610, and that because during the term of the foresaid truce the said effect was not obtained or procured of either side.

LXVII.—The limits and bounds in Flanders and elsewhere shall be regulated in such sort as shall be found just, and appertaining to the jurisdiction of both sides, whereupon informations shall be waited for and delivered, that so the said limits may be adjusted and regulated in due time.

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LXVIII.—On the part and side of the said Lord the King of Spain, the forts here named near l'Ecluse shall be demolished, viz., St. Job, St. Donas, the fort l'Estoile, fort St. Theresa, fort St. Frederick, fort St. Isabella, fort St. Paul, and the redoubt Papemuts ; And on the side and part of the said Lords and States shall be demolished the following forts, viz., the two forts in the isle of Casant called Orange and Frederick, the two forts of Pas, all the forts upon the east side of the river Escaut, except Lillo, and the fort at Keildrecht called Spinola ; which demolition, to be made reciprocally, shall be agreed upon betwixt both parties, that so the equivalent thereof may be regulated.

LXIX.—All the registers, charters, letters, archieves and papers, as also all the bags of processes concerning any of the respective United Provinces, associated countries, cities and members, or any inhabitants thereof, being in the Courts, Chanceries, Councils, Chambers of Policy, Courts of Justice, Finances, Fiefs or Archies, whether at Avennes, Malines, or any other places under the obedience of the said Lord the King, shall be delivered *bona fide* to those who shall have a commission from the said respective Provinces to demand them : And the same shall be done on the part of the said Lords the States, for the Provinces, towns, and particular persons under the obedience of the said Lord the King.

LXX.—The jurisdiction over the waters shall be left to the town of l'Ecluse, as appertains to it.

LXXI.—The dike that crosses the river Soute, near St. Donas, shall be taken down and opened ; and in place of it shall be made and raised a Sas, the guarding of which Sas shall be agreed upon, as has been said above with relation to the demolition of the forts.

LXXII.—In this present treaty of Peace shall be comprehended all those who, before the exchange of the agreement or ratification, or within three months after, shall be named on both sides, in which time the said Lord the King shall name such as he shall think proper : In the meanwhile, on the part of the said Lords the States, are named the Prince the Landgrave of Hesse Cassel, with his countries, towns and states ; the Count of East Frieseland, the town of Emden, the County and Country of East-Frieseland ; the Hanseatick Towns, and particularly Lubeck, Bremen and Hamburg ; and the said Lords the State reserve to themselves the nómination of others, in the aforesaid term, whom they shall think proper.

LXXIII.—As touching the pretentions of the Count of Flodrof, for the restitution made to him of the Castle of Leut, with the goods thereupon depending, and all other goods and villages which might belong to him thereabout, and which were seized by the said Lord the King, the said restitution shall be granted him, as also that of the Castle ; saving an allowance to be made between the conclusion of the present treaty and

the ratification of the same, for the maintenance of a garrison by the said Lord the King, or for the demolition of the new fortifications made since the castle was possessed.

LXXIV.—As to what has been treated and agreed the 8th of December, 1646, between the Ambassadors Extraordinary, and the Plenipotentiaries of the said Lords, the King and the States, touching Roger Huygens, for and in the name of his wife Lady Anne Margaret Van Stralen ; it shall have the whole force and effect, and shall be fulfilled and executed in the same manner as if it was inserted word for word in this present treaty.

LXXV.—And to the end that the present treaty may be the better observed, the said Lord the King and the States respectively promise to use their endeavors, and employ their power, each in his place, to render the passages free, and the seas and rivers navigable and secure from all incursions of pirates, corsairs and robbers ; and if they can catch them, to chastise them with rigour.

LXXVI.—They promise moreover, not to do anything contrary to or in prejudice of the present treaty, nor suffer anything to be done directly or indirectly ; and if anything be done they promise to repair it without any difficulty or delay ; and they oblige themselves respectively (viz., the said Lord the King and his heirs and successors) to the observation of all the above ; and for the validity of the said obligation, they renounce all laws, customs, and other things whatsoever to the contrary.

LXXVII.—The present treaty shall be ratified and approved by the said Lords the King and the States, and letters of ratification shall be delivered by the one to the other in good and due form, within the term of two months ; and if the said ratification comes sooner, all acts of hostility between the parties shall cease, without waiting for the expiration of the said term. But then it must be observed, That after the conclusion and signing of this treaty, hostlities of both sides shall not cease, till the ratification thereof shall have been delivered by the said Lord the King of Spain in due substance and form, and exchanged for that of the Lords the States General of the United Provinces.

LXXVIII.—So that in the meanwhile the affairs of both sides shall continue in the same state and condition they shall be found at the conclusion of the present treaty, until the foresaid reciprocal ratification shall have been exchanged and delivered.

LXXIX.—The said treaty shall be published everywhere, as is usual, immediately after the ratifications of both sides shall have been exchanged and delivered ; and from thenceforth all acts of hostility shall cease.

Annex 2

Treaty of Peace between England and Spain, Utrecht, 13 July 1713

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 478, pp. 23-34)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

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sive, none of the natives or inhabitants of this or any other country, shall be permitted other than in the name of this United Company to sail or trade upon the coasts and lands of Africa, reckoning from the Tropic of Cancer to the *latitude* * of 30 degrees south of the Equator, with all the islands in that district lying off the aforesaid coasts, and particularly the Islands of St. Thomé, Annebon, Isle of Principe, and Fernando Polo, together with the places of Isekepe and Bauwmerona, situated on the continent of America, as well as the Islands of Curaçao, Aruba, and Buonaire:

* * * * * *

II.

That the aforesaid Company shall henceforth be permitted to make in our name and by our authority within the limits set down above, contracts, leagues, and alliances with the Princes and natives of the countries lying within them; shall further build fortresses and strongholds there, and shall appoint Governors, Warriors, and Officers of Justice, and keep up establishments of good order, police, and justice, for other necessary services and for the maintenance of the police.

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Treaty of Peace concluded at Utrecht July 13, 1713, between England and Spain.

TREATY *of peace and friendship between their Majesties the King of Spain and the Queen of England in which, among other things, the incompatibility is stipulated of the Crowns of Spain and France being possessed by the same person, as also the hereditary succession of Great Britain in the descendants of Queen Anne, in those of the Electress Widow of Brunswick and those of her heirs in the protestant House of Hanover, Concluded at Utrecht on the 13th of July, 1713.*

The Supreme Arbiter of all things having been pleased in his Divine Mercy to incline towards peace and harmony the minds of princes who hitherto have been waging a war against each other that has filled almost all of the Christian World with blood and death; and, the Most Serene and Most Powerful Prince Philip V, by the grace of God King of Spain, and the Most Serene and Powerful Princess Anne, by the grace

* Note by Prof. Burr.—For *latitude* as given here the Blue Book reads *height*.

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of God Queen of Great Britain, France and Hibernia, wishing for nothing with more ardour, nor there existing another thing that they so much desire as to reestablish and tighten with new bonds of reciprocal convenience the old friendshipand confederation of the Spaniards and the English, in such a manner that it shall pass to the most remote posterity with almost indissoluble ties; in order therefore to happily conclude this most useful and for so many reasons most desirable affair, they have appointed on the one part and on the other as their ambassadors extraordinary and plenipotentiaries, giving them the necessary instructions, to wit, the Catholic King on his side, His Excellency don Francisco de Paula Téllez, Jiron, Benavides, Carrillo y Toledo, conde de Leon, duke of Ossuna, Conde de Ureña, Marquess de Peñafiel, grandee of the first class, gentleman of his Chamber, Lord Chamberlain and principal cup bearer, principal notary of his kingdoms of Castile, knight of the order of Calatrava, principal key bearer of the same order and knighthood, and commander of the same and the order of Usagres in that of Santiago, captain of the first Spanish company of his life-guards, and His Excellency Don Isidro Casado de Rosales, Marquess de Monte-Leon, member of the council of the Indies, Ambassadors Extraordinary and Plenipotentiaries of His Catholic Majesty, and the Queen of Great Britain on her side, the Most Reverend Lord John, Bishop of Bristol, of her Privy-Council and Keeper of the Privy Seal, Dean of Windsor and secretary of the most noble order of the Garter and His Excellency Lord Thomas, Earl of Strafford. Viscount Wentworth, Woodhouse and Staineborough, Baron Ravij, Neumarch and Overseliy, member of the Privy-Council, Lieutenant General of her armies, first Lord of the Admiralty of Great Britain and Ireland, knight of the most noble order of the Garter, Ambassador Extraordinary and Plenipotentiary of the States-General of the United Provinces of the Netherlands; which ambassadors, according to the tenor of what was agreed by the Ministers of the two parties, both in the Court of Madrid and in that of London, consented to and agreed upon the following articles of peace and friendship.

I.

There shall be a Christian and universal peace and perpetual and sincere friendship between the Most Serene and Most Powerful Prince Philip V, Catholic King of Spain, and the Most Serene and Most Powererful Princess Anne, Queen of Great Britain; between their heirs and successors and also between their kingdoms, states, dominions and provinces, wherever they may be situated as well as between their subjects; and this peace shall be so kept and preserved that neither of the parties shall attempt anything which may be prejudicial or hurtful to the other under any pretext whatsoever, neither can they or shall they aid or as-

sist for any cause whatsoever whomever may attempt or wish to cause either of them any prejudice, but on the contrary Their Majesties shall be bound to procure all that may be useful, honourable or convenient to each other, endeavoring in every way to promote, by new demonstrations of friendship, the peace that is hereby established, that it may each day acquire greater stability.

II.

It being a certain fact that the war which is now happily ended by this treaty of peace, was commenced and has been continued for many years with great vigor, enormous expense, and an almost incalculable number of killed, on account of the great danger with which the close union of the Kingdoms of Spain and France threatened the liberty and safety of all Europe ; and wishing to take from the minds of all men the care and suspicion which this union has given them and to establish the peace and tranquillity of the whole christian world through the just equilibration of the Powers (which is the best and the most solid foundation of a mutual friendship and a durable peace) it has been agreed both by the Catholic King and by the Most Christian King to prevent with the justest precautions that the kingdoms of Spain and France can ever be united under the same dominion or that one same person can be the ruler of both kingdoms ; and with this object in view His Catholic Majesty has most solemnly renounced, for himself and for his heirs and successors, all rights, titles and pretension to the Crown of France in the form and words which follow.

(Here are introduced the seven instruments of renunciation which are placed in the treaty made on this same date with the Duke of Savoy.)

And by this article His Catholic Majesty renews and confirms his aforesaid most solemn renunciation. And the same having been established a royal ordinance and fundamental law, he again promises in the most binding manner that he will faithfully keep it and shall have it kept by others, endeavouring with all its power and directing with the greatest diligence, that the aforesaid renunciations be observed and irrevocably executed both on the part of Spain and that of France ; for if these subsist in their full force and are kept in good faith by both parties, together with the other transactions which tend to the same object, the crowns of Spain and of France will be so separated that they can never come together again.

III.

There shall be on both sides a perpetual amnesty and forgetfulness of all the hostilities which during the recent war may have been committed in any place or manner by both parties ; so that at no time under pretext

of the same, or for any other cause, any molestation may be caused by the one party to the other either directly or indirectly, under colour of justice, neither by acts of violence, nor shall they allow it to be caused.

IV.

All the prisoners of both parties and each one of them of whatever state or condition they may be, shall, on the ratification of the present treaty, be restored in their original liberty without any ransom being demanded from them, paying only the debts which they may have contracted during the time of their captivity.

V.

In order to give greater force to the peace which is thus reestablished, and to the faithful and never broken friendship, and in order to remove all causes of mistrust which might arise at any time respecting the right and the mode established for hereditary succession to the kingdom of Great Britain and the limitation thereof, established by the laws of Great Britain (both in the reign of the late king William III of the glorious memory and of the present queen) in favour of the descendants of the aforesaid queen) and failing this in favor of those of the Most Supreme Princess Sophy, Electress Widow of Brunswick and of her heirs in the protestant house of Hanover; in order therefore to preserve the aforesaid succession in accordance with the laws of Great Britain, the Catholic King sincerely and solemnly recognizes the aforesaid limitation of the succession to the kingdom of Great Britain, and he declares that it shall ever be ratified and accepted by him and his successors upon his royal faith and word, thereto engaging his honour and that of his heirs. The Catholic King likewise promises, under the same engagement of his honour and royal word, that neither he nor his heirs and successors shall, at any time, recognize as king or queen of Great Britain any others but the aforesaid Queen and her successors, according to the limitation established by the laws and statutes of Great Britain.

VI.

The Catholic King likewise promises in his own name and in that of his heirs and successors that he shall at no time molest or cause any trouble to the aforesaid Queen of Great Britain nor to her heirs and successors descending from the aforesaid protestant family, who may hold the crown of Great Britain and the dominions subject thereto: neither shall at any time the aforesaid Catholic King nor any of his successors aid, assist, favour or advise either directly or indirectly, on land or at sea, or with money, arms, ammunitions, war materials, ships, soldiers, sailors or in any other manner, any person or persons, should there

be any, who for any cause or under any pretext should attempt to oppose the aforesaid succession, whether declaring war or fomenting rebellion, or plotting conspiracies against the Prince or Princes who may occupy the throne of Great Britain by virtue of acts approved by Parliament, or against any Prince or Princess to whom by act of Parliament the succession belongs as aforesaid.

VII.

The ordinary procedures of justice shall be reestablished in the kingdoms and dominions of both Their Majesties, so that all the subjects of the two parties can freely maintain and obtain their rights, pretentions and actions, according to the laws, constitutions and statutes of both kingdoms; and, especially, if there is any complaint of injuries or grievances caused in time of peace or at the beginning of this war, against the tenor of the treaties, care shall be taken to repair the dammages as soon as possible in accordance with the forms of justice.

VIII.

Commerce and navigation shall be free between the subjects of both kingdoms as they were at other times during peace and before the declaration of this war, during the reign of the Catholic King of Spain Charles II, of glorious memory, in conformity with the treaties of friendship, confederation and commerce which were established between the two nations, according to ancient customs, letters patent, schedules and other acts, especially made in this respect, and also in conformity with the treaty or treaties of commerce which will already have been concluded in Madrid or will be concluded later. And, as among other conditions for general peace, it has been established by common consent as a principal and fundamental rule that the navigation and commerce of the West Indies of the dominion of Spain shall remain in the same state in which they were in the time of the aforesaid Catholic King Charles II, in order that this rule be observed in future, with an inviolable good faith, so that it cannot be broken, and all causes for mistrust and suspicion regarding this affair be avoided and removed, it has been especially agreed and established, that for no consideration, and under no pretext, permission may be granted to the French or to any other nation either directly or indirectly, to navigate, traffic or introduce blacks, goods or merchandize or other things in the dominions of America belonging to the crown of Spain excepting that which may be agreed upon in the aforesaid treaty or treaties of commerce and by the rights and privileges granted in the convention vulgarly known as the *Seat of blacks*, which is mentioned in article 12; and excepting likewise that which the aforesaid Catholic King or his heirs or descendants may offer in the treaty or

treaties for the introduction of blacks in the Spanish West Indies, after the aforesaid convention of the seat of blacks shall have been concluded. And in order that the navigation and commerce of the West Indies shall be more firmly and amply established, it has also been agreed and adjusted by these presents, that neither the Catholic King nor any of his heirs and successors, can either sell, cede, mortgage or transfer to the French or to any other nation any lands, dominions or territories of Spanish America or any part thereof, or alienate it from themselves or from the Crown of Spain. And on the contrary, in order that the dominions of Spanish America be preserved in a greater entirety, the Queen of Great Britain promises that she will ask from and give assistance to the Spaniards in order to reestablish and fix the former limits of their dominions in America as they were in the time of the aforesaid Catholic King Charles II, should they in any manner or under any pretext have undergone any dismemberment after the death of the aforesaid Catholic King Charles II.

IX.

It has also been agreed upon and established as a general rule, that all and every one of the subjects of both Kingdoms shall, in all lands and places the one of the other, in all that concerns persons, merchandize, vessels, cargoes, sailors, navigation and commerce, enjoy the same privileges, franchises and immunities and receive the same favour in all, that the subjects of France or of another foreign nation the most friendly, have, enjoy and possess or may hereafter have and enjoy.

X.

By this treaty the Catholic King, for himself and for his heirs and successors gives to the crown of Great Britain full and entire possession of the city and castle of Gibraltar, together with its port, and the defences and fortress that belong to it, giving her the aforesaid property to have and to hold with full right and forever, without any exception or impediment whatsoever. But in order to avoid all abuses and fraud in the introduction of merchandize, the Catholic King desires, and he supposes that it is so understood, that the aforesaid property is given to Great Britain, without any territorial jurisdiction upon nor with open communication by land with the neighbouring country. And as communication by water with the court of Spain cannot be open and safe at all times, and thence it might happen that the soldiers of the garrison of Gibraltar and the inhabitants of that city might find themselves in great trouble, it being the intention of the Catholic King only to prevent, as aforesaid, the fraudulent introduction of merchandize by way of land; it has been agreed that in these cases, provisions and other necessary things for the use of the troops of the garrison, of the inhabitants

and of vessels lying in the port may be bought with ready money in the neighbouring land of Spain. But if any merchandize be apprehended which has been introduced through Gibraltar, whether in exchange for provisions or for any other purpose, it shall be adjudged to the fisc, and upon complaint being made of this infringement of the present treaty, the guilty parties shall be severely punished. And Her British Majesty, at the request of the Catholic King, consents and agrees that, for no consideration, jews or moors shall be allowed to reside or have a domicile in the said city of Gibraltar, nor shall moorish ships of war be allowed to enter the port of said city, whereby the communication between Spain and Ceute might be interrupted and the Spanish coasts infested with moorish corsairs. And as treaties of friendship, liberty and commerce exist between the English and some regions of the coast of Africa, it is understood that the entrance to the port of Gibraltar cannot be refused to the moors or their vessels who only go there for commercial purposes. Her Majesty the Queen of Great Britain also promises that the inhabitants of the aforesaid city of Gibraltar shall be allowed the free practice of the roman catholic religion. If at any time the crown of England should find it convenient to give away, sell or alienate in any manner the aforesaid city of Gibraltar, it has been agreed and adjusted by this treaty that the crown of Spain shall be given before any one else, the first chance to redeem it.

XI.

The Catholic King for himself and his heirs and successors also gives to the crown of Great Britain the whole of the island of Minorca, transferring to it forever all rights and full dominion over the aforesaid island, and especially over the aforesaid city, castle and port of the bay of Minorca, commonly called Port Mahon, together with the other ports, garrisons and towns situated in the aforesaid island. But it is provided as in the preceding article, that neither in Port-Mahon, nor in any other port of the aforesaid island of Minorca, moorish ships of war shall be allowed to enter which might infest the coasts of Spain with their privateering ; and only those moors and their vessels that go there for commercial purposes shall be allowed to enter said island according to the compacts which may have been made with them. The Queen of Great Britain also promises that if at any time the island of Minorca and the ports, garrison and cities therein situated, are to be alienated from the crown the first chance shall be given to Spain, before any other nation, to redeem the possession and the proprietorship of the aforesaid island, Her British Majesty also promises that all the inhabitants of the aforesaid island, whether secular or ecclesiastic, shall safely and peacefully enjoy all their property and honours, and that they shall be allowed to practice freely the Roman Catholic religion ; and that all measures shall

be taken for the preservation of this religion which are not in opposition to the civil Government and laws of Great Britain. Those persons shall also be allowed to enjoy their property and honours, who are at present in the service of the Catholic King, though they should remain in it; and all those who wish it shall be allowed to leave that island and sell their property or transfer it to Spain.

XII.

The Catholic King gives and grants to Her Britannic Majesty and to the Company of her subjects which has been formed with this purpose, the power of introducing negroes into various parts of the dominions of His Catholic Majesty in America, which are vulgarly called the seat of negroes, which power is granted them to the exclusion of the Spaniards and all others for the period of thirty consecutive years commencing from the 1st of May, 1713, with the same conditions that the French enjoyed, or could or should have enjoyed at any time, together with the territory or territories which the Catholic King shall determine, to be given to the company at a convenient point of the Rio de la Plata (without said company having to pay any dues or tributes during the period of the aforesaid treaty of the seat of negroes, and for no longer a period), also taking care that the aforesaid territories and establishments which are given to the company, shall be suitable for labouring and for grazing cattle for the maintenance of the employees of the company and of their negroes, and for the safe keeping of the latter until they are sold ; and also that the vessels of the Company can put in there and find shelter from all dangers. But it shall always be permitted to the Catholic King to place there an official to prevent anything being done or admitted which may be against his royal interests, and all persons who may go thither as commissioners of the Company, or who may belong to the same, shall always be subject to the inspection of the aforesaid official in all that concerns the aforesaid territories ; and should any doubts, difficulties or controversies arise between the aforesaid official and the commissioners of the Company, they shall be laid before the Governor of Buenos Ayres for him to judge them. It was furthermore the will of the Catholic King to grant to the aforesaid Company other great advantages, which are more fully and extensively explained in the treaty of the seat of negroes which was made and concluded in Madrid on the 26th of March of the present year 1713; which treaty of negroes, with all the clauses, conditions immunities and privileges therein contained and are not contrary to this article is understood and is to be understood as forming a part of this treaty exactly as if it were herein inserted word by word.

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XIII.

Considering that the Queen of Great Britain does not cease to urge that all the inhabitants of the principality of Catalonia, of whatever state and condition they may be obtain not only the entire and perpetual forgetfulness of all that has been done during this war and enjoy the sole possession of all their estates and honours, but also that they preserve, inviolable and intact, their ancient privileges, the Catholic King, out of consideration for Her Britannic Majesty, by these presents grants and confirms to any and all the inhabitants of Catalonia, not only the desired amnesty together with the full possession of their property and honours, but he also gives and grants to them all those privileges which are possessed and enjoyed by the inhabitants of the two Castiles, which of all the population of Spain are the best-beloved of the Catholic King.

XIV.

It having also been the wish of the Catholic King, at the request of Her Britannic Majesty to cede the Kingdom of Sicily to His Royal Highness Victor Amadeus Duke of Savoy, and he having in fact ceded to him by the treaty concluded this day between His Catholic Majesty and His Royal Highness the Duke of Savoy, Her Britannic Majesty promises that she shall take good care that, failing male heirs of the House of Savoy the possession of the aforesaid Kingdom of Sicily shall return to the crown of Spain; and her Britannic Majesty further agrees that the aforesaid Kingdom may not be alienated under any pretext or in any manner whatsoever, nor be given to any other Prince or State but the Catholic King of Spain and his heirs and successors. And as the Catholic King has expressed to Her Britannic Majesty that it would be quite in reason and very agreeable to himself, that, not only the subjects of the Kingdom of Sicily, though they may reside in the dominions of Spain and may be in the service of His Catholic Majesty, but other Spaniards and subjects of Spain who may possess property or honours in the Kingdom of Sicily should enjoy them without any loss whatsoever, and that they be not molested or disturbed in any manner under pretext of their personal absence from said Kingdom, and he also willingly promises that the subjects of the aforesaid kingdom of Sicily and others of his Royal Highness, who may possess property and honours in Spain or in any of her dominions shall enjoy them without any loss, and shall not be molested or disturbed under pretext of their personal absence; therefore Her Britannic Majesty promises that she shall issue letters and will order her ambassadors extraordinary and plenipotentiary who are at Utrecht, to use efficient endeavours that the Catholic King and His Royal Highness come to an agreement on this point, arranging it in the manner most convenient to both.

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XV.

Their Royal Majesties, each one for his and her part, renew and confirm all the treaties of peace, friendship, consideration and commerce made and concluded before now between the crowns of Spain and Great Britain, and by the present confederation are renewed and confirmed the aforesaid treaties in a manner as ample and explicit as if they were each one herein introduced, that is to say, as far as they are not in opposition to the treaties of peace and commerce recently concluded and signed; and by this treaty of peace are specially confirmed and corroborated all pacts, alliances and conventions which concern commerce and navigation in Europe and other parts, as well as the introduction of Negroes into Spanish America, as also all those which have already been concluded or will be concluded as soon as possible in Madrid between the two nations. And whereas it is urged on the part of Spain that the Biscayans and other subjects of Her Catholic Majesty possess a certain right of fishing at the Island of Newfoundland, her Britannic Majesty agrees that the Biscayans and other peoples of Spain shall preserve intact all the privileges which they may rightfully claim.

XVI.

Whereas in the armistice convention made between Her Britannic Majesty and the Most Christian King for four months from the 11th to the 22d day of August last, which was confirmed by the acquiescence of the Catholic King, and is now confirmed by this treaty, as well as the prorogation thereof to the 11th and 22d day of April of this year, it was expressly stipulated, among other conditions, in which cases the vessels, merchandize and other movable property captured by each one of the parties from the other, are to be left to the capturers or be restored to their original owners, therefore is it now agreed that in those cases the stipulations of said armistice shall remain in full force, and that all that concerns said captures, whether they have been made in British waters or in southern waters or in other parts, shall be governed in good faith by the tenor thereof.

XVII.

Should it happen that through thoughtlessness, imprudence or any other cause, any subject of either of Their Royal Majesties should commit any offence, whether on land, or at sea, or in fresh waters in any part of the world, whereby the strict observance of this treaty should suffer, or any particular article thereof should not be strictly carried into effect, it is agreed that this shall not interrupt or break the peace established between the Catholic King and the Queen of Great Britain; but on the contrary, it shall remain in its original force and only the aforesaid sub-

ject shall be held responsible for his own acts and made to pay the penalties established by the rules and statutes of international law.

XVIII.

But if, what is to be deprecated, the extinguished enmity between their Catholic and Britannic Majesties should at any time be revived and a declaration of war should ensue, the ships, merchandize and movable and immovable property of the subjects of both parties, which may be captured in the ports and dominions the one of the other, shall not be adjudged to the fisc; but on the contrary, a period of six months shall be granted to the subjects of both Their Majesties for them to sell, carry or transfer to wherever they may wish, their aforesaid property or anything else which they may possess and to leave those places.

XIX.

The kings, princes and states mentioned in the following articles and all those which by common consent of both parties may be mentioned by either of them before the exchange of the ratifications, or within the six months following, shall be included and comprised in this treaty as a mark of mutual friendship; Their Catholic and Britannic Majesties being fully persuaded that they will recognize the provisions in it made and established.

XX.

All that may be contained in the treaty of peace which is about to be concluded between His Sacred Royal Majesty of Portugal, with the approval of Her Sacred Royal Majesty of Great Britain, shall be held an essential part of this treaty, as though it were introduced in it word by word; and Her Britannic Majesty furthermore offers to guarantee the aforesaid treaty of peace and she has really and expressly promised to fulfill it that it may be more inviolably and religiously observed.

XXI.

The treaty of peace concluded this day between His Catholic Majesty and His Royal Highness the Duke of Savoy is specially included and confirmed in this treaty as an essential part thereof, as though it were introduced in it word by word; and the Queen of Great Britain expressly declares that she wishes to be bound by the stipulations of guarantee therein promised.

XXII.

The Most Serene King of Sweden, together with his kingdoms, seigniories, provinces and rights, as also the Most Serene Princes the Grand Duke of Tuscany and the Duke of Parma together with his towns

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and subjects and also with the freedom and profits of commerce of the aforesaid subjects, shall be included in this treaty in the best possible form.

XXIII.

The Most Serene Republic of Venice shall be included and comprised in this treaty and in the best possible form, in consideration of the strict neutrality she has preserved between the belligerents during this war, and of other many acts of humanity she has executed; and her dignity, power and safety shall ever remain inviolable, as a mutual friend of both Their Majesties, who wish both to give her at all times all the tokens of sincere friendship which her interest may demand.

XXIV.

It has also been the pleasure of Their Majesties to comprise the Most Serene Republic of Genoa in this treaty, who, preserving the strictest neutrality during this war, has cultivated and tightened the ancient bonds of friendship which bound her to the crowns of Spain and of England; and it is the will of Their Majesties that the benefit of this peace shall embrace all that may be convenient to her, and that her subjects shall henceforth enjoy in all cases and in any place the same freedom of commerce which they enjoyed in former times, during the life of Charles II, King of Spain.

XXV.

The city of Dantzig, is likewise included in this treaty that she may henceforth enjoy the ancient benefits which she has heretofore enjoyed from the commerce of both kingdoms, whether by treaties or from ancient custom.

XXVI.

The ratifications of this treaty, solemnly and in due form executed, shall be exhibited and exchanged within the period of six weeks counted from this date, or before if it be possible.

In witness whereof, the Ambassadors Extraordinary and Plenipotentiary aforesaid, after duly exhibiting to each other and exchanged their credentials, have signed the present treaty and sealed it with their seals at Utrecht on the 13th day of July, 1713.

DUKE OF OSSUNA. MARQUESS OF MONTELEON.
JOH. BRISTOL E. P. S. STRAFFORD.

Annex 3

Convention between Great Britain and Holland relating to their Colonies, Holland cedes the colonies of Demerara, Essequibo and Berbice to Great Britain, 13 August 1814

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 483, pp. 43-48)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 481.

Done at Amiens on the 27th of March 1802, 6th Germinal year X of the French Republic.

(L. S.) JOSEPH BONAPARTE.

(L. S.) CORNWALLIS.

(L. S.) J. NICOLAS DE AZARA.

(L. S.) R. J. SCHIMMELPENNINCK.

No. 482.

Extract from a Proposed Charter for the Colonies of Essequibo and Demerara, submitted to the Council of the American Colonies and Possessions of the Batavian Republic, June 22, 1803, by G. A. W. Ruysch, late member of the Council.[1]

[Reprinted from U. S. Commission, Report, Vol. 3, pp. 657–658.]

* * * * * *

Inasmuch as there are to be found in the upper rivers of this colony, and likewise in the various creeks, a great number of abandoned plantations and uncultivated lands, the Republic grants to all who may wish to establish themselves on one or more of those estates and to cultivate there rice, tobacco, cocoa, indigo, or any other useful product, not only a considerable [piece] of tobacco land, gratis, but moreover freedom from all charges during ten consecutive years; the like privilege is granted to those who on such abandoned or uncultivated lands may be willing to establish studs, cattle-ranches, or stock-farms for horned cattle—cows, sheep, and goats—or for hogs.

* * * * * *

No. 483.

Convention between Great Britain and Holland relating to their Colonies. Holland cedes to Great Britain the Colonies of Demerara, Essequibo and Berbice, August 13, 1814.

In the name of the Most Holy and Indivisible Trinity.

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[1] Note by Prof. Burr.—Under date of June 21, 1803, one reads in the minutes of the Council of the American Colonies: "The President stated to the meeting that he had received from a former member of this Council, G. A. W. Ruysch, a charter drafted by him for the agricultural colonies of the State, with the request that if he saw fit he would present it to the Council, that the Council might make at its convenience such use of it as it should deem proper." The charter was referred to the Committee on Policy, and is never heard of again. The document itself bears a marginal memorandum, stating that it was submitted to the Council of the Colonies on June 23, 1803. Ruysch, who on July 8, 1802, had been granted leave of absence because of ill health, had resigned from the Council on April 1, 1803.

No. 483.

The United Provinces of the Netherlands having, by the favour of Divine Providence, recovered their independence, and having been placed by the loyalty of the Dutch Nation and the armies of the allied Powers under the government of the illustrious house of Orange: and H. B. M. being desirous of entering into an arrangement with the Sovereign of the United Provinces of the Netherlands regarding the colonies of the aforesaid Provinces which were conquered during the late war by the armies of this Majesty, which arrangement shall promote the prosperity of the aforesaid State, and also wishing to give a proof of his constant friendship and attachment for the house of Orange and the Dutch nation, the High Contracting Parties aforesaid, moved by like feelings of cordial benevolence and attachment towards each other, have appointed as their Plenipotentiaries, to wit: His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honourable Robert Stewart, Viscount Castlereagh, member of His Majesty's Privy Council, member of Parliament, colonel of the regiment of the Londonderry militia, Knight of the Most Noble order of the Garter and his First Secretary of State for Foreign Affairs: and H. R. H. the Prince of Orange, Prince Sovereign of the United Provinces of the Netherlands, Mr. Henry Fagel, his Ambassador Extraordinary and Plenipotentiary to the Court of H. B. M., who after having exchanged their full powers and found them in good and due form, have agreed upon the following articles:

ART. 1.

His Britannic Majesty engages to restore to the Prince Sovereign of the United Provinces of the Netherlands, within the time which shall be specified here below, the colonies, factories and establishments of which Holland was in possession at the beginning of the late war, that is to say, on the 1st of January 1803, in the seas and continents of America, Africa and Asia, with the exception of the Cape of Good Hope and of the establishments of Demerara, Essequibo and Berbice, which the High Contracting Parties reserve the right to dispose of by a supplementary convention which shall be adjusted at once in conformity with the mutual interests of both parties, and more especially in relation to the stipulations contained in articles 6 and 9 of the treaty of peace concluded between His Britannic Majesty and His Most Christain Majesty on the 30th of May 1814.

ART. 2.

His Britannic Majesty agrees to cede in all sovereignty to the Prince Sovereign of the United Provinces of the Netherlands, the Blanca island, situated in the eastern seas, in exchange for the establishment of

Cochin and its dependences on the coast of Malabar, which shall be left in all sovereignty to His Britannic Majesty.

ART. 3.

The stronghold and forts in the colonies and establishments ceded and exchanged by the two High Contracting Parties by virtue of the two preceding articles, shall be delivered in the same state in which they may be at the moment of signing the present convention.

ART. 4.

His Britannic Majesty promises to allow the subjects of His Royal Highness the Prince Sovereign of the United Provinces of the Netherlands, to enjoy, in regard to commerce and to the safety of their persons and property, within the limits of the British dominions on the Indian Continent, the same facilities, privileges and protection which have been granted or may hereafter be granted to the subjects of the most favoured nation.

On his side, H. R. H., wishing for nothing more earnestly than for the perpetuity of peace between the crown of England and the United Provinces of the Netherlands, and wishing from now and as far as lies in his power to remove all that might at any time disturb the good understanding which exists in the relations of both nations, promises not to erect any fortifications in the establishments which are to be restored to him and are situated on the borders of the British dominion in the Indian Continent, and not to maintain therein a larger number of troops than is necessary for the preservation of order.

ART. 5.

The colonies, factories and establishments which are to be ceded to H. R. H. the Prince Sovereign of the United Provinces of the Netherlands by His Britannic Majesty in the seas and Continent of America shall be delivered to him within three months from the ratification of the present convention.

ART. 6.

The High Contracting Parties being desirous of casting in oblivion the differences which have agitated Europe, declare and promise hereby that in the countries restored and ceded by this treaty no person of whatever class or condition shall be prosecuted, disturbed or molested under any pretext whatsoever, or on account of their political conduct or opinions or their attachment to either one of the Contracting Parties or to Governments which may have ceased to exist, or for any other cause, excepting for debts contracted with third parties or by acts posterior to the present treaty.

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ART. 7.

In all the countries which are to change sovereigns, both by virtue of the present convention or by arrangements which may be made in consequence thereof, the inhabitants, natives or foreigners, of whatever class and condition, shall be granted a period of six years, counted from the date of the exchange of the ratifications, to dispose of their property, if they see fit to do so, whether acquired before or after the late war, and to go to the country which they may elect.

ART. 8.

Being moved by an earnest desire to cooperate in the most effectual manner with H. M. the King of the United Kingdom of Great Britain and Ireland in obtaining the abolition of the trade of slaves on the coast of Africa, and having issued a decree of his own accord, under date of the 15th of June, 1814, whereby he commands that no vessel destined for said trade shall be equipped at or sail from the ports or garrisons of his States, or shall be admitted to the forts or possessions of the coast of Guinea, and that no inhabitant of those regions shall be sold or exported as a slave, the Prince Sovereign of the United Provinces of the Netherlands hereby further engages to prohibit his subjects, in the most effectual manner and under the severest penalties, from taking any part whatever in this inhuman trafic.

ART. 9.

The present convention shall be ratified and the ratifications shall be duly exchanged in London within the term of three weeks or sooner if possible.

In witness whereof we the undersigned plenipotentiaries have signed the present convention, by virtue of our respective powers, and have sealed it with the seals of our arms.

Done in London on the 10th of August, 1814.

[L. S.] CASTLEREAGH. [L. S.] H. FAGEL.

FIRST ADDITIONAL ARTICLE.

In order to further ensure the defense and the reunion of the United Provinces to Holland, as well as with the object of securing for His Swedish Majesty, according to Article IX of the Treaty of Paris, a suitable compensation for the rights which he ceded by virtue of the same article, which compensation it is understood that Holland shall be obliged to provide after the said reunion has been effected in conformity with said stipulations, the High Contracting Parties have agreed by the present article that His Britannic Majesty shall take the following charges upon himself:

No. 483.

1. The payment of one million pounds sterling to Sweden for the aforesaid demands and in consequence of a convention which has been concluded and signed this day with the Plenipotentiary of His Swedish Majesty, of which convention a copy is annexed to the present additional articles.

2. The sum of two million pounds, to be employed with the concurrence of the Prince Sovereign of the United Provinces of the Netherlands, besides a like sum which shall be furnished by the latter Prince for the increase and fortification of a line of defense of the Netherlands.

3. To defray, jointly with Holland, and in equal parts, all the ulterior expenses which may be determined and agreed upon by common consent by the High Contracting Parties and their allies, with the object of consolidating and definitively establishing, in a satisfactory manner, the union of the Netherlands and Holland under the rule of the House of Orange, the quota to be furnished by Great Britain not to extend three millions pounds sterling.

In consideration of the engagements above mentioned, the Prince Sovereign of the Netherlands consents to cede in all sovereignty to His Britannic Majesty the Cape of Good Hope and the establishments of Demerara, Essequibo and Berbice, on condition, however, that the subjects of H. R. H. the Prince Sovereign, who own property in said colonies or establishments, shall be at liberty (saving the regulations which shall be agreed upon in a supplementary convention) to navigate and trade between said establishments and the territories of said Prince Sovereign in Europe.

The High Contracting Parties have furthermore agreed that ships of all kinds belonging to Holland shall be freely admitted in the Cape of Good Hope, to furnish themselves with victuals and to make the necessary repairs, without having to pay any higher duties than those paid by English subjects.

SECOND ADDITIONAL ARTICLE.

The small district of Bernagore, situated near the city of Calcutta, being required to ensure tranquillity and order in said city, the Prince of Orange agrees to cede said district to His Britannic Majesty, who shall pay to His Royal Highness the annual sum which, in the judgment of Commissioners who shall be appointed by both parties, shall be just and reasonable; and the profits and revenues which the Dutch Government generally derives from the district in question shall be taken into account.

THIRD ADDITIONAL ARTICLE.

The present additional articles shall have the same force and validity

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that they would have if they had been introduced word by word in the convention which has been signed this day. They shall be ratified and the ratifications exchanged at the same time and place.

In witness whereof we, the undersigned plenipotentiaries, have signed them and sealed them with the seals of our arms.

Done in London on the 13th of August, 1814.

[L. S.] CASTLEREAGH.
[L. S.] H. FAGEL.

No. 484.

Treaty of Peace and Recognition between Venezuela and Spain, March 30, 1845.

The Republic of Venezuela on the one part and H. M. the Queen of Spain Doña Isabel II on the other part, being desirous of effacing the traces of the late struggle and of fomenting by means of a public and solemn act of reconciliation and peace, the good relations which already exist between the citizens and subjects of both States, and which will become closer each day, to their mutual benefit, have resolved to conclude, with this laudable end in view, a treaty of peace, based upon the principles of justice and of reciprocal convenience; and the Republic of Venezuela has appointed as her Plenipotentiary. Señor Alejo Fortique, Judge of the Superior Court of Caracas, and at present Envoy Extraordinary and Minister Plenipotentiary of the Republic to H. B. M., and H. C. M., Don Francisco Martinez de la Rosa, Knight Grand Cross of the Royal and distinguished Order of Charles III, of that of Christ of Portugal of that of Leopold of Belgium and of the Saviour of Greece, her Minister of State, who after having communicated their full powers to each other and found them in good and due form have agreed upon the following articles:

ARTICLE FIRST.

H. C. Majesty, making use of the power vested in her by decree of the Cortes Generales of the Kingdom, of 4th of December, 1836, renounces for herself, her heirs and successors the sovereignty, rights and action which she has upon the American territory known under the old name of Captaincy General of Venezuela, now Republic of Venezuela.

ART. 2.

In consequence of this renunciation and cession H. M. recognizes the Republic of Venezuela as a free, sovereign and independent nation, com-

Annex 4

Treaty of Peace and Recognition between Venezuela and Spain, 30 March 1845

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 484, pp. 48-53)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 483.

that they would have if they had been introduced word by word in the convention which has been signed this day. They shall be ratified and the ratifications exchanged at the same time and place.

In witness whereof we, the undersigned plenipotentiaries, have signed them and sealed them with the seals of our arms.

Done in London on the 13th of August, 1814.

[L. S.] CASTLEREAGH.
[L. S.] H. FAGEL.

No. 484.

Treaty of Peace and Recognition between Venezuela and Spain, March 30, 1845.

The Republic of Venezuela on the one part and H. M. the Queen of Spain Doña Isabel II on the other part, being desirous of effacing the traces of the late struggle and of fomenting by means of a public and solemn act of reconciliation and peace, the good relations which already exist between the citizens and subjects of both States, and which will become closer each day, to their mutual benefit, have resolved to conclude, with this laudable end in view, a treaty of peace, based upon the principles of justice and of reciprocal convenience; and the Republic of Venezuela has appointed as her Plenipotentiary. Señor Alejo Fortique, Judge of the Superior Court of Caracas, and at present Envoy Extraordinary and Minister Plenipotentiary of the Republic to H. B. M., and H. C. M., Don Francisco Martinez de la Rosa, Knight Grand Cross of the Royal and distinguished Order of Charles III, of that of Christ of Portugal of that of Leopold of Belgium and of the Saviour of Greece, her Minister of State, who after having communicated their full powers to each other and found them in good and due form have agreed upon the following articles:

ARTICLE FIRST.

H. C. Majesty, making use of the power vested in her by decree of the Cortes Generales of the Kingdom, of 4th of December, 1836, renounces for herself, her heirs and successors the sovereignty, rights and action which she has upon the American territory known under the old name of Captaincy General of Venezuela, now Republic of Venezuela.

ART. 2.

In consequence of this renunciation and cession H. M. recognizes the Republic of Venezuela as a free, sovereign and independent nation, com-

posed of the provinces and territories mentioned in her Constitution and other posterior laws, to wit: Margarita, Guayana, Cumana, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure, Merida, Trujillo, Coro and Maracaibo and any other territories or islands which may belong to her.

ART. 3.

There shall be a complete forgetfulness of the past and a general amnesty for all the citizens of the Republic of Venezuela, and Spaniards without exception, whichever party they may have followed during the war and the dissensions which are happily brought to an end by the present treaty.

This amnesty is stipulated and is to be granted through the high interposition of H. C. M. as a proof of her desire to base upon principles of benevolence the peace, union and close friendship which shall henceforth be preserved between her subjects and the citizens of the Republic of Venezuela.

ART. 4.

The Republic of Venezuela and H. C.-M. have agreed that their respective subjects and citizens shall fully preserve the right to demand and obtain justice and complete satisfaction for the debts which they may have contracted between themselves *in good faith*, as also that no obstacles or impediment shall be put in their way by the public authorities in the rights which they may allege, on account of marriage, inheritance by testament or *ab intestato*, succession or any other title of acquisition which is recognized by the laws of the country in which the claim is presented.

ART. 5.

The Republic of Venezuela, impelled by feeling of justice and equity spontaneously recognizes as a national consolidated debt, the sum to which may amount the debt of the treasury of the Spanish Government which may be registered in the books of the Treasury of the old Captaincy General of Venezuela, or which may be proved in any other equivalent and lawful manner; but as it is difficult, on account of the peculiar circumstances in which the Republic is at present, and of the disastrous war which is now happily ended, to definitively determine this point, and both parties being anxious to conclude this treaty of peace and friendship as soon as possible and as their mutual interest demands, they have agreed to leave the decision of it for later arrangement. It must be understood, however, that the sums which according to this arrangement shall prove qualified and are admitted as being lawfully owed, shall as long as they are not paid, bear an interest of five per cent. per annum, to

be reckoned from one year after the exchange of the ratifications of the present treaty, and said debt to be subject to the general rules established on the subject in the Republic.

ART. 6.

All property movable or landed, jewels, money or effects of any other kind which on account of the war, may have been seized or confiscated from citizens of the Republic of Venezuela or from subjects of H. C. M., and may be still at the disposal of the Government in whose name the seizure or confiscation has been made, shall be immediately restored to their former owners or to their heirs or legal representatives, without the latter having the right to claim anything for the proceeds which said property may have or could have yielded from the time of the seizure or confiscation.

ART. 7.

Neither can any claim be presented by either party for the damages or the improvements which may have been since then made in said property for any motive whatsoever.

ART. 8.

The owners of property movable or landed, which, having been seized or confiscated by the Government of the Republic may have been since sold, adjudicated or disposed of in any manner by the Government, shall receive from the latter a suitable compensation. This indemnity shall be given, at the option of the owners, in bonds of the consolidated debt of the Republic, bearing an annual interest of three per cent. to be reckoned from one year after the exchange of the ratifications of the present treaty, from which date they shall have the same chances as other creditors of the same kind of the Republic, or in lands belonging to the State. For the indemnity either in bonds as aforesaid or in lands, the value shall be taken into account, which the property had at the time of the seizure or confiscation; in all of which it shall be proceeded in good faith and in an amicable manner and not judicially, in order to avoid all causes of discontent between the subjects of both countries and to prove on the contrary, the mutual wish for peace and fraternity which possesses every body.

ART. 9.

If the indemnity is in the form of bonds of the consolidated debt, the Government of the Republic shall issue a document of credit against the State, which shall bear the above mentioned interest from the time fixed in the preceding article, even though the document be issued at a later

period ; and if in the form of public lands, after one year following the exchange of the ratifications, it shall be added to those given as an indemnity for the lost ones, an extent of land equivalent to the proceeds which would have been yielded by the original property, if said lands are delivered within one year after the exchange of the ratifications or sooner, so that the indemnity shall be effectual and complete when it is effected.

ART. 10.

The citizens of the Republic of Venezuela or the Spanish subjects who, by virtue of what has been stipulated in the preceding articles, may have a claim against either one of the two Governments, shall present it within the period of four years counted from the date of the exchange of the ratifications of the present treaty, accompanied by a brief statement of the facts, supported by bona fide documents to justify the genuineness of the claim ; after the aforesaid four years have elapsed, no new claims of this kind shall be admitted under any pretext whatsoever.

ART. 11.

In order to remove all grounds for disagreement about the meaning and the exact execution of the preceding articles, the two Contracting Parties declare that they shall not reciprocally present any claim for damages or prejudice caused by the war or in any other manner, confining themselves to those stipulated in this treaty.

ART. 12.

Impelled by the like feelings, and in order to remove all cause for future claims or complaints, both Parties reciprocally promise not to permit in their respective territories any conspiracy against the safety and tranquility of the other State, preventing on the contrary any expedition which may be prepared with such a prejudicial purpose, taking against the persons guilty of such intents the most efficient measures that the laws of each one of the countries may permit.

ART. 13.

In order to at once and forever efface all traces of division between the subjects of both countries who are now united by the bonds of the same origin, religion, language, customs and affections, the two Contracting Parties have agreed :

1.—That the Spaniards who for special reasons may have resided in the Republic of Venezuela and adopted the nationality of that country, shall be allowed to resume their original nationality, a period of one

year being granted them to avail themselves of this right, counted from the date of the exchange of the ratifications of the present treaty. This shall be done by entering their names in the register of Spaniards which shall be opened in the Legation or Consulate of Spain which shall be established in the Republic in consequence of this treaty; and due notice shall be given to the Government, of the number, profession and business of those who shall prove to be Spaniards in the register, on the day that the latter is closed after the expiration of the appointed time. After this time has elapsed, shall be considered as Spaniards only those coming from Spain and her dominions and those who, through their nationality, are the bearers of passports issued by Spanish authorities, and enter their names in said register immediately upon their arrival.

2.—Venezuelans in Spain and Spaniards in Venezuela shall be at liberty to own all kinds of moveable or landed property, to keep establishments of all kinds, to exercise all kinds of industry and trade, whether wholesale or at retail; those who are thus established being considered in each country as national subjects, and as such, subject to the laws of the country where they own property, reside or exercise their industry or commerce; they shall likewise be at liberty to carry their property integrally away from the country, to dispose of it, to succeed by testament or *ab intestato*; all this in the same terms and under the same conditions as natives of the country.

ART. 14.

Citizens of the Republic of Venezuela in Spain, and Spanish subjects in Venezuela, shall not be compelled to serve in the army, navy or national militia, and shall be exempted from all forced loans, only paying for the property which they may own or the industry they may exercise the same taxes as natives of the country.

ART. 15.

The Republic of Venezuela and H. C. M. hereby agree to proceed as soon as possible to the adjustment of a treaty of commerce based upon principles of mutual profit and advantages.

ART. 16.

In order to facilitate commercial relations between both States, the merchant ships of each one of the countries shall be admitted into the ports of the other with the same advantages which are enjoyed by those of the most favoured nations, without having to pay any other or higher duties than those known under the name of harbour duties, as they are paid by the ships of the most favoured nation.

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ART. 17.

The Republic of Venezuela and H. C. M. shall have the right of appointing Diplomatic and Consular agents in the dominions the one of the other; and these agents having been accredited and recognized, shall enjoy the same franchises, privileges and immunities that are enjoyed by those of the most favoured nation.

ART. 18.

The Consuls and Vice Consuls of the Republic of Venezuela in Spain, and those of Spain in Venezuela, shall intervene in the successions of the subjects of either country who may be established, residing or transient in the territory of the other, whether by testament or *ab intestato;* likewise in the case of wrecks or disasters of ships, they may issue passports to the respective subjects, and in general exercise all the functions inherent to their position.

ART. 19.

Being desirous of preserving the peace and harmony which have been happily re-established by the present treaty, the Republic of Venezuela and H. C. M. hereby solemnly and formally declare:

1.—That any advantage which may be acquired by them, by virtue of the preceding articles, is and shall be understood to be a compensation for the benefits which are mutually conferred by the same articles; and

2.—That if, as it is to be deprecated, the harmony should be interrupted, which should exist in future between the Contracting Parties, through a misunderstanding of the articles hereby agreed upon, or for some other motive of offence or complaint, neither of the Parties shall permit acts of hostility or of reprisal to be committed either on land or at sea, without having previously presented the one to the other a justificatory memorial of the facts upon which the complaint or offence is grounded, and unless a suitable apology be refused.

ART. 20.

The present treaty, containing twenty articles, shall be ratified, and the instruments of ratification shall be exchanged in this Court within the term of eighteen months counted from the day on which it was signed, or sooner if both parties desire it.

In witness whereof the respective Plenipotentiaries have signed it and have affixed thereto their private seals.

Done in Madrid on the thirtieth day of March one thousand eight hundred and forty-five.

[L. S.] ALEJO FORTIQUE.

[L. S.] FRANCISCO MARTINEZ DE LA ROSA.

Annex 5

Treaty of Arbitration between Great Britain and the United States of Venezuela, Washington D.C., 2 February 1897

Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GB-VE_970202_Treaty%20of%20Arbitration.pdf

Treaty of Arbitration between Great Britain and the United States of Venezuela

Washington D.C., 2 February 1897

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of Venezuela, being desirous to provide for an amicable settlement of the ques-tion 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 of Great Britain and Ireland, 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 Distin-guished 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 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 ap-pointed 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 for 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 re-spectively 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 appli-cable 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 set-tlement 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 interna-tional 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 Tribu-nal 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 re-spectively.

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 offi-cial 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 ap-pointment 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 expira-tion 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 ei-ther 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 writ-ten 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 for 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 Presi-dent 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

Annex 6

Venezuela and United Kingdom of Great and Northern Ireland, Agreement to Resolve the Controversy over the Frontier between Venezuela and British Guiana, Geneva, 17 February 1966 (Geneva Agreement)

Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GB-VE_660217_Agreement%20to%20Resolve%20Controversy%20over%20Frontier%20British%20Guiana.pdf

No. 8192

VENEZUELA
and
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966

Official texts : Spanish and English.

Registered by Venezuela on 5 May 1966.

VENEZUELA
et
ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD

Accord tendant à régler le différend relatif à la frontière entre le Venezuela et la Guyane britannique. Signé à Genève, le 17 février 1966

Textes officiels espagnol et anglais.

Enregistré par le Venezuela le 5 mai 1966.

No. 8192. AGREEMENT [1] 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 Government of the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana, and the Government of Venezuela ;

Taking into account the forthcoming independence of British Guiana ;

Recognising that closer cooperation between British Guiana and Venezuela could bring benefit to both countries ;

Convinced that any outstanding controversy between the United Kingdom and British Guiana on the one hand and Venezuela on the other would prejudice the furtherance of such cooperation and should therefore be amicably resolved in a manner acceptable to both parties ;

In conformity with the agenda that was agreed for the governmental conversations concerning the controversy between Venezuela and the United Kingdom over the frontier with British Guiana, in accordance with the joint communiqué of 7 November, 1963, have reached the following agreement to resolve the present controversy :

Article I

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 [2] about the frontier between British Guiana and Venezuela is null and void.

Article II

(1) 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.

(2) The Government appointing a representative may at any time replace him, and shall do so immediately should one or both of its representatives be unable to act through illness or death or any other cause.

[1] Came into force on 17 February 1966, the date of signature, in accordance with article VII.

[2] *British and Foreign State Papers*, Vol. 92, p. 160 (see also United Kingdom : *Treaty Series No. 5* (1897), C. 8439, for text of Treaty of 2 February 1897).

(3) The Mixed Commission may by agreement between the representatives appoint experts to assist the Mixed Commission, either generally or in relation to any individual matter under consideration by the Mixed Commission.

Article III

The Mixed Commission shall present interim reports at intervals of six months from the date of its first meeting.

Article IV

(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.

Article V

(1) In order to facilitate the greatest possible measure of cooperation and mutual understanding, 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.

(2) No acts or activities taking place 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 create any rights of sovereignty in those territories, except in so far as such acts or acti-

vities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela. No new claim, or enlargement of an existing claim, to territorial sovereignty in those territories shall be asserted while this Agreement is in force, nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being.

Article VI

The Mixed Commission shall hold its first meeting at a date and place to be agreed between the Governments of British Guiana and Venezuela. This meeting shall take place as soon as possible after its members have been appointed. Thereafter the Mixed Commission shall meet as and when agreed between the representatives.

Article VII

This Agreement shall enter into force on the date of its signature.

Article VIII

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

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Geneva this 17th day of February, 1966, in the English and Spanish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

Michael STEWART
Secretary of State for Foreign Affairs

L. F. S. BURNHAM
Prime Minister of British Guiana

For the Government of Venezuela :

Ignacio IRIBARREN BORGES
Minister for Foreign Affairs

Annex 7

Guyana, United Kingdom of Great Britain and Northern Ireland and Venezuela, Protocol to 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, Geneva, 17 February 1966 ("Protocol of Port Spain"), Port Spain, 18 June 1970

Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GY-GB-VE_700618_ProtocolPortSpain%28eng%29.pdf

No. 11410

GUYANA, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND and VENEZUELA

Protocol to 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 (" Protocol of Port of Spain "). Signed at Port of Spain on 18 June 1970

Authentic texts: English and Spanish.

Registered by Guyana on 19 November 1971.

GUYANE, ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD et VENEZUELA

Protocole à l'Accord tendant à régler le différend entre le Venezuela et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord relatif à la frontière entre le Venezuela et la Guyane britannique signé à Genève le 17 février 1966 (« Protocole de Port of Spain »). Signé à Port of Spain le 18 juin 1970

Textes authentiques: anglais et espagnol.

Enregistré par la Guyane le 19 novembre 1971.

PROTOCOL OF PORT OF SPAIN [1]

The Government of Guyana, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Venezuela,

Having received on this date the Final Report dated 18th June, 1970 of the Mixed Commission established by the Agreement 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, signed at Geneva on 17th February, 1966 [2], hereinafter referred to as the Geneva Agreement;

Convinced that the promotion of mutual confidence and positive and friendly intercourse between Guyana and Venezuela will lead to an improvement in their relations befitting neighbouring and peace-loving nations, have agreed as follows:

Article I

So long as this Protocol remains in force and subject to the following provisions the Government of Guyana and the Government of Venezuela shall explore all possibilities of better understanding between them and between their peoples and in particular shall undertake periodical reviews, through normal diplomatic channels, of their relations with a view to promoting their improvement and with the aim of producing a constructive advancement of the same.

Article II

(1) So long as this Protocol remains in force no claim whatever arising out of the contention referred to in Article I of the Geneva Agreement shall be asserted by Guyana to territorial sovereignty in the territories of Venezuela or by Venezuela to territorial sovereignty in the territories of Guyana.

[1] Came into force on 18 June 1970 by signature, in accordance with article VI.
[2] United Nations, *Treaty Series*, vol. 561, p. 321.

(2) In this Article, the references to the territories of Guyana and the territories of Venezuela shall have the same meaning as the references to the territories of British Guiana and the territories of Venezuela respectively in the Geneva Agreement.

Article III

So long as this Protocol remains in force the operation of Article IV of the Geneva Agreement shall be suspended. On the date when this Protocol ceases to be in force the functioning of that 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 first jointly declared in writing that they have reached full agreement for the solution of the controversy referred to in the Geneva Agreement or that they have agreed upon one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations.

Article IV

(1) So long as this Protocol remains in force Article V of the Geneva Agreement (without prejudice to its further operation after this Protocol ceases to be in force) shall have effect in relation to this Protocol as it has effect in relation to that Agreement, subject to the substitution for the words " British Guiana " wherever they occur in that Article of the word " Guyana ", and subject to the deletion from paragraph (2) of that Article of the following phrases:

(*a*) " , except insofar as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela "; and

(*b*) " , nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being ".

(2) The signing and the continuance of this Protocol shall not be interpreted in any way as a renunciation or diminution of any rights which any of the parties may have of the date on which this Protocol is signed or as a recognition of any situation, practice or claim existing at that date.

Article V

(1) This Protocol shall remain in force for an initial period of twelve years, renewable thereafter, subject to the provisions of this Article, for successive periods of twelve years each.

COLONIAL DOCUMENTS

Annex 8

Letter from Antonio De Berrío to the King, 2 December 1594 (Translation)

From *Archivo General de Indias*, ESCRIBANÍA, 1011A, Piece 8. Year 1594.

Sir:

For fifty-two years I have served Your Majesty and Emperor Carlos V, of glorious memory, our lord and father of Your Majesty, in all the wars in Germany, Italy, Barbary and Flanders, and I came to do so by order of Your Majesty in the War of Granada, where I served in different places as a governor.

The services I have rendered for Your Majesty, being rendered to a King so Christian and so notorious, there is no need for me to mention them. I will only say that so far three brothers of mine have died in the war: one in Piedmont, the other in the War of Granada as my ensign, and the third in the naval war that Your Majesty's General Lord Don Juan of Austria won against the Turk.

And when the War of Granada was over, being governor of the Alpujarras, I married the daughter of Colonel Hernando de Oruña, who served Your Majesty for fifty years in the manner that Your Majesty and everyone knows, and at the end he and his sons died in the War of Granada, and at that time Don Gonzalo Jiménez de Quesada died. He was the *Adelantado* of the New Kingdom of Granada who discovered, populated and conquered that Kingdom in the name of Your Majesty. At his death, he left as his successor Doña María de Oruña, my wife, because she was the daughter of his eldest sister and he had no other successor with more right, and entrusted to me the journey they call *El Dorado*, which he had begun, having capitulated it with Your Majesty. And, for further service, considering it just to take charge of so great a thing and of which so much increase and profit came to the Royal Crown, with Your Majesty's licence, I went to the New Kingdom of Granada in the year eighty, and having arrived there, by virtue of the capitulations that the *Adelantado* had concluded with Your Majesty, I established a new formal agreement with the Royal Court of that Kingdom, which Your Majesty confirmed; and without losing any time, at the beginning of January eighty-two, I set out with the best army I could, in pursuit of the said journey. Having arrived at the plains,

with my back to the mountain range of the said Kingdom, I walked southwards along the plains for more than two hundred and fifty leagues, and I crossed the Pauto River, which is the beginning of the limits of my governorate, and then the Dabne and Ubarro rivers, which are all large, and having passed them, on Palm Sunday of the said year, I went to the mountain ranges on the other side of the Llanos, so desired and sought after by so many captains for so many years.

There, near it, I came across two other very large rivers, one called Guixar and the other Goayhuare, which, not being able to break off to the right as they were going towards the large mountain ranges, turn towards the sea and there all the rivers I have mentioned join together with those of Bita and Pauto, which are all famous. But there is also an infinity of other small rivers and lagoons that flow there, which all together make a very large river which in that province is called Barraguán, which I crossed after building, with great difficulty, a large boat. For this I tried again to cross the sierra and mountain ranges because of the great news that the natives there gave me that, past the mountain ranges, on the other side, there was a very large sum of natives and gold and other great things, but although I tried many times I did not succeed, with the cows and horses that I carried with me in great numbers. Then, I tried to find out about the Papamene River, which marks the other limits of my governorate where I was going, and the most certain information I learned was that it has its source in the mountains of San Juan de los Llanos, which is in the last part of the New Kingdom of Granada, and runs towards Pasto, where it joins an infinite number of other very large rivers, and breaks through the mountain range itself and flows into the Marañón.

This is the most certain information that we have because this river, being so large, does not go down to the sea in these parts of the mountain range and being so, nor having been able to reach the sea, it is certain that it has broken through some part of the less rugged mountain range and flows into the Marañón, which is many leagues away. This is what I have been able to learn about these two rivers, and while working and trying to cross the mountain range with the great news that we had, the people worked so hard that their work and the movement of land and maintenance and the lack of them was the cause that made most or all of them sick, and I was forced by sheer necessity to return, which I did by a different route on which I was able to navigate by the rivers and I had news that I would find the entrance further down, and with this I returned to the New Kingdom, having spent seventeen months on the road alone from the moment I entered the Llanos to the time I left.

Having returned to the New Kingdom and with the health of many restored, and accompanied by others who joined me, I set out again, for the second time, with a tremendous cost and equipment and more than five hundred horses and as many cows. I took the route further down than the first time, crossing a large number of marshes, lagoons, swamps and uninhabited and unhealthy land. I went straight to Barraguán, which is more than a league wide in that place, and after the whole army and baggage had passed, I tried again to break through the Barraguán. Because of the roughness of the sierras, it was not possible to ride on horseback and it took me twenty-eight months this second time, and I went down the mountain range for more than two hundred leagues, cutting down more and more, and the news improved so that the more work we went through the more we were eager to cross. And at that moment, one of the captains who came with me, called Gonzalo de Piña, mutinied against me and with his mutiny a large part of the people left me, so much so that this forced me to leave too because I had no strength left to get through, notwithstanding the work I have described and having spent more than a hundred thousand pesos of fine gold on these two occasions.

I armed and geared up for the third time and decided to come by land and water, and so I managed to cross twenty-two canoes and as many rafts, all loaded with victuals, supplies and ammunition, bringing only a few cows to eat on the way. With this arrangement by water and up to two hundred horses by land I walked another round to Barraguán River itself because there was no other passage. I crossed it by embarking on the Casanare, which is a large river that enters into the Pauto River and the Pauto into the Barraguán, and further down, about fifty or sixty leagues, it loses the name of Barraguán and is called Orinoco, which name lasts until it reaches the sea, so that it is well understood that Pauto, Casanare and Meta and many other rivers that I have and have not named all have their source in the mountain range of the New Kingdom of Granada, and they are named according to the provinces through which they pass until they take the name of Orinoco, with which name it enters the sea in front of the Island of Trinidad, less than three leagues across. And the Papamene, which flows towards Pasto through that region, joins the other rivers and breaks through those large mountain ranges and joins the Marañón. And from here it will be understood that the *Adelantado* Don Gonzalo Jiménez, as a very prudent and discreet man, took the known boundaries of the four hundred square leagues given to him for a governorate, and that Don Pedro de Silva and the said *Adelantado* always aspired to a property of their own, but Diego Fernández de Serpa, although he almost aspired to a property of his own, is different because he asked Cumaná for limits because he had Your

Majesty's salary and Cumaná was populated, and from there it ran to the hill of Caburuto and the Gulf of Paria, which all fall on the part of the Pauto that is called Orinoco towards the Llanos and Cumaná. And what he and Don Pedro de Silva and the *Adelantado* capitulated was of their property.

Don Pedro de Silva died twenty years ago, and that governorate was left to Your Majesty, and Diego Fernández de Serpa died some years before, and the governorate was left to his son, who left it to Your Majesty. In recompense for this, Your Majesty gave him a good reward of natives in Cartagena, and no one of these two nor any of theirs has returned to continue this journey, but only the *Adelantado*, who began it twenty-five years ago and spent three and a half years on it, and from the hard work he died, leaving it in my charge. And I embarked on it thirteen years ago and I have never left it out of my hands.

Now, continuing with my account of the third time that I left and crossed the Barraguán with the whole army, having spent some months looking for a way to cross the mountain range, I decided to stay for the winter, and when the summer came, I left in pursuit of my journey and returned again by various places to try to break through the mountain range and in no way was I able to do so, having great news and the certainty that it was impossible to cross the mountain range if I did not go down the Orinoco and arrive at the province of Caroní, which is called by another name, the provinces of Moriquite and Carapana. Knowing this and having lived the worst calamities ever faced in the Indies, and after two parts of the people died or ran away, and with the largest part of the people remaining determined to return to the Kingdom, and considering that if I returned this time my pretensions would come to an end, I decided to take the great risk of going down to the river to the place where I could find poles to build ships. And God wanted by way of a miracle to give me five of them all together, the largest and the most beautiful I had ever seen in my life, and having found them, I decided to kill all the horses because the soldiers had lost hope of returning to the Kingdom, and with the salt that we had brought with us, we made some dried beef to eat there while the canoes were being built, for we were in great need, and with the meat that we had left, almost without other provisions, entrusting myself to God and to luck, I set off down the river and walked along it for about two hundred and fifty leagues until I reached the Caroní River, which flows down to the large and rich provinces that we call El Dorado, there and at Moriquite and Carapana, which is a small district.

I stopped for five months and found out for certain that all that I had been told was true and that the mountain ranges ended there and that the land was healthy, well populated and full of gold, and the road was peaceful and good until I reached the beginning of the great provinces that I was looking for. And from there I sent people to the Island of Trinidad to find out if it was populated because I had written to Your Majesty begging for it to be populated because I always knew that no help could come to me except from that island, and Pedro de Ledezma had written to me that Your Majesty had seen my letter and would order that the said island be populated, and seeing that it was not populated, my stay up there was of no use, and considering that the island came within my demarcation under a chapter of my capitulation granted by Your Majesty to the *Adelantado* first and then to me, I agreed to come to the said island, and entered it on the first of September ninety-one, where I spent twenty days examining it and determining where I could populate it.

And knowing that all I had done was work in vain, since the island was not populated, and because I lacked supplies and ammunition, I decided to go on to Margarita to get the necessary things ready, and from there I wrote to Your Majesty giving an account of some of the things I have mentioned here and saying how I was preparing myself to return to populate the said island without spending any time because it was convenient for Your Majesty's service. And then I dispatched Domingo de Vera Ibargoyen, who serves Your Majesty as Camp Master on this journey, to go to Caracas and gather as many people as he could, which he did with great haste.

With the people he brought and with the people I had, he put forty men in a boat and three canoes that could not fit any more, nor did he have any ships or natives to sail, because Don Juan Sarmiento, governor of Margarita, had decided to disrupt me, and then I sent him as many others with whom he populated the Island of Trinidad, so that when I took possession of it, it was the first of September ninety-one. And when it was populated, having looked at it and surrounded it, it was the nineteenth of May ninety-two, as shown in the documents that I sent to Your Majesty with Pedro de Ysasi, the captain of a ship, and when I had it populated, Your Majesty recalled that I had begged him by my letter to populate it.

A formal agreement was made with Francisco de Vides, a neighbour of Caracas, and he was granted the governorate of Cumaná, as it appears from his documents, on condition that within six months after having arrived at the said Cumaná he was obliged to populate the said

Island of Trinidad and then successively La Granada, and other things that he might be ordered to do. The said Francisco de Vides came to the Indies and entered Cumaná on Christmas Eve of ninety-two, which is sixteen months after I had entered the said Island of Trinidad and eight months after I had had it populated. When I found out that he had arrived and the documents he had, and in view of the fact that I needed people to begin to populate or at least to position myself at the gates of those great provinces, I wrote him a letter with the greatest humility imaginable, almost asking him, for the love of God, that since he had made a capitulation with Your Majesty to populate this island and to put a hundred men on it, and that because he was populating this island, he would be given Cumaná, to comply with the service and obligation that he owed to Your Majesty and send me seventy soldiers well prepared with ammunition and the things that I needed, and told him that notwithstanding the fact that I had populated this island and that it fell in my demarcation, I would beg Your Majesty to order me to hand it over to him, and that with those seventy men and with the eighty men I had, the island would be safe and I would go to the gates of those great provinces, and that in doing this I was serving God and Your Majesty and I would be very happy and pardon him more than twelve thousand pesos I had spent to populate this island. This letter was given to him and he confesses to having received it, but he did not want to reply to me.

Six months later, a royal decree from Your Majesty came to me, as precise as it could be in the world, in which he was ordered to favour me with all the people I requested and needed. I sent this letter to him with Captain Felipe de Santiago. And through a friar called Domingo de Santa Agueda I earnestly asked him —because at that time the Caribs had killed eleven very good soldiers and had me under siege somehow, and considering that English ships regularly came to this island to which much damage had been done—for the love of God, to recall both the mercy that Your Majesty had given him without him ever having served and the capitulation that he had concluded with Your Majesty, and help me, and that in doing so he would do what he owed and what Your Majesty ordered him to do. But he disregarded the royal decree and did not want to send a single man and would not even reply to my letter. For the sake of a lot of money, he had given licence or rather redeemed all the soldiers he brought from Spain, and now he has less than twenty of them left, adding guilt to guilt. I had sent Camp Master Domingo de Vera Ibargoyen to Caracas to dispatch to Your Majesty a document with the happy news that —with only thirty-five soldiers and a thousand ducats of payment— I had discovered and started to enter the very provinces of Mucura Goarai, and other things which I referred to in what I wrote.

The aforementioned Camp Master arrived in Cumaná but did not disembark, knowing that he was in possession of another decree like the one that Captain Santiago had, and the latter ordered him, at the risk of his life, to leave the port and not to disembark, and he did so. During the previous year, I had been in great need and in great difficulty because of the continuous war, and when I learned that a Flemish ship had come to Cumaná with a lot of ammunition, I sent two captains to buy me some and other things necessary for the journey. He imprisoned them and refused to let them go until they provided guarantees that they would not take people or anything else out of the town. After spending time in prison, these two captains left without bringing anything with them. Thirty-seven months had passed since I had this island, with great expense and labour, and a royal decree came to him from Your Majesty as he, in a sinister account, had reported I had come to this island after he was in the Indies, even though I had it before he had left the Indies for Spain. Bringing the said royal decree and twenty-five men, all from Cumaná and some canoemen, he came to this island to ask me to give it to him, not bringing any man to leave on it. If I took out the people I had here, which cost me so much, it would be deserted and depopulated, which being so, and the island being depopulated, everything I had done and worked for had been time and money lost.

I realised his evil intention within a calendar day of his serving me the royal decree with a man who was not a notary, but who, having wrongfully acted upon it, was condemned to the galleys as a forger. He left without wanting to give me the summons for me to reply, and he did other things and tried to do them so much in the service of Your Majesty that it is just to send a judge to punish these and other great crimes that he commits every day, and to order him to populate Granada instead of this island, because it is of great importance to the service of Your Majesty, and he has it thus capitulated.

And so that you may understand the reason why these great provinces have been sought for eighty years and have not been found, I will tell you here what I know and the truth as a man who has travelled so many leagues and for so many years in search of them.

The Orinoco River is a very big river and so big that I do not have knowledge that there are two bigger ones in what has been discovered. When it reaches the Caroní River, the land begins to be very low and is divided into seven branches and each branch of these into an infinite number of channels. All these branches and spouts enter the sea, each one by itself, and because of this respect and the growth of the sea, it floods more than forty leagues inland and

more than two hundred and fifty leagues of coastline, so that on dry land until now there was no place where a Spanish town could be built or where the ships and the great news could be unloaded. And the provinces are from the Caroní River upwards, although the entrance is by that very post, you have to walk a few leagues to the south and then turn the towns to the southwest and then to the west. As the Indians try to drive those who go to them out of their homes and the Spaniards saw that which was so waterlogged and bad, nobody ever got rid of [sic] the water itself and the news was from above, because of which they never came to get and know the right path and, better to say, it had not been God's will that it should be seen until now.

The state in which I now have this matter is that, as I wrote to Your Majesty, I sent everywhere to ask for help and they have not wanted to give it to me from any part, but by all possible means they hinder me so that no people come in, and it is well understood that the devil, as such a powerful protector and defender of this journey, blinds the minds of those who have to serve God and tries to turn them away from Your Majesty.

As I have written to Your Majesty, among those I sent was my son, so that he may begin to know how to serve as Colonel Hernando de Oruña, his grandfather, did, and as I have done. I brought him with me when he was thirteen years old and was the successor and heir to the *encomiendas* of the *Adelantado*. It may seem a pity that a child so tender and rich should have had to go through so much work, but it is my crown that he should begin to serve Your Majesty, so that he will know how to do it when he is a man. And as a person who cared more than anyone else, wishing to enjoy his labours, he sold all the property that remained to us in the New Kingdom of Granada and has begun to send me people down the river, which I have located in the province of Carapana. And he sent me word that he has many people assembled and that the weather has not allowed them to come in any way, and that at the beginning of the summer he and as many as he can bring will come down the rivers to the same place where the others are.

The said river is beginning to be visited and it becomes known that it is contrary to walk on it, and what took a year, in a month and less you can go from Carapana to Casanare. The river is so tame because it is so big that there is almost little difference between going and coming because the breeze assists you in going and the current helps you in coming. I wish I had the ability to know better how to declare and describe these things, in particular because

they are very great and it is convenient to know them, but as time goes by it will be done very easily. I beseech Your Majesty, in view of my many labours and the short life I have left, that Your Majesty may favour me by giving me warmth, favour and help so that before I die, I may leave some cities in those rich provinces populated and my body buried in them, since it costs you so much work, and may Your Majesty remember that I have nine children, six daughters and three sons, and that I have spent all their wealth serving Your Majesty.

To provide a better account of what I am saying, I am sending Domingo de Vera Ibargoyen, who has served and is serving Your Majesty on this journey as your Camp Master, and I beg Your Majesty to grant permission for the sale of five hundred licences of blacks that Your Majesty has granted me and to convert the proceeds into five hundred men and one hundred muskets and one hundred quintals of gunpowder and two hundred quintals of lead and twelve shoulder emery guns and half a dozen small bronze verses, and to punish Francisco de Vides for not having wanted to comply with Your Majesty's decrees and for having tried to thwart me, and to order him not to meddle in this island, because beyond (sic) being of my demarcation and Your Majesty having confirmed it twice, I populated it thirty-seven months before he came here and his intention was never to populate it but to depopulate it because being depopulated it serves him and the governors with neighbours from another Guinea, taking from this island a quantity of Indians, which is against what Your Majesty has ordered with severe penalties.

And if I do not have this island I cannot afford the things necessary for the population of those rich provinces and all that I have done is money and time wasted and Your Majesty cannot be well served, and if Francisco de Vides, when I asked him for the people, would have given it to me, which would have been of so much benefit to him, I would have populated some cities and Your Majesty would have been supplied with a large sum of gold, which is found in those provinces on the earth, but he never served Your Majesty and after this government was given to him, much less so.

On the Island of Trinidad, the second day of December in the year one thousand five hundred and ninety-four.

[Signed] Antonio de Berrío.

Annex 9

Orders of Cristobal Felix Guzman, Governor of Guiana, to Francisco de Venavides, his Lieutenant of War of Santo Thomé de la Guyana, 7 July 1711

Venezuela- British Guiana Boundary arbitration, The counter-case of the United States of Venezuela before the Tribunal of Arbitration to convene at Paris, under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3.

Available at: https://books.google.co.ve/books?id=--GfAAAAMAAJ&pg=PA16&lpg=PA16&dq=Orders+of+Cristobal+Felix+Guzman,+Governor+of+Guiana,+to+Francisco+de+Venavides,+his+Lientenant+of+War+of+Santo+Thomé+de+la+Guayana,+July+7,+1711,+in+case+of+an+invasión,+Archivo+General+de+Yndias+(Seville),+Stand+56,+Case+6,+Bundle+15.&source=bl&ots=mHWM81cOZt&sig=ACfU3U1DdZAakCtMEgvIOsjCEpjJARjAew&hl=en&sa=X&ved=2ahUKEwjnvpnGtveEAxXARjABHfw7C08Q6AF6BAgPEAM#v=onepage&q=Orders%20of%20Cristobal%20Felix%20Guzman%2C%20Governor%20of%20Guiana%2C%20to%20Francisco%20de%20Venavides%2C%20his%20Lientenant%20of%20War%20of%20Santo%20Thomé%20de%20la%20Guayana%2C%20July%207%2C%201711%2C%20in%20case%20of%20an%20invasión%2C%20Archivo%20General%20de%20Yndias%20(Seville)%2C%20Stand%2056%2C%20Case%206%2C%20Bundle%2015.&f=false

No. 8.

must forewith embark and leave this river, warning them that should they fail to comply with the orders and be captured a second time, they will forfeit all that is found with them and will be punished as transgressors of the orders and agreements; and this will not only apply to this (second) instance but to any other instance, when they may be found on this river. This act shall be made known to them for their instruction, and they shall be given letters of safe conduct, for to day, after which the foregoing shall be in force. Done on the said day, month and year.

No. 9.

Orders of Cristoval Felix de Guzman, Governor of Guiana, to Francisco de Venavides, his Lieutenant of War of Santo Thomé de la Guayana, July 7, 1711, in case of an invasion.

[Printed from translation of a certified copy of the original in the "Archivo General de Yndias" (Seville), Stand 36, Case 6, Bundle 15.]

Major Don Cristobal Felix de Guzman, Governor and Captain General of the City of San José de Oruña, Island of Trinidad and Provinces of El Dorado, Guayana, Naparimas, Aruacas, Pariagotos, Caribes, Guaraunos and their Royal Forces by the King our Master . . . etc.

By these presents I order and command Captain Don Francisco de Venavides, my Post Lieutenant, Chief Justice, and Captain of War of the City of Santo Thome del Sant° Sacramento of the Province of Guayana—

To be very careful and vigilant of the movements and intentions of the Hollanders of Surinam, Berbis and Essequibo, also of the Caribes and Aruacas Indians who are with the aforesaid people.

To take notes of their pretentions and their forces, and to give me notice of everything.

To hold the Royal Forces in regular defense with provisions and the Infantry well supplied with ammunition.

To the Cacique Don Lorenzo de Playas and his Lieutenant of Guayano and Pariagoto Indians, and Captain Don Antonio Baraba y Bustamente, who is with the Aruacas of that territory, keep them advised and in readiness, that, in case of hostilities they with their men may promptly come to the defense of this city and Royal forces.

At all events occupy the hill which serves as a rampart to said Royal forces, covering yourselves with regular trenches, with enough men to repulse whomsoever would attack said Post, and never to abandon it even if it should take the last drop of blood.

In case you are unable to resist the enemy and, should be forced to surrender, to capitulate honorably, with credit to the Arms of Our King and Master Don Felipe V., over whom God guard.

And you will retire with your men to the Place of Araguacay, where

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the Cacique Magaracana lives, so as not to leave the Province helpless—procuring safe places for the security of the women and families—and particularly for the Indians so as not to let them be made slaves and heretics.

And of all the events in all circumstances and times you will give me notice so as to be able to help you promptly without delay.

Given in this City of Santisimo Sacramento of the Province of Guayana the seventh day of July in the year one thousand seven hundred and eleven.

Signed by my hand and countersigned by my Secretary of War.

DON CRISTOVAL FELIX DE GUZMAN.

(a flourish)

FRANCISCO DE VENAVIDES—(a flourish)

By Command of the Governor and Captain General my Master. DON PEDRO DE LA GUERRA Y VEGA, his secretary—(a flourish).

No. 10.

Certificate given by Cristoval Guillen de Orvay and other officers of the Island of Trinidad in favor of Cristoval Felix de Guzman, Governor of Guiana, etc., September 13, 1711.

[Printed from translation of a certified copy of the original in the "Archivo General de Yndias" (Seville), Stand 56, Case 6, Bundle 14.]

Sergeant Major Don Christoval Guillen de Orvay, His Majesty's Regular Magistrate for this present year; and Captain Don Antonio Garcia de Cordova; and Ensign D. Martin de Mendoza, Magistrates, do hereby certify before our Lord the King in his Royal and Supreme Council and Chamber of the Indies, and before all other Courts to whom it may concern, that Sergeant Major Don Xptoval Felix de Guzman His Majesty's Governor and Captain General of these Provinces is known to us; that he took possession of said Provinces on the twenty first of April of the present year, and thereupon he passed muster and attended to the defenses of the Government in His Majesty's Service. He went to Guiana to reconnoitre the River Orinoco as far as Angostura, which no other governor has done since Don Pedro de Viedma went to punish the Carib Indians of Caura. We also testify to the truth of the attempt made by the Dutch enemy from Surinam to fall upon the Province of Guiana and Angostura, prompted thereto by their covetousness of the silver mine of Aracafiua; and that the work of making six gun carriages for the artillery of Guiana was carefully watched over and supervised by him; that on this matter he issued decrees—to which we refer—by reason of several depositions justifying such act. That, at a general meeting held by order of said gentleman, we were informed of the worthless state of defense of the said Province of Guiana; and moreover that

Annex 10

Ministry of Foreign Affairs (1981) Venezuelan International Law: British Limits of Guyana, Collection "Fronteras" 8, Caracas.
(Translation)

Avialable at: https://kamuru.mppre.gob.ve/index.php/s/f4EgYB65s3N4JHY

TITLE OF 4 JUNE 1762 GRANTED TO COLONEL DON JOAQUÍN MORENO DE MENDOZA TO GOVERN THE PROVINCE OF GUAYANA, UPON ITS ESTABLISHMENT AS A SEPARATE COMMANDANCY

ROYAL TITLE

Don Carlos, by the grace of God, King of Castile & • In consideration of the importance of *placing the government of the province of Guayana on another footing*, as well as for the better custody of it, the interior and the Kingdom of Santa Fe, thanks to the entrance that the known navigation of the Orinoco River facilitates, as well as to prevent, by moving the population of Guayana to the Angostura of the said river, the weather that has hitherto been experienced, which has been so fatal to its inhabitants and has prevented their increase, I have resolved to establish a separate Commandancy in the whole district, which shall be directly subordinated to the Viceroyalty of Santa Fe. And as it is convenient that this responsibility should fall on an officer having the merits, conduct and other attributes corresponding to this role, these being present in you, Lieutenant Colonel Don Joaquín Moreno de Mendoza, who has been the Governor of the Island of Margarita, I have decided to appoint you on an interim basis to run the aforementioned Commandancy with a salary of three thousand pesos per each year of those that you will occupy the position, to be deposited in the Santa Fe treasury. Therefore, I command the Viceroy, Governor and Captain General of the New Kingdom of Granada and president of the Audiencia of the city of Santa Fe, that following the oath —which you shall take before the Governor, Captain General of the province of Venezuela and the city of Caracas, where you are at present— that you will well and faithfully fulfil the aforementioned Commandancy, to order and arrange for you to be received at the said Commandancy, providing for all that concerns this end; and I command all the troops of the said province, including officers of all ranks, sergeants and soldiers, and the neighbours, natives, inhabitants

and employees of the said province, without distinction or reservation of any kind, to receive, respect and obey you as their commander, to respect and obey you, to comply with and execute your orders, whether in word or in writing, for in any case they will fulfil their obligation and that which is due to me from them, as to their King and natural lord. And as far as it pertains to my express intention in the manner and practice of this new establishment, I have ordered my undersigned Secretary of State and of the Universal Office of the Indies, to instruct you and to provide for what is appropriate; and to advise you to be fully at my command as you are instructed, for in so doing you will be free from all charge and you will do my will. I declare that you do not owe any amount by reason of this employment, given that it is newly created, and that the salary of three thousand pesos per year shall be earned and enjoyed from the day you take possession of the Commandancy, being paid from the funds of my Royal Treasury in the Santa Fe treasury, by its royal officers, to which this item shall be credited, as is done with the others of those who have a salary in them. Notwithstanding the fact that this title fails to comply with the legal requirement of having been entered on record in the general accounting offices for finances and allocation of my Royal Treasury and of my Council of the Indies, which I hereby repeal for this single case, this title shall remain in force and effect for all others, but shall be entered on record by the Royal officers of the treasury of Santa Fe.

Given at Aranjuez on the fourth day of July in the year one thousand seven hundred and sixty-two.— I THE KING.— *Don Julián de Arriaga.*

Annex 11

Manuel Centurión appointed Interim Commander of the Province of Guyana, 1 May 1766
(Translation)

AGN-C. *Papeles del Gobernador Centurión*. Caracas, t. único, 1766-1776, fs. 68-68vto.; otra copia en AHMPPRE-C. *Archivo Antiguo*. Colombia, Colec. Verde, t. 146, Exp.21, Doc.18, fs. 244-244vto. 1766.

The King has kindly decided to appoint you to succeed Don Joachin Moreno in the interim command of the province of Guayana, according to the Royal Dispatch that the Governor of Caracas, Don Joseph Solano, will deliver to you, to which effect it is sent to you on this occasion. I inform this to you for your acquaintance, and in order that complying with the requirements that are expressed in the referred Dispatch, you proceed to take possession of the mentioned Command, in the understanding that the Viceroy of Santa Fe is notified of this providence, and that he is to supply you with his aids; and also Don Joachin Moreno is forewarned that when you present yourself with the corresponding Dispatch, he is to hand over to you the command and all the orders and instructions that have been issued to him concerning the best establishment of that Province, its fortifications, the arrangement of troops and other matters concerning it, to the effect that with this knowledge and under the direction of the aforementioned Governor of Caracas, you may take the necessary steps for the continuation and effective fulfilment of the Royal intentions of His Majesty which have been communicated to you, in whose importance it is hoped that you will demonstrate your zeal and activity. May God preserve you for many years to come. Aranjuez, 1 May 1766. The Bailiff Fray Don Julián de Arriaga.
To Mr. Don Manuel Centurión.

This is a copy of the original Royal Order that exists in the Archives of the Secretariat of the General Command of Orinoco and Guayana, which I certify. City of Guyana, 11 November 1773.

Annex 12

Royal Decree separating the Provinces of Cumaná, Guayana, Maracaibo Margarita and Trinidad from the New Kingdom of Granada, adding them in Government and Military matters from the Captaincy General of Venezuela, 8 September 1777
(Translation)

AHMPPRE-C. Archivo Antiguo, Colombia, Colec. Verde, t. 146, Exp. 7, Doc. 4, fs. 25-26vto. 1777.

The King. In view of what has been presented to me by the current Viceroy, Governor and Captain General of the New Kingdom of Granada, and the Governors of the provinces of Guyana and Maracaybo regarding the inconvenience caused by the fact that the said provinces, as well as those of Cumaná and the islands of Margarita and Trinidad, remain united as they are at present to the Viceroyalty and Captaincy General of the said New Kingdom of Granada, due to how distant they are from the capital of Santa Fé, with the consequent delay of provisions, with serious prejudice to my Royal service. Therefore, in order to avoid these and the greater damages that would be caused in the event of an invasion, I have decided to resolve the absolute separation of the said provinces of Cumaná, Guyana and Maracaybo, and the islands of Margarita and Trinidad from the Viceroyalty and Captaincy General of the New Kingdom of Granada, and to add them governmentally and militarily to the Captaincy General of Venezuela -as well as they are in respect of the management of my Royal Treasury- to the new Intendancy erected in the said Province and city of Caracas, its capital. I have also resolved to separate the two provinces of Maracaybo and Guyana in legal terms from the Audience of Santa Fe and to add to the original Audience of Santo Domingo the above-mentioned provinces of Maracaybo and Guyana, as is the case of that of Cumaná, and the islands of Margarita and Trinidad, so that these territories, being under the same Audience, a Captain General and an immediate Intendant, may be better governed and ruled with greater benefit of my Royal service. And, consequently, I command the Viceroy and the Audience of Santa Fé to be inhibited and to abstain from the knowledge of the respective matters that were theirs before the separation that has been insinuated, and the Governors of the provinces of Cumaná, Guyana and Maracaybo, and the islands of Margarita and Trinidad to obey as their Captain General the one who is now, and henceforth will be, of the province of Venezuela, and to comply with the orders that in matters of my Royal service he communicates to you in all governmental and military matters; and that the governors of the provinces of Maracaybo and Guyana also comply with the provisions which my Royal Audience of Santo Domingo shall henceforth issue, admitting before it the appeals which may be filed according to, and in the manner which they have done, or should have done, before that of Santa Fe, which is my will. Given at San Ildefonso, the eighth day of September, one thousand seven hundred and seventy-seven. I, the King. Joseph de Gálvez.

Annex 13

Royal Order to survey the region East of the Lower Orinoco, 1 October 1780

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 652, p. 385-386)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 651.

tion taking part in it; which advices it is thought indispensable to communicate to you in order that you may take every precaution to frustrate the designs of the French, giving prompt notice of whatever may have happened or shall happen in future.

May God preserve you many years.

No. 652.

Royal Order as to Surveying the Region east of the Lower Orinoco, October 1, 1780. [1]

[Translated from certified copy of original in Caracas-Civil-1779-Docket-77-1.]

Although the papers were lost which were being brought by the brigantine "Nuestra Señora del Rosario" and by the other two vessels which sailed in its company from the port of La Guayra for Spain, the captain of the said brigantine, Don Josef Felipe de Inciarte, was able to save the letter of April 12 last, which Your Lordship gave him in order that he might present himself to me with it and inform me of the results of his commission, directed to the examination and occupation of the lands at the east of the lower Orinoco; and this he did verbally. Moreover, he gave me the original drafts, which were likewise saved, of the Journal, the Chart, and the Report which he submitted to Your Lordship on the 27th of November of last year, and, having laid before the King the substance of these documents, His Majesty has deigned to authorize the return of the said Inciarte, in order that Your Lordship, immediately or when convenient, may commission him again to the same task of occupying and settling the places which he pointed out in his above mentioned report of November 27th last, and to construct two small provisional forts which he deems necessary—the one in order to ward off the insults of the Dutch from Essequibo against the village to be founded, as proposed in the said document, close by the cove made by the said river or Cayon of Moruca, at a distance of a quarter of a league from the post of guard which the Dutch maintain at a distance of about eighteen leagues from the Essequibo towards the Orinoco, this said first fort to be placed at the most elevated point, so that it may command the site to be occupied by the village and its surroundings; and the second fort, with four or six cannon, on the cove itself of the said river Moruca, in order to prevent the passage of any hostile vessel, displacing the Dutch from the above-mentioned post or advanced guard which they have built there, it being understood that, if the Director-General or Governor of Essequibo should complain of this act, it is to be answered that we have proceeded and do proceed in this matter according to the

[1] Another translation of a portion of this document is printed in Vol. 2, p. 489 (No. 434).

No. 652.

laws and general instructions for the good government of our Indies which do not permit such instructions [intrusions[1]] of foreigners in the Spanish dominions as are these; for the same reply will be made here if any complaints or remonstrances are offered by the States-General of Holland. To the said Inciarte there were given five hundred dollars which he showed to be necessary for his journey; and, in order that he enter with the greater honor on his commission, the King has deigned to give him the rank of Lieutenant of Infantry in the army. A dispatch corresponding to this has been issued and given to him; and the same will be done with this Royal Order, that it may be placed in the hands of Your Lordship with the enclosed notifications for the Captain-General and the Governor of Guayana. In these they are recommended to aid your Lordship and the said person commissioned by you with the utmost activity and efficiency, in order that the object of his commission may be fully attained with the promptness and security befitting the service of His Majesty. Of all this I notify Your Lordship by His Majesty's order, for your information and for the execution of the part which concerns you.

May God Keep Your Lordship many years.

No. 653.

Report of Felipe de Inciarte on the French Company and French Settlements 1778-1784 with Accompanying Papers.

[Translated from Certified Copy of Original in Archivo General de Simancas—Department of War—Docket 7805.]

Report submitted by Don Felipe de Inciarte, commissioned to establish villages in the Eastern part of Guayana, [region] of the lower Orinoco, in order to hinder the progress of the French Company.

Report on the company which had been established in France for the settlement and cultivation of French Guiana.

By letter of September 7, 1776, the Count of Aranda sent a copy of the resolution taken by His Most Christian Majesty [the King of France] on January 6th of the same year, authorizing sundry of his subjects to form in French Guiana the establishments necessary for its cultivation, and furthermore *with the end of facilitating the maintenance of his Windward and Leeward Islands*, and also authorizing that, under the name of Company of French Guayana, they might make all the agreements and regulations which they judged necessary for the government and administration of the said establishments.

[1] That "intrusions" is the word intended appears from another document. See p. 396, below.

Annex 14

Report of Antonio López de la Puente upon his exploration of the Cuyuni River in 1788, 13 April 1788

(Venezuela-British Guiana boundary arbitration. (1898) The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 1-2, Annex n. 443, pp. 448-454)

Available at: https://archive.org/details/venezuelabritis01venegoog/page/86/mode/2up

No. 442.

vice. He will, on his arrival, present and make known to your Reverence the instructions with which he has been furnished. It will be well that your Reverence appoint a religious acquainted with the place to accompany this official for the purpose of examining and becoming acquainted with the site of Tumeremo, and an advantageous and proper place on the Cuyuni, where a village or post may be established, with the object of protecting the rear of the Missions, and rendering help to the new reductions, which the venerable community under your Reverence's charge are continuing to found. In this view, I remember to have conferred with your predecessor and other religious, who inform me that the junction of the rivers Yuruary and Cuyuni is very well adapted for that purpose. But, nevertheless, I have instructed the official not to omit to examine carefully all parts of that neighborhood for the purpose of seeing whether there may not be another more advantageous position better suited for the purpose, as this is an affair as important to His Majesty's service as beneficial and useful to the preservation and increase of these Missions, and I trust your Reverence will supply the said Don Antonio Lopez de la Puente with all that may be necessary to enable him the better to fulfil the commission with which he is charged. If you will also send a Circular letter to the Religious under your charge in the villages through which he may pass to see that the same orders be duly observed, I shall feel obliged.

It is understood that any expense he may incur while on his mission will be immediately paid on presenting an account signed by him.

In informing you of this in full confidence, thoroughly assured of your love and zeal for His Majesty's service, I pray God may preserve you, &c.

No. 443.

Report of Antonio Lopez de la Puente upon his Exploration of the Cuyuni River in 1788; dated April 13, 1788.

[Reprinted from Blue Book, No. 3 pp. 329-332.]

February 26th of the present year (1788), at 10 o'clock at night, Adjutant-Major Don Antonio Lopez de la Puente departed from this capital of Guayana, provided with the passport and instructions from the Governor of this province, Don Miguel Marmion, in order to carefully explore the River Cuyuni and its neighbourhood.

Having embarked in the cargo boat of Miguel Castellaños, in company with Corporal Antonio Mora, we arrived at the port of San Joaquin (?) on the 28th of the present month (February) at 3 P. M., and at the same hour I wrote to the reverend Father Prefect, who was at the

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village of Caroni, forwarding him at the same time the official letter of the Governor, asking him to send me animals for my journey.

As it was now night, and no news having arrived, I took some riding animals from a team of mules which were then in this port as necessary for my journey, which took place on the 29th, the day that I arrived at the Mission of Caroni, being a journey of two leagues.

At 7 in the morning I went to see the Prefect, who having been already informed of the commission with which I was charged from the official note and instructions I showed him, I requested some animals to continue my journey the same day for the town of Upata. To which he replied that all would be furnished me, for he rejoiced much that some remedy would be applied to those parts of Cuyuni, for already, long before, they had represented the great danger the Missions were in from the Dutch on that part. But he said that I could not yet go forward, for it was necessary to consult with the assistants in order to select a Religious to accompany me, and in awaiting this choice I was detained until the 2nd.

On the 2nd March I left Caroni at 4 in the afternoon, the Father Prefect having told me that the Father selected to accompany me was Father Mariano de Perafuta, that he was writing to Father Manuel Prejania [*sic*], so that as soon as I arrived at the village of Carapo he might accompany me to Tupuquen, and the Father of Tupuquen to Angel Custodio. In like manner he gave me a Circular letter, so that the Fathers in the places through which I might pass should furnish all the assistance I might require, with which I took my leave, and after having marched 5 leagues we arrived at the watch-house and resting-place of Guacayma at 7 o'clock at night.

On the third day I continued my journey at 6 o'clock in the morning; and having gone 7 leagues, we reached the village of Altagracia at 4 in the afternoon, where we remained with the Father of the village until I should arrange with the one of the town of Upata to send me animals and whatever else I should request, so that we remained until the following day.

Fourth day: I continued my journey at 7 in the morning for the town of Upata, having arrived there at 10 o'clock, after a march of 2 leagues.

On this same day I delivered the order of the Governor to Lieutenant Don Diego Morales, who, as the residents of this town were then engaged at their labours, had to send for them. And of three whom I had to take with me there was wanting Patrick Rivas, who did not put in an appearance until five days later, on account of which I was obliged to wait until the 9th for the animals I had requested the Father of the village of Altagracia to send.

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Tenth day: I continued my journey to the village of Santa Maria, in company with three inhabitants of the town of Upata, and a militiaman of the escort, for, by an order of the Governor, sent to the Sergeant in command of the escort, he was directed to give me three militiamen. These men being at the time in the villages of Angel Custodio and Agua Chica, orders were sent to them to join my company. Having arrived at the said village of Santa Maria, 4 leagues distant from the town, I requested animals from the Father of this village, which he provided the following day.

Eleventh day: I pursued my journey at 3 in the afternoon, and after a march of 5 leagues we arrived at the River Cume (Cuniri?) at 7 at night.

Twelfth day: I continued my journey at 10 o'clock in the morning on account of two horses having disappeared, and in the best way we could we went forward until we reached the Savannahs of Carapo, where it was necessary to encamp, after having marched, with a great want of water, during a half day, only 4 leagues, and we remained in a "morichal" until the following day.

Thirteenth day: At 7 in the morning we set out on our journey, and having marched 4 leagues we arrived at the village of Carapo, and on this day animals were provided for the next day's journey.

Fourteenth day: I continued the journey in company with the Father Manuel Preciana [*sic*], who was ordered by the Prefect to accompany me as far as Tupuquen. And after a 5 leagues march we arrived at the said village after 12 midday, from where the said Father returned to his village, leaving the same order of the Father Prefect with Father Leopold of this village. On this day I sent for the militiaman, Migel Zuñiga, interpreter of the Carib language, and one of the three appointed to accompany me, so that I might inform myself concerning the Indians that were to be taken. From this village, and on this same day, Father Leopold sent for Father Mariano, appointed to accompany me, and he was at the village of Angel Custodio, and arrived in like manner with the before-mentioned Zuñiga at 7 at night. I was then informed by the said Zuñiga of the most suitable means for best fulfilling my commission.

Fifteenth day: We conferred with the two Fathers, Leopold and Mariano, Zuñiga being present, on the arrangements that were to be made in regard to experienced Indians and rowers, boats and supplies. On this same day we sent to ask Father Peter, of Guacipata, for ten Caribs as being the most experienced, just as those of this village of Tupuquen were the best in regard to the Cuyuni, with the permission of Father Leopold. Only four were found useful, and they were appointed.

On this same day a notice was sent to the Father of Cura that he should have dried meat prepared, and advise us of what quantity of Cassava bread could be furnished. This notice was sent by Father

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Mariano; and in awaiting the Indians and this news from Cura we remained until the following day.

Sixteenth day: The said Father Mariano returned to his village of Angel Custodio to arrange for his journey and await our arrival, on the understanding that the rowers that might be wanting should be completed from among those there might be in Angel Custodio and Cura; and in case there should not be all the Cassava bread necessary at Cura, it was to be provided from Tupuquen, where it was in abundance; and in waiting for the Indians the day was passed, though we had the necessary animals to continue the journey.

Seventeenth day: The Caribs arrived from the village of Guacipata. I left with Father Leopold for Angel Custodio with two militiamen of those appointed, fourteen Caribs, and those who already accompanied me, for, although an order was sent to me that I should be accompanied by one who is in Agua Chica (Avechica), the Father missionary of the said village opposed it; and although Father Leopold urged that this militiaman was necessary to the expedition, the Father had his way in not allowing him to come; and notwithstanding that it was necessary to arrange military measures, I started on this day; and having gone more than 2 leagues we arrived at the village of Angel Custodio, where I found news from the Father of Cura, who was preparing the meat that I might require, and in regard to the Cassava bread, he only offered five loads, upon which six more loads were required from Father Leopold. With them we went on to Cura, having dispatched this day a boat with six Indians to the said Cura, on account of the want of canoes in those places; and having provided the animals necessary we remained here until the following day.

Eighteenth day: We started for Cura, and after a journey of 5 leagues we arrived at the said village, where we met Father Fray Manuel de Castel-Feriol, and conferred with him and Father Mariano (who now accompanied me, as was arranged, on this journey) about the boats. He offered those he had, which we went to see, and we really found in a creek two large, roomy canoes, which, with what we brought from Angel Custodio, was sufficient to continue the voyage. Notwithstanding this service and all the rest which he had furnished in supplies of provisions, the said Father offered whatever else might be necessary in the service of the King. But, on his asking how we had intended to continue the voyage, I answered by water; on this he observed that, not to put any difficulty in the way, he offered everything; but that it was impossible for us to continue the voyage, as the river was totally dry, more so than he had ever seen it before. To this I replied that, nevertheless, the best manner of proceeding on our way would be considered. After receiving this information from the Father, I determined to learn the truth from

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the Carib pilots of Guascipata and Tupuquen. Notwithstanding that they gave the same account, I asked if we could not go, although with much labour, by hauling the canoes. They answered that we could, but that before two days were at an end we would have no boats, and for six or eight that we would have to pass before entering the River Supamo, where navigation would be possible, it would be necessary to build new canoes. This was because the Yuruari, where we had to go, was all stony in the summer, and was impassable, as well as the Supamo, at this season.

Notwithstanding these reasons, I told them to come the following day to see it; the two above-mentioned Fathers were also invited, and at once offered to accompany me, as was verified on the following day.

Nineteenth day: At 8 in the morning we went to the port of Cura, on the River Yuruary, the two Fathers, Fray Mariano and Fray Manuel, and I, accompanied by the corporal, Antonio Mora, five Spaniards, and the Caribs of Tupuquen and Guascipati; and at a distance of a quarter of a league I undeceived myself, it being impossible to proceed, for in various parts we crossed it without taking off our boots, upon which I determined to return to the village until the following day.

Twentieth day: I ordered Corporal Antonio Mora, accompanied by two of the militiamen, three inhabitants of the town, and the Carib Indians, to go and examine during the whole day that part of the river, in order to find out whether there was water lower down. He returned with those who accompanied him, telling me that on account of the river being more rocky a less quantity of water was found.

Then after questioning the Carib Indians, asking the interpreter Zuñiga and one of the militiamen of the company as to whether on passing overland to the Supamo, and then making bark canoes, we might be able to proceed, they replied that it was very difficult, for, as the Indians used this river, there were no more bark boats to be found there, nor trees from which to get the bark from.

And in view of these reasons, and wishing to open a way to the mouth of the Yuruary, and make bark canoes, the same difficulty arose, as they say, that in all this mountain very little bark is to be found. In regard to opening the way, they said it would require at least forty days, no Savannahs existing in that distance until reaching the place where the Yuruary flows into the River Supamo [?]; so that, in view of all these difficulties, I resolved on suspending all attempt until the river should rise, as the winter season was approaching. On my stating this, in agreement with the Father of this village of Cura, another difficulty arose. They said that when the River Yuruary is in flood the going down is easy; but on our return, at the time we should be coming, the river would be in full flood, and as the greater part of the region about there is inundated, we should perish of hunger; and that from experi-

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ence they knew that the time the Indians navigated it was from August to February, which was the season when the Indians made their voyages to Essequibo; and that those who went from February and later were obliged to remain until the beginning of the winter season, as happened at the present with these from Tupuquen, who had not yet returned.

Notwithstanding these reasons, it was my own experience and practice that convinced me, and as it appeared to me useless to remain, I resolved to return and make a report to the Governor of all that happened, and inform him of the proper season, and thereby save greater expense, which would be occasioned by remaining.

Twenty-first day: I informed Father Mariano, my companion, of my determination of returning to the capital and reporting. In regard to the supplies furnished for the voyage, Father Mariano and the Father of Cura said that the Cassava bread would be sent to the new cattle-farm of Tumeremo, and the meat would remain at Cura for the use of the village.

This new cattle-farm of Tumeremo is established, according to what they say, at a distance of 6 or 7 leagues from Cura, on the east side, and from that cattle-farm towards the east there is a river named Curumo, which flows south (like the Yuruary), seeking its outlet in the Cuyuni, and although not so large as the Yuruary, it is navigable at the same time, and is nearer to the mouth of the Masuruni, where the first habitations of the Dutch are. They say too that, according to the best information of the Carib Indians, from the mouth of this Corumo downwards there are no rapids or any impediment to hinder the transit of any boat at all seasons, and without the difficulties in the shape of rapids which they say exist by way of the Yuruary and Cuyuni down to the mouth of the Corumo, where I thought of returning to come out at Tumeremo.

Twenty-second day: I dispatched the Caribs and rowers to their respective villages, and the Father and I remained with the Spaniards until the following day, to return by Angel Custodio, leaving here the boat which had been rowed from Angel Custodio, not being able to take it.

Twenty-third day: Father Mariano and I with the other Spaniards left Cura for Angel Custodio, having previously taken care to warn the Father at Cura that until such time as the said voyage should take place to the Cuyuni, it would be very important that no permission should be given to the Indians to go to the Dutch, on account of the bad consequences that might follow if it became known to the Dutch that an exploration of the Cuyuni and its neighborhood was projected. We said it might bring upon the Father, for example, the misfortunes of the expedition of the Parime, and advised him that he should also warn Father Leopold of Tupuquen and Father Peter of Guascipati.

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Twenty-fourth day: I left Angel Custodio for Tupuquen, and having given this said precaution and warning of circumspection to Father Leopold, I then remained until the following day with the animals that were furnished me.

Twenty-fifth day: I departed from Tupuquen for Guascipati, and warned Father Peter Martin in like manner as those of Cura and Tupuquen, namely, that I knew that as soon as the river was high the Indians of this village would go down to Essequibo; for this purpose I remarked they had a great quantity of hammocks made, and on my asking for whom they were, they replied to take to the Dutch of Essequibo, and that for each hammock they received a piece of calico and six flasks of spirits or a Trenquera (?).

Twenty-sixth day: I left Guascipati for Carapo, and with the intention of changing animals I passed all the rest of the day there in Carapo.

Twenty-seventh day: I left Carapo and arrived at the village of Santa Maria the following day, 28th, and having reached on this day the town of Upata I remained there until Monday, the 7th April (on account of being ill), leaving in charge of the Sergeant in command of the escort the two militiamen who had accompanied me, and likewise delivering over to the Lieutenant of the said town the three residents. Then, with the animals which they provided for me from Altagracia, I continued to Caroni.

On the eighth day I arrived at Caroni, where I was furnished, by order of the Father Prefect, with a sailing-boat and six Indian rowers from the village of Puga, and I departed for this capital on the tenth, leaving with the Father Prefect an account of the animals and men which had been given me for my journey in each village as I was going and returning.

On the twelfth day I arrived at this capital with Corporal Antonio Mora, having intact and complete the 200 cartridges and 5 lbs. of powder which were delivered to me, and of the 100 lbs. of tobacco I took from the town of Upata for the Indians, having only consumed 50 lbs., the rest remaining in my possession until further orders of the Governor.

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Certificate of Election of Officers of the Capuchin Missions, 1787.

[Reprinted from Blue Book No. 3, pp. 883–884.]

The undersigned certify in the most formal manner that, on the 25th day of the month of April of the present year, we celebrated our triennial Chapter in the Mission of San Joseph de Cupupuy, in which the Revered Father Fray Buenaventura de San Celonio was elected Prefect of our Missions, and for Assistants the Reverend Fathers Fray Buenaventura de Sevadel and Fray Buenaventura de Santa Coloma, and in accordance with our institutes the same reverend Fathers elected for their offices [stations] and Presidencies the reverend Father missionaries as follows:—

Annex 15

Memorandum presented by the Plenipotentiary Minister of Gran Colombia José Manuel Hurtado to the Government of His British Majesty, London, 16-VII-1824, Public Record Office, F.O. 18/10

Ministerio de Relaciones Exteriores Republic de Venezuela, Report on the Boundary Question with British Guiana Submitted to the National Government by the Venezuelan Lawyers, Caracas, 1967.

MINISTERIO DE RELACIONES EXTERIORES

REPUBLICA DE VENEZUELA

REPORT ON THE BOUNDARY QUESTION WITH BRITISH GUIANA SUBMITTED TO THE NATIONAL GOVERNMENT BY THE VENEZUELAN EXPERTS

CARACAS, 1967

3.—*Memorandum presented by José Manuel Hurtado, Plenipotentiary Minister of Gran Colombia to H. M. Government. London, 16/VII/1824. (Extract).*

LIMITS

The Republic of Colombia is today composed by the countries known as Venezuela and Nueva Granada, and it is located within the heart of the torrid zone of South America. This beautiful and rich country extends by the Northern Sea, *from the Essequibo River* or the limits of the Province of Guayana, up to the Culebras River in the boundary with Guatemala.

Public Record Office (London). F. O. 18/10

II

SCHOMBURGK'S ARGUMENTS ARE GROUNDLESS

1.—*Minutes by Lord Stanley, Colonial Office Secretary. London 7/IX/1841.*

This report should be communicated to the Foreign Office. The Maps in my possession do not enable us to trace the course followed by Mr. Schomburgk and he affords no great facilities for tracing his course. *Extracts* from the Report should be communicated to the Royal Geographical Society but care should be taken not to insert any of the vague charges against the Venezuelan Government, which, though very possible founded in fact, would have no sufficient authority and if they did, perhaps no advantage would be derived from their publication. *Mr. Schomburgk does not give any data upon which he assumes the limits claimed by him, to be, as he designates then more than ever, the "undoubted" right of the British Crown.*

Public Record Office (London). C. O. 111/179

2.—*Confidential memorandum from the British Foreign Office. 24/XI/1857. (Extracts).*

It would be difficult, within reasonable limits, to discuss the value to be attached to the evidence adduced on both sides from various writers as to this boundary, although, so far as Sir R. Schomburgk is concerned, *that evidence is limited by his objection to French writers on the score of national jealousy, and to the Roman Catholic writers on the score of sectarian motives...*

Hitherto attention has been called to the question as to right in the matter of this portion of the boundary; and it *certainly appears to be doubtful whether our rights are so free from doubts as to make it advisable to claim the boundary as laid down by Sir R. Schomburgk*, if negotiations are now resumed.

Bodleian Library (Oxford) Mss. Clarendon Deposit C/275.

Annex 16

Extracts from Letter of Henry Light, Governor of British Giuana to Lord Glenelg, 1 September 1838

Venezuela-British Guiana Boundary Arbitration. The Counter-Case of the United States of Venezuela before the Tribunal of Arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty, Signed at Washington February 2, 1897. (1898), vol. 1-2, Annex 94, pp. 176-178.

Available at: https://archive.org/details/venezuelabritis01venegoog/page/368/mode/2up

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Demerary and Essequebo.

	Miles.
From Registrar's office to any part of Georgetown.	
East Coast Demerary.	
From Georgetown to Pl. Kitty	3
" " " Vryheid's lust	6
" " " Good Hope	9
" " " Paradise	12
" " " Nabacles	15
" " " Ann's Grove	18
" " " Mahaica Creek	22
" " up the Creek to Pl. Belmont	25
" " to Cane Grove & beyond	28
" " " Broomhall	30
" " " Mahaicony	36
" " " Up the Creek	44
" " " Abary	45
R. Demerary, East Side.	
From Georgetown to Pl. Houston	3
" " " Pl. Providence	6
" " " all estates in Canal No. 3	12
" " " Plt. Farm	9
" " " Great Diamond	12
" " " New Hope	15
" " " Garden of Eden	22
River Demerary, West Side.	
From Georgetown to Pl. Malgré Font	3
" " " La Grange	6
Canal No. 1.	
Any estate on the same	12
La Retraite	9
Canal No. 2	
From Georgetown to any estate on the same.	15
" " " Plt. Vriesland	15
" " " Reynestia	22
" " " Borselin Island	33
" " " Sand Hills	40
" " " Saw Mill of Huss	50
And all above f. 110.	
West Coast.	
From Georgetown to Nouvelle Flandres	3
" " " Waller's Delight	6
" " " Blankenburgh	9
" " " Cornelia Ida	12
" " " Vrees en Hoop	15
" " " Kinderen end Booe's Rust	18
" " " Philadelphia	21
" " " Farm	24
" " Beyond as far as road extends	27
" " to Leguan	25
" " " Tiger Island and Wakenaam	30
" " " Hog, Fort and Troolie Island	35
West Coast Essequebo.	
From Supenaam Creek to Plt. Somerset and Burks and Evergreens	40
To Pomeroon, f. 330.	
From Supenaam up the river to the Falls, f. 150.	

No. 94.

Extracts from Letter of Henry Light, Governor of British Guiana, to Lord Glenelg, September 1, 1838.

[From Parliamentary Papers, "Papers relative to the West Indies. Part I., Jamaica—British Guiana. Ordered by the House of Commons, to be printed, March 15, 1839. pp. 278–279.]

Though the country over which I have lately passed has no variety of surface, and may be represented as one great flat, intersected by creeks, rivers, and trenches, yet I think it my duty to attempt some description of it, that may enable your Lordship to form, perhaps, with the aid of the

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accompanying Map, a more correct idea of the various locations, of the cultivation, past and present, and of the future means of increasing this cultivation, and thence judge of the value of this important colony to Great Britain, if supported by the capital of the mother country, and the protection of the Government; a protection never withheld, but more peculiarly required where the field for improvement of the resources of the country is so wide, and so capable of adding to the treasures of the parent state.

The three great rivers Berbice, Demerara, and Essequibo, may be considered the source of all the alluvial soil now in cultivation, peculiarly British. The Corantyne, being the boundary of British Guiana, it contributes plainly to the richness of the soil on the Corantyne coast of Berbice. Into all these rivers flow what are misnamed creeks, which may be rather considered tributary streams, taking their rise at greater or less distance amongst the great marshy savannahs of the interior. The Pomaroon river, at the western extremity of Essequibo, may be taken as a limit to the country, though there is a mission supported by the colony on the Maracca river or creek, a short distance westward, where 500 Spanish Indians are collected in a settlement under a Roman-catholic priest, recommended from Trinidad for that purpose; he is reported to be effecting good.

The cultivation of the staple commodities, sugar, coffee and cotton, is confined at present to the coast of the Essequibo; west and east Demerara; the west and east coast, Berbice, as regards the sea. On the three great rivers the highest cultivation is on the Berbice, 35 miles on the east bank. On the west bank, some few miles less, and on the east and west banks of the Demerara and Essequibo, the highest cultivation does not extend above 25 miles from the mouth of the river. The Canje Creek, flowing into the Berbice river below New Amsterdam, also has several estates in cultivation on each bank. On the Corantyne there are only two estates.

By reference to the accompanying map, the existing cultivation will be observed coloured green; the abandoned cultivation, brown.

* * * * * * *

The banks of the Pomaroon and the western extremity of the Essequibo are rich in alluvial soil, but are not cultivated; there is one wood-cutting settlement on the Pomaroon which may be considered as fit for mercantile purposes, and is prosperous.

The appearance of the country, on the Essequibo coast and in the islands, is much more cheerful than on the Demerara river; canals, trenches and dykes, the same everywhere. In Essequibo, the traveller drives through cultivation; in Demerara, he must view it at a distance, as the front lands are generally morass and bush, the land having been exhausted. In most parts of Essequibo it seems inexhaustible. The numerous creeks or tributary streams take their rise, as I have said before, in the savannahs, which are either barren sand, impassable marsh, or land so marshy as to forbid a

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hope of cultivation; yet on the sides of these creeks are borders of soil which quickly repay the cultivator, though as yet few, but the scattered families of aborigines, are to be found taking advantage of such spots.

* * * * * * *

On the extremity of the coast of Essequibo, towards the Pomaroon, there are two isolated estates in cultivation, while rich land is ready for human industry. The Dutch formerly cultivated the banks of the Essequibo, 100 miles above its mouth; the map will show your Lordship how little, on either side, is now in cultivation.

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No. 95.

Proposed establishment of an Indian Village; debate in the Combined Court of British Guiana, March 27, 1844.

[From "Royal Gazette," Georgetown, British Guiana, Tuesday, April 2, 1844.]

The Government Secretary—The Governor and Court of Policy, at the recommendation of the Combined Court, have placed an item on the Estimate for the establishment of an Indian Village.

Mr. Arrindell—I move that it be struck off.

Mr. Naghten—I second it.

Mr. Arrindell—It may appear somewhat singular that I should move an amendment that is irregular, or would appear irregular, but for the precedent which was set about two or three days past. There was an item on the Estimate for a certain Clergyman; it was moved that it be struck off, and the motion was carried by a majority. In the absence of one of the majority, it was reconsidered and placed on the Estimate. I have, therefore, an excellent precedent for my motion, and I trust that the item will be this day struck off. The Court of Policy has been recommended to put the item on the Estimate and has done so. On both occasions I was, unfortunately, in the minority. I agree with yourself, and many others, that the prospects of the Colony are considerably increased within the last two or three years, but they are increased so much a magnitude as to warrant the Court in throwing away $10,000 upon a mere chimera. It is stated that we have a native population which may be civilized. We are endeavouring to civilize them as much as is in our power, and we have two or three Missions established, which we are supporting with very great liberality. Why, merely upon a whim or caprice, so large a sum, or any sum, should be placed at the disposal of God knows whom, merely for the purpose of erecting a Village, which is to be populated by savages from the interior (and whether they are to be under any and what control we know not), I cannot understand. Many attempts have been made to redeem those people from their habits; they have been taught to read, and in

Annex 17

Exchange of Letters between Alejo Fortique and Lord Aberdeen, 10 January 1842, 31 January 1842
(translation)

Letter from Henry Light, Governor of British Guiana to Mr. Daniel F. O'Learly, 9 March
(translation)

Letter from Mr. Daniel F. O'Learly to Mr. Aranda, 8 April
(translation)

Ministerio de Relaciones Exteriores, (1981), Arbitramiento sobre los Límites entre Venezuela y la Guayana Británica: alegato y contra-alegato, Colección "fronteras" 6, Caracas, pp. 16-20.

Available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4

LETTER FROM ALEJO FORTIQUE TO LORD ABERDEEN, JANUARY 10, 1842

Dr. Fortique to Lord Aberdeen

The undersigned, Minister Plenipotentiary of the Republic of Venezuela, has the honor to reply to the communication of the Hon. Earl of Aberdeen, Her British Majesty's Principal Secretary of State in the Department of Foreign Affairs, dated on 11th of last month, in which, referring to the signs placed on Venezuelan territory by Surveyor Schomburgk, his Lordship states that their removal would entail much useless trouble, as they offer the only tangible means by which Her Majesty's Government could be prepared to discuss the boundary question, and that they were erected with this special object, and not, as the Venezuelan Government seems to fear, as signs of dominion and government on the part of Great Britain.

The undersigned regrets to be obliged to again insist upon this point; but the damages sustained by Venezuela on account of the permanence of said signs are so serious, that he hopes, in view of these facts, that the trouble resulting from their removal may not appear useless.

The undersigned has already stated, either by writing or verbally, that the unexpected proceeding of the English Commissioner, the ostentatious performance of this act, and the fact that the English flag was raised upon these same signs and Her British Majesty's monogram placed thereon, have given rise, as was to be expected, not only to the dissatisfaction of the Venezuelan people, but have also excited grave fears that all the explanations received up to the present time, and the hope which the undersigned has imparted that such signs would soon be removed, cannot wholly dissipate. The Venezuelan Government has vainly taken great pains to inspire confidence in the uprightness of Her Majesty's Government and to persuade the people that negotiations are preferable to force. Citizens, well worthy of the public esteem in which they are held, on seeing the position of the relations between the two countries, and fearing that the peace of English subjects resident in the Republic might be disturbed, have also vainly striven to the same end; the Venezuelans have seen the English flag floating over their territory, and it is not to be expected that while such marks, erected so untimely, lest the Venezuelans should feel satisfied to let them remain, and malcontents will profit by this for their plots of ominous consequences.

Congress will soon convene and the Executive must submit to that body both this matter and the Government's conduct in the premises. No one can tell in what light these will be looked upon by the Representatives of the Nation nor how far they may be influenced by public alarm. It would be desirable then that they learn at the same time that the confidence in Her Majesty's Government has not been misplaced and that the marks or signs have been removed.

Contraband trade, which reduces the revenue of the Treasury and so completely demoralizes communities, is also one of the evil results of these unfortunate signs, because, under the British flag raised in Barima, a perfect system of fraudulent trade has been established from the Island of Trinidad, affecting most seriously the interests of honest merchants, either English or otherwise, who respect the laws of the country and who endeavor by means of honest trade to make profits proportionate to their labor. This is a calamity that at the present is

deplored by British subjects resident in Trinidad, Barbados and other places, according to reports published by the newspapers of said islands and also by the city papers. Would the trouble resulting from the removal of the signs be useless if it is conducive to the preservation of the order and morality of a State that has constantly given to England proofs of its friendship and good faith ?

In addition to this, the fatal results of public restlessness and the fact that a disagreement is to be feared, must be taken into consideration, and it will be seen that, even were the signs less significant than Her Majesty's Government proclaim them to be, the Governor of Demerara, Commissioner Schomburgk himself proclaim them to be, a sentiment of justice and the consideration due to a friendly nation demand their removal.

But the Hon. Earl of Aberdeen is of opinion that these signs may serve as tangible means for the discussion of a boundary treaty, and it must be remarked at this juncture, that the line, such as it is described, is not the one H. B. M. believes to be the boundary of British Guiana, but the line that Commissioner Schomburgk has thought convenient to describe, as the map which he was instructed to draw after examination of the territory has not, even yet, been received in London. In this uncertainty the undersigned is not of the opinion that the fixation of points should be the initial operation, nor does he believe most appropriate to inspire that confidence required for any transaction the fact that one of the parties concerned should ascribe to itself, without previous consent of the other, the territory the possession of which is claimed.

When the points over which a boundary line will pass have been agreed upon; when, as was the case with the United States of North America, there is a previous boundary treaty in force, the commissioners of one or both parties may proceed to the material operation of describing said boundary, and in case they should not come to an understanding, they may proceed to the erection of any signs which they may deem convenient, until an arrangement can be arrived at which shall depend solely upon the understanding or realization of what has been agreed upon. Venezuela is ready to enter into such an agreement and has invested the undersigned with the proper authority to that effect and if, as it is to be expected, Her Majesty's Government is well disposed toward a friendly settlement, the removal of the aforesaid signs is not only useful but is also an absolute necessity.

The undersigned takes pleasure in renewing to the Hon. Earl of Aberdeen the assurance of his highest consideration and esteem.

A. Fortique.
22 Wimpole st., January 10, 1842

To the Hon. Earl of Aberdeen, etc., etc., etc.

LETTER FROM LORD ABERDEEN TO ALEJO FORTIQUE, JANUARY 31, 1842.

Lord Aberdeen to Dr. Fortique.

[Copy.]

Foreign Office, January 31, 1842

The undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note addressed to him on the 10th instant by M. Fortique, Minister Plenipotentiary of the Republic of Venezuela, representing the alarm and agitation which have been created in Venezuela on account of the marks fixed by Mr. Schomburgk at different points of his survey near the mouth of the Orinoco, and renewing his request that Her Majesty's Government will order the removal of those marks.

The undersigned begs to inform M. Fortique in reply, that in order to meet the wishes of the Government of Venezuela, Her Majesty's Government will send instructions to the Governor of British Guiana, directing him to move the posts which have been placed by M. Schomburgk near the Orinoco.

But the undersigned feels it his duty distinctively to declare to M. Fortique, that, although, in order to put an end to the misapprehension which appears to prevail in Venezuela with regard to the object of M. Schomburgk's survey, the undersigned has consented to comply with the renewed representations of M. Fortique upon this affair; Her Majesty's Government must not be understood to abandon any portion of the rights of Great Britain over the territory which was formerly held by the Dutch in Guiana.

The undersigned begs to renew to M. Fortique the assurance of his high consideration.

Aberdeen

Foreign Office, January 31, 1842

To Dr. A. Fortique

LETTER FROM HENRY LIGHT, GOVERNOR OF BRITISH GUIANA TO MR. DANIEL F. O'LEARY, MARCH 9, 1841.

British Guiana – Government House,

Demerara, March 9, 1842

Mr. Hairy Light to Mr. Daniel F. O'Leary

Sir:

I have the honor to inform you, for the satisfaction of the Government of Venezuela, that I have received instructions from the Right Honorable the Secretary of State for the Colonies to remove the landmarks placed by Mr. Schomburgk on the Barima and elsewhere in his survey of the assumed limits of British Guiana.

These instructions having been given will, I trust, be received by you as a pledge of the friendly intentions of Her Majesty's Government and shall be obeyed as soon as possible.

In the meantime, if any delay arise in carrying into effect the orders I have received, I trust to your good offices to point out to the Venezuelan Government that all grounds of remonstrance may be considered removed, from the concession made to it by the British Ministers.

I have the honor to be, Sir, your most obedient, humble servant,

Henry Light,
Governor British Guiana

Mr. Daniel F. O'Leary, Caracas

LETTER FROM MR. DANIEL F. O'LEARY TO MR. ARANDA, APRIL 8, 1841

Caracas, April 8, 1842

Mr. F. O'Leary to Dr. Aranda

The undersigned. Her Britannic Majesty's acting Consul at Caracas, has the honor to transmit herewith to M. Aranda, Secretary of State for Foreign Affairs of the Republic of Venezuela, copy of a dispatch which he has received from the Governor of British Guiana, acquainting the undersigned, for the satisfaction of the Venezuelan Government, that His Excellency has been directed by the Right Honorable the Secretary for the Colonies to remove the landmarks placed by Mr. Schomburgk near the mouth of the Orinoco; and expressing a hope that the Venezuelan Government will consider all grounds of remonstrance removed, from the concession made to it by Her Majesty's Government.

The undersigned feels most happy when he has it in his power to communicate to M. Aranda any intelligence that may be agreeable to the Venezuelan Government, and he avails himself of this opportunity to renew to M. Aranda the assurance of his high consideration.

Daniel F. O'Leary

To His Excellency M. Aranda, etc., etc., etc.

Annex 18

Letter from Governor Henry Light to Lord Stanley, 4 March 1842

Venezuela: Desp. Guiana- Venezuela Boundary (Governor Light). Bound: Venezuela 12. Reference: FO 881/7214. The National Archives, UK.

F.O. 881/7214

Printed for the use of the Foreign Office. June 1, 1899.

CONFIDENTIAL.

7214

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1899

Governor Light to Lord Stanley.—(Received May 10.)

(Confidential.)

My Lord, *Government House, Demerara, March 4, 1842.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch, marked "Confidential," of date 28th January.

In reply, I have the honour to state that, were British Guiana/a well-peopled Colony, capable of employing a surplus population in the cultivation of the extensive tracts of waste land between the Pomaroon and the Orinoco, it might be necessary to insist strongly on every point marked by Mr. Schomburgk as the natural boundaries of this province.

Limited as is the population both of Venezuela and British Guiana, the Governments of neither country can derive any benefit from the boundary in question for at least a century to come; yet it is the hereafter that we must consider.

We have no claim to the Amacura River west of the Barema, though in the old map of Major L. von Bouchenroeder, published in 1798, the first river is marked east of the second, both flowing into the Orinoco.

Mr. Schomburgk's map, as well as Codazzi's, place these rivers in their proper position, the Amacura entering the Orinoco south-west of the Barema.

In the Dutch map first mentioned, of which I have the honour to forward a correct copy, the site of a Dutch fort is marked on the Barema, and a line drawn to the Cuyuni, which has its embouchure in the Essequibo, pretty nearly in the direction laid down by Mr. Schomburgk, as the natural limit of this province.

Mr. Schomburgk has taken the Amacura as a connecting link with the Barema to unite (a small portage excepted) all the rivers and creeks with the Cuyuni, which, flowing into the Essequibo, secures an internal water communication with the Orinoco.

Mr. Schomburgk assumes the Amacura as a boundary, I believe, only by a right of expediency.

A more just claim appears to exist for marking the Barema as part of the Dutch province, though many years have passed since the Post of that river was occupied by the Dutch.

Its ruins still remain, and, according to Mr. Schomburgk, of the truth of whose assertion there is little doubt, ships were annually sent there from Middleburgh for the purposes of trade.

A reference to the records of Holland ought therefore to be made in support of this weighty fact.

The question then resolves itself into this:—

Has any cession been ever made of the Barema by the States of Holland to the Old Monarchical Government of Spain, or was the possession of this river usurped by the Dutch from Spain?

If the Dutch usurped it in former days, and abandoned it before the Province of British Guiana was ceded to Great Britain, then, if Great Britain has formally acknowledged the rights of the Spanish Monarchy in Venezuela, the Barema must be considered of right as belonging to Venezuela.

The Barema is of no use at this moment either to the Venezuelans or to this province, but it commands one of the entrances to the Orinoco, which naturally enough is an object of attention to the Venezuelans, or rather to Venezuelan Guiana, of which Angostura is the capital.

Neither the Barcma nor the Amacura can now be of any importance to Great Britain, and could only be occupied at an expense of life and money which could not be expedient; but care should be taken that some more important Power than that of Venezuela should not get possession of them.

The existence of the Spanish-American Republics seems to depend so much on parties who are at all times ready to dispute for power, that it may be well asked, What is to prevent some contending province wishing to obtain external aid from offering to the United States, or France, or to any other Power, a settlement on either of the rivers in question, merely from the madness of party feelings, ready to plunge into any folly, that some temporary advantage may be gained over an opposite faction?

So long as Great Britain retains its maritime superiority, the possession of the Barcma or of the Amacura by the Venezuelans would not prevent our command of the Orinoco.

It is therefore a matter of little present importance whether Great Britain assume the Barcma as the boundary, or allow it to remain with the Venezuelans.

A public right, if it be found and proved, that the Barcma was part of the Dutch possessions should not, however, be yielded without a guarantee.

Such a guarantee might be demanded from the Venezuelan Government as that British Guiana should never be subject to have the flags of France, of the United States of America, or of any other Power waiving on her frontiers.

That guarantee obtained, Great Britain may afford to yield something to the national feelings of a poor and weak Government such as Venezuela, whose interests must be benefited by intimate connection with Great Britain, and the majority of whose people are well disposed to look on Great Britain with regard and admiration.

It may, however, be proper to observe that though the Venezuelan Government has remonstrated against our supposed encroachments on her territory, that very Government had directed a set of maps to be published in 1840 by Codazzi, in which is marked a tract of country as belonging to Venezuela, but usurped by the English, extending over many hundred miles to the Essequibo from the confluence of the Cuyuni with that river to the Moroco, which would include many of our Settlements on the Essequibo handed over to Great Britain in 1815.

This is presumption of right infinitely more offensive and less founded on justice than that set up by Great Britain to the Barcma.

The possession of the Barcma, without that of the Amacura, will not secure the continuous connection of the boundary laid down by Mr. Schomburgk; therefore, if the Amacura, to which we have no right, be yielded, there may be no great necessity for keeping the Barcma.

In the copy of the despatch dated the 5th November, 1841, from the Acting Consul at the Caracas to Lord Aberdeen, received with your Lordship's despatch No. 47, dated the 28th January, the Wyana, called Guiana by Mr. O'Leary, and so written in Codazzi's maps, is mentioned as a limit, about which there would be no difficulty in coming to an arrangement with the Venezuelan Government.

The Wyana offers a fine shell bank for a Post, but is not, I believe, so large a river as the Barcma, nor do its banks present such rich growth of timber.

But the Wyana, instead of taking its source from the south, runs in a slanting direction from south-east to north-west; thence it does not afford the same ready mode of fixing a boundary of rivers as the Barcma and the Amacura.

There will be savannahs and hills without marked line of separation; these might hereafter be the cause of dispute. An imaginary boundary-line cannot be preserved.

Yet if security be given that all the country extending between the boundary marked by Mr. Schomburgk and the Wyana should be left to the undisturbed possession of the aborigines, the Venezuelan Government binding itself to respect the rights of these unfortunate people, as well of those now existing as of those who may retire there from the Orinoco or elsewhere—if security be given that no fort or forts shall be constructed on the Barcma either by the Venezuelans or by any other Power—then Great Britain may yield to the national pride of the New Republic, and make the Wyana, with its tributary streams, including both banks of those streams, a boundary, connecting it with the Cuyuni by such convenient line of communication as may be best found by survey.

I have, &c.
(Signed) HENRY LIGHT.

Annex 19

Letter from Alejo Fortique to Lord Aberdeen, 31 January 1844

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

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OFFICIAL HISTORY

OF THE

DISCUSSION BETWEEN VENEZUELA AND GREAT BRITAIN

ON THEIR

GUIANA BOUNDARIES.

ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

Secretary of State for Foreign Affairs of the Republic of Venezuela, copy of a despatch which he has received from the Governor of British Guiana, acquainting the undersigned, for the satisfaction of the Venezuelan Government, that His Excellency has been directed by the Right Honorable the Secretary for the Colonies to remove the landmarks placed by Mr. Schomburgk near the mouth of the Orinoco; and expressing a hope that the Venezuelan Government will consider all grounds of remonstrance removed, from the concession made to it by Her Majesty's Government.

The undersigned feels most happy when he has it in his power to communicate to M. Aranda any intelligence that may be agreeable to the Venezuelan Government, and he avails himself of this opportunity to renew to M. Aranda the assurance of his high consideration.

DANIEL F. O'LEARY.

His Excellency M. Aranda, etc., etc., etc.

Dr. Fortique, Venezuelan Minister at London, to Lord Aberdeen, Chief Secretary of State for Foreign Affairs of H. B. M.'s Government, January 31, 1844.

[Translation.]

Her Majesty's Government being desirous to learn which were the limits of English Guiana, ordered a map to be drawn. These instructions were carried out in a manner that caused the Government of Venezuela to complain of the conduct of the Commissioner, as he entered into Venezuelan territory and therein erected, at his will, posts and tents that were subsequently removed by the express order of Her Majesty's Government. Since that occurrence, the undersigned, Minister Plenipotentiary of the Republic of Venezuela, has not ceased to urge the Count of Aberdeen, Prime Secretary of State of Her Majesty in the Department of Foreign Affairs, to commence without delay negotiations for a treaty fixing definitely the boundry line that shall divide the two countries. Although it was undoubtedly the duty of the one who promoted this question to take the first steps toward the negotiation of the

treaty, the undersigned being well aware that other important matters claim the attention of Her Majesty's Government, and as he ought not to wait indefinitely, hastens to propose an agreement which, if left for a later date, may be difficult to conclude. It cannot be expected, however, that in a communication of this character he should undertake to justify the rights of the Republic, and even absolute silence on this question would be excusable; but his confidence in the good faith, conciliatory spirit, and the sentiments of justice of Her Majesty's Government is so complete that, in the belief that they may lead to an amicable settlement of the question, he has decided to make a few remarks on the subject.

No one has ever denied to Spain her rights as discoverer and first occupant of the New World. All nations have, directly or indirectly, recognized such rights, and it would be lengthy and unnecessary to enumerate here the facts that go to prove this. Upon this being understood, it may not be amiss to recall the fact that the coasts of the territory in question were the very same that Columbus saw when he first discovered the American Continent; that it was here where Alonzo de Ojeda began his discovery and conquest of Venezuela; that this was the same land the government of which was ceded to Diego de Ordaz by the Emperor Charles V., and that which in the early part of the sixteenth century was courageously explored by this same Ordaz, and by Herrera, Ortal, Cedeno, and others. It is also pertinent to recall that the occupancy of this land followed soon after its discovery, and with its occupancy a decided intention to retain possession of it; then also followed the founding of towns, the sending of missionaries, and the civilization of the Indians based upon the gospel. This shows why, in 1579, the enemies of Spain found towns to destroy and priests to persecute, as the effects of the war that alternately divided the nations of Europe were disastrously felt in those far-off regions, where invasions, attacks, and conflagrations were of frequent occurrence. The very rights that no one could dispute with Spain excited both envy and vengeance.

But the sufferings of Spanish Guiana cannot be exclusively attributed to war. The report of the gold that was supposed

to exist in this section, its rich woods, its tobacco, and the facilities for enslaving the natives, excited cupidity, and several expeditions were formed. For the present, it will suffice to cite, among others, the famous one of Sir Walter Raleigh, in which the city of Santo Tomás was destroyed for the second time, not a trace remaining of it. The sad recollection of this fact is presented here simply to prove, even with the testimony of an old English traveler, that the Spaniards were in possession then of the Orinoco and of all its contiguous territory, that they already occupied the rivers Barima, Moroco, and Pumaron, that their domain extended to the Essequibo, and that, according to the document which he found in possession of Governor Antonio Berrio, formal possession of that territory was again taken in the name of the King of Spain, on the 23d day of April, 1593.

Were it desirable to quote other testimony even less liable to objection to prove the exclusive possession of the Spaniards in these lands, previous to the treaty of Münster, that of Juan de Laet might be added. He was a Dutchman, a member of the Leyden University, who, about this time, undertook to write about the prowess of his countrymen in South America, as well as of that of the English and Spaniards; and if he assumes that the Dutch were occupants of certain points on the Amazon, he also agrees with Sir Walter Raleigh in regard to the Spanish occupancy of the Orinoco, Moroco, and Pumaron.

The treaty of Münster has been mentioned because all know that in it was expressly stipulated that whatever territory the contracting parties were possessed of at that date was to be retained, both of the contracting parties agreeing not to encroach upon any territory occupied by the other party. It follows then that the Dutch, not being possessors of any territory in Guiana, at least on the opposite side of the Essequibo, they could not trespass upon that line without violating an express agreement, not to mention the violation of Spain's right as discoverer and first occupant. But there exist besides authentic documents, signed by the kings of Spain, in which the territory of the Province of Guiana is extended to the Amazon. It must be inferred from this that, in the belief of said

sovereigns, with the exception of what the Dutch had taken from the Portuguese in Brazil, nothing less belonged to Spain (A. D. 1750). In a public treaty Spain and Portugal reciprocally guarantee their respective possessions in South America, and agree to aid and to support each other until they remain in peaceable enjoyment of their domains, this obligation, on the part of Portugal, extending from the Amazon or Marañon to the borders of the Orinoco on both sides.

There also exists a royal decree which establishes (March 5, 1768,) the limits of Spanish Guiana and carries them to the south as far as the Amazons, extending them to the east to the Atlantic Ocean. It is not to be believed that the kings of Spain and all their ministers should make an error in so weighty a matter, nor that they should appear before all other nations as giving to themselves territories that did not belong to them.

No; the truth is, as Martens says (Diplomatic Course, vol. 3, page 183): "The conquests made by the Dutch in the Indies and in America during the long war of their revolt against Spain went as far as the Portuguese, then subjects to the crown of Spain. The Peace of Münster therefore took nothing away from Spain when it was stipulated, in Article 5th, that each of the contracting parties should 'retain their possessions in the East Indies and on the coasts of Asia, Africa, and America.'"

But, be this as it may, it cannot be denied that the Essequibo has been considered as the dividing line between the two possessions, either on account of difficulty in crossing it, its current being so strong that the natives called it "the brother of the Orinoco," or that the kings of Spain, being unable to control such a vast expanse of coast, reserved to themselves particularly that part lying between the Essequibo and the Orinoco, without, however, resigning the right they had to the rest of the territory. "English Guiana"—says La Condamine—"commences at the Marawine river and ends at the Essequibo; there remains for Spanish Guiana the territory lying between the Essequibo, where Dutch Guiana ends, and the Orinoco." Norie, the English geographer, author of the Chart of the coast of Guiana, makes the same assertion. His words are worth quoting: "British Guiana extends from the Corawine in a

northwesterly direction to the Essequibo. This was the true line of extension of the Colony as agreed upon between the Spaniards and the Dutch by the Münster Treaty in 1648, *which never since then has been revoked.*" Bellin, Engineer of the navy and of the school of charts, Royal Censor of the Naval Academy and of the Royal Society of London, a man of whose impartiality and learning it were injustice to dispute, in treating of this subject finds himself compelled to make an assertion which, as coming from an old foreign writer, bears upon this case. He says that he gives the name of Dutch Guiana to "the territory that the Dutch occupied and were possessed of" when he wrote, "not attempting, however, to decide upon the rightfulness of its possession, nor to injure in any way whatever the rights that the French or the Spaniards, their neighbors, may have upon the same land, where the Dutch have been seen increasing and extending step by step, advancing settlements as far as it has been possible for them to go."

Countless quotations could be made with the authority of the men of learning who have treated on this subject, to show that the territory lying between the Essequibo and the Orinoco has been considered by the world as the exclusive property of Spain. It will be noticed that purposely quotations have been omitted from Spanish writers, who afford the most abundant evidence in favor of Venezuela, since the undersigned, as above stated, has only undertaken to make some brief remarks and has thought it best, for the present, to make use of the words of foreign writers. Moreover, the undersigned is not ignorant of the fact that, the rights of Spain as first occupant and by the stipulations of the Münster Treaty being established, upon Her Majesty's Government would devolve the difficult task of proving that the Dutch were the rightful possessors, or that Spain approved of their encroachments; but, instead of this we find that as far back as 1596, the Dutch, having undertaken to cross the Essequibo, were immediately repulsed by the Spaniards, who compelled them to retreat to the river headwaters, where it could not be said that they were tolerated, as even toward the middle and the end of the last century, particularly on the Pumaron and the Moroco, they were disturbed and attacked,

the Spaniards striving to expel them as intruders who violated an express agreement. It cannot be said that these hostilities emanated from private authority. They were, on the contrary, expeditions ordered and approved by the Kings of Spain (Royal Decree dated at Aranjuez, on the 10th of August, 1780), who cautioned those intrusted to direct these expeditions that, "should the Director or Governor-General of Essequibo complain on this account," he should be answered that they were acting in this matter "in accordance with the laws and general instructions for the proper government of the Indies, which do not countenance such intrusions of foreigners upon Spanish territory" such as this was; and that this same answer would be given in Madrid should the States-General of Holland either make any complaint or present any claims. These attacks, these orders, and solemn declarations do most certainly reject all idea of consent, on the part of the Spaniards, to the usurpations of the Dutch. Without this consent no pretensions could be made, not even to the title of prescription, which is founded upon the belief that the owner has abandoned the right he owned.

The undersigned is well aware that some modern travelers, such as Depons and Humboldt, indicate Cape Nassau, on the coast, and the Essequibo river, in the interior, as the boundary between the Spanish and the Dutch (now English) Guianas; and it was, perhaps, referring to them that the Governor of Demerara gave his opinion that "the river Pumaron, west of the Essequibo, could be taken as the boundary of the colony." (Parliamentary Papers, desp'd, September 1, 1838.) But these travelers followed Bellin's course; not pretending to decide upon the rightfulness of the Dutch possessions, and without any injury to the right of the Spaniards, they divided the territory according to the material occupation then existing. Humboldt, besides, refers to the chart of Major J. von Bouchenroeder, a Dutchman, who made it by order of the Committee on Colonies and Possessions of the Republic of Batavia, which chart was dedicated to him. It is not, therefore, Humboldt's testimony, but the testimony of a Dutch commissioner, which in reality has served as a guide to the Governor of Demerara, who

can undoubtedly be excused, as showing his desire to increase, as much as possible, the country with whose government he has been entrusted. Depons conclusively declares that "the Dutch, violating the original treaties, had erected advanced posts on the Spanish territory."

Enough has already been said in regard to this retention damaging to the rights of Spain as the first occupant and in violation of the Münster treaty, to render further insistence upon this point unnecessary. Therefore the undersigned will only recommend a very special circumstance in this effort of the Kings of Spain to defend their territory against the invasions of the Dutch, and this circumstance is that Great Britain, who succeeded the latter, agreed at Utrecht by a public treaty (A. D. 1713) to aid Spain as much as she could in the restoration of the old boundaries of its possessions in America, as they existed during the time of the Catholic King Charles II. The Dutch, themselves, acknowledged the justice of this agreement when acquainted with it, they ratified on the following year, and at the same place, the treaty of Münster. These documents would make a strange contrast with the pretensions of disputing with Spain, or her successor, the Republic of Venezuela, the territory contiguous to the Orinoco, if such pretensions should emanate from any of the sovereigns who so solemnly engaged themselves to fulfill the Treaty of Utrecht. Happily this state of affairs has not yet arrived, and probably, never will, as it is only a question of peaceable fixing, and in a conciliatory spirit, the dividing line of two friendly States, for whom the main object is the maintenance of their pleasant relations, which certainly are worth much more than the uncultivated and barren land that may be the cause of a controversy.

But, upon drawing this line the future must not be lost sight of, and such points must be selected as will allow a division to be made which will obviate all causes of further misunderstanding. There exists no doubt that the Essequibo seems to be a river purposely made by nature to fulfill this object, and as the British colonists, at present, occupy nothing, or almost nothing, of the land between this river and the Orinoco, their plantations being on the other side, a settlement of this question

upon this basis would suit the purpose, and would insure to Great Britain even the most remote rights that she may possess as the successor to Holland.

The undersigned avails himself of this opportunity to renew to the Earl of Aberdeen the assurance of his consideration and respect. (Signed) A. FORTIQUE,

22 Wimpole street, January 31, 1844.

To the Earl of Aberdeen, etc., etc., etc.

Lord Aberdeen's Reply to the Foregoing Note.

[Retranslation.]

The undersigned, Her Majesty's Prime Secretary of State in the Department of Foreign Affairs, had the honor to receive, on the first of last month, a note from Señor Fortique, Minister Plenipotentiary of the Republic of Venezuela at this Court, calling the attention of Her Majesty's Cabinet to the question of limits between British Guiana and the Republic of Venezuela.

Mr. Fortique commences said note by recalling to the undersigned certain acts of the Commissioners appointed by Her Majesty's Government to examine the limits of the Colony, which gave rise to the complaint of the Government of Venezuela on the ground that they had invaded territory of the Republic and planted therein certain marks which, Señor Fortique observes, were immediately removed by the express order of Her Majesty's Government.

The undersigned believes that, before proceeding, he must remind Señor Fortique that Her Majesty's Government's consent to the removal of said marks must not be construed as a resignation of any of the rights that, in the future, it may be deemed proper to claim, but that it was only prompted by a friendly deference to the entreaties of the Government of Venezuela.

Señor Fortique then remarks that, although it properly belongs to the party who promoted this question to take the first steps toward its settlement, he hastens to propose an arrangement, which, if left for a later date, may be difficult to conclude,

Annex 20

Extract from the Instructions of the Government of Venezuela to Mr. Dr. Alejo Fortique, Venezuela's Minister in England, September 1841

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Avialable at: https://www.loc.gov/item/04010002/

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GEO. W. HARRISON, Manager.
1896.

PART III.

Extracts from the Instructions by the Venezuelan Government to Dr. Alejo Fortique, its Minister at London, September, 1841.

[Translation.]

Although Venezuela's rights in Guayana extended to the banks of the Essequibo, as you should show, this Government being anxious to remove all obstacles to a speedy adjustment, is not disposed to insist upon its rights to that extent, it being manifest that England will not agree to surrender her establishments on the Pumaron and Moroco rivers. You may, therefore, direct the course of your negotiations accordingly, making gradual concessions until an agreement can be had on the following line of boundary between Venezuela and British Guiana, viz.: The Moroco from its mouth to its headwaters in the Imataca mountains; thence southward along the highest ridge of these mountains to Tupuro creek; thence along the waters of said creek to the Cuyuni river; thence along the northern side of the Cuyuni to its confluence with the Essequibo; and thence southward along the left bank of the Essequibo to its confluence with the Rupuruni as a terminus.

Dr. Fortique to Lord Aberdeen.

[Translation.]

The undersigned, Minister Plenipotentiary of the Republic of Venezuela, has the honor to inform the Honorable Earl of Aberdeen, Prime Secretary of State and Foreign Affairs, that his Government, being informed of the appointment by Her Majesty's Government of a Commissioner to fix and mark the limits between British Guiana and Venezuela, proposed since the 28th of January *ultimo*, that a treaty of boundaries be agreed upon by Plenipotentiaries fully authorized thereto, and

Annex 21

Letter from Alejo Fortique to Lord Aberdeen, 5 October 1841

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

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1896.

PART III.

Extracts from the Instructions by the Venezuelan Government to Dr. Alejo Fortique, its Minister at London, September, 1841.

[Translation.]

Although Venezuela's rights in Guayana extended to the banks of the Essequibo, as you should show, this Government being anxious to remove all obstacles to a speedy adjustment, is not disposed to insist upon its rights to that extent, it being manifest that England will not agree to surrender her establishments on the Pumaron and Moroco rivers. You may, therefore, direct the course of your negotiations accordingly, making gradual concessions until an agreement can be had on the following line of boundary between Venezuela and British Guiana, viz.: The Moroco from its mouth to its headwaters in the Imataca mountains; thence southward along the highest ridge of these mountains to Tupuro creek; thence along the waters of said creek to the Cuyuni river; thence along the northern side of the Cuyuni to its confluence with the Essequibo; and thence southward along the left bank of the Essequibo to its confluence with the Rupuruni as a terminus.

Dr. Fortique to Lord Aberdeen.

[Translation.]

The undersigned, Minister Plenipotentiary of the Republic of Venezuela, has the honor to inform the Honorable Earl of Aberdeen, Prime Secretary of State and Foreign Affairs, that his Government, being informed of the appointment by Her Majesty's Government of a Commissioner to fix and mark the limits between British Guiana and Venezuela, proposed since the 28th of January *ultimo*, that a treaty of boundaries be agreed upon by Plenipotentiaries fully authorized thereto, and

promised that, upon conclusion of said treaty, Venezuela would designate a Commissioner who, in accord with one appointed by Her Majesty's Government, would proceed to settle upon fixed bases and to mark the limits between British Guiana and Venezuela. Two days later the British Consul at Caracas announced that he had transmitted to his Government the proposition made by the Venezuelan Government, which is still awaiting a reply.

The Honorable Earl of Aberdeen may now judge the surprise of the Government of Venezuela upon learning that, in the territory of the Republic, a sentry-box has been erected, upon which the British flag has been raised. The Venezuelan Government is in ignorance of the origin and purport of these proceedings, and hopes that they may receive some satisfactory explanation of this action. In the meantime, the undersigned, in compliance with the instructions communicated to him, urges upon the Honorable Earl of Aberdeen the necessity of entering into a treaty of boundaries, as a previous step to the fixation of limits, and begs to ask for an answer to the above mentioned communication of January 28th.

With sentiments of the highest consideration and esteem, the Hon. Earl of Aberdeen's most obedient servant,

(Signed) A. FORTIQUE.

No. 22 Wimpole St., October 5th, 1841.

To the Hon. Earl of Aberdeen, etc., etc., etc.

Lord Aberdeen to Dr. Fortique.

The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honour to acknowledge the receipt of the note addressed to him on the 5th instant by M. Fortique, Minister Plenipotentiary of the Republic of Venezuela, referring to a correspondence which took place in January last between the acting British Consul at Caracas and the Venezuelan Minister for Foreign Affairs, respecting the appointment of Mr. Schomburgk to survey and mark out the Boundaries between British Guiana and Venezuela, and stating that the

Annex 22

Lord Aberdeen's Reply to the Foregoing Note, 30 March 1844

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available at: https://www.loc.gov/item/04010002/

OFFICIAL HISTORY

OF THE

DISCUSSION BETWEEN VENEZUELA AND GREAT BRITAIN

ON THEIR

GUIANA BOUNDARIES.

ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

upon this basis would suit the purpose, and would insure to Great Britain even the most remote rights that she may possess as the successor to Holland.

The undersigned avails himself of this opportunity to renew to the Earl of Aberdeen the assurance of his consideration and respect. (Signed) A. FORTIQUE,

22 Wimpole street, January 31, 1844.

To the Earl of Aberdeen, etc., etc., etc.

Lord Aberdeen's Reply to the Foregoing Note.

[Retranslation.]

The undersigned, Her Majesty's Prime Secretary of State in the Department of Foreign Affairs, had the honor to receive, on the first of last month, a note from Señor Fortique, Minister Plenipotentiary of the Republic of Venezuela at this Court, calling the attention of Her Majesty's Cabinet to the question of limits between British Guiana and the Republic of Venezuela.

Mr. Fortique commences said note by recalling to the undersigned certain acts of the Commissioners appointed by Her Majesty's Government to examine the limits of the Colony, which gave rise to the complaint of the Government of Venezuela on the ground that they had invaded territory of the Republic and planted therein certain marks which, Señor Fortique observes, were immediately removed by the express order of Her Majesty's Government.

The undersigned believes that, before proceeding, he must remind Señor Fortique that Her Majesty's Government's consent to the removal of said marks must not be construed as a resignation of any of the rights that, in the future, it may be deemed proper to claim, but that it was only prompted by a friendly deference to the entreaties of the Government of Venezuela.

Señor Fortique then remarks that, although it properly belongs to the party who promoted this question to take the first steps toward its settlement, he hastens to propose an arrangement, which, if left for a later date, may be difficult to conclude,

and proceeds, therefore, to state some of the facts upon which the claims of Venezuela to a certain boundary line are based, observing, however, that it cannot be expected that in a communication he would undertake to justify the rights of the Republic, and that even absolute silence on this point would be excusable. The undersigned believes that the claims presented by Señor Fortique, and the accounts upon which he based them, may be condensed to the following:

That the American continent not only was discovered and originally occupied by subjects of the Spanish Crown, but that the territory now under discussion—that is, the country lying between the Orinoco, the Barima, Pumaron, and the Essequibo—was at a very early date explored and inhabited by the Spaniards, and that on this account became a point of attack for the enemies of Spain. Señor Fortique tries to account for these facts by referring to a concession made by the Emperor, Charles V., and by the condition in which Sir Walter Raleigh found the coasts of the territory in question, at the end of the XVIth century and beginning of the XVIIth.

That when the Münster Treaty was concluded, this country remained under the exclusive power of the Spaniards, and that the Dutch, not having at that time any possessions on the coast west of the Essequibo, they could not cross the river unless in violation of said treaty.

Señor Fortique then states that no one could deny that the Essequibo was always considered as a dividing line between the Spanish and Dutch possessions, either on account of the strong currents which made navigation difficult, or because it not being possible for Spain to control all the coast, her occupation of the territory was limited to the space lying between the Orinoco and the Essequibo. His Excellency states that he could cite countless authorities to prove that this territory has been considered by all the world as the exclusive property of Spain. Señor Fortique quotes three of these authorities, one of them the author of a modern English Treatise on Coast Navigation, in which this author has not used his own data, being compelled, on account of the character of the work, to rely on Spanish authorities; the other two are French. In conclusion, after briefly

quoting from Depons and Humboldt, whose testimony contradicts the exclusive right claimed by Venezuela, Señor Fortique says that—there being no doubt that the Essequibo is the natural limit, and as the British colonists at present occupy nothing, or next to nothing, between the Essequibo and the Orinoco—the selection of the former river as the boundary line of the colony would be a settlement of the question by which Great Britain would insure all her rights.

The undersigned thinks this a fair exposition of Venezuela's rights, as Señor Fortique has wished to describe them in his communication. But that in so presenting this right there should be a desire to promote a friendly settlement of the question, as Señor Fortique states at the beginning of his communication, would appear, without the express declaration of His Excellency, doubtful to the undersigned, who can only state the surprise of H. M.'s Government at such an exposition.

The fact that the American continent was discovered and largely occupied by Spanish subjects cannot certainly be disputed, but this does not bear directly upon the matter under discussion. Señor Fortique wished it to be understood that up to 1648 (date of the Münster Treaty) no section west of the Essequibo had been occupied by the Dutch, and that their endeavors to cross the river had been fruitless. Were this true, it would be of greater importance for the object His Excellency has in view. But the undersigned must remark that this statement is so far from being true that, according to J. de Laet (the same authority quoted by Señor Fortique), the Dutch since 1580 navigated the Orinoco river, with the object to establish themselves at such points as were not occupied by the Spaniards; and in 1581 the States-General granted to certain parties the exclusive privilege to trade with those settlements. It is also stated that, toward the end of the same century, there existed a company of merchants in Middleburgh trading on the Barima river. Be this as it may, it is certain that in 1621, a body of merchants, under the name of the West India Company, obtained from the States-General the privilege of exclusive trade with America, and of govern

ing new colonies that they might have acquired, said States reserving the right to appoint Governors. Hartsinck, the most truthful historian of Guiana, states, more than once, that the Orinoco river was the limit of the West India Company.

As Señor Fortique states, it was agreed between the Spanish Crown and the States-General by the Münster Treaty in 1648, that both of the contracting parties should retain their possession of all the points in Asia, Africa, and America, which they were occupying at that time, and including especially all the settlements of the West India Company.

In proof of the fact that such settlements extended as far as the Orinoco, a document can be seen by which the West India Company donated to the Count Fernando Casimiro de Hanau a parcel of the land they owned on the American coast, and that the Orinoco was mentioned as the western limit of said possession. This document is dated 1669, only twenty-one years after the Münster Treaty was concluded.

Prior to this, in 1657, the Dutch erected the forts of New Zealand and New Middleburgh on the Pumaron and on the Moroco.

It was at the former of these forts that in 1797, during an attack made by the Spaniards, they were completely routed by the garrison, which was composed of Dutch and English soldiers, and were compelled to seek refuge in their boats, with the loss of many lives.

In 1674 the West India Company, formed in 1621, was dissolved, but a new company was formed and authorized, restricting their rights to trade with certain parts of Africa, the Island of Curacão, and the colonies of the Essequibo and Boneverone (Pumaron), the latter extending, as above stated, as far as the Orinoco.

Pursuing the examination of the authorities, which in more modern times confirm these data, it will be found that in the History of South America by Bolt, published about the middle of the last century, Dutch Guiana is described as extending from the mouth of the Orinoco at 9° as far as the Marawaina to 6° 20′ latitude north ; that in a map of said coast published in 1783 by Taden, the Orinoco river is established as the

western limit of the Dutch, according to their pretensions; and that in a more recent chart published by Fefferys in 1798 the Barima river is described as being the division between the Dutch and Spanish lands. The undersigned must declare that these authorities cannot be rejected as being English, and, therefore, having an interest in this question because, although at the date of the last cited chart the Dutch colony was under the protection of Great Britain, it was restored to the Batavian Republic in 1802, and there is no reason to doubt the testimony of Taden and Bolt, or to accuse them of partiality.

It is doubtful whether the same could be said of La Condamine, Bellin, and other French writers, whose government always showed itself to be jealous of the progress of the Dutch in the neighborhood of the settlements of Cayena.

But, in reality, no doubt can exist that the mouth of the Orinoco was not only claimed by the Dutch as the western limit of their possessions, but also that, from the very beginning, they effected its military occupation and retained possession of it. Hartsinck says: "The first rivers found in Dutch Guiana coming from the Orinoco are the Barima, about one mile in width, where in olden times we had a fort." There exist documents of the West India Company showing that the directors recommended to the commander of Pumaron to keep the Barima fort in good condition. Colonel Moody found the ruins of these fortifications when in 1807 the English occupied the coast, and were preparing to send some forces to Angostura to destroy the buccaneers that were pillaging the coasts of Dutch Guiana, and also to fortify that place again. Mr. Schomburgk, when in the discharge of a commission, found the remains of the fort and also of cultivation in the neighboring territory.

The undersigned does not deem further evidence necessary to show how erroneous are the assertions of Señor Fortique when he states that the Essequibo has been considered as a dividing line between the two countries, and that the territory lying between that river and the Orinoco has been considered by the world as belonging exclusively to Spain. These

statements make the undersigned feel justified in doubting whether Señor Fortique would be supported by his own countrymen in his views, taking into consideration that in the maps of the provinces of Venezuela published four years ago by an officer of the Republic, the extreme limits of the Venezuelan eastern claim is the Moroco river; and, in truth, to judge from the exaggerated pretensions found in this work on other points, the author is not inclined to sin on the side of generosity with respect to the neighboring British colony.

Were the undersigned inclined to act upon the spirit of Señor Fortique's communication, it is evident, by what he has said, that he ought to claim, on behalf of Great Britain as the rightful successor to Holland, all the coast from the Orinoco to the Essequibo; and such claim, aside from all question of right, would certainly be much less injurious to Venezuela than the pretensions of Señor Fortique is to England, as Venezuela has no settlements on the disputed territory, and the admission or acknowledgment of the Essequibo as the limit of the Republic would, of course, mean that Great Britain should deliver about one-half of the Colony of Demarara, including Point Cartabo and the Island of Kykoveral where the Dutch founded their first settlements on the Mazaruni, the missions of Barlika Grove, and many settlements now existing on the Arabisi coast as far as fifty miles from the capital.

But the undersigned believes that the negotiations would not be free from difficulties if the claims that cannot be sustained are presented, and shall not, therefore, follow Señor Fortique's example, but state here the concessions that Great Britain is disposed to make of her rights, prompted by a friendly consideration for Venezuela, and by her desire to avoid all cause of serious controversies between the two countries.

Being convinced that the most important object for the interests of Venezuela is the exclusive possession of the Orinoco, Her Majesty's Government is ready to yield to the Republic of Venezuela a portion of the coast sufficient to insure her the free control of the mouth of this her principal river, and to prevent its being under the control of any foreign power. With

this end in view, and being persuaded that a concession of the greatest importance has been made to Venezuela, Her Majesty's Government is disposed to lay aside its rights upon the Amacuro as the western limit of the British territory, and to consider the mouth of the Guaima river as the boundary of Her Majesty's possessions on the coast side. Moreover, Her Majesty's Government will consent that the boundary in the interior be fixed by a line from the mouth of the Moroco to the point where the rivers Barama and Guaima meet; continuing from this point the line follows up the Barama as far as the Aunama, whose upward course will be followed until this stream approaches the point nearest the Acarabisi; then following the downward course of the Acarabisi as far as its confluence with the Cuyuni, it will pursue the upward course of the latter as far as the high lands contiguous to the Roraima mountain, where its waters are divided between the Essequibo and the river Branco.

Great Britain is, then, disposed to cede to Venezuela all the territory lying between the above mentioned line and the Amacuro river and the chain of mountains where it has its head, upon condition that the Government of Venezuela shall engage itself not to alienate any portion of said territory to any foreign power, and also upon condition that the tribes of Indians now living in said territory shall be protected against all ill-treatment and oppression.

The undersigned has the honor to renew to Señor Fortique the assurance of the highest consideration.

(Signed.) ABERDEEN.

Foreign Office, March 30, 1844.

Annex 23

Letter from Lord Granville to Dr. José María Rojas, 12 February 1881

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available at: https://www.loc.gov/item/04010002/

OFFICIAL HISTORY

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ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

Earl Granville to Dr. Rojas.

FOREIGN OFFICE, February 12th, 1881.

Monsieur le Ministre:

Her Majesty's Government have had under their consideration the desire expressed in your letters of the 12th of April and 27th of September last to reconsider the question of the boundary between British Guiana and Venezuela, and stating that your Government would be willing to accept the mouth of the river Moroco as the boundary on the coast.

I have now the honor to inform you that Her Majesty's Government are unable to accept the mouth of the Moroco as the boundary on the coast. They would nevertheless be ready to consider any conventional boundary which the Venezuelan Government may propose, commencing at a more northerly point on the coast, and would be glad to be favored with a general indication of their views, not only on that point, but also as to the general line of frontier which in their opinion might form a basis of negotiations.

I have the honor to be with the highest consideration, Monsieur le Ministre,

Your most obedient humble servant,

GRANVILLE.

Senor Don J. M. de Rojas, etc., etc.

Dr. Rojas to Earl Granville.

[Translation.]

LEGATION OF THE UNITED STATES OF VENEZUELA.

PARIS, February 21, 1881.

My Lord:

I have had the honor to receive Your Excellency's dispatch of 12th inst. referring to the most important question of limits between Venezuelan Guiana and British Guiana. This is a question which my Government always has been anxious to have adjusted and with which it has seriously concerned itself during the past forty-one years without, however, obtaining any practical results.

Annex 24

Letter from Dr. José María Rojas to Lord Granville, 21 February 1881

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available at: https://www.loc.gov/item/04010002/

OFFICIAL HISTORY

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I have the honor to be with the highest consideration, Monsieur le Ministre,

Your most obedient humble servant,

GRANVILLE.

Senor Don J. M. de Rojas, etc., etc.

Dr. Rojas to Earl Granville.

[Translation.]

LEGATION OF THE UNITED STATES OF VENEZUELA.

PARIS, February 21, 1881.

My Lord:

I have had the honor to receive Your Excellency's dispatch of 12th inst. referring to the most important question of limits between Venezuelan Guiana and British Guiana. This is a question which my Government always has been anxious to have adjusted and with which it has seriously concerned itself during the past forty-one years without, however, obtaining any practical results.

Your Excellency will permit me to make in the present communication a summary statement of the true state of the question which I am about to treat of.

This question can only be considered under two phases: Either a treaty must be concluded between the two countries fixing in a friendly and cordial manner an accommodation and mutually convenient frontier; or it must be adjusted in accordance with the principles of universal law and with the titles which each side may present. In the latter case the frontier will be a consequence of the rights which either party may establish.

Her Britannic Majesty's Government claim in the event of the latter extremity of the foregoing dilemma the following frontier, judging from the dispatch which Your Excellency was pleased to address to me on the 10th of January, 1880: The mouths of the Orinoco as a starting point west of Point Barima in a southerly direction towards the Imataca mountains, which line would continue towards the northwest passing through the high lands of Santa Maria exactly south of the city of Upata, as far as the foot of the mountains on the eastern shore of the Caroni river; continuing thence southwards until it meets the Roraima mountains in British Guiana, and thence still further south, stopping at the Pacaraima chain.

The Venezuelan Government maintains, in view of the titles, documents, and official maps and of all the proofs more or less irrefutable at law, which it will in its turn adduce, that the frontier between the two Guianas commences at the mouths of the Essequibo river, up said river as far as its confluence with the Rupumini and Rewa rivers to the eastern extremity of the Pacaraima chain, and that therefore all the immense territory to-day occupied by Her Britannic Majesty's Government within said limits belongs to Venezuela.

It was agreed between the two Governments that, in order to avoid any delay in this important question, the demarcation of an accommodation frontier satisfactory to the interests of both countries should be proceeded to. In fulfilment of this promise, I had the honor of proposing to Your Excellency

to designate the Moroco river as the starting point from the coast. The remainder of the frontier, when once said point had been fixed upon, would be a matter of secondary consideration.

When this question was seriously discussed in 1844 the Honorable Lord Aberdeen proposed to my predecessor in London the following frontier: As a starting point at the coast the mouth of the Moroco river at the point where the Barama river joins the Guaima; thence through the Barama up the river as far as Aunama in order to ascend through it to the Acarabisi, descending through the latter as far as its confluence with the Cuyuni, and up the latter river as far as the high lands of Mount Roraima, where the waters which pour into the Essequibo part from those which pour into the Rio Branco. It was therefore thirty-seven years ago that Her Majesty's Government spontaneously proposed the mouths of the Moroco as the limit on the coast, a limit which Your Excellency will not accept to-day as you are pleased to say in the dispatch to which I now have the honor to reply.

The Venezuelan Government moved by the desire to preserve unaltered the relations of cordial friendship at present happily existing between the two nations, now propose the following conciliatory frontier as a mutually convenient one in order to finally settle this question by means of a treaty; and in order to prove the sincerity of these feelings they will accept a starting point of the frontier on the coast, one mile northwards of the mouths of the Moroco. There a post shall be placed which shall indicate the true limit between the two countries on the coast. At said point a meridian of latitude shall be drawn westward until the point at which this line shall cross the longitude of sixty degrees of Greenwich and thence it shall continue southward through said meridian of longitude as far as the boundaries of both countries. This demarcation has the advantage of being precise and unalterable and is the greatest of all the concessions which the Venezuelan Government can make in this matter in order to come to a friendly understanding.

If Her British Majesty's Government do not think it convenient to accept this proposed demarcation, there is then nothing left for both Governments but resort to the determination of a strictly legal frontier. And as in case such a contingency should arise, the two Governments would be unable to come to a mutual agreement, as the titles adduced by one would be rejected by the other and each would endeavor to demonstrate the wrong of its adversary, a mutual agreement between both countries would be absolutely necessary in order to submit the decision of this important matter to arbitration or to a tribunal which would pronounce a final award. I have therefore received instructions from my Government to urge Her Britannic Majesty's Government to refer the question to an arbitrator selected by both parties and to whose decision both Governments shall submit. This same arbitrator should decide whether the Island of Patos belongs to Venezuela or to Her Britannic Majesty's Government.

In view of the importance of this matter and of the convenience for both countries to adjust it in a final manner, I beg Your Excellency to honor me with a reply as soon as possible, and meanwhile I have the honor to sign myself with highest consideration Your Excellency's most obedient, humble servant.

(Signed) J. M. DE ROJAS.

To His Excellency Earl Granville, Her British Majesty's Secretary for Foreign Affairs, London.

Earl Granville to Dr. Rojas.

FOREIGN OFFICE, September 15, 1881.

Monsieur le Ministre:

Her Majesty's Government have carefully considered the proposals contained in your letter of the 21st of February last for the settlement of the question of the boundary limits between the Colony of British Guiana and Venezuela.

In reply I have now the honor to state to you that they regret that they are unable to accept the line of demarcation indicated in that letter as a satisfactory solution of the question.

Annex 25

Memorandum of Sir E. Herslet about the British Guiana maps, 1 June 1886

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Memorandum de Sir. E. Herslet, Bibliotecario del Foreign Office, 1886, Box: E-04

MEMORANDUM DE SIR EDWARD HERTSLET, BIBLIOTECARIO DEL FOREIGN OFFICE

1 de junio de 1886.-

BRITISH GUIANA MAPS

Another fact has just been brought to my notice respecting a Map of British Guiana, which I think it right to report.

At an interview which I had a day or two ago with Mr. Hawtagne, who was Acting Administrator of British Guiana in 1884. I asked him what published Map of the Colony he considered the best; and he replied "A Map published by Mr. Stanford for the Colonial Office in 1875, in 4 sheets".

I ordered a copy of it at once, but a gentleman who called upon me yesterday from the Colonial Office, and saw it upon my table, said he thought it right to tell me that the Boundary as coloured upon it was "All Wrong" and entirely opposed to British interests and, on comparing it with Schomburgk's original Maps preserved at the Colonial Office, I found it to be so.

This is really a very important matter, as the Map bears upon the faces of it the following Title: "Map of British Guiana compiled from the surveys executed under H. Majesty's Commission from 1841 to 1844 and under the direction of the Royal Geographical Society from 1835 to 1839. By Sir Robert H. Schomburgk, K.R.E., Ph.D. Revised and corrected to the present time by Cathcart Chalmers Esqr., Crown Surveyor of the Colony and James Gay Sawkins Esqr., Director of the Geological Survey of the West Indies and British Guiana. With additions by Charles B. Brown Esqr. Engraved under the Superintendence of William Walker Esqr. 1875".

Then...

(62)
1

Then follows this note:

"Note-- The Boundaries indicated in this Map are those laid down 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 laid down between Brazil on the one side, and Venezuela on the other, and the Colony of British Guiana must not be taken as authoritative; as they have never been adjusted by the respective Governments and an engagement subsists between the Governments of Great Britain and Venezuela by which neither is at liberty to encroach upon or occupy territory claimed by both".

I suggested to the gentleman from the Colonial Office that they should at once place themselves in communication with Stanford and get him to reissue the Map properly coloured, removing the last two lines of the present note, and adding this note upon it: - "Corrected up to date, 1886" and in the meantime to suspend the sale of the incorrect copies for as the dispute with Venezuela with regard to this Boundary has now come to a height, a demand is sure to be made for the best map upon the subject, and if this is the best Map which H. M's Govt. can produce in support of their claim, the general opinion cannot fail to be pronounced to a great extent, in favour of Venezuela, and against the justice of the British claim.

This question is so important that I would venture to suggest that the Intelligence Department of the War Office should at once be asked to prepare a Map founded upon Schomburgk's Maps and other official data, to be supplied by the Colonial Office, supplemented with information upon Treaty and Historical points to be supplied by this office. We might then quote this as our Official Map.

I send...

Annex 26

Letter from Earl Rosebery to General Guzman Blanco, Minister of Venezuela in Great Britain, 20 July 1886

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 589, p. 233)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 588.

Letter from Earl Rosebery to General Guzman Blanco, Minister of Venezuela in Great Britain, June 23, 1886.

[Reprinted from Blue Book, No. 1, p. 356.]

I should be very glad if possible to give effect to the wishes you have expressed that the opportunity should be taken of your visit to London to endeavour to arrange the various questions which have been so long pending between our Governments.

Being most desirous to place the relations between the two countries on the most friendly footing, I propose to address a note to you explaining the views of Her Majesty's Government on each of those questions.

I should be glad to know whether your present arrangements allow of your remaining in London for a little while longer in order that I may have the advantage of discussing with you the proposals which I may be able to make after communication with the Secretary of State for the Colonies.

No. 589.

Letter from Earl Rosebery to General Guzman Blanco, Minister of Venezuela in Great Britain, July 20, 1886.

[Reprinted from Blue Book, No. 1, p. 356.]

I have the honour to acknowledge the receipt of your notes of the 19th and 24th ultimo.

I am most anxious to take advantage of your stay in Europe to endeavour to come to an understanding as to the questions in dispute between our respective countries, and, in accordance with the proposal which I made in my note of the 23rd ultimo, I now transmit to you a Memorandum of the bases on which I should be prepared to negotiate.

You will, I feel sure, recognize the conciliatory spirit shown by Her Majesty's Government in these proposals; and I feel confident that you will meet them with a sincere wish to settle these troublesome questions in a manner which will be fair and satisfactory both to England and to Venezuela.

Annex 27

Extract of the Memorandum by Sir E. Herslet, Foreign Office, 5/VIII/1886

Ministerio de Relaciones Exteriores Republic de Venezuela, Report on the Boundary Question with British Guiana Submitted to the National Government by the Venezuelan Lawyers, Caracas, 1967, p. 35

MINISTERIO DE RELACIONES EXTERIORES

REPUBLICA DE VENEZUELA

REPORT ON THE BOUNDARY QUESTION WITH BRITISH GUIANA SUBMITTED TO THE NATIONAL GOVERNMENT BY THE VENEZUELAN EXPERTS

CARACAS, 1967

III

THE SCHOMBURGK MAPS ARE TAMPERED WITH

1. — *Foreign Office statement explanatory of the Schomburgk Line* (Extract).

In June 1886 the Hon. R. G. W. Herbert (by direction of Earl Granville) *ordered the boundary to be corrected and all copies of the map in existence to be destroyed.*

Public Record Office (London) F.O. 80/373.

2. — *Letter from Mr. Charles Alexander Harris (Colonial Office) to Sir E. Hertslet (Foreign Office). 11/VI/1886.*

I am afraid this Venezuelan Boundary question is in a very unsatisfactory state.

The Colonial Office appear to have had a more or less official map *which differs widely from Schomburgk's original Map* and now we hear privately that the tracing of our Boundary which was officially submitted as our ultimatum to Venezuela cannot be absolutely guaranteed; but the Colonial Office are about to send a surveyor with a police escort to mark the Boundary and a British squadron is orderer to cruise off the Orinoco.

Public Record Office (London) F.O. 80/309.

c. — *Letter from Sir E. Hertslet to Mr. Jervoise. 14/VI/1886.*

What do you think of the enclosed letter from Mr. Harris? If the map which was sent to the Venezuelan Government officially in Sept/81 in support of our claims is inaccurate, and the published Map, issued under the auspices of the C.O. in 1875 is all wrong, I am afraid our case is a poor one indeed. The more I see of this business, the less I like it, entre nous.

Public Record Office (London) F.O. 80/309.

4. — *Memorandum by Sir E. Hertslet (Foreign Office). 5/VIII/1886.* (Extract).

Are the objections on the part of Her Majesty's Government to arbitration on the boundary question insuperable?

I should say we could not submit the case to arbitration with the slightest hope of success in face of the contradictory claims which have been put forward in the English published maps, for, in addition to what has been stated above, the map was published by Mr. Stanford, under the auspices of the Colonial Office and with everything upon the face of it to denote that it had official sanctions and the boundary marked thereon was approximately the same as that marked on the map which was laid before Parliament in 1840; and, therefore, embracing considerably less territory than was claimed in 1880 or in 1883; besides which it has been considered that "the argument on the ground of strict right would be hopeless"...

Public Record Office (Landon) F.O. 80/8310.

Annex 28

Transcription of the Memorandum by Sir E. Herslet, Librarian of the Foreign Office, 22 October 1886

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Memorandum de E. Hertslet, 1886, Box: E-07.

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MEMORANDUM DE SIR E. HERTSLET, BIBLIOTECARIO DEL FOREIGN OFFICE.-
22 de octubre de 1886.-

MEM: ON THE GUIANA BOUNDARY MAPS.

I think it would lead to misapprehension hereafter, if the statements made in the Colonial Office Letters of the 25th and 27th Ult:, were accepted without comment, and I therefore beg to point out; with reference to the statement made in the letter of the 25th September, that the "British Government has never withdrawn or modified it's claim to the Boundaries laid down by Schomburgk"; and to the statement repeated in the letter of the 27th September, that "the claim to the Boundary laid down by Schomburgk has been consistently adhered to by that Department, although, in lapse of time, it has been now and again distorted by the issue of unauthorized Maps," etc; that the existence of Schomburgk and Herbert's M.S. Map of 1842, which is evidently the one now alluded to, was not officially known at this office until the present year,* and that, so far from any "unauthorized Map" (by Schomburgk) having been issued, the Colonial Office themselves, in May 1840, laid before Parliament a Map which was described as being a "sketch Map of British Guiana, by Robert H. Schomburgk Esqre." and upon which a line was drawn and coloured, which was stated to be "the Boundary as claimed by Great Britain," and which line was very different from that traced upon Schomburgk & Herbert's M.S. Map, now in the possession of the Colonial Office.

* altho' a reduced tracing from it was received in Sept. 81 not so stated on it (at the time)

Another...

Another Map was published by Stanford in 1875, but neither could this Map be well called an "unauthorized" one, since it bore upon it the following inscription:

"Map of British Guiana,* compiled from the surveys executed under Her Majesty's Commission from 1841 to 1844. And under the direction of the Royal Geographical Society from 1835 to 1839. By Sir Robert H. Schomburgk, K.R.S., Ph.D.

Revised and corrected to the present time by Cathcart Chalmers Esqre., Crown Surveyor of the Colony, and James Gay Sawkins Esqr. , Director of the Geological Survey of the West Indies and British Guiana. With additions by Charles B. Brown, Esqr. Engraved under the superintendence of William Walker Esqr. , 1875".

Then followed this note:

"The boundaries indicated in this map are those laid down 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 laid down between Brazil on the one side, and Venezuela on the other, and the Colony of British Guiana must not be taken as authoritative; as they have never been adjusted by the respective Governments, and an engagement subsists between the Governments of Great Britain and Venezuela by which neither is at liberty to encroach upon or occupy territory claimed by both".

It is true that this year the Colonial Office called in this Map, and authorized Stanford to reissue it with the Boundary line so traced as to make it agree with the line traced on Schomburgk and Herbert's M.S. Map in their possession, but the 1875 Edition of Stanford's

* See Memo: (E.H.) of 5 June. Conf. Print P: 71

Map...

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* See Memo: (E.H.) of 5 June. Conf. Print P: 71

Map...

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the Government Secretary, Georgetown, British Guiana".

This is Schomburgk & Herbert's unpublished Map of 1842, a photograph of a portion of which was sent by the C.O. to the Govt. of British Guiana "sometime ago".

E.H.
(E. Hertslet)

23/10/86

PUBLIC RECORD OFFICE (LONDON)

F.O. 80/310

Annex 29

Venezuela's protests against British violation to the disputed territory. (Translation)

AHMPPRE, Archivo Antiguo, País: Gran Bretaña, Periodo 1886-1887, Vol. 148, N° 12, Folios 22-45. 1886.

MINUTES RELATING TO THE VENEZUELAN COMMISSIONS APPOINTED TO STUDY THE PLANS OF THE MOUTHS OF THE ORINOCO RIVER.

London July 28, 1886

General Guzmán Blanco to Lord Rosebery

Excellency:

It is some time since the Government of the United States of Venezuela communicated to me the order to endeavour before Her Britannic Majesty's Cabinet the claims initiated in Caracas against repeated acts of violation of the territory of Venezuela, executed by English authorities. I have waited until now that the Queen's Cabinet, taking into consideration the just complaints of the Republic, and previous to the reports of the case, would agree to the measures of redress that such offenses demanded. But, as this has not happened, I will now explain the grounds for the urgent requests of the Executive.

I must begin by pointing out that the acts committed to the detriment of Venezuela lack all possible justification, and that naturally, because of this and because they come from agents of a great and powerful nation, with whom Venezuela has lived in ancient and cordial friendship, they have considerably excited the interest of the Venezuelan people, and awaking the sentiments that has been calmed since 1841.

If you will deign to send for the respective papers, you will find that then the engineer Schomburgk, in charge of a scientific communication to Guiana, went through the region and arbitrarily planted posts in Barina and other parts as signs of British domination in those places, as if only one of the parties to an international litigation could resolve by itself, out of all contradictory and factual discussion, a controversy with one who has the same attributes as it, of sovereignty and independence. However, such arbitrariness was not sustained, but on the contrary, listening to the voice of reason, the Government of Her Britannic Majesty gave explanations to her honour, and, what is more, ordered the removal of the posts and emblems.

Desirous of avoiding in the future the repetition of such serious events, of forever blinding a source of disagreements and difficulties, the Venezuelan President then strongly promoted the settlement of the boundary question between the two countries. In the end, negotiations were initiated through the Plenipotentiary Minister, Dr. Alejo Fortique; but they remained without result as a consequence of his premature death in 1844. Since then, some steps have been taken to bring the matter to an end; and Venezuela has seen with regret that in recent times a less favourable proposal has been made by Great Britain, without the cause of the difference being known, than the one presented spontaneously by Lord Aberdeen to Dr. Fortique. On its side

the Republic, considering the mutual advantages of arbitration, and the adoption of it on the part of Her Majesty in analogous cases, and in view also of constitutional precepts, has appealed again and again to the recourse so earnestly urged by the Houses, statesmen, and public opinion of the United Kingdom of Great Britain and Ireland and the whole civilized world.

In 1850 Mr. Belford Hinton Wilson, Chargé d'Affaires of Great Britain in Venezuela, on the occasion, he said, of rumours having spread that England wanted to claim Venezuelan Guyana, took upon himself to deny them, and declared in an official note of November 11 that not only were they absolutely and completely devoid (sic) of any foundation, but that they were precisely the reverse of the truth. Furthermore, it expressed itself in the following terms: "E Government of Venezuela, without being unjust to Great Britain, cannot for a moment distrust the sincerity of the formal declaration, now made in the name and express order of Her Majesty's Government, namely, that Great Britain has no intention of occupying or usurping the disputed territory; so, in the same spirit of good faith and friendship, the Government of Venezuela can have no objection to make to Her Majesty's Government a similar formal declaration, namely, that Venezuela itself has no intention of occupying or usurping the disputed territory."

Further on and in the note itself Mr. Wilson added: "His Majesty's Government, as aforesaid, will neither order nor sanction such usurpations or occupation on the part of British authorities, and the undersigned is persuaded that, should there ever be misunderstanding as to the determination of his Government on this point, he would gladly renew his orders in the matter; I therefore cherish the conviction that, in accordance with the friendly directions of His Majesty's Government, that of Venezuela will not hesitate to send to the Venezuelan authorities in Guiana positive instructions to refrain from taking measures which the British authorities may justly regard as aggressive. "

The Government of the Republic acceded to what was requested of it, declaring that it had no intention of occupying or usurping any part of the territory whose dominion was in dispute, nor would it view with indifference that Great Britain should proceed otherwise. He also ordered the authorities of Guyana to abstain from taking any action that would violate the obligation that the Government had contracted by virtue of what had been declared, and that could lead to disastrous results.

This agreement has continued until now without any change whatsoever, since no duration was fixed, nor have the parties made the least communication to each other about it since then.

Now, if such an agreement means anything, neither Great Britain nor Venezuela have been able to occupy disputed places, the specification of which should have been made, and was not made, on that occasion as an integral part of the agreement. But the rational sense of the agreement is that it was intended to maintain the status quo. This is how the Republic has understood it, which, claiming as its own places whose de facto possession is held by Great Britain up to the Essequibo, has provisionally left them there.

On the contrary, Great Britain has continued to advance its occupations, which and the recent actions of its authorities prove that it has not taken into account its spontaneous declaration here recalled.

When negotiations were being held to fix the boundaries between Venezuelan and British Guyana, Lord Aberdeen, Principal Secretary of State to Her Britannic Majesty in the Office of Foreign Affairs, after the Plenipotentiary Mr. Fortique had claimed the Essequibo line, spontaneously proposed to begin it along the coast at the mouth of the Moroco River and to continue it upstream.

This proves that the British claim could not go beyond that point, because to suppose that His Majesty's Cabinet was then unaware that the frontier should go up to the Orinoco, is an absurdity as inadmissible as it is disgraceful to the enlightened members who constituted the Government at the time.

However, Venezuela did not agree to the proposal. Now, forty years after those events, and in spite of the fact that England can have no more rights today than those that corresponded to its originator, Holland, in 1814, from the cession of part of Dutch Guiana, it is advanced that Great Britain exercises authority and jurisdiction from the right bank of the Amacuro River.

But, supposing for a moment that such were the aspirations of His Majesty's Government, since it promised not to occupy or usurp the disputed territory, it has not been permitted to execute acts such as those which, by means of officers of its navy and civilians, it has consummated at the great mouth of the Orinoco and elsewhere with disregard for the sovereignty, laws and authorities of Venezuela. After English officials had asked for pilots in October 1884 to go up that river, as they were refused because their destination was not any authorized port of the Republic, they continued their trip quietly, entered places that have always belonged to Venezuela, placed posts, posted signs declaring that British laws were in force there, changed employees of the Republic replacing them with others of their own choice, tried to put Venezuelan officials under their service, and promised to return with greater force to make their mandates effective. They returned with effect to continue the series of events they had begun, without taking absolute care of the counterclaims of the Venezuelan authorities. Not content with this, they took a Commissary of the Republic under the pretext that he had committed a crime by mistreating a Portuguese subject; and placed under the jurisdiction of a court of Demerara, he was prosecuted and sentenced, which has been carried into effect. This individual's name is Roberto Wells; he was in charge of the Commissariat of Amacuro, and was caught with cunning.

Such facts do not need more proof than the following. The Government of the Republic sent a commissioner to clarify them, Mr. General Federico Puga. He went to the places where the events took place, and having found Mr. Michael McTurk in Morajuana, he asked him first by word of mouth, and then in writing, about them. Said individual, who is entitled Acting Special Magistrate and Superintendent of Crown Lands and Forests in the Pomaron River District, replied in the following terms on April 4:

"Morajuana River, British Guiana, April 4, 1885.

"I have been on the Amacuro, Barima, Morajuana and Guaima rivers and have posted notices in English at the principal places on those rivers. I am sorry I do not have a copy of these notices to forward to you; but as they were removed by employees of the Manoa Company, you will probably be able to get some with them. The notices were placed by order of His Excellency the Governor of British Guiana.

"The name of the steamer on which I came was the Lady Longden, commanded by Captain Paisley. I have been several times on the rivers referred to after the posting of the notices, but in the exercise of my duties as Magistrate-in-Charge of the District of which they form a part.

"Robert Wells was sentenced before the Supreme Criminal Court of the Judelie Sessions, Esequibo River, on the 20th of February last, for an assault committed (I believe last October) on the person of a Portuguese on the Morajuana River. I never knew him to be a police employee of the Venezuelan Government, but he was a police employee of the Manoa Company, as Wells himself told me.

"I did not need a pilot for the Amacuro River, nor did I request the services of any for the Orinoco.

"I have the honor to be, sir, your obedient servant.

"Signed) Michael McTurk,

"Acting Special Magistrate and Superintendent of Crown Lands and Forests in the Pomaron River District.

"Mr. F. Puga, Commissioner of the National Government of Venezuela."

Here it is paladinly acknowledged: 1° that Senor McTurk has been in the Amacuro, Barima, Morajuana and Guaima Rivers, and in the principal places of them has placed notices in English: 2° that this he has done by order of His Excellency the Governor of British Guiana; 3° that it was in the steamer Lady Longden, commanded by Captain Paisley; 4° that he has been several more times in the said rivers after the posting of the notices, although he adds that in exercise of his functions as Magistrate in Charge of the District of which they form a part; 5° that Robert Wells was sentenced before the Supreme Criminal Court of the Judelie Sessions, Esequibo River, on the 20th of February last, for an assault said to have been committed (October 1884) on the person of a Portuguese on the Morajuana River; and 6° that he did not require a pilot for the Amacuro River, nor did he request the services of any for the Orinoco.

With respect to the last point there is a contradiction between the affirmations of Mr. McTurk and those of several witnesses; but we will dispense with this for the moment in order to examine the transcendence of the acts executed by the former in his capacity as a British public official.

The first reflection that will come to light is that the most sacred property of the Republic of Venezuela, its territory, has been violated by British officers, by virtue of orders of the Governor of Guiana, and this not accidentally, but with deliberate purpose, and in the midst of the friendship established by a solemn pact.

In the second place, an agreement devised and proposed by Great Britain to Venezuela since 1850, and which the latter only accepted out of deference to the wishes of Her Majesty and with a view to avoid for the future, and while the demarcation was being definitively settled, any dispute capable of harming the good relations of the two parties, has been infringed.

The Governor of English Guiana has failed to comply with the orders then given to him and subsequently repeated, not to practice any usurpation or occupation, since His Majesty's

Government promised not to order or sanction such acts on the part of its authorities, and was ready to renew its orders in this respect, should there be any misunderstanding of its determination on this point.

The declaration made on behalf of and by express order of His Majesty's Government, namely, "that Great Britain has no intention of occupying or usurping the disputed territory," is likewise violated.

If such an agreement refers to the parts of territory over which there is a dispute, with greater reason must the same be applied to places over whose ownership there has not been the least doubt, and which remain in the quiet and peaceful possession of their owner. This is precisely the case with some of those in which English officials have exercised jurisdiction, and in which no other Government than that of the Republic has ever been known. The very circumstance of having thought it convenient to place their notices and other signs of British dominion, proves that it was intended to speak to the eyes of the inhabitants, making them understand that it was a question of introducing novelties. With the same object, Mr. McTurk was sent to places to which his jurisdiction had not been extended.

Although the said gentleman assures that he did not ask for pilots to go up the Orinoco, there is testimony from employees who affirm the contrary, and that they were not given to him because his voyage was not directed to any authorized port. But he dispensed with such a formality and went ahead, exposing himself to the danger that measures of force might be taken to oppose the consummation of an act which violated the rights of Venezuela. Its laws do not permit entry into the territory except through ports authorized for that purpose: thus, even if Great Britain had possessions to reach which it needed to cross lands or waters of the Republic, it would have to comply with such a formality. The Orinoco is an internal river, whose entry is only permitted under certain conditions and with a designation of the points where it can be touched or anchored.

There is also a law that prohibits foreign warships from entering ports not open to foreign trade, except with scientific objects, and that with prior permission of the Executive. This law, although it was not necessary, was notified to the nations represented in Caracas, among them Great Britain, in the course of 1882.

The gravity of the case is increased by the fact that an employee of the Republic was taken prisoner, in his own territory, and without any consideration for his authority, he was cunningly taken to a British vessel, declared there to be a prisoner, taken to Demerara, put on trial, and sentenced for the crime of mistreatment of a Portuguese subject. The majesty of the nation has been offended by such proceedings in regard to the person of Mr. Wells, its Commissioner. If he committed any fault in the exercise of his office, he was only responsible for it before the competent judges of Venezuela, and in no way before the courts of a foreign country to whose laws he was not subject; and it is not conceivable that the case should be prolonged, once he had alleged that he was an official of Venezuela, and that the act imputed to him was an act of legitimate jurisdiction on the soil of the Republic. In the event that the latter had been improperly conferred upon him, the consequences would have been taken by him, his principal, and should not have fallen upon a subordinate who was acting on behalf of another. But even if he had been a private delinquent, his actions were subject only to the owner of the territory where they were committed, not to the English magistracy of Demerara, which tried and punished him. The officer who was on the aforementioned warship of S.MB. entered the mouth of the Orinoco, arrived at Pontoon Faro and asked for pilots to go up the river; and having been

denied by the employees of the latter for not going to authorized ports, he dispensed with pilots and followed his course to "Amacuro," leaving the next day for "Guaima" through the "Barima" channel, after having posted this notice at all the points traveled:

"(L. S.)- Government Notice.

"Notification is hereby given that any persons who infringe the Rights of Her Majesty, or who act in contravention of the laws of British Guiana, will be prosecuted according to law.

"By virtue of mandates,

"Francis Villiers,

"Acting Secretary of Government.

"Georgetown, Demerara, October 16, 1886."

This happened in October 1884, with such operations beginning on the 18th. The invasions in Venezuelan territory continued since then, and had among other objects the violent deposition of the authorities that the Governor of the "Delta Territory" had established at the mouths of the Amacuro and the Morajuana; and the proposal was made to the Commissioner from the mouth of the first, Mr. Roberto Liso, to invest him with sufficient authority, assign him a salary, and leave him the garrison required to maintain and defend British jurisdiction at that point.

On the following November 22, the aforementioned Mr. McTurk wrote from the right bank of the Amacuro River to Mr. Tomás A. Kelly, President Administrator of the Manoa Company, telling him that he had news that she was trying to erect a Sierra at the mouth of the Barima and adding these words: "I consider it my duty as an officer now in charge of the Judicial District of the Pomarón River, a District that extends to the limits of the Colony on the Venezuelan or Western side, to notify you that the Barima River is in the county of Essequibo and Colony of British Guiana and is part of the Judicial District over which I exercise jurisdiction. No establishment of any kind, whether for commercial or other purposes, can be formed within the limits of the colony except in accordance with its existing laws, whose obedience will be required of those who live there.

"I would like to draw attention to the notices posted on the trees of the Amacuro, Barima and Waini rivers, of which they tell me that you have one. I include a handwritten copy of it. These notices were placed where they are by order of the Exmo. Mr. Governor"

In another letter of the same date, Mr. McTurk said to Mr. Kelly himself: "I have the honor to inform you that you are now within the limits of the colony of British Guiana and those of my District as one of the magistrates' special forces and superintendent of Crown lands and forests for that colony, and consequently outside his jurisdiction as an employee of the Government of Venezuela. Any notifications that you make to the inhabitants will be void, and all individuals residing in this or any other part of this colony or visiting it, will have to behave in accordance with its laws. I must also draw your attention to the notices posted on the trees of this river and also of the Wairú and Barima rivers. These notices have been posted where they are ordered by the Governor of British Guiana."

On October 15, 1884, the Acting Secretary of the Government of British Guiana wrote to Mr. Fitzgerald the following: "Secretary of the Government of British Guiana.-Georgetown, Demerara, October 25, 1884.- The Hon. Mr. Governor of British Guiana has ordered me to notify you of receipt of your three letters noted in the margin regarding the company of Manoa and the concession made by the Government of Venezuela, and to thank you on behalf of His Excellency for the reports and documents that you have given him. supplied. Regarding the limits of British Guiana, Your Excellency orders me to inform you that the colonial Government exercises authority and jurisdiction within the limits indicated on the attached map starting from the right bank of the Amacuro River, and that within those limits the Government colonial enforces the laws of British Guiana. I must further inform you that any person who fails to comply with the laws of British Guiana or acts in contravention of them within these limits will be subject to proceedings in accordance with the laws of the Colony. The entire territory, between the Amacuro and Barima rivers, is part of British Guiana, and the colonial Government will maintain jurisdiction over this territory and will prevent the rights of His Majesty or the inhabitants of the Colony from being infringed in any way.

I have quoted these passages verbatim, so that you can see the determination with which the British authorities claim jurisdiction in those places in Venezuela, thus adding words to facts.

On the other hand, in the note from the British Legation in Caracas to the Ministry of Foreign Affairs of Venezuela, dated January 8, 1885, the following is read:

"In a letter dated November 28 in London, His Majesty's Government ordered me to draw the attention of the Government of Venezuela to the procedures of the Manoa Company in certain districts whose sovereignty the Government of His Majesty and that of Venezuela equally claim.

"Mr. Count Granville also instructs me to ask the Government of Venezuela to take measures to prevent the agents of the Manoa Company, or of Mr. H. Gordon, who also has a concession from the Government of Venezuela to colonize, from claiming or impregnating any part of the territory claimed by Great Britain.

"His Majesty's Government, in the event of Venezuela's refusal to move in this matter, to its great regret, would find it necessary to adopt measures to prevent the usurpation of the Manoa Company, and the Governor of British Guiana would even be authorized to employ adequate police force to prevent such usurpation and maintain order.

"Lord Granville nevertheless goes ahead and informs me that the Governor of British Guiana will not take any action while this reference to the Government of Venezuela is pending.

"I hardly need to remind Your Excellency that the question of the limits of British Guiana is of ancient date, and that His Majesty's Government and the Minister of Venezuela in London are communicating on the matter, and so it is all the more important that it be prevent incidents capable of causing great inconvenience. Without taking into account the territories disputed between Venezuela and Great Britain, the territories granted to the Manoa Company are of enormous extension; Furthermore, without going into that part of the matter, I am certain that the Hon. Mr. President of the Republic will duly appreciate the immense importance of avoiding the possibility of any collision between the agents of the Company and the British authorities in the territories whose sovereignty is still a disputed issue.

On the 26th of the same month of January, Mr. Mansfield again wrote to the Government to inform them that orders had been transmitted to the Governor of British Guiana to send Mr. Turk, a stipendiary magistrate, accompanied by a force of police adequate to instruct in the District of the eastern bank of the Amacuro River an inquiry into the proceedings of the Manoa Company, and more especially into the conduct of Mr. Robert Wells and others, who were accused of having tortured persons by hanging them for a long time by the ankles, etc. The Legation further expressed that Mr. McTurk would act in accordance with the laws in force in the other parts of British Guiana, remembering that the words of the contract with the Manoa company strictly say "until British Guiana," and observing for this reason that in the report of the territorial concession of the Great Orinoco Delta to the Manoa company, Mr. Fitzgerald says that "about ten miles southwest of Punta Barima is the entrance of the Amacuro River, which in 1800 formed the limit between British Guiana and Venezuela; " from which it would appear that the place whose incidents have been noted is not even claimed by the "Manoa" company. Lately Mr. Mansfield mentioned that the Governor of British Guiana had informed London that the posts placed by order of the Government of that colony had been removed, as was presumed, by order of the government of Venezuela, and sent to Ciudad Bolívar. On October 11 on the eastern bank of the Amacuro River, and in other places against the usurpers, as the British crown claimed the territory, observing that this incident could lead to correspondence of an unsatisfactory character, if not to serious inconveniences in a future date.

From the copied passages and the facts presented, the definitive affirmation appears that the British authorities have exercised the most solemn acts of jurisdiction in places that at the same time declare to be in dispute with Venezuela; that is, they have violated and continue to violate Her Britannic Majesty's proposed agreement not to "occupy or usurp the disputed territory." The infraction is all the more serious as the use of violence has been carried out as if it were parties over whose control there had never been the slightest controversy. So the London Cabinet has not taken into account the rights of Venezuela at all, but has alone decided the superiority of those it alleges, and consequently proceeded to violent acts.

Another notable circumstance is that the prior step of presenting to the Government of the Republic, not even through this Legation, the reasons for complaint on which the resort to force was going to be based was not taken. This procedure belies the friendship cultivated by Venezuela with such care, which in order to make it more and more perfect it had accredited a first-class representative in London; and it is also contrary to the practice of nations that, always before resorting to reprisals, use the procedures of conciliation and good intelligence as required by the considerations they owe to each other.

Mr. Mansfield expressed in a letter dated January 8 that the Governor of British Guiana would not take any action while the request then addressed to the Government of Venezuela to prevent the agents of the Manoa company or Mr. H. Gordon from claiming or impregnate some part of the territory claimed by Great Britain. This friendly step would not have failed to produce convenient results, if by the date on which it was taken the measures decided by the British Government had not been completed. A few days later, on January 24, Mr. Mansfield reported that since October 11, 1884, by order of the Governor of British Guiana, posts had been placed on the eastern bank of the Amacuro River and in other places. On January 31, the Governor of the Delta Territory informed the Executive that a commission of Englishmen had entered the mouth of the Amacuro and taken (sic) prisoner the civil commissioner established there by the government of said territory, leaving a police guard in place.

Mr. Fitzgerald's assertion that in 1880 the boundary between Venezuela and Great Britain was about ten miles southwest of the Amacuro River is completely untenable. To be convinced of this it is enough to remember that in that year Great Britain had not acquired any right to the part of Guiana that Holland ceded to it in 1814; and that with respect to this and the Spanish possessions the limit was on the Essequibo River, as had always been affirmed by Venezuela. So Mr. Fitzgerald's error cannot prejudice the rights of the Republic.

And it is important to never lose sight of the fact that the concession to said gentleman does not determine specific limits, but rather makes use of the expression "up to British Guiana" as repeated by Mr. Mansfield in one of the aforementioned passages of his correspondence. However, the procedures of the Manoa company have been taken as a pretext for actions that depress the rights of Venezuela.

That the posts placed by order of the Government of British Guiana on the eastern bank of the Amacuro River and in other places have been removed would only mean a protest against the precautions of Great Britain, well, if she believes herself to be the mistress of such places , the Republic is certain that these are its own; and allowing these signs to remain would be equivalent to recognizing the intention with which they have been placed, and would be alleged tomorrow as proof of Venezuela's acquiescence to the arrogation of British dominion. With such signs the occupation of a territory that Her Majesty has undertaken "not to occupy or usurp" would be demonstrated by a spontaneous act of Her Government presented with determination for the acceptance of Venezuela. In the denied case that the latter, on its part, had violated the same duty that it contracted in turn, it was appropriate that friendly representations be initiated against it aimed at repairing the fault, instead of taking unilateral and coercive measures capable of hurting the dignity of a sovereign State, which sees the integrity of its territory threatened more than ever in a very important part, namely, the great Orinoco River that leads to the ocean the waters that in great numbers bathe its soil and that of neighboring countries, and form the main means of communication not only between its populations, but also between foreign regions, promising the most promising future with the natural progress of the new nationalities of America.

In the last proposal of accommodation made by the British Government to Venezuela, it was told that, as the capital point for it was the possession of the Orinoco, a line was presented that would begin about twenty-nine miles east of the right bank of the Barima River; line not accepted by Venezuela, which claims that of Essequibo.

The Government of the Republic, in its answers to Mr. Mansfield, assured him in accordance with the words of the contract "up to British Guiana" that the limits of the aforementioned contracts did not extend beyond those of the territory in dispute, and promised with all sincerity take measures to clarify the facts, since the Manoa Company was accused of having exceeded those lira. Note that on October 18, 1884, an English war steamer entered the mouth of the Orinoco, and arriving at the Pontón Faro, it asked for pilots to go up the river, and they were denied for not heading to authorized ports, in accordance with the law. That despite such opposition, he continued his course to Amacuro, leaving the next day for Guaima through Barima, after having established apostes at all points of his journey with declaration forms of ownership; facts that had very actively attracted the attention of the Government, which even doubted them, given the extraordinary nature of the event.

In a second note, the His Excellency Minister of Foreign Affairs expressed to Mr. Mansfield the deep surprise with which the Federal Executive had heard the report of his letter of January

26, both in relation to the facts attributed to Mr. Roberto Wells, as well as to the orders given to the Governor of British Guiana, to send, with an adequate force of police, Mr. McTurk to investigate the procedures of the Company on the Eastern side of the Amacuro River, although it was operating in territory indisputably belonging to Venezuela. "This surprise from the Government, Your Excellency," the Minister continues, "has risen to a higher level when reading yesterday a telegram from the Governor of the Delta Territory in which he announced that an armed force, sent by the Excellency Governor of the English Guiana entered Venezuelan territory, and using violence reduced the Commissioner of the mouth of the Amacuro to prison, whom he took away, leaving a police force established. In addition to all the other events that Your Excellency is already aware of, this single event is enough for Venezuela to feel attacked in its sacred rights of dominion, and for it to urgently call Your Excellency's attention in order to dictate the measures that the case requires that these procedures be corrected and things return to the state they had, in accordance with the current status quo, and that determines that neither of the two nations exercises jurisdiction in any part of the disputed territory. This becomes all the more essential when negotiations are in progress between Venezuela and Great Britain, with the aim of putting an end to the long boundary dispute that they sustain. The Plenipotentiary of the Republic has received orders to activate the negotiations, and undoubtedly these would soon reach the terrain of the desired conciliation, if inadequate procedures were avoided that have all the appearance of de facto avenues, which are in complete disagreement with respect for "the principles of territorial dominion and those of justice that should characterize the relations between civilized countries."

In accordance with the orders of my Government, and in merit of the foregoing, attaching a copy of the agreement consented by it at the request of Mr. Wilson, Chargé d'Affaires of Great Britain in Caracas, I respectfully request:

1° Removal of all signs of sovereignty placed by order of the Governor of English Guiana in the disputed territories.

2° Withdrawal of employees and public forces that have been placed in them.

3° Satisfactory explanations for the lack of compliance with the proposed agreement with Venezuela on the part of Great Britain, and the violation of the laws of the Republic regarding ports not open to foreign ships.

4 ° Annulment of the process brought against Mr. Roberto Wells, his freedom and compensation for the damages caused to him with his capture and imprisonment and submission to trial and punishment for accusation of a crime in Venezuelan territory.

5° Complete restoration of things to the state they had in 1850, date of the aforementioned agreement, and strict orders to the Governor of British Guiana to observe it scrupulously, while the two Governments settle the question of their limits.

I renew to Your Excellency the protests of my highest consideration.

Guzmán Blanco.

Hon. Lord Count Rosebery, Principal Secretary of State to H.M.B. in the Office of Foreign Affairs, etc., etc., etc

COMPLAINT ABOUT THE ATTITUDE OF THE BRITISH COMMISSIONER IN AMACURO AND ABOUT THE EXTRACTION OF GOLD IN VENEZUELAN TERRITORY. DEMAND FOR GREAT BRITAIN'S DARE TO TAKE JURISDICTION OVER THE ORINOCO. RECAPITULATION OF NEGOTIATIONS SINCE 1840. DEMAND FOR ARBITRAMENT OR SUSPENSION OF RELATIONSHIPS.

AHMPPRE, Old Archive, Country: Great Britain, Period 1886-1887, Vol. 148, Exp. 12. Folios 83-119. 1887.

Appointment of interest

Caracas: January 26, 1887

Your Excellency sir.

In accordance with what was communicated to Your Excellency by this Ministry on December 7, the President of the Republic sent Commissioners to Barima and other points, with the objects already indicated, Engineer Doctor Jesús Muñoz Tebar and General Santiago Rodil.

The Head of the Commission has just returned here, and has brought its results to the attention of the Government.

Unfortunately, the serious news that motivated this measure has been confirmed.

First, the Commissioners found in the neighborhood of the right bank of the Amacuro River two Commissioners, Messrs. Francis Stephen Neame and G.B. Jeffry. They presented their despatches of Rural Constables (sic) issued by Mr. Michael Mc Turk, who is titled Her Majesty's Stipendiary Magistrate, in and for the Colony of British Guiana, on March 1, 1885 and September 6, 1886 , respectively. In responding to a communication from the Commissioners, the Commissioners assured them that they had not received instructions to oppose the Venezuelan authorities of the left who lowered the Amacuro; but that they did have authorization to prevent any Venezuelan ship from selling rum or spirituous liquors in British territories, and added that anyone who sold rum without the competent license, given by their Government (that of Demerara) could be arrested at any time.

In the same hamlet of Amacuro, the commission took sworn statements from the Venezuelan commissioner, Mr. Roberto Wells, and from Mr. Aniceto Ramones and Alfonso Figueredo. His depositions corroborated the capture and abduction of the former in that same place, his taking to Georgetown and confinement in jail there for two months, his trial and sentence to a fine of twenty-five pesos; and they also established the fact of the existence of a wooden house with a thatched roof that serves as a public office, displays the English flag, was built by order and at the expense of the Colonial Government and has been seen by the Commissioners. It was also proven in the same way that an English coast guard named Transfer has made trips to Amacuro several times accompanied by a British Magistrate and armed police officers, for the purpose of hearing, judging and deciding criminal and police cases; and that both in Amacuro and in Barima, the vessels legally dispatched from Ciudad Bolívar are registered and they are prohibited from selling the merchandise, and from following the Barima branch, unless it is a burden, requiring them to obtain a license in Georgetown in order to negotiate.

The Commissioners moved to the right bank of the Amacuro, where they were in written and verbal communication with the aforementioned Commissioners. They then went to the neighborhood of Aruca, where they were told that there was a Commissioner named Harrington, who was absent at the time, and that a justice of the peace had been there three months ago on the occasion of the murder of a coolie, and whose perpetrator was accused. He arrested him and took him to Georgetown to judge him. 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 that serves as a Protestant church and public school, built under the direction of the missionary Walter Heard. In the marriage registry kept there it states that the place belongs to the county of Essequibo. No Commissioner was found at the site; Furthermore, according to a report from the 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 made sure that the English authority was benefiting from gold mines in our territory located between the Cuyuni, Mazaruni and Puruni rivers, and that a large quantity of that mineral had already been exported (sic) by the English Customs.

Finally, the Commission headed to Georgetown, and, through the Consulate of Venezuela in that city, informed the Governor of Demerara of the objects of its commission, what it had done by virtue of it and the violations of Venezuelan territory that it had committed. had found out. The Secretary of said British employee limited himself to responding on the sixth of this month that he referred to the notice published in the London Gazette on October 21, 1886, of which he attached a copy, and stated that the districts to which the note referred official of the Commission were included in the boundaries established by the terms of the notice and are part of the Colony of British Guiana.

In the notice it is proclaimed and notified that since the limits of British Guiana, Her Majesty's colony, and the Republic of Venezuela are in dispute between Her Majesty's Government and the Government of Venezuela, and since it has become known of His Majesty's Government that the Government of Venezuela has made or proposes to make concessions of land within the territory claimed by His Majesty's Government, such titles will not be admitted or recognized, and he will be judged as a violator of property according to the laws of the colony to any person who takes possession of those lands or exercises any right in them under the pretext of such titles. In conclusion, it is said that a map indicating the limits between British Guiana and Venezuela, claimed by Her Majesty's Government, can be seen in the library of the colonial office, Downing Street, or in 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 for a map that is separate from the notification to which they are linked.

Now, apparently there is no longer the slightest 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, with the despicable grounds that there is a boundary dispute between the Republic and Her British Majesty. The logical conclusion of the existence of a dispute over ownership of land and water should be, at most, the convenience of neutralizing the places of dispute by mutual agreement, pending its decision. But resolving one of the contenders alone and with disregard for the rights of the other, the appropriation of the controversial thing, is in the light of all jurisprudence an unjustifiable violation of the most sacred right of nations, it is a mortal wound to Sovereignty. of the Republic. In a similar case, Great Britain has condemned the very act it is carrying out today with Venezuela.

According to the Decree issued by the King of Spain in 1768, the province of Guayana bordered the Amazon to the South and the Atlantic to the East. So the acquisitions of other powers within those limits were not valid except insofar as they were legitimized by the subsequent consent of that monarchy. Regarding the Netherlands, to whose rights Great Britain has succeeded, the only thing that was left in its possession, of the aforementioned Region, were the establishments of Essequibo, Demerara, Berbice and Suriname, which the Dutch had taken over during the long war with its former metropolis, which ended with the treaty of Munster of 1648. That the Dutch (sic) did not then possess any other colonies than those mentioned, is confirmed by the extradition agreement celebrated in Aranjuez between Spain and the Netherlands for the purposes from the 18th century, on June 23, 1791, in which only those are listed. And it is noteworthy that the Dutch could not continue advancing on the Spanish possessions, because Article 6 of the Treaty of Munster prohibited them from sailing to them and trafficking with them. Despite this, they continued to advance; but, far from consenting to new usurpations, Spain used arms to repel them. Lord Aberdeen himself recalled in his note of March 30, 1844, to Mr. Fortique, that in 1797 she attacked the fort of New Zealand, regardless of nothing his success unfavorable. What we are trying to prove is not the superiority of her forces over the Dutch garrison, but the opposition to their advances. Consequently, everything that passed through Essequibo was outside the jurisdiction of Holland, which on the other hand only ceded to Great Britain in 1814 the settlements of Essequibo, Demerara and Berbice.

In 1844 Lord Aberdeen proposed the Moroco as the limit.

In 1881 Lord Granville presented to Venezuela a line that began 29 miles east of the eastern bank of the Barima.

IN 1886 Lord Rosebery asked for a border that started from the sea coast towards (sic) the west of the Guaima River.

In 1868 the Governor of Demerara, in a decree on the division of records, did not establish another one further north than that of Pomarón.

It was on November 6, 1886 when, upon repealing that decree by order of the Government of Her Majesty, he established new divisions that reached the shore of the Amacuro.

It was also in 1885 and 18886 when he appointed Commissioners for Amacuro.

In 1841 the engineer Schomburgk capriciously pointed out the limits that His Majesty's Government today claims and put up posts and other signs.

Alarmed by the Republic with such a fact, the Government sent two Commissioners to Demerara to demand explanations, and ordered its Minister in London to demand that the marks be removed.

The Governor of Demerara told the Commissioners that, as the limits were really indefinite and in question, Mr. Schomburgk's operation had not been and could not have been carried out with the intention of taking possession, but as a simple marking of the line presumed on the part of British Guiana, and that therefore, while the limits were indeterminate, the Government of Venezuela had to trust that no fort would be built on the land in question, nor would any troops or force be sent to it.

For his part, Lord Aberdeen replied that the marks placed by Mr. Schomburgk in some parts of the country which 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 limits with the Government of Venezuela; that they were established with that express purpose, and not, as the Government of Venezuela feared, with the intention of indicating dominion and empire on the part of Great Britain. He added that he was glad to learn from Mr. Fortique's note that the two Commissioners sent by this Government to English Guiana could have ascertained from the reports of the Governor of that Colony that Punta Barima had not been occupied by English authorities. This was written on December 11, 1841

Shortly after, on January 31, 1842, Lord Aberdeen ordered the removal of the marks, in order to put an end to the bad intelligence that reigned in Venezuela in order to obtain the recognition of Mr. Schomburgk, and to attend to the renewed representations of Mr. Fortique.

Reconciling the procedure then, which made it clear that during the controversy the territory could not be taken, and the fact now, by which the British Government has assumed control of what it says it claims, is beyond intelligence. from Venezuela.

And I must here state that she has never understood that the ownership of the places located further from the mouth of the Pomarón was disputed, but only of those that are between that river and the Essequibo; and it is very clear from the proposal of Lord Aberdeen, who was satisfied with the mouth of the Moroco as the western limit of the British possessions.

But, even if it were admitted by way of argument that the disputed land was larger, Great Britain would not have had the right to occupy it, not only because of the thing itself, but also because it contracted the obligation not to occupy the territory in dispute.

I refer to the Convention concluded in November, 1850, by exchange of notes with Mr. Wilson, Chargé d'Affaires of Great Britain, at his request and in force of strict instructions from his Government. He declared first of all that the rumors then widespread here that Great Britain wanted to claim Venezuelan Guiana were unfounded and the reverse of the truth; He immediately declared that Great Britain would not occupy or usurp the disputed territory, nor would it order such occupations or usurpations, nor would it sanction them by its authorities; and he requested and obtained similar statements from Venezuela.

Then, it is clear that Great Britain has violated that agreement, its own work, by entering Venezuela through prohibited places, visiting the Guaima, Morajuana, Amacuro and Barima arm rivers; planting notice of their laws being in force there, in the trees of the riverbank; appointing commissioners; seizing a Venezuelan commissioner under the pretext of having mistreated a Portuguese, although in the jurisdiction of the Republic, taking him to Georgetown, imprisoning him, trying him and imposing a penalty of twenty pesos; establishing public office in Amacuro; covering the space between it and the Barima by means of the coast guard schooner Transfer, including those regions in the Governor's District of Demerara; sending a Magistrate to them to hear and decide police and criminal cases; authorizing the exploitation of mines in Venezuelan territory, and finally, appropriating it because he says the boundary dispute is pending.

As Minister of the Republic, General Guzmán Blanco demanded from the British Government, in a note dated July 28, the satisfaction that such events demand; and the response has been to

proclaim and notify, with a notice published on October 21, 1886 in the London Gazette, that what is included in the demarcation of the engineer Schomburgk is his.

That is to say, that the Government of Great Britain by itself and before itself, with the exclusion of Venezuela, has resolved that it owns the property of the mouth of the Orinoco, the most important river of the Republic, and of which the Barima and Morajuana, and even Punta Barima, which its Chargé d'Affaires Sir Robert Porter spontaneously recognized on May 26, 1836 as being under the sovereignty of Venezuela.

Many times he has proposed that the issue be submitted to the ruling of a legal arbitrator, and His Majesty's Government has refused on the basis of not being able to apply that method to boundary controversies. He has persisted in his refusal, despite having been reminded that by agreements of 1827 and 1871 he referred to an arbitrator boundary disputes with the United States, one regarding possessions in North America, and another regarding the Haro Canal, with the circumstance that in the last case the proposition emanated from himself up to six times.

Venezuela remains willing to end the controversy by resorting to arbitration, the only method compatible with its current Constitution.

In light of the above, the President of the Republic claims from H.M.B. the evacuation of the Venezuelan territory, from the mouths of the Orinoco to the Pomarón, which she has improperly occupied; with the understanding that, if by next February 20, the time of the meeting of Congress, to whom the Government must report everything, there has not been a response or a negative response has been made, from then on diplomatic relations between the two countries.

I renew to Your Excellency the protests of my high consideration.
(SIGNED).- DIEGO B. URBANEJA.

Hon. Mr. F. R. Saint John, Resident Minister of His Majesty, etc. etc.

REQUEST FROM SIR ROBERT KER PORTE, PLACEMENT OF A LIGHTHOUSE IN PUNTA BARIMA. IGNORANCE OF SIR KER'S AUTHORITY BY G. B. GREAT BRITAIN CLAIMS RIGHTS OVER PUNTA BARIMA. PUNTA BARIMA IS THE EXCLUSIVE PROPERTY OF VENEZUELA. NONE OF THE PROPOSALS BY LORD ABERDEEN, LORD GRANVILLE AND LORD ROSEBERY INCLUDE BARIMA ISLAND.

AHMPPRE, Ancient Archive, Country: Great Britain, Vol. 148, Exp. 12, Folios 129-141. 1887.

Minister of Foreign Affairs.
Caracas: January 31, 1887.
Your Excellency sir.

I have given the President of the Republic an account of the note that Your Excellency gave me this morning, and in which he states that the British Consul's request for the erection of a lighthouse in Punta Barima in 1836 was neither known nor authorized by the British Government of so; and that the attempt to erect such a lighthouse without the consent of Her Majesty's Government would be a deviation from the reciprocal commitment made by the Governments of Venezuela and England in 1850 not to occupy or usurp the territory in dispute between the two countries; that His Majesty's Government would be justified in resisting such a procedure as an act of aggression on the part of Venezuela; that as the lighthouse at Barima would make the navigation of the Orinoco River safer, and would thus result in the undoubted benefit of commerce in general, His Majesty's Government does not wish to insist unduly on its rights, and consequently, consents to the erection of the lighthouse in Barima under the condition that an agreement be concluded between the two Governments as to the amount of lands that can be occupied for the purpose, and that the Government of Venezuela gives in writing the assurance that the placement of the lighthouse will not be considered in any way. as prejudicial to the British claim to the disputed territory, of which Punta Barima forms a part, nor will it henceforth be interpreted as proof of any right of Venezuela to it, nor as acquiescence of Great Britain to such a supposition.

The President of the Republic, far from finding in the extracted note a path to the solution of the existing difficulties, judges that it aggravates them more and more, as will be seen.
He does not admit that today, fifty years and eight months after Sir Robert Ker Porter passed away, it is said that he was not known or authorized by the British Government of the time, and that he is called Consul as to weaken the force of his word.

He was Consul at first; but since the treaty of 1834 was exchanged between the two countries, he was appointed Chargé d'Affaires, and he had such a character when on May 26, 1836 he urged the establishment of the lighthouse at Punta Barima.

Venezuela does not admit now, nor has it admitted before, nor will it ever admit, that Punta Barima has ever been an issue, as Barima Island is not, nor was it, nor will it be; which, as well as Pedernales, are islands located physically and politically with many others, in the Great Orinoco Delta, exclusive property of Venezuela. Homeland of which all of them are an integral part.

Without a doubt respecting that sacred and invulnerable patriotic right, none of the successive proposals of Lord Aberdeen, Lord Granville and Lord Rosebery include Barima Island.

He invokes the Government of His Majesty B, the agreement of 1850 to deny Venezuela the right to establish a lighthouse in Barima. With this he justifies more and more the complaints and claims of the Republic, because it is without this same agreement that he has been taking over the vast territory included between the Pomaron, Barima and the right bank of the Amacuro, making any accommodation impossible.

I have already told Your Excellency, and I repeat, that Venezuela has never considered the territory between the Pomaron and the Amacuro as controversial, but rather the one located between the Pomaron and the Essequibo; but that, even if the first space in dispute had been included, Great Britain would not have been able to occupy or retain it, because it should have been prevented from doing so by the existence of the pact that it is currently using against the Republic, and which it has violated for its own benefit.

The President does not submit, for the construction of the lighthouse in Punta Barima, to the conditions presented to him, because that would be to consent to the advances of Great Britain, which do not recognize any foundation, and to make declarations harmful to the incontestable rights of the Republic.

And the most important. This is the first occasion in which His Majesty's Government reveals its claims to the Orinoco River, and speaks of its rights in this regard, and establishes that Punta Barima is part of the disputed territory, and intends to take ownership of it and establish conditions. for the use of some lands where the lighthouse is placed. Before now everything had been limited to facts of a single party, foreign to the knowledge of the other; But today it is notified of what is being executed, and it is hoped to obtain its approval of acts and claims contrary to its rights.

Consequently, the President of the Republic has ordered me to formally renew the demand contained in my note of the 26th of this month, regarding the evacuation of all the territory occupied and detained by Great Britain, without any right and in violation of the rights of Venezuela, from Amacuro to Pomarón, for February 20 when Congress meets.

And I must add that, if this is not done by then, and if it is not accompanied by unemployment, the acceptance of arbitration as a means of deciding the pending boundary dispute, the diplomatic relations of the two Governments will be severed, and the a protest that safeguards for all time the rights of Venezuela against actions, which should not be expected from a power with which it has always strived to cultivate the most friendly intelligence and frank treatment. I take advantage of this opportunity to renew to Your Excellency the assurances of my high consideration.

(SIGNED). DIEGO B. URBANEJA.

Hon. Mr. F. R. Saint John, Resident Minister of H. M. B. etc, etc etc,

VENEZUELA'S PROTEST AGAINST THE USURPATION OF ITS TERRITORY AND THE DECREE OF THE GOVERNOR OF DEMERARA, CHARLES BRUCE, WHICH DECLARES BARIMA AN ENGLISH COLONIAL PORT, IN ADDITION TO CREATING A POLICE STATION. VENEZUELA PROTESTS AGAINST THE ACT OF JURISDICTION THAT THE BRITISH COLONY INTENDED TO EXERCISE OVER THE LAND OF VENEZUELA.

AHMPPRE, Country: USA, File 471, Piece 4, Folios 82-83. 1889.

Law Department
Outdoor Public
Caracas December 16, 1889

In the newspaper "The Dayly Chronicle", of Demerara, British Guiana, the Government of Venezuela has seen a decree of the Governor of the Colony, Sir Charles Bruce, dated the 4th of this same month and year, in which Barima is declared, that is, the Great Mouth of the Orinoco, an English colonial port, assigning its limits to those of the line drawn by M. R Schomburgk. Now, according to a statement from Lord Aberdeen to the Minister of the Republic in London, Mr. Fortique, that engineer was authorized to occupy any part of our territory, not even that inhabited by independent tribes; and the signs that it had left in its wake were nothing more than a purely preliminary act of the delineation that would be the subject of discussion between the Governments of both nations, and that it was not known that a sentry box, fort or military post had been built in which it was hoisted. the british flag. This happened in 1841, and the Government of Venezuela later managed to remove the marks placed by M.R. Schomburgk in the places he had traveled.

But now the Governor of Demerara, following the system of usurpation of his predecessors, has not hesitated to declare Barima a Colonial port, create a police station there, and seize the territory of a neighboring country, without regard or consideration of any kind and with ridicule of the principles that govern the international treatment of cultured countries, of morality and justice. For these reasons, the Government of the United States of Venezuela sees itself in the case of protesting, and formally protests against the act of the Governor of Demerara that declares Barima a colonial port, in the same manner and in the same manner expressed in the protests of February 24, 1884, June 15 and October 29, 1888 against previous usurpations of Venezuelan territory.

It also protests against the act of jurisdiction that the same Colony has recently attempted to exercise over Venezuelan land, authorizing the construction of a road that puts Demerara in communication with the Yuruary federal territory, as soon as it enters the soil of the Republic, which only It is subject to its own jurisdiction and in no way to that of said colony, since, even if it were, as it is not, a matter of dispute between Venezuela and Great Britain, the latter could not occupy it by virtue of the agreement that it itself proposed to this Government in 1850, through its Chargé d'Affaires in Caracas, Mr. Belford.

Hinton Wilson.
[Signed] Fr. Casamova

ON VENEZUELA'S RIGHT TO TERRITORY AND THE SUPPORT OF THE VENEZUELAN GOVERNMENT FOR THE GERMAN SUBJECT FAULL, WHO WAS AUTHORIZED TO BUILD A HOUSE AND FARMLAND ON THE RIGHT BANK OF CUYUNI. IT MENTIONS THE COMPLAINT OF THE GERMAN, WHO COMPLAINED TO THE VENEZUELAN AUTHORITY ABOUT THE PRESENCE OF ARMED MEN (ENGLISH) WHO PREVENTED HIM FROM CONTINUING WITH HIS WORK, FACING THE COMPLAINT, POLICE WERE SENT IN THE FACE OF ANY AGGRESSION.

AHMPPRE, Old Archive, Country: Great Britain, Volume 164, Folio 328-329. 1894.

Copy
El Dorado, October 24, 1894
Mr. D.D. Barnes
Cuyuni
My Lord.

Your letters indicate under what aspect you consider the matter that motivates them. It is my duty, therefore, to express to you, once again, my way of seeing in this regard:

In use of the right of the Republic over a territory that unquestionably belongs to it, I have granted permission to the German subject, Mr. Guillermo Faul, to make a house and farm on that bank of the Cuyuni, where you live with the pleasure of all of us who understand the convenience of populate this fertile and hospitable soil.

Yesterday Mr. Faull complained to this General Commissioner that there were in the part that has been dismantled, some armed men from your department who prevented him from continuing his work.

With this virtue and my purpose being to make effective the guarantees offered by our laws in every person who lives in the territory of the Republic, yesterday I sent a Police Commissioner with some unarmed men to enforce the rights legitimately acquired by Mr. Faull. And since today the same contempt for authority has been repeated again, I have once again sent my armed police, thus prepared against any aggression.

The colony of Demerara has no right over the part of the indisputably Venezuelan territory. Placed under my command; Therefore, I reject the phrase violation of British territory, by your Employee, because in any case, since you attribute an official character that I am unaware of, those who have crossed the Esequivo are the ones who have violated Venezuelan territory. You probably don't ignore that.

I subscribe to you atte. S.S and friend
GIVES. Siphons

REPORT ON THE EVENTS THAT OCCURRED ON THE BANKS OF THE CUYUNI. DEFENDS THE RIGHTS OF VENEZUELA OVER THE TERRITORY AND THE EVOLUTION OF THE SETTLEMENT OF THE TERRITORY BY VENEZUELANS. IT NOTES THAT BEFORE 1890 THERE WERE PROPERTIES BELONGING TO VENEZUELANS. IT ALSO DENOUNCES THE ENGLISH OCCUPATION AND THE CONFLICTS GENERATED BETWEEN 1894-1895.

AHMPPRE, Old Archive, Country: Great Britain, Volume 164, Folio 201-220. 1895.

U.S.A. of Venezuela
National Commissioner
Del Cuyuni and its tributaries
Caracas April 16, 1895
Citizen Minister of Internal Affairs
Present

I have the honour to present to that Ministry a report on the events that occurred on the banks of the Cuyuni on January 2 of the current year, on the occasion of the occupation of the right bank of said river, the object for which I was called by your Office in telegram of the 11th of the same month.

In order to provide the Government with the greatest amount of data, and for the better, clarification of the international matter that is being aired, I am forced to go back to the state in which they were in March 1894, the date of my arrival in that region, honoured by the Government with the appointment of the National Commissioner of Cuyuni and its Tributaries. By then, there were 9 houses on both banks: 6 on the left and 3 on the right. Of the latter, two, with their respective farms, were founded in 1870 by José Francisco and Loreto Lira, Miguel Gonzalez and Lorenzo Rivas; and the other, built in 1890 by a British subject named Mac Turk, in front of the mouth of the Yuruan, and in which six individuals of the same nationality resided, busy working on a small farm and, since April or May 1894 under the orders of the titled Inspector D.D Barnes.

When I visited him, few but cordial relations of friendship existed between us.

The primary object of my mission being the promotion of colonization in that section of the Republic, placed under my jurisdiction, I proceeded to verify considerable clearings on the banks of the Yuruan el Cuyuni. On the right bank of the latter 30 leagues downstream, and at the mouth of the Coroco River, a tributary of the right, the citizen Pedro Ravelo built a house and promoted farming of small fruits. This place is the same old position in which, as a Venezuelan authority appointed by the Government of the extinct Yuruary Federal Territory, the late General Felipe Parra resided years before 1890, in the company of several other Venezuelans. Also on the same bank and in front of "El Dorado", the name given to the town that stands on the left, Mr. Guillermo Faull, of German nationality, authorized by me, proceeded to build a house.

Despite the good relations maintained with Mr. Barnes, he tried to disturb Faull in his work, making him withdraw, along with his laborers, from the place he occupied. Faull filed his complaint with the National Commissioner and was authorized by her to bring a greater number of laborers with their corresponding work machetes. The Englishman, seeing them in greater

numbers, retired to his house. The next morning Faull was once again rejected. Annoyed by such inexplicable tenacity and hateful pretension, I ordered eight armed men to be placed under Faull's command, also as his attackers were. The same as the day before, the English retired to their house, without having received any damage; only if they were notified not to attempt a repetition of that intrusion.

This incident in no way altered my good relations with Mr. Barnes, who for his fine treatment always deserved my personal esteem.

From that date I left a guard of seven policemen at the aforementioned point, determined as I was to properly watch the river, to prevent at all costs the trafficking of contraband, to which some neighbours and several other people had previously indulged, according to the English themselves. of the previous national authorities.

By the last days of December 1894, there were already 23 houses, some completed and others under construction. The guard on the right bank of the Cuyuni frequently went to the main police post on the left to practice ordinary exercises. On January 2, the English took advantage of the circumstance of momentarily only finding the post on the right, for the reason previously mentioned, and rushing down to the river, armed with rifles, they docked at said post, lowered the Venezuelan flag and raised the flag. English. The citizens of "El Dorado" were exasperated at the outrage inflicted on the national insignia and there was no shortage of people who tried to fire on the invaders, in order to repair the grievance. Captain Andrés Avelino Dominguez, hastily crossing the river with part of the police force, takes the English prisoners and, keeping the greatest considerations for them, he leads them to the house that serves as the Office of the National Commissioner. He immediately gave me express notice; Because on that day I was at a distance of 23 leagues, not yet recovered from the serious illness that in the last days of November made me abandon Cuyuni. Before moving to "El Dorado" I informed the Government what was happening.

Such are the facts, Citizen Minister, that I found consummated upon my arrival at Cuyuni on the afternoon of January 8.

Forced to make a decision, I hastened to prepare the legal summary, for which purpose I brought a lawyer, understanding the seriousness of the conflict. The statements were answered, among them, that of Inspector Barnes himself, put in his own handwriting, and in which he confessed that he was solely responsible for the attack committed.

Once the file was finished, on January 12, Barnes and his companions were dispatched, with all kinds of considerations, all travel expenses being paid for by the Commissioner, at the order of the citizen Minister of Interior Relations.

In my capacity as National Commissioner, I could not proceed otherwise. Disapprove of what Captain Dominguez did; disavow him for having saved his national honour; It would have been cowardice on my part, which I did not want to commit.

Days later I learned that the English had been released on the journey, and that the file addressed to the citizen minister had been opened by the interim Commissioner Mr. César Urdaneta, who was on his way to replace me, who strongly urged the English to occupy their position, also offering them all kinds of guarantees.

Two circumstances should be noted in this report. In one of them, Barnes told me that upon his arrest on January 2, the Venezuelan soldiers, together with some individuals from the town, had caused damage to the English establishment, a damage for which I immediately rushed to pay him. . I attach the receipt that he gave me for this purpose.

Mr. Barnes also demanded that I allow him to go through the Cuyuni to Demerara, to which I did not agree, because having committed a punishable attack, I did not want to incur such a serious responsibility towards my Government through weakness.

By occupying, Citizen Minister, the right bank of the Cuyuni, only 10 leagues away from the Municipalities of Tumeremo and Nueva Providencia, I did so by virtue of our incontrovertible rights and the very nature of my appointment: "National Commissioner of the Cuyuni and its Tributaries" - Also in compliance with strict instructions from my Superior_

I thus fulfill my official duty towards that Ministry.

God and Federation
D. A Sifonos

Annex 30

Letter from Chas Bruce to Manuel L. R. Andrade, Consul of Venezuela in Georgetown, 6 January 1887.

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 595, p. 254)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 595.

Letter from Charles Bruce to Manuel L. R. Andrade, Consul of Venezuela in Georgetown, January 6, 1887.

[Reprinted from Blue Book, No. 1, pp. 382-383.]

I am directed by his Excellency the Governor to acknowledge the receipt of your letter of the 5th instant, reporting the arrival here on the 31st ultimo, of the Venezuelan gun-boat "Centenario," having on board Señores Dr. Jesus Muñoz Tebar and Santiago Rodil. Your letter embodies an official note in which those gentlemen have communicated to you the object of their visit to British Guiana.

I am desired, in reply, to refer you to the Notice dated the 21st October, 1886, published in the "London Gazette" by authority of Her Majesty's Government, of which a copy is herewith inclosed, and to state that the districts referred to in the official note inclosed in your letter are included within the limits as defined by the terms of that Notice, and form part of the Colony of British Guiana.

No. 596.

Letter from Governor Sir Henry T. Irving, to Mr. Stanhope, January 7, 1887.

[Reprinted from Blue Book, No. 1, p. 383.]

In continuation of my despatch of this date on the subject of the visit of the Venezuelan gunboat "Centenario," I have the honour to transmit to you the reply which I have received from the Acting Consul for Venezuela to my answer to his communication embodying the official note of the two gentlemen representing themselves to be Commissioners of the Venezuelan Government.

I also inclose a written statement which has been handed to the Government Secretary by Rural Constable Neames to the effect that Constables or Commissioners have been appointed by Venezuelan authority in these districts.

In reference to Neames' statement, I have to add to it that he states verbally that such Constables or Commissioners have instructions not to act on their commissions without further orders.

Annex 31

Letter from Diego B. Urbaneja, Minister in Venezuela, to F. R. St. John in Caracas, 26 January 1887

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 597, p. 255-260)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 597.

Letter from Diego B. Urbaneja, Minister in Venezuela, to F. R. St. John in Caracas, January 26, 1887.

[Reprinted from Blue Book, No. 1, pp. 389-393.]

In accordance with what was communicated to you by this Department on the 7th December last, the President of the Republic sent as Commissioners to Barima and other spots, with the object already explained, Engineer Dr. Jesus Muñoz Tebar and General Santiago Rodil.

The Head of the Commission has just returned here, and has informed the Government of its result.

Unfortunately, the grave reports which caused that step are confirmed.

Firstly, the Commission found in the neighbourhood of the right bank of the River Amacura two Commissaries, Messrs. Francis Stephen Neame and J. B. Jeffry.

These produced their warrants as rural constables, sent by Mr. Michael McTurk, who styles himself Her Majesty's Stipendiary Magistrate in and for the Colony of British Guiana. The warrants are dated the 1st March, 1885, and 6th September, 1886, respectively.

In replying to a communication from the Commissioners, the Commissaries stated that they had not received instructions to prevent the Venezuelan authorities of the left bank from descending the Amacura, but that they were authorized to prevent any Venezuelan vessel from selling rum or spirituous liquors on British territory, and they added that any one selling rum without a licence to that effect issued by the Government (of Demerara) could be arrested at any time.

In the said village of Amacura the Commission took declarations on oath from the Venezuelan Commissary, Mr. Robert Wells, and Messrs. Aniceto Ramuñez and Alfonso Figueredo.

Their depositions corroborated the capture and arrest of the first in that same place, his conveyance to Georgetown and confinement in the prison of that place for two months, his trial, and sentence to a fine of 20 dollars, and, moreover, established the fact of the existence of a wooden house with a tiled roof, which serves as a public office, flies the British flag, was built by order and at the expense of the Colonial Government, and was seen by the Commissioners. It was in the same manner also proved that an English revenue-cutter, named "Transfer," had on various occasions made voyages to the Amacura, conveying the British Magistrate and armed police functionaries, with the object of inquiring into, judging, and deciding criminal and police cases; and that vessels legally dispatched from Ciudad Bolivar are registered in Amacura as well as in Barima, and are prohibited from selling their goods and continuing their course on the Barima unless in ballast, requir-

ing them, in order to trade, that they obtain permission in Georgetown.

The Commissioners proceeded to the right bank of the Amacura, where they put themselves in communication, written and verbal, with the said Commissaries. From thence they proceeded to the neighbourhood of Acura, where they were told there was a Commissary, named Harrington, who was at that time absent, and that a Judge of the Peace was there until three months previously on account of the assassination of a coolie, and that the culprit was arrested and conveyed to Georgetown for trial. He was sentenced to five years' imprisonment.

In Cuabana, a village situated on the right bank of the River Guainia, they found a shed which serves for a Protestant church and public school, built under the superintendence of the missionary, Walter Heard, In the register of marriages found there it is stated that the place pertains to the county of Essequibo. No Commissary was found in the place.

Moreover, according to information obtained from the schoolmaster, Mr. Jacob Inglis, the Colonial Government keeps one in the village of Guaramuri, on the bank of the River Moruca. The Commission also ascertained that gold-mines are worked under English authority in our territory situated between the Rivers Cuyuni, Mazaruni, and Puruni, and that a great quantity of that mineral has been already exported through the English Custom-house.

Lastly, the Commission proceeded to Georgetown, and, through the Venezuelan Consulate in that town, made the Governor of Demerara acquainted with the duty with which they were charged, what, by virtue of it, they had done, and with (the fact of the) proved violation of Venezuelan territory.

The Secretary of said British functionary confined himself to replying on the 6th day of this month that he inclosed a Notice published in the "London Gazette" on the 21st October, 1886, of which he sent a copy, and he declared that the districts referred to in the official note of the Commission are within the limits indicated by the terms of the Notice, and form a part of the Colony of British Guiana.

In the Notice it is proclaimed and notified that the limits of British Guiana being in dispute between the Government of Her Majesty and that of Venezuela, and it having come to the knowledge of Her Majesty that the Government of Venezuela has granted, and intends to grant, concessions of land within the territory claimed by the Government of Her Majesty, such titles will not be admitted nor recognized, and that all persons taking possession of such lands, or exercising in them any right on the strength of such titles, will be tried as trespassers.

In conclusion, it is stated that in the Library of the Colonial Office, Downing Street, or in the Secretariat of the Government in Georgetown,

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British Guiana, may be seen a map which indicates the limits between British Guiana and Venezuela as claimed by Her Majesty's Government.

It is incomprehensible why in the said Notice these limits are not specified, and why they are left in a map separated from the Notice to which they relate.

Well, then by what is seen there remains not the slightest doubt that an extensive territory in Venezuela and the great artery on the north of the Continent of South America, the Orinoco, are practically under the authority of Great Britain, on the specious ground that there exists a dispute of limits between the Republic and Her Britannic Majesty.

The logical conclusion from the existence of a difference respecting the proprietorship of land and water should be all the more reason for neutralizing by common accord the places in dispute, pending a decision of the same. But for one of the litigants to determine by himself, and without consideration of the rights of the other, upon the appropriation of the object in dispute, is by the light of all jurisprudence an unjustifiable violation of the most sacred law of nations, and is a mortal wound (inflicted) on the sovereignty of the Republic.

Great Britain has herself, in an analogous case, condemned the very act which she has now committed against Venezuela.

According to the Decree issued by the King of Spain in 1768 the Province of Guiana was bordered on the south by the Amazon and on the east by the Atlantic.

So that the acquisitions of other Powers within these limits were unlawful, except such as were afterwards recognized by that Monarchy. As regards the Netherlands, to whose rights Great Britain succeeded, all that was left in their power of the said territory were the establishments of Essequibo, Demerara, Berbice, and Surinam, of which the Dutch had taken possession during their long war with their former Suzerain, which ended with the Treaty of Munster of 1648.

That the Dutch then possessed no other Colonies than those mentioned is proved by the Convention of Extradition concluded in Aranjuez between Spain and the Netherlands at the end of the eighteenth century, on the 23d June, 1791, in which only these are named.

And it is to be observed that the Dutch could not encroach upon the Spanish possessions, because Article VI of the Treaty of Munster forbade them to navigate and trade thither; notwithstanding this they continued to advance; but Spain, far from consenting to fresh usurpations, recalled them by force.

Lord Aberdeen himself mentions in his note of the 30th March, 1844, to M. Fortique, that in 1797 the attack by Spain of the fort of New Zealand, without attaching importance to its unfavourable result [*sic*].

What it is endeavoured to prove is not the superiority of her forces

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over the Dutch garrison, but the opposition made to the latter's advances. Therefore, all beyond the Essequibo was outside the jurisdiction of Holland, who, on her side, only ceded to Great Britain in 1814, the establishments of Essequibo, Demerara and Berbice.

In 1844 Lord Aberdeen proposed as limit the Moroco.

In 1851 Lord Granville suggested to Venezuela a line commencing 29 miles east of the eastern bank of the Barima.

In 1886 Lord Rosebery suggested a frontier which should start from the sea-shore to the west of the River Guainia.

In 1868 the Governor of Demerara, in a Decree on land survey, fixed none more northerly than the Pomaroon.

It was on the 6th November, 1886, when on the repeal of that Decree, by order of Her Majesty's Government, that he ordered new surveys reaching the eastern bank of the Amacura.

It was also in 1885 and 1886 that he named Commissaries for the Amacura.

In 1841 the Engineer Schomburgk capriciously fixed the frontier claimed to-day by Her Majesty, placing posts and other marks.

The Republic, being alarmed by such acts, sent two Commissioners to Demerara to demand explanations, and ordered their Minister in London to request that the marks be removed.

The Governor of Demerara stated to the Commissioners that, as the frontier was undefined and a matter of question, the work of Mr. Schomburgk was not and could not have been made with the idea of taking possession of the line, but as a simple indication of the line presumed on the part of British Guiana, and that in the meantime, while the frontier remained undetermined, the Government of Venezuela might rest assured that no fort should be ordered to be built on the territory referred to, nor should any troops or forces be sent there.

On his part Lord Aberdeen replied that the marks placed by Mr. Schomburgk, in various parts of the country which he had explored, were only a preliminary step subject to future discussion by the two Governments; that they were the only practicable means of preparing oneself for the discussion of the question of the frontier with the Government of Venezuela; and they were placed with this express object, and not, as stated by the Venezuelan Government, with the intention of establishing the dominion and rule of Great Britain.

He added that he was pleased to learn, by a note from Señor Fortique, that the two Commissioners sent by this Government to British Guiana were able to convince themselves, from the statements of the Governor of that Colony, that Barima Point had not been occupied by British functionaries. This was written on the 11th December, 1841.

Soon after, on the 31st January, 1842, Lord Aberdeen ordered the

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marks to be removed, in order to put an end to the ill-feeling which existed in Venezuela in consequence of the proceedings of Mr. Schomburgk, and in compliance with the renewed representations of Señor Fortique; how to reconcile, therefore, this proceeding, at a time when it was held that during dispute it was impossible to take possession of the territory, with the act of to-day, by which the British Government has arrogated to itself the dominion of that which it professes to claim, exceeds the understanding of Venezuela.

And I must here remark that the latter never understood that the proprietorship of the places situated on this side of the mouth of the Pomaroon was ever in dispute, but only those to be found between this river and the Essequibo, and it very clearly follows from the proposal of Lord Aberdeen that it was agreed that the mouth of the Moroco should constitute the western limit of the British possessions.

However, even admitting, by way of argument, that the territory in dispute was more extended, this would not have authorized Great Britain in occupying it, not only for the reason of the thing in itself, but because she bound herself not to do so.

I refer to the Convention concluded in November 1850 by exchange of notes with Mr. Wilson, Chargé d' Affaires of Great Britain, at his request, and in pursuance of clear instructions from his Government. He declared the rumours then bruited about here, that Great Britain desired to claim Venezuelan Guiana, to be without foundation and the reverse of true. He followed up this statement by declaring that Great Britain would neither occupy nor usurp the territory in dispute, nor order such occupations or usurpations, nor authorize them on the part of her authorities, and she requested and obtained from Venezuela simliar assurances.

Hence it is clear that Great Britain has violated this agreement, which was her work; that she has penetrated into forbidden places, visited the Rivers Guainia, Morazuana, and Amacura, and Barima Creek, affixing notices on the trees on the river banks that her laws were there enforced; that she named Commissaries; carrying off a Venezuelan Commissary on pretext that he had maltreated a Portuguese, even though within jurisdiction of the Republic, conveying him to Georgetown, imprisoning him, trying him, and inflicting on him the fine of 20 dollars; that she established in Amacura a public office, traversing the space lying between it and the Barima by means of the coastguard schooner "Transfer;" that she included those places within the district of the Governor of Demerara, sending thither a Magistrate in order to inquire into and decide police and criminal cases; that she authorized the working of mines on Venezuelan territory, and finally appropriated it on the ground, as alleged, that the dispute of limits was pending.

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As Minister of the Republic, General Guzman Blanco claimed from the British Government, in a note of the 28th July last, the explanation which such acts demanded, and the reply has been to proclaim and publish, by a Notice in the "London Gazette," of the 1st October, 1886, that what is included in the delimitation of the Engineer Schomburgk belongs to her; that is to say, that Great Britain, by herself and for herself, with exclusion of Venezuela, has decided as hers the mouth of the Orinoco, the most important river of the Republic, of which the Barima and Moraznana are branches, and including Barima Point, which her Chargé d'Affaires, Sir Robert Porter, spontaneously surrendered on the 26th May, 1836, as being under the sovereignty of Venezuela. Many times has the latter proposed that the question be submitted to the decision of an arbitrator of rights, and the Government of Her Majesty has declined, on the ground of being unable to apply such a method in a dispute of limits. She has persisted in her refusal, notwithstanding that by Conventions in 1827 and 1871 she referred to arbitration boundary disputes with the United States, the one respecting possessions in North America, and the other respecting the Haro Canal, with the circumstance that in the last case the proposal emanated as many as six times from herself.

Venezuela continues to be disposed to end the controversy by recourse to arbitration, which is the only way compatible with her existing Constitution.

On the grounds of what has been explained, the President of the Republic demands from Her Majesty the evacuation of Venezuelan territory from the mouth of the Orinoco to that of the Pomaroon, which she (Great Britain) has unjustly occupied with the understanding that if by the 20th February next, at the meeting of Congress, to whom the Government is bound to render an account of everything, no reply should be received, or should be negative, the diplomatic relations between the two countries shall be broken off.

No. 598.

Letter from Diego B. Urbaneja, Minister in Venezuela, to F. R. St. John, in Caracas, January 31, 1887.

[Reprinted from Blue Book, No. 1, pp. 394-395.]

I have submitted to the President of the Republic the note which you delivered to me this morning, and in which you inform me that the request of the British Consul regarding the erection of a lighthouse on Barima Point in 1836 was neither known to nor authorized by the British Government of the time; that the attempt to erect such a lighthouse

Annex 32

Letter from F. R. St. John in Caracas to Diego B. Urbaneja, Minister in Venezuela, 7 February 1887

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 601, p. 265)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 601.

Letter from F. R. St. John, in Caracas, to Diego B. Urbaneja, Minister in Venezuela, February 7, 1887.

[Reprinted from Blue Book, No. 1, pp. 395–396.]

I have to acknowledge the receipt of two notes on the Guiana frontier question which your Excellency did me the honour to address to me, one dated the 26th and the other the 31st ultimo, and I must express my astonishment that, despite the positive assurance I gave—which was afterwards confirmed by Her Majesty's Government—namely, that Sir Robert Porter's request in 1836 for the placing of a light at Barima Point had been made without the authority or even the knowledge of Her Majesty's Government, the Government of Venezuela should doubt the statement and persist in regarding the circumstance as a justification of their claim to the spot. As well might it on the other side be argued that the merchants of Ciudad Bolivar (or Angostura as it was then called) presumably, from their proximity, better acquainted with the locality than Sir Robert, having petitioned the British Agent at Carácas instead of the Venezuelan local authorities for the means of safer navigation, that the circumstance proved that the merchants looked upon Barima Point as British and not Venezuelan territory.

With equal surprise do I observe that, notwithstanding your Excellency's allusion in your first note to the several instances, namely, in 1844, 1850 and 1886, in which Her Majesty's Government have, from a friendly feeling to Venezuela, offered to cede the lower right bank of the Orinoco, your Excellency should affirm in your second note that the Venezuelan Government now for the first time learn (by my note of the 31st ultimo) that the territory claimed by Great Britain extends to the Orinoco.

I have only to add that your Excellency's first note was transmitted a few days ago to Her Majesty's Government, and that your second note will be forwarded by the next opportunity.

No. 602.

Letter from F. R. St. John, in Caracas, to Diego B. Urbaneja, Minister in Venezuela, February 11, 1887.

[Reprinted from Blue Book, No. 1, p. 397.]

Having telegraphed to Her Majesty's Government the substance of your Excellency's note to me of the 26th ultimo, I have this moment received, by telegraph, instructions from Her Majesty's Principal Secretary of State for Foreign Affairs, to state to you, in reply, that the Government of Her Majesty, while still prepared to enter into friendly negotiations with the object of settling the Guiana boundary question, are unable to

Annex 33

British Memorandum in reply to Mr. Pulido's Memorandum
(Translation)

Ministerio de Relaciones Exteriores, (1981), Arbitramiento sobre los Límites entre Venezuela y la Guayana Británica: alegato y contra-alegato, Colección "fronteras" 6, Caracas, pp. 187-189.

Available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4

Mr. Pulido's Memorandum of the 24th ultimo has received the careful consideration of Her Majesty's Government, who have been desirous of examining in the most friendly and impartial spirit any proposals which the Venezuelan Government may wish to offer for the resumption of diplomatic relations and the settlement of pending differences.

In Mr. Pulido's opinion the only matter which presents real difficulties is the question of the frontier between Venezuela and British Guiana, upon which he states that the public opinion in Venezuela is greatly excited. He thinks that it is materially impossible to settle this question in a short time, but as a step towards its final solution he proposes a preliminary agreement to the following effect:

Venezuela to recognize the title of British Guiana to the exclusive possession of the River Essequibo, with its banks and the lands covering it, while Her Majesty's Government would similarly recognize the title of Venezuela to the exclusive possession of the River Orinoco, its banks, and the lands covering it. A Mixed Commission of Engineers appointed by the two Governments to survey in the course of a year, the country to the west and northwest of the Essequibo River and the two Governments then to proceed, with the information thus obtained, to lay down a frontier between their respective territories, giving the preference to a natural boundary. In case of their being unable to agree on a line, the decision of the boundary to be referred to two arbitrators to be appointed one by each Government, and if they should disagree, to a third arbitrator to be chosen by the other two. Pending these discussions, both Governments to withdraw all posts and signs of presumptive possession or dominion from the territory in dispute.

Her Majesty's Government regret that this proposal is not such as they would feel justified in accepting.

The proposed declaration, if it be correctly understood, would recognize the right of Great Britain to the main stream only of the Essequibo and the land immediately upon its banks, without including its tributaries, in exchange for a similar recognition of the right of Venezuela to the main stream of the Orinoco and the lands upon its banks and in the neighborhood of its mouth, including Point Barima and the adjacent district, while the whole intervening country

would remain subject to discussion and in last resort to arbitration. Such a transaction is clearly inadmissible. For in this manner Venezuela would maintain her full claim, surrendering nothing to which she can hope to show any legitimate title, while Great Britain would not only admit the discussion of claims upon the part of Venezuela, for which she has constantly maintained that there is no serious foundation, but would at once and unconditionally abandon a considerable portion of territory of which she is in actual occupation.

That territory, and by far the greater portion of the large tract of country which the Venezuelan Government seeks to put in question, accrued to the Netherlands under the Treaty of Munster of 1648 by right of previous occupation. It was constantly held and claimed by the States-General in succeeding years. It was publicly and effectively occupied by Great Britain during the wars at the close of the last century, and the formal transfer of the country so occupied was effected by the Treaty of Peace with the Netherlands of August 13th, 1814, and was in no way questioned by Spain in the conclusion of peace with her in the same year.

Her Majesty's Government would have no object in joining in such a survey, as is proposed by Mr. Pulido, of country which is already sufficiently well known to them and which has been scientifically surveyed by British Engineers. For many years past British administration has been familiar with the greater part of the districts watered by the Cuyuni and Massaruni Rivers. There is, therefore, already at the disposal of the two Governments ample information for the purpose of settling a general line of frontier, although the decision of any minor points of detail might be properly left to a mixed commission of delimitation.

Her Majesty's Government have indicated in previous statements the extent of the full territorial claim which they believe themselves entitled to make. They have also defined the line within which they consider the British title to be unquestionable. In offering that certain portions of their claim beyond that line should be submitted to arbitration they expressed their willingness to exclude from the proposed reference those valuable districts in the neighborhood of Guasipati, which although falling within their claim, have for some time been in Venezuelan occupation, and in regard to which an arbitral decision adverse to Venezuela might have caused her considerable embarrassment and would have involved heavy pecuniary claims on the part of Great Britain on account of revenue received in past years.

They regret to see that this offer on their part does not appear to have been appreciated or to have met with any response on the part of Venezuela. Her Majesty's Government would not object to receive for examination and possible discussion any suggestion for modification of their proposal in points where the Government of Venezuela consider that the interests of the Republic are seriously involved, but they are unable to depart from the general principle on which those proposals are based, or to accept an eventual reference to arbitration of a character so extensive as the method of procedure suggested by Mr. Pulido would not improbably involve.

Her Majesty's Government have more than once explained that they cannot consent to submit to arbitration what they regard as their indisputable title to districts in the possession of the British Colony.

Every fresh investigation tends only to enforce and enlarge that title, and to make it more incumbent on them to maintain it as an act of justice to the rights and interests of the Colony.

Annex 34

Notes sent to Mr. Saint John, 13 February 1890
(Translation)

Remarks in relation to the Pro Memoria that Sir. Th. Sanderson, by order of Lord Salisbury, has addressed to me in reference to the conditions that Her British Majesty's Government deem necessary for the satisfactory settlement of the pending questions between Venezuela and Great Britain.

I. Venezuela possesses titles, historical data, Spanish and English plans, and all kinds of precedents proving that Venezuelan Guiana extends as far as the Essequibo, the natural limit of British Guiana, and in regard to Point Barima, Her British Majesty's Government has acknowledged that said Point and its island are both Venezuelan territory and property; the Government of Venezuela cannot, therefore, accept, even in one single point, the arbitrary and capricious line made by Schomburgk in 1841, which Her Majesty's Government has declared as inefficient or null, neither is it possible for Venezuela to accept arbitration of any territory lying to the west of said line.

Venezuela, notwithstanding her unquestionable rights, has proposed and still proposes arbitration, embracing all the territory from the Essequibo and the evacuation of those districts invaded from the Pomaron to the Orinoco.

In regard to this, documents give evidence that the British Government had proposed through the Right Honorable Sir Andrew Clark, Lieutenant-General, and the Right Honorable Captain Lowther, to evacuate the invaded territory, and to submit the decision of this question to the arbitration of a friendly power, provided that the Government of Venezuela should declare the diplomatic relations between the two countries restored.

The Government of Venezuela acting upon this spirit, has been pleased to appoint a confidential agent to negotiate a preliminary agreement restoring the diplomatic relations with Her British Majesty's Government. Therefore, the Venezuelan Government has been grieved to see that the conditions demanded by Lord Salisbury, in the Pro Memoria, to which reference is made, are more unfavorable to Venezuela, whose President, Doctor Rojas Paúl, desires peace and seeks the relations of Great Britain, that the propositions made to the former confidential agent who, when he was President of Venezuela in 1887, severed the diplomatic relations with Great Britain, whom, it appears, has cause of complaint against the magistrate who acted as stated.

The present Government of Venezuela, a constitutional, prudent, and pacific Government which has given no cause of complaint to Great Britain, but, on the contrary, is desirous of renewing the diplomatic relations with Her British Majesty, was in hopes that the conditions imposed by Her British Majesty's Government with this object would be less severe for Venezuela than those formerly demanded of the Government representative, who in 1887, interrupted the diplomatic relations with Her British Majesty's Government, and of whom Her British Majesty's Government may have cause of complaint.

It therefore becomes necessary to repeat that the present Pro Memoria of Lord Salisbury is much more unfavorable to Venezuela than the propositions made to my predecessor by the Right Honorable Gentlemen, Clark and Lowther.

II. On the matter of the differential duty collected on the imports made from the English Colonies, as well as from the Colonies of other nations, the fact may be brought to mind that Venezuela has constantly and for years complained against the protection given by the authorities in Demerara to the introduction into Venezuela of smuggled merchandise. But in no case can this differential duty be construed as a violation of article 4 of the Treaty of Commerce of 1825.

This difficulty could be completely settled in the new Treaty of Commerce to be agreed upon between Great Britain and Venezuela, because taking into consideration the progress made in the world by civilization and commerce and the increase of transactions of all kinds between the two countries, Great Britain and Venezuela, the treaty of 1825 could be considered as having fallen into caducity.

III. The manner to settle the claims of each of the two nations, Great Britain and Venezuela, against each other, presents no difficulty, as Great Britain, who may be considered as one of the nation's founders of the universal principles of modern laws of nations, could have no difficulty in applying them to Venezuela in order to stipulate, as other nations have done already, that said claims be made in accordance with the principles of the law of nations, which principles are well known at present in the civilized world.

With the highest respect and reiterating the wishes that the diplomatic relations between Great Britain and Venezuela be reestablished, these remarks are presented on Pro Memoria transmitted by Sir Thomas Sanderson by order of Lord Salisbury, for the renewal of the diplomatic relations between the two mentioned nations.

It is to be hoped that the Government of Her British Majesty, guided by her own sentiments of justice, should modify the conditions of the Pro Memoria, so that they be compatible with the sovereignty and the rights of Venezuela, with the respect due to enlightened public opinion, and with the duties imposed by the desire to maintain the interior peace of the Republic and her pleasant relations with the Government of Her British Majesty.

Paris, February 13, 1890

Annex 35

Letter from Lord Rosebery to Dr. Michelena in response to the Pro-Memoria, 3 July 1893

(Venezuela-British Guiana boundary arbitration. The case of the United States of Venezuela before the Tribunal of arbitration to convene at Paris under the Provisions of the Treaty between the United States of Venezuela and Her Britannic Majesty Signed at Washington February 2, 1897, vol. 3, appendix parts 3, 4, 5, 6, 7 and 8. Annex n. 617, p. 287-289)

Available at: https://archive.org/details/venezuelabritis03venegoog/page/n304/mode/2up

No. 616.

claims the same territory as being the heir of Spain; both Governments being inspired by friendly intentions, and being desirous of putting an end to the differences which have arisen on this matter, and both Governments wishing to pay all deference to the titles alleged by either to prove its jurisdiction and proprietary rights over the territory in question, they agree and stipulate that as soon as official relations shall have been re-established between the two countries, and after the ratification of the present Preliminary Convention by both Governments, one or more Delegates shall be named by each Party with full power to conclude a Frontier Treaty founded on a conscientious and complete examination by the said Delegates of the documents, titles, and data supporting the claims of either Party, it being agreed that the decision of doubtful points and the laying down of a frontier on the line of which the Delegates may be unable to agree shall be submitted to the final decision, from which there shall be no appeal, of a Judicial Arbiter, to be appointed, should the case arise, by common agreement between the two Governments.

* * * * * * *

4. It shall be recorded in the Preliminary Convention that both Her Britannic Majesty's Government and that of Venezuela acknowledge and declare that the *status quo* of the boundary question is that which existed in 1850, when Sir — Wilson, English Chargé d'Affaires at Carácas, formally declared, in the name of, and under express instructions from, Her Britannic Majesty's Government, that no portion of the territory in dispute should be occupied, and demanded and obtained a corresponding declaration from the Government of Venezuela. The *status quo* shall be maintained pending the conclusion of the Frontier Treaty mentioned in 1.

5. The Convention drawn on the bases now proposed will be signed by the Confidential Agent of Venezuela in virtue of the powers conferred on him, and by the person duly authorized thereto by Her Britannic Majesty's Government, and shall be immediately submitted to the direct ratification of both Governments; on the exchange of the ratifications, diplomatic relations between the two countries shall, *ipso facto*, be re-established.

No. 617.

Letter from Earl Rosebery to Tomás Michelena, Confidential Agent of Venezuela in Great Britain, with Inclosure, July 3, 1893.

[Reprinted from Blue Book, No. 1, pp. 431–433.]

Her Majesty's Government have carefully examined the proposals set forth in your *pro-memorid* of the 26th May for the settlement of the various questions which are at issue between the Government of Venezuela and that of Her Majesty.

No. 617.

The most important of those questions, in the opinion of Her Majesty's Government, is that of the boundary between Venezuela and the Colony of British Guiana, and it will, I think, tend to simplify the discussion if in this note I confine myself to that point, and refrain from offering for the present any observations on the proposals contained in clauses 2, 3 and 5 of the *pro-memoriâ*. I must in the first place point out that, although the present proposal of the Venezuelan Government admits the possibility of settling the question of boundary by Treaty, the fact that it also involves reference to arbitration in case of difference between the Delegates of the two Governments charged with the negotiation of that Treaty practically reduces it to the form which has repeatedly been declined by Her Majesty's Government, viz., the reference to arbitration of a claim advanced by Venezuela to a great portion of a long-established British Colony.

Her Majesty's Government therefore consider that clause 1 of the *pro-memoriâ* can only be accepted by them under the conditions specified in the Memorandum communicated in Sir T. Sanderson's note to Señor Urbaneja of the 19th March, 1890. They would propose that the first clause of your *pro-memoriâ* should be amended in the manner indicated by the additions marked in red ink in the copy inclosed herewith.

With regard to clause 4 of the *pro-memoriâ*, in which it is proposed that both Her Majesty's Government and that of Venezuela shall acknowledge and declare that the *status quo* of the boundary question is that which existed in 1850, Her Majesty's Government consider that it is quite impossible that they should consent to revert to the *status quo* of 1850, and evacuate what has for some years constituted an integral portion of British Guiana. They regret, therefore, that they cannot entertain this proposition.

The Declaration made to the Venezulean Government in the year 1850 by Sir Belford Wilson, the British Chargé d'Affaires, was as follows: That "whilst on the one hand Great Britain had no intention to occupy or encroach on the disputed territory, it would not on the other hand view with indifference aggressions in that territory by Venezuela." The arrangement on this basis was disturbed by Venezuela on several successive occasions prior to any attempt on the part of Her Majesty's Government to exercise jurisdiction in the districts in question. In the same year (1850) in which the Declaration was made, the Venezuelan Government began to establish new positions to the east of Tumeremo, and in 1858 they founded the town of Nueva Providencia, on the south side of the River Yuruari. Again, in 1876, licences were granted by the Government of Venezuela to trade and cut wood in the district of Barima, and to the eastward of that district. In 1881, the Venezuelan Government made a grant of great part of the disputed territory to General Pulgar, and in 1884 it made concessions to the Manoa Company and others, which were followed by actual attempts to settle the territory.

In contrast to this action, the attitude of the British Government was marked by great forbearance and a strong desire to execute the arrange-

No. 617.

ment in good faith. In proof of this disposition, it may be instanced that when applied to in 1881 to grant a Concession in the disputed territory to certain applicants they distinctly declined to entertain the proposal, on the ground that negotiations were proceeding with Venezuela, and it was not until the encroachments of the Manoa Company began to interfere seriously with the peace and good order of the Colony that Her Majesty's Government decided that an effective occupation of the territory could no longer be deferred, and steps were taken for publicly asserting what they believe to be the incontestable rights of Great Britain.

Those rights they are unable now to abandon, and they could not consent that any *status quo* except that now existing should remain in force during the progress of the negotiations.

I shall be glad to learn that you are able to accept these modifications of your proposals, as it would be a subject of sincere satisfaction to Her Majesty's Government to find that there is a prospect of a speedy re-establishment of diplomatic relations between the two countries.

[Inclosure, in above letter.]

Amended Article 1.

[Whereas] The Government of Great Britain claims certain territory in Guayana as successor in title of the Netherlands and [by right of conquest as against Spain, and whereas] the Government of Venezuela claims the same territory as being the heir of Spain; both Governments being inspired by friendly intentions, and being desirous of putting an end to the differences which have arisen on this matter, and both Governments wishing to pay all deference to the titles alleged by either to prove its jurisdiction and proprietary rights over the territory in question, they agree and stipulate that, as soon as official relations shall have been re-established between the two countries, and after the ratification of the present preliminary Convention by both Governments, one or more Delegates shall be named by each party with full power to conclude a frontier Treaty founded on a conscientious and complete examination of the said Delegates of the documents, titles, and passed events supporting the claims of either party, it being agreed [that the said territory in dispute lies to the west of the line laid down in the Map communicated to the Government of Venezuela on the 19th March, 1890, and to the east of a line to be marked on the same Map running from the source of the River Cumano down that stream and up the Aima, and so along the Sierra Usapamo and] that the decision of doubtful points and the laying down of a frontier on the line of which the Delegates may be unable to agree shall be submitted to the final decision, from which there shall be no appeal, of a Judicial Arbiter, to be appointed, should the case arise, by common agreement between the two Governments.

Annex 36

Letter from Dr. Michelena to Lord Rosebery, 31 July 1893

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available at: https://www.loc.gov/item/04010002/

that stream and up the Aima and so along the Sierra Usapamo,[a] and that the decision of doubtful points and the laying down of a frontier on the line of which the Delegates may be unable to agree shall be submitted to the final descision, from which there shall be no appeal, of a Judicial Arbitrator, to be appointed, should the case arise, by common agreement between the two Governments.

July 3, 1893.

Dr. Michelena to Lord Rosebery.

[Translation.]

CONFIDENTIAL AGENCY OF VENEZUELA IN GREAT BRITAIN.

LONDON, July 31, 1893.

My Lord:

After duly considering the statements in your Excellency's communication of the 31st instant made in reply to the proposed basis of agreement submitted by me on the 26th of May last, the Confidential Agent of the Republic of Venezuela, sufficiently authorized thereto, begs to offer some remarks suggested by the conclusive declarations in that communication, and to reply to that part of it which bears the character of charges against the conduct of Venezuela, in the question of limits between the Colony of Demerara and the territory of the Republic.

Your Excellency commences by declaring "that the most important of the questions pending between Great Britain and Venezuela is, in the opinion of Her Britannic Majesty's Government, that of boundary between both countries." In order to simplify the discussion, your Excellency refers, in the aforesaid note, solely to said question, refraining for the present from making any remarks upon the propositions contained in clauses 2, 3, and 5 of the memorandum of 26th of May last.

[a] The words in italics are written in red ink in the original MS., and constitute the modification referred to by Lord Rosebery.

This declaration would seem to imply that in case that the remarks referring to boundary could be admitted, the other clauses mentioned would be left unconsidered. Since, however, those referring to limits so completely destroy the basis of the agreement, it really seems useless to consider the character and tendency of said clauses. In this manner the discussion is not made easy, but on the contrary tends to break it off entirely.

It was with friendly intention and a sincere desire to arrive at an amicable settlement of all the points in controversy, that the undersigned, seeking the mutual convenience of both countries, put aside the discussion of abstract rights over territories. He sought to avoid the interminable form which has been hitherto adopted and followed up in the discussion of this matter. With this purpose in view, he was led to hope there might be a possibility of adjusting the question of boundary by means of a treaty involving reference to an arbitrator in case of differences and doubts arising in the minds of the Delegates appointed to mark out the frontier lines.

Your Excellency meets this proposition in the following terms: "The reference to arbitration of the claim advanced by Venezuela to a great portion of a long *established British Colony*," etc.

Your Excellency will permit me to express my surprise at such a statement. It is far from historical truth, and from the character of the controversy which has existed since 1841 until now. What Venezuela desires is a just and natural demarcation of frontiers, about which nothing definite has been hitherto settled by law; and, to that end, she asks that the titles of both parties be submitted to an arbitrator. As to the alleged rights of Great Britain, namely, that the disputed territory is an "integral part" of one of her Colonies, that has never been admitted by Venezuela. The mere fact that the Government of Great Britain may believe it has dominion over territories which, from times past, have been an integral part of the Republic of Venezuela (for which reason the latter disputes them with her), is not a sufficient reason to refuse the intervention

of a Juridical Arbiter, who should judge and decide, in conformity with the titles and antecedents, as to the rights of each nation over the territories situated north and west of the Moroco, Pomaron, and Essequibo rivers, and therefore, without arbitrary restrictions on account of the unjust claims of one of the parties. Venezuela might also, with equal reason, demand that the decision of the Arbitrator be restricted in a contrary direction. But she does not do this. She makes no restrictions whatever. She aks for nothing unjustly and retains no territory through arbitrary occupation. On the contrary, she proposes to submit her titles to an expert Jurisconsult for examination, and engages to abide by the decision that may be given. That decision would legally determine what pertains to each country—to the one as the heir of Spain and to the other as the successor of the Netherlands.

The conditions made by Your Excellency in modification of the first clause specified in the Memorandum communicated by Sir Th. Sanderson's note to Señor Urbaneja on the 19th of March, 1890, cannot be admitted under any consideration, since they imply the recognition by Venezuela of the claims of Great Brtain over a large portion of territory which has for many years past been the subject of controversy, and is precisely the foundation of the contention regarding the legitimacy of the rights of each party. Nor can the determinate modification now submitted by the Earl of Rosebery be accepted for reasons already stated. His Lordship says: "I would propose that the first clause of your Memorandum be altered in the manner indicated by the additions in red ink in the copy which I inclose, which additions are as follows: *that the disputed territory is situated west of the line marked in the map sent to the Government of Venezuela on the 19th of March, 1890, aud east of a line which shall be marked in said map, starting from the sources of the Cumano River following the current of the same downwards and up the Aima along the Usupamo chain.* This proposed modification does nothing in fact but materially alter "the extreme claim" of Her Majesty's Government made by Sir Th. Sanderson on behalf of Lord Salisbury. It ex-

tends the capricious line drawn by the explorer Schomburgk all in absolute opposition to another demarcation proposed by the Earl of Rosebery himself in 1886, which reduced the "extreme claims" of Great Britain to much narrower limits.

Then the Foreign Office, considering the fourth clause of my Memorandum, goes on to impugn the idea of the *status quo* of 1850, declaring that "it is impossible for Her Majesty's Government to consent to revert to the *status quo* of 1850, and evacuate what has for some years constituted an integral part of British Guiana." Your Lordship regrets to be unable to accept said proposition. The undersigned also regrets it. For, by *returning* to that *modus vivendi*, Great Britain would have given a brilliant proof of her love of justice, of her respect for the fulfillment of an international agreement, and of her desire for conciliation in order to resume the political relations between both countries, and to bring all pending matters to a definite adjustment. Your Lordship alleges, in support of this lamentable decision, reasons that cannot be admitted. They are based upon what seems to me to be a legal sophism, and cannot be applied to a territory which was declared to be neutral in 1850. On considering, and in acknowledging the declaration made by Her Majesty's Government through Sir Belford Wilson, British Chargé d'Affaires at Caracas, Your Excellency adds, "that the arrangement on that basis was disturbed by Venezuela on several successive occasions, prior to any attempt on the part of Her Majesty's Government to exercise jurisdiction in the districts in question; that in the same year 1850 in which the declaration was made, the Venezuelan Government began to establish new positions to the east of Taneremo, and in 1850 they founded the Town of Nueva Providencia on the south side of the River Yuruary; that again in 1876 licenses were granted by the Government of Venezuela to trade and cut wood in the District of Barima, and to the eastward of that District; that in 1881 the Venezuelan Government made a grant *of a great part of the disputed territory* to General Pulgar; and that in 1884 it made concessions to the Manoa Company and others," etc.

These antecedents are alleged as an excuse by the British Government for its occupancy of a large extent of territory, which Venezuela maintains to be hers, and in justification of its conduct during the latter years. An it now declares that said territory belongs to the Colony of Demerara, for which reason it cannot evacuate it, nor submit the titles of its rights to the judgment and decision of a judicial arbiter.

What then was the territory that was declared to be neutral and in dispute by the convention of 1850? Was it perchance that which is inclosed within the capricious line drawn by the explorer, Schomburgk? Was it perchance that comprised within the arbitrary line drawn by the Marquis of Salisbury? Does it perchance comprehend quite all that is now called the British "*extreme claim*"? Most of those lines appeared much later. It is most natural to suppose that the one which was proposed by Lord Aberdeen in 1841 was the one contemplated by the agreement of nine years later. And this supposition is the more natural since, later on, in 1886, the Earl of Rosebery suggested another line, which differs from that of Lord Aberdeen only in that it advances somewhat further north. Neither the former nor the latter line comprise the Yuruary and its southern banks, where the city of Nueva Providencia was founded, nor the District of Barima, in which licenses were granted to trade in and cut wood as Your Excellency states. As to the concessions or privileges granted to General Pulgar and to the Manoa and other companies, they were of non-effect. Nor were they ever granted in other territories other than those belonging to the Republic. The rights of the Colony of Demerara were duly respected; consequently, the neutrality agreed upon in 1850 on a portion of lands over which Venezuela has refrained from exercising any jurisdiction.

Your Excellency says in an apparently conclusive manner, that *those rights*, that is, those which Great Britain claims to have over the territories she has occupied, both those corresponding to the *modus vivendi* of 1850 and the others north and west of said portion, *cannot be abandoned*, and that Her

Britannic Majesty's Government will not consent that any other *status quo* than the one now existing shall remain in force during the course of negotiations.

I must believe that the theory that consummated facts have the strength of law cannot be applied to diplomatic negotiations designed to bring about a cordial and friendly settlement between two nations that have been bound to each other by the ties of friendship and community of commercial interests. That theory cannot prevail. It cannot be imposed when the object is to avoid serious dangers in the future; when the aim is to perfect and guarantee the important financial interests which Great Britain has in Venezuela, and when the mercantile affairs between both countries being nearly at a standstill, it is sought to be replaced on the same satisfactory footing on which they were some years ago, and thus to avoid serious conflicts which the prolongation of the present state of the political relations between both countries may bring about. Aside from the fact that the political institutions of Venezuela absolutely prohibit her Governments from consenting to a tacit recognition by means of treaties the rights of other nations over territories considered as integral parts of her own, such action would not be in conformity with international law and precedent. Nor would it conform to the dignity of both nations, which is at stake. It would dishonor Venezuela by giving way to imposition, and it would dishonor Great Britain by unjustly imposing herself merely because she is the stronger power.

In view of the above reasons, the undersigned takes the liberty of once more requesting Your Excellency to agree to a settlement upon bases so just and liberal as to admit of no refusal. Inspired by this desire, I again beg to urge the consideration of the bases for a preliminary agreement, that will preclude any discussion of the adverse claims of territorial rights, leaving that important matter entirely to the decision of a judicial arbitrator, in case the Commission of Delegates should not be able to agree upon all points in settling a frontier line.

The undersigned therefore ventures to hope that the Secre-

tary of State will modify his idea in conformity with the declarations made before Parliament by Mr. Gladstone in behalf of Her Majesty's Government in regard to arbitration, and in such a manner as to definitely adjust the questions pending with Venezuela, to which end Your Excellency may assuredly count upon the good will and co-operation of the undersigned.

I am with feelings of highest consideration, your Excellency's most obedient servant, TOMÁS MICHELENA,

Previtali Hotel, Arundel St., Piccadilly Circus.

To the Right Honorable the Earl of Rosebery, Secretary of State, etc.

Dr. Rojas to Dr. Michelena.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS, No. 1039,

CARACAS, August 4, 1893.

Sir:

The newspapers of the British Colonies, notably of the Island of Trinidad, have during the last few days spoken of new acts of jurisdiction on the part of the authorities of Demerara over the territories in Guiana which Venezuela looks upon as comprised within her limits. This occurs at a moment when the Republic, acting upon its desire to adjust, in a manner conformable to the laws of international decorum, the difficulties which separate her from Great Britain, has sent to London an agent who is instructed to arrange with the Foreign Office the means of re-establishing political relations between both countries. The Executive has therefore learned with great surprise of the statements made by some of the organs of the Colonial press, and deems it convenient that you should call the attention of Her British Majesty's Secretary of State to these facts.

The *Port of Spain Gazette* of the 25th of July, after speaking of the excellent conditions of what the English now call the "Northwestern District," which extends as far as the mouth of the Orinoco, and the proprietorship of which Vene-

Annex 37

Letter from Dr. Rojas to Dr. Michelena, 4 August 1893

Letter from Dr. Michelena to Dr. Rojas, 30 August 1893

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

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OFFICIAL HISTORY

OF THE

DISCUSSION BETWEEN VENEZUELA AND GREAT BRITAIN

ON THEIR

GUIANA BOUNDARIES.

ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

tary of State will modify his idea in conformity with the declarations made before Parliament by Mr. Gladstone in behalf of Her Majesty's Government in regard to arbitration, and in such a manner as to definitely adjust the questions pending with Venezuela, to which end Your Excellency may assuredly count upon the good will and co-operation of the undersigned.

I am with feelings of highest consideration, your Excellency's most obedient servant, TOMÁS MICHELENA,

Previtali Hotel, Arundel St., Piccadilly Circus.

To the Right Honorable the Earl of Rosebery, Secretary of State, etc.

Dr. Rojas to Dr. Michelena.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS, No. 1039,

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The newspapers of the British Colonies, notably of the Island of Trinidad, have during the last few days spoken of new acts of jurisdiction on the part of the authorities of Demerara over the territories in Guiana which Venezuela looks upon as comprised within her limits. This occurs at a moment when the Republic, acting upon its desire to adjust, in a manner conformable to the laws of international decorum, the difficulties which separate her from Great Britain, has sent to London an agent who is instructed to arrange with the Foreign Office the means of re-establishing political relations between both countries. The Executive has therefore learned with great surprise of the statements made by some of the organs of the Colonial press, and deems it convenient that you should call the attention of Her British Majesty's Secretary of State to these facts.

The *Port of Spain Gazette* of the 25th of July, after speaking of the excellent conditions of what the English now call the "Northwestern District," which extends as far as the mouth of the Orinoco, and the proprietorship of which Vene-

zuela has always claimed and maintained with legal arguments since the time of Lord Aberdeen, announces vast prospects of exploitation on said territory, to be carried out with capitals and by companies from the colony. It is therein said that a sloop was fitted out a short time ago under the direction of Dr. Chittenden, Secretary of the Board of Agriculture of Trinidad, with the object of conveying twenty-nine expeditions to Upper Barima, and of hastening the work of the Dixon Company.

Acts of this nature, which are altogether in opposition to the success of the negotiations that have been commenced neither can nor must be ignored. It is therefore absolutely necessary that the government of Great Britain should know the feelings with which the Executive of Venezuela regards the tendency of the Colony of Demerara to impede by such acts the understanding which is solicited for the settlement of the pending question.

I am your obedient servant, P. EZEQUIEL ROJAS.

To Señor Tomás Michelena, Confidential Agent of Venezuela in Great Britain, London.

Dr. Michelena to Dr. Rojas.

[Translation.]

CONFIDENTIAL AGENCY OF VENEZUELA IN GREAT BRITAIN,
PARIS, August 30, 1893.

Number 28.

Sir:

I have the honor to acknowledge receipt of your dispatch dated the 4th of the current month, No. 1039, referring to new acts of jurisdiction on the part of the Authorities of Demerara on territory of Venezuelan Guiana, which are altogether in opposition to the success of the negotiations which have been commenced with Her British Majesty's Government, for which reason the Government of Venezuela considers it absolutely necessary that that of Great Britain should be in-

formed of the feelings with which the Executive of the Republic regards the tendency of the Colony of Demerara to impede by such acts the negotiation for the settlement of the pending question.

I have addressed a communication to the Earl of Rosebery in which I have transcribed the dispatch above referred to, and should I receive a reply from said Official, I shall hasten to communicate it to your Department.

I am your obedient servant,

TOMÁS MICHELENA.

To Dr. Pedro Ezequiel Rojas, Secretary for Foreign Affairs, Caracas.

Lord Rosebery to Dr. Michelena.

[Copy.]

FOREIGN RELATIONS, September 12th, 1893.

Sir:

Her Majesty's Government have carefully examined the arguments contained in your note of the 31st of last July, concerning the settlement of the boundary question between the Republic of Venezuela and the Colony of British Guiana.

I regret to inform you that it does not appear to Her Majesty's Government that the contents of your note open the way to any agreement that they can accept concerning this question.

They are still desirous, however, to come to an understanding in regard to the frontier between the possessions of the two countries, and they are disposed to give their best attention to any practicable proposals that might be offered then to that effect.

I have the honor to be, Sir, your most obedient humble servant,

ROSEBERY.

Señor Michelena, etc., etc., etc.

Annex 38

Letter from Dr. Michelena to Lord Rosebery, 29 September 1893

Letter from Dr. Michelena to Lord Rosebery, 6 October 1893

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

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OFFICIAL HISTORY

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ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

Same to Same.

[Copy.]

FOREIGN OFFICE, September 22d, 1893.

Sir:

With reference to my note of the 2d instant, I have the honor to inform you that Her Majesty's Government have given their careful attention to the representations contained in your note of the 26th ultimo, complaining of acts on the part of the authorities of British Guiana which are considered by the Venezuelan Minister for Foreign Affairs to be in contravention of the rights of Venezuela.

Her Majesty's Government are desirous of showing all proper respect for the recognized rights of Venezuela, but the acts of jurisdiction to which you refer in your note do not appear to them to constitute any infraction of or encroachment upon those rights. They are in fact no more than part of the necessary administration of a territory which Her Majesty's Government consider to be indisputably a portion of the Colony of British Guiana and to which, as it has been their duty to state more than once, they can admit no claim on the part of Venezuela.

I have the honor to be, Sir, your most obedient humble servant,

ROSEBERY.

Señor Michelena.

Dr. Michelena to Lord Rosebery.

[Translation.]

HOTEL DE BADE, BOULEVARD DES ITALIENS,
PARIS, September 29th, 1893.

My Lord:

I have had the honor to receive Your Excellency's note of the 12th inst., in which I am informed that Her Britannic Majesty's Government, after carefully considering the contents of my note of the 31st of July last proposing adjustment of

the boundary question between Venezuela and British Guiana, regrets that said note does not offer any basis of agreement that can be accepted. Your Excellency closes by stating, however, that Her Britannic Majesty's Government still desire to come to a friendly settlement of the question of boundary, and are disposed to take into consideration any practicable proposition looking to that end.

The terms in which Your Excellency has been pleased to reply to my note of July 31st ult., weaken, if indeed they do not wholly destroy, the confidence which the closing words might otherwise inspire. Your Excellency totally disregards the proposal made in my note of the 26th May last, and reiterated and simplified in my note of July 31st, to submit the whole question of boundary to a Commission of Delegates duly empowered to trace a boundary line between the British Colony of Guiana and the Republic of Venezuela; and, as a last resource, to submit to the decision of *arbiters juris* any differences that said Delegates might not be able to settle between themselves. Not only this; Her Majesty's Government ignores the reasons presented in support of the most just refusal by the Venezuelan Government to accept as indisputable the line proposed in Your Excellency's note of July 3d last, and which embraces a vast extent of territory beyond the limits of that hitherto in dispute, and which Venezuela maintains is hers by indisputable title. Nevertheless, Her Britannic Majesty's Government still professes a desire to come to a friendly settlement of the question of the boundaries, and says it is disposed to take into consideration "any practicable proposition" leading to this object.

It was faith in this same promise, made by Your Excellency's predecessor to Doctor Lucio Pulido, former Agent of the Venezuelan Government, and the well founded hope that the present British Cabinet, and that Your Excellency in particular, who had conducted the negotiations in 1886 in a more conciliatory spirit than that shown by Lord Salisbury, would receive without restrictions, and in lieu of a most indecorous and unjustifiable submission on the part of the Government of Venezuela,

the propositions for an adjustment based upon a conscientious study of the question by persons fully authorized by each Government with powers to fix the boundary line in accordance with the titles produced by each party to the dispute; and that, in an extreme case, whatever said Commission could not solve by mutual agreement, should be submitted to the final decision of a Tribunal of *arbiters juris*. It was, I repeat, with this hope that the Government of Venezuela hastened to renew the negotiations which were interrupted in 1890, and entrusted to me the commission of continuing them, presenting as I have already done to Your Excellency, the propositions with which Your Excellency is already acquainted. This hope was strengthened by Your Excellency's reply to the London Chamber of Commerce, and to an Association for Peace and Arbitration which asked for a settlement of the Venezuelan question.

The proposal to which I referred in my note of the 26th May last to Your Excellency is the only one by which the historical truth and legitimate rights of both parties can be made clear; the only one which promises a solution without humiliation to either party; the only one that would respect the contentions and equities of both; and is the more worthy to be entertained in that it would quiet fears that the stronger power might impose upon the rights of the weaker. It is the only procedure which can be held to be an easy and practicable solution of this long-standing and vexed question. The numerous plans for settlement hitherto proposed had given rise to radical disagreements, and the great diversity of frontier lines, more and more advantageous to Venezuela which had been proposed at various times by the Government of Her Britannic Majesty, had already given just cause for the remark by an eminent statesman, Secretary of Foreign Affairs of the Republic of the United States, in 1888, in an official note to the Minister Plenipotentiary of the same Republic in London, that "if indeed it should appear that there is no fixed limit to the British boundary claim, their good disposition to aid in a

settlement might not only be defeated, but be obliged to give place to a feeling of great concern."

This controversy, which has so unfortunately interrupted the long-established and cordial diplomatic relations between Great Britain and Venezuela, and upon which all the Governments of America have already formed an opinion by reason of the widespread publication of all its incidents, has caused the Government of Venezuela to receive the offers of several of those Cabinets to bring their friendly influence to bear upon the Government of Her Britannic Majesty in order to arrive at a decorous settlement; circumstances which have produced a profound conviction that, should Venezuela confide without any restriction, its final solution to the efficacy of the arbitration recognized by all civilized nations and recently proclaimed by the Prime Secretary, Mr. Gladstone, in a solemn and highly applauded speech before Parliament, there could exist no doubt of her desire to arrange the condition of affairs lately created by acts which otherwise can result in nothing but disorder, contention, and violence.

Although the brevity of Your Excellency's note contrasts strongly with the length of the present one, I am compelled to be lengthy on account of the necessity of demonstrating, as far as possible, that the refusal of Her Britannic Majesty's Government to consider acceptable and practicable the proposition to submit the question of limits to a Commission of Delegates and, as a last resource, to the judgment of *arbiters juris*, without restrictions, would entirely frustrate the desire, which Your Excellency assures me is cherished by Her Britannic Majesty's Government to arrive at an amicable settlement, and to consider any practicable proposition to that end. I must be allowed to say that the rejection of the offer made, and the last declared purpose to consider any practicable proposition for a settlement, seem to me to be wholly incompatible. Permit me to briefly review the divers phases which have been successively presented in this question of limits, in order that the pretensions that have been made known by Her Britannic Majesty's Government in these later years, with reference to

the limits of the Colony of British Guiana, may be clearly understood. They are so divergent from those manifested in the first few years of this question, that should the Government of Venezuela now submit unconditionally to them, as Her British Majesty's Government wishes, far from being an amicable settlement between the two countries, they would simply convert the Venezuelan Nation into a country still subject to conquest.

The first frontier line proposed by Lord Aberdeen dates from 1841, at which period Doctor Alejo Fortique came to London as Minister from Venezuela. The frontier line then proposed by Great Britain commenced on the borders of the river Moroco, and extended into the interior of the territory which Venezuela considers as hers. It left as British possessions all the river Cuyuni on its left bank. The premature death of Doctor Fortique interrupted these negotiations, which doubtless would have been concluded in a manner satisfactory to both Governments, since that of Her Britannic Majesty gave hopes of reducing the limits of the claims, and the Government of Venezuela, with the approval of the Council of Government, proposed an intermediate line.

As a result of these negotiations, the Government of Her Britannic Majesty in 1850, at the solicitation of the Government of Venezuela, and through the medium of Sir Belford Wilson, at that time British Chargé d'Affaires in Caracas, made a solemn and official declaration that both countries should hold as entirely neutral the belt of land in dispute until the conclusion of a definite treaty of boundaries. Now this belt was none other than that comprised within the line proposed by the Earl of Aberdeen, which line commenced on the banks of the river Moroco, and extended into the interior, following the left bank of the Cuyuni, and that contended for by Venezuela, namely, the banks of the Essequibo river.

That declaration, made at the instance of Venezuela, was caused by certain arbitrary acts of the engineer R. Schomburgk, who, as an explorer, penetrated into the interior of Venezuela and there planted posts and put up marks following

an entirely new line according to his pleasure, which posts and marks Her Britannic Majesty'a Government ordered to be removed on the express solicitations of Doctor Fortique as Minister of Venezuela, the British Foreign Office declaring that such posts and marks did not mean *rights* but only *aspirations*. This "Schomburgk line," so appropriately named by the English Government, has nevertheless now come to be the "war horse" of the Foreign Office. It no longer includes lands "aspired" to, but territory claimed and occupied as a "*right*"; and it is now gravely contended that this *de facto* occupancy and extended claim should be recognized by Venezuela as a legitimate title of possession, first, in virtue of the fact that it is within the line of dispute, and second, by reason of the *ex parte* Decree of October, 1886, by British authority.

In a note dated September 15, 1881, Lord Granville proposed to Señor José Maria Rojas, then Minister of Venezuela to Her Britannic Majesty's Government, a dividing line which should start from the coast at 29 miles longitude east of the left bank of the river Barima, and unite, in the interior, with that proposed by the Earl of Aberdeen, both extending to the river Cuyuni on its left bank. Dr. Rojas had proposed that the border line should begin from the coast, one mile north of the mouth of the Moroco (the nearest point of departure to the line of Lord Aberdeen), and that from said point should be traced one meridian of latitude to the point of crossing with 60° Greenwich longitude, and that from there the frontier should continue southward by said meridian to the confines of both territories.

Five years later Your Excellency, being then, as now, in charge of the Prime Secretaryship of Foreign Affairs, proposed that it should be considered as disputed territory all situated between the line proposed by Señor Rojas on the 21st of February of 1881, and that proposed by Lord Granville on the 15th of September of the same year, both lines being specified as above, and that *a dividing line should be traced within the limits of this territory, either by arbitration or by a Mixed Commission, in order to divide it equally between both parties, taking into due con-*

sideration its natural limits. Your Excellency added that your Government *gave special importance to the possession of the river Guaima and cherished the desire to stipulate that* the line should start from the seacoast to the west of said river, offering to make "due compensation" in some other part of *the disputed territory on account of this departure from the principle of equality in the division.* Your Excellency also offered to consider in connection with the limits the surrender to Venezuela of the Island of Patos, asking, at the same time, for complete freedom of commerce and navigation on the Orinoco.

I feel it my duty, on this occasion, to dwell particularly upon the significance of these bases of settlement proposed by Your Excellency in 1886, since they vary so widely from the position which Her Britannic Majesty's Government now assumes, when so important a subject as the re-establishment of friendly relations between the two countries is up for discussion.

By these proposals of settlement Your Excellency limited the extreme pretension of Lord Granville, offering to divide the disputed territory in half, with all due regard to its natural limits. Moreover, Your Excellency suggested the appointment of a Mixed Commission (or of an Arbitration) to determine the frontier line; thus recognizing the undeniable efficacy of that method of adjustment of all questions of boundary. Your Excellency presented as *an aspiration* of Her Britannic Majesty's Government, *as a most important desire*, that it should be stipulated that the line start from the seacoast towards the west of the river Guaima, promising to make due compensation in the disputed district for this deviation from the principle of equality. Your Excellency will perceive how very widely these proposed bases of settlement vary from the unconditional and extreme proposition now made in Your Excellency's note of the 3d of July last. In the note last named it is pretended that Venezuela should accept "as indisputable" the capricious "Schomburgk line," excluding from arbitration all the territory within that line, and which Great Britain claimed not as a right, but only as a matter of *convenience* in the discussion of boundary. That territory is now claimed as a right, and

British jurisdiction extended to and over the rivers Cuyuni and Barima, Point Barima, and over the territories adjacent to said streams, from their source to their debouchure into the great mouth of the Orinoco. This means that Venezuela should give up an area of her territory far larger than that marked out by Lord Aberdeen in 1841, and larger than that proposed by Lord Granville in 1881; twice as large as that proposed by Your Excellency yourself in 1886, and still more important than the one desired by Sir Th. Sanderson in conference with Dr. Lucio Pulido on July 31, 1890, when he promised that England would abandon her pretensions to the mouth of the Orinoco, and agree to fix a limit on that side "by means of a line, which, starting from Point Mocomoco, between Point Barima and the river Guaima, should reach the river Amacuro on the southwest."

Your Excellency repeats in the note of July 3d last, in answer to the proposals of settlement presented by me with memorandum of May 26th, the demand that Venezuela recognize, as indisputable, the line proposed by Sir Th. Sanderson, in his note of March 19, 1890, addressed to Doctor Modesto Urbaneja, which was enclosed with a map, in which the course of said line was seen, and which far overreaches the original "Schomburgk line," not to mention its excess of the two lines proposed by Lords Aberdeen and Granville. Your Excellency consents only to the arbitration of that portion of territory which lies on the left bank of the river Cuyuni up to the point where that stream intersects the "Schomburgk line," near the debouchure of the Acarabisi. That is to say, arbitration is consented for in regard to territory which at no former time has been a matter of dispute, and which the Republic of Venezuela has quietly and peacefully held in possession since the time of its Independence; a possession founded upon indisputable and hitherto undisputed historical and juridical titles.

Your Excellency can hardly fail to perceive the insurmountable difficulties presented by these various frontier lines claimed or proposed by Her Britannic Majesty's Government in 1841, 1881, 1886, 1890, and at the present time; and likewise

the unvarying tendency shown to extend the limits of the Colony of British Guiana at the expense of the Venezuelan territory, and the manifest discordance which the propositions of Your Excellency in 1886 show, with the present request that Venezuela accept, without any compensation whatsoever, the enlarged "Schomburgk line," which dispossesses her, not only of the river Guaima (an *important desire* of the Foreign Office in 1886), but also deprives the Republic of the river Barima and the cape of that name, together with its adjacent territories.

The question naturally suggests itself: What is the nature of the titles and of the documents upon which the present enlarged and extended British claim is supposed to rest; a claim so diverse and elastic, and so foreign to antecedents, to unity and precision? If any titles at all exist, and they be as conclusive as the British Foreign Office now assumes them to be, why not submit them to examination by an impartial tribunal? Could any solution of the controversy be more "practical?" Could any be found more in accordance with justice and the practice of civilized nations? This is all that Venezuela asks. She is willing to confide her case to the judgment of a Mixed Commission, or to a tribunal of arbitration, to abide their decision, and thus end a vexatious controversy of fifty years' standing.

The only document quoted by Sir Th. Sanderson, in his reply to the Memorandum sent by Doctor Lucio Pulido in 1890 to the Foreign Office, was the treaty of Münster of 1648, according to which Sir Th. Sanderson maintains that the territory in dispute belonged to Holland by right of previous occupation; that its occupation by Great Britain during the wars at the close of the Eighteenth Century was publicly and effectively made, and that the formal transfer of the country thus occupied took place by the Treaty of Peace with the Netherlands on the 13th of August, 1814, and was not disputed by Spain on signing the Treaty of Peace with her in the same year. Sir Th. Sanderson omitted to say that the Treaty of Münster did not specify the territory recognized by Spain as belonging to the Dutch; that the Spaniards remained in possession of all the land which extends from the Orinoco to the Essequibo, in the

vicinity of which they had established missions, as well as posts on the Cuyuni; that Spain's efforts were unceasing to drive the Dutch away from the Orinoco, which latter people were forbidden by the Treaty of Münster to even communicate with the Spanish settlements, and that the English, when they took the Dutch Colonies by force were also subject to the same prohibition; that all the hostile acts committed by the Dutch, or by the Dutch and English together, or by these latter alone, in open opposition to said Treaty and not ultimately made lawful by the consent of Spain, constitute no title whatever to dominion; that the treaty of the 13th of August, 1814, by which the Netherlands ceded to England the "settlements of Essequibo, Berbice, and Demerara," merely designated them by their names without expressing the limits of any one of them.

In the history of the Colonies of Essequibo, Demerara and Berbice, published in 1888 by the Dutch Captain, P. N. Nestcher, compiled from documents in the official archives of his own country, it can be seen that, in his opinion, the dividing line traced in one of his maps, commences from the Moroco and follows a southwesterly course to the crossing of the Cuyuni, and thence descending directly south as far as the Sierras of Roraima and Pacaraima. Moreover, the only document which gives direct information of the limits between the Spanish Colonies and those of Dutch Guiana, namely the Treaty for the Extradition of fugitive slaves and deserters in 1791, locates the Spanish Colonies at the Orinoco and the Dutch at the Essequibo, Demerara, Berbice and Surinam. Consequently Spain did not believe that the Dutch had any possession whatsoever at the north or at the northwest of the Essequibo. The Treaty with Great Britain in 1814 (not of peace, as Sir Th. Sanderson says, but of Alliance, since peace existed between them since 1802 and their forces acted jointly in the Spanish Peninsula to repel the French invasion) would have had no motive for complaint on account of the greater extension given to Holland's settlements with consequent detriment to those of Spain. Lastly, Sir Th. Sanderson omitted to state that the English Government, in the list they published in 1877 of their British Colonies, carried the frontier of

Guiana almost to the south of the mouth of the Amacuro as far as the junction of the rivers Cotinga and Takutu, and that in the list published in 1887 it makes the line follow an extensive turn towardthe south following the Yuruary.

From what has been stated it will be perceived that, throughout the whole period of this controversy, Great Britain has never once produced any historical or other lawful title to show with any degree of certainty the true and legitimate origin of any one of the many lines which she pretends that Venezuela ought to accept as "indisputable." Lacking these lawful titles, and violating all that was stipulated and promised by Sir Bedford Wilson in 1850, to wit, that both countries should hold as neutral the then disputed territory until the conclusion of a Definite Treaty of boundary, Great Britain has proceeded to occupy *de facto* the area comprised within the "Schomburgk line" which was once formally disclaimed by the British Government.

In contrast with these pretensions, and with proceedings so little conducive to the maintenance of harmony between the two countries, Venezuela, in order to arrive at a just and honorable final settlement of the question in dispute, proposes to submit to the verdict of a Commission of persons duly authorized by both parties, who shall analyze all antecedents, examine all titles, scrutinize all historical documents and vouchers, and sift all evidence upon which each country predicates its claim, and thence fix a corresponding boundary line—the Commissioners submitting to the decision of *arbiters juris* all questions on which they may not be able to agree.

It cannot but be recognized, therefore, that the conduct of Venezuela's Government offers the most palpable proof of its love of justice and of its earnest desire to do its part, as far as may be compatible with its legal obligations, to preserve and defend its territory, to bring about a settlement, and the restoration of diplomatic relations.

Greater proofs of intelligent comprehension of the question, greater independence and impartiality could not be desired than those of that High Tribunal of arbitration, whose decision shall be unappealable. How is it possible that Her Britannic

Majesty's Government can consider as impracticable or unacceptable an arbitral decision to settle the question of limits with Venezuela when other nations have had recourse to it in similar cases, and quite recently Great Britain herself in the case of the Behring Sea controversy with the Republic of the United States?

It is with the sincerest regret that I shall inform my Government of the contents of Your Excellency's note of the 12th inst., in which the propositions formulated by me have been ignored; propositions made in fulfillment of my instructions, and inspired by an earnest desire to bring to a decorous and lawful termination this so long-standing question of boundaries, and by such means arrive at the re-establishment of the diplomatic relations between both countries.

It only remains, however, for me to most solemnly declare in the name of my Government, that it is with deep regret that it finds itself compelled to leave the present situation (the outcome of the events that have taken place on the disputed territory during the last few years) subject to the grave disturbances which the *de facto* proceedings can hardly fail to give; and also to state that at no time will Venezuela consent that such proceedings be recognized as titles in support of an occupancy which is contrary to her rights to territorial jurisdiction.

I take advantage of this opportunity to renew to Your Excellency the sentiments of my highest consideration, and I have the pleasure to subscribe myself

Your Excellency's obedient servant,

TOMÁS MICHELENA.

To the Earl of Rosebery, Prime Secretary of Foreign Affairs of Her Britannic Majesty's Government, London.

Dr. Michelena to Lord Rosebery.

[Translation.]

CONFIDENTIAL AGENCY OF VENEZUELA IN GREAT BRITAIN.

PARIS, October 6th, 1893.

My Lord:

I have the honor to acknowledge the receipt of Your Ex-

cellency's communication of the 22d of September ulto., informing me that Her Britannic Majesty's Government, having taken into consideration the representations contained in my note of August last, voicing the complaint of the Venezuelan Government on account of certain acts performed by the authorities of British Guiana in violation of the territorial rights of the Republic, does not consider that the acts referred to in my note constitute a violation of the above mentioned rights, as in reality such acts, Your Lordship adds, are nothing but part of the necessary administration of a territory that the Government of Her Britannic Majesty considers unquestionably as a portion of the Colony of British Guiana, and upon which territory (as it has been the duty of Her Britannic Majesty's Government to declare more than once) no claim whatever could be admitted on the part of Venezuela.

I shall report Your Excellency's communication to my Government, which will doubtless cause a deep feeling of regret, since Her Majesty's Government ignores the legitimate rights Venezuela has to oppose certain acts of the authorities of the Colony of British Guiana, performed upon a territory Venezuela considers exclusively her own, which she has possessed perfectly and undisturbed until within a few years past, when the British Colony invaded them performing acts of jurisdiction which have given rise to repeated and energetic protests on the part of the Government of the Republic.

Her Britannic Majesty's Government will in vain consider this territory as an unquestionable portion of the Colony of British Guiana, when against such declaration stands as an incontestable testimony of which public opinion is fully aware the history of this boundary question for the last fifty years. This history plainly shows the questionable nature of the pretended rights of the Colony of British Guiana; and before the High Tribunal of public opinion one single stroke of the pen of Her Britannic Majesty's Government can never suffice to efface the verdict condemning acts of force as unduly performed as they are useless.

It is my duty to again protest most solemnly in the name of

the Venezuelan Government against the acts of the Colony of British Guiana which constitute an invasion upon the territory of the Republic; and I also protest against the declaration in Your Excellency's communication, that Her Britannic Majesty's Government consider that portion of the territory as forming part of British Guiana, and that no claim whatever from Venezuela upon the same can be admitted. In support of this protest, I hereby confirm all the arguments contained in my communication to Your Excellency bearing date of the 29th of September ultimo, and also all the facts presented by the Government of Venezuela in the several occasions in which it has been obliged to make this same protest.

I will close by casting upon Her Britannic Majesty's Government all the responsibility of the acts that may take place in the future, owing to the necessity in which Venezuela is placed to oppose by all possible means the spoliation of any portion of her territory, since the refusal to put an end to this violent situation by means of arbitration is a disavowal of all her rights that places her in the painful position which she is forced to assume to provide for the legitimate defense of her rights.

I have the honor to remain Your Lordship's obedient humble servant,

TOMÁS MICHELENA.

To His Lordship the Earl of Rosebery, Her Britannic Majesty's Secretary of State.

Annex 39

Memorandum relating to the Question of Limits between Venezuela and British Giuana, presented to the Honorable W. Q. Gresham, Secretary of State, by José Andrade, 31 March 1894

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available at: https://www.loc.gov/item/04010002/

OFFICIAL HISTORY

OF THE

DISCUSSION BETWEEN VENEZUELA AND GREAT BRITAIN

ON THEIR

GUIANA BOUNDARIES.

ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

deavors to establish as a regular and ordinary means of preventing war.

Conformably to their custom of seeking and obtaining the help of the United States for the better adjustment of this same conflict, the Government of Venezuela have instructed me to ascertain the mind of the Government of this Republic as to their present disposition to tender their aid in the peaceful design of procuring the final acceptance by England of the civilized recourse proposed by Venezuela for the honorable settlement of the question.

The United States has asserted as a principle in which it considers its own rights and interest to be involved, that the nations of the American Continent, after having acquired the liberty and independence which they enjoy and maintain, are not subject to colonization by any European power; and the Government of the undersigned entertain the hope that in the aforesaid declaration, and in the judicial guardianship of international law, which, to a certain extent, the United States assumed on this continent in virtue of that declaration, and which it has actually exercised hitherto, the Government of Your Excellency will find sufficient reasons of political convenience, and, perhaps, even of moral obligation, to allow them to adopt such a tone in their new representations as may convince Great Britain, without affecting her inviolableness or that of anything lawfully pertaining to her, of the necessity of granting to Venezuela what Venezuela has an undeniable right to demand of her.

I beg to offer to Your Excellency the renewed assurance of my highest consideration. JOSÉ ANDRADE.

To His Excellency W. Q. Gresham, Secretary of State.

[Inclosure—Translation.]

Memorandum on the Boundary Question between Venezuela and British Guiana, Communicated to the Honorable W. Q. Gresham, Secretary of State.

Venezuela's rights over the territory in dispute are, as it is known, derived from Spain, whose sovereignty, titles and ac-

tions, which she inherited by the event of her independence, were afterwards ratified by virtue of the treaty of recognition, peace, and amity concluded between the two nations on the 30th of March, 1845.

The sovereignty, titles, and actions which, in this solemn instrument, were renounced by His Catholic Majesty, in his name and in that of his heirs and successors, are the same which the Spanish Sovereign possessed until 1810 over the country formerly known as Captaincy-General of Venezuela. This being subsequently constituted as an independent Republic, included thirteen provinces, that of Guiana among them.

By that time the Captaincy-General of Venezuela had the following geographical boundaries: on the north the Caribbean sea and Atlantic ocean beyond the eastern bank of the Essequibo; on the south, the Marañon or Amazon river; on the west, the Vice-royalty of Santa Fè, and on the east, Dutch Guiana which, by the convention of August 13th, 1814, signed in London by His British Majesty and the United Provinces of the Netherlands, came to be the British Guiana of the present time. Such, at least, had been the allegation of the Spanish Governments ever since 1648, and such the position which they considered themselves entitled to maintain, founded on treaties of peace and friendship, and of boundaries with Portugal, Holland and England; and the fact is furthermore attested by countless schedules, ordinances, instructions and other official deeds of the King of Spain, together with no smaller a number of historians, travelers, geographers and hydrographers that it is not within my scope to specify here. Apart from the limits referred to, the territory lying west and south as far as the Portuguese possessions of Brazil, belonged in its entirety to the Crown of Spain in 1810, notwithstanding any transitory or not well asserted occupancy of some spot on the seashore on or about the Orinoco river, or along the rivers in the interior, with posts, barracks, forts, stores or other settlements of the West Indies Company not legally authorized, or of the Dutch smugglers who, from an early date had often infested Spanish Guiana. The regions thus occupied had their lawful

owner, who had never relinquished them, and without whose consent they could not be appropriated for any use, he having at all times looked on the settlers as usurpers of his dominions from which he would expel them even by force of arms.

Venezuela, furthermore, has never confirmed such usurpations by any consent, law, treaty, cession or act whatever of voluntary abandonment. Out of moderation and prudence, however, she has contented herself with claiming the Essequibo line as that dividing Venezuelan Guiana from British Guiana. Starting from the mouth of said river, this line runs southward up-stream as far as 4° 12′ north latitude, half way between the mouths of the Sibarona and Rupumuni; thence eastward across the Essequibo, and one-fourth to the southeast over the Tumucuraque mountains, and finally bends to the southeast until it reaches 2° 10′ south latitude and 56° 4′ west longitude, where it meets the mountains of Acaray, inhabited by the Chiriguana Indians.

As regards her right of possession, as heiress to Spain, over the territory inclosed within the aforesaid bounds, she has never entertained the least doubt; she considers such right to be clear, historically evident, and easily demonstrable. In her opinion, the vast tract of land occupied by the settlers from Demerara and Berbice has been unquestionably usurped, but the necessity of devoting herself, as she naturally did, to the supreme struggle for her independence first, and afterwards to the absorbing work of her internal organization when she separated from the old Republic of Colombia, thus neglecting all questions not essential to her existence, prevented her from seeking a definitive adjustment of the matter with England.

Great Britain, on the other hand, had herself shown no interest in discussing it, apparently satisfied with possessing *de facto* the Pomaron district, which the force of events had allowed her to retain. For the first time in 1840 she evinced greater pretensions. At the latter part of said year she commissioned Sir R. H. Schomburgk, without the knowledge or acquiescence of Venezuela, to examine and lay down the boundaries of British Guiana, and directed the Governor of this

Colony to withstand all aggressions on the territories adjoining the frontier, until then inhabited by independent tribes. The Venezuelan Department of Foreign Relations was kept ignorant of such measures until informed by Her Majesty's Consul at Caracas, when they had already been, or were unavoidably to be, carried out. Thus the English engineer was enabled to reach the mouths of the Barima and Amacuro on the Orinoco, where he erected a sentry-box, hoisted his nation's flag and set up royal monograms and other emblems. He then proceeded to the interior of the country, made surveys, delineated metes and bounds, and drew out maps. Such was the origin of the so-called Schomburgk line.

Venezuela, however, did not tolerate the action taken by the British Government, for she immediately complained and remonstrated, until due satisfaction was obtained. According to explanations given by the Government of Demerara, the Commission intrusted to Schomburgk was only a part of a project which Lord Palmerston had recommended to the Secretary of State at the Colonial Office of the United Kingdom, to the effect that a map of British Guiana should be figured in accordance with the bounds described by the aforesaid engineer, to which was to be appended a report illustrative of the natural features defining and constituting them; that a copy of both the map and report should be sent to the Governments of Venezuela, Brazil, and the Netherlands, as a statement of the British claims, and that, meanwhile, commissioners should be dispatched for the purpose of establishing posts on the land, intended to represent permanent marks of the boundaries to which Great Britain pretended; which being done, and after each of the three Governments interested had offered their objections, stating the arguments in support of their assertions, the British Government would present the reasons they deemed proper and just. Consequently, Schomburgk's marks were to be regarded as a measure conformable to Lord Palmerston's purpose, not as symbols of possession capable of becoming, later on, titles of sovereignty for any of the four States, exclusive of all other nations that could lay claim to

the region thus bounded. And, as though to dispel all doubts regarding the real intention of Her Britannic Majesty's Government, Lord Aberdeen added to the above explanation an order, which was actually executed, to remove all the marks.

Considering the occasion favorable for the full and decisive establishment, by treaty, of the boundaries between the two Guianas, the Venezuelan Government had resolved to profit by it, and to authorize to that effect their Diplomatic Minister at London, Señor Fortique, who unfortunately died before he had succeeded in securing to his country the fruit of the negotiation with which he had been intrusted. He had time, however, to induce Great Britain to admit the supremacy of the Venezuelan titles over the territory between the rivers Moroco and Orinoco, as it appears by the line lastly proposed by Lord Aberdeen, viz.:

"Beginning on the east coast at the mouth of the river Moroco, it runs straight to a point where the river Barama joins the Guaima; from there up the Barima as far as the Aunama, which it follows upward to the place where this creek reaches its shortest distance from the Acaribisi; then it descends the said Acaribisi as far as its confluence with the Cuyuni, following afterwards the latter river up-stream until it reaches the high lands in the immediate neighborhood of Mount Roraima, which divides the waters flowing to the Essequibo from those running into the river Branco."

"Great Britain" (finally said Lord Aberdeen) "is disposed to cede to Venezuela the whole of the territory situated between the line mentioned and the Amacuro river and the chain of mountains where it takes its source, on condition that the Government of the Republic shall bind themselves not to alienate any portion of said territory to any foreign power, and also that the Indian tribes at present residing in it shall be protected against ill-treatment and oppression."

This was simply a resumption of her position in 1836, when the British Legation at Caracas admitted that the Venezuelan Government had legal power to pass decision in matters relating to the construction of lighthouses at Punta Barima and

the setting of beacons at the large mouth of the Orinoco, and of 1838, when the Governor of Demerara expressed his opinion, in official dispatch, dated the 1st of September (Parliamentary Papers) that the Pomaron river, west of the Essequibo, could be accepted as the limit of the English colony.

As, however, the delineation proposed dispossessed Venezuela of the territory comprised between the rivers Pomaron and Essequibo which she claimed to be her dominion, she did not esteem convenient to admit it without certain modifications, which she sent to London, but which were never submitted to Her Majesty's Government, owing to the discontinuance of the negotiations consequent to the decease of the Venezuelan Minister. In her opinion, however, Lord Aberdeen's proposal has lost nothing of its import as a proof that she never accepted Schomburgk's line, and that Great Britain herself had formally desisted, not only from upholding said line, but from Lord Palmerston's design, and, after a renewed and more conscientious consideration of her titles, had renounced all dominion over the land between the Moroco and Amacuro. Such was the state of affairs about the middle of 1844.

A few years later, in 1850, a rumor spread that Great Britain intended to take possession of the Venezuelan province of Guiana. This gave rise to a public feeling of indignation, which manifested itself in the organization of patriotic societies all over the country for the purpose of opposing and repulsing the aggression. The Government directed the authorities of the province especially menaced to prepare it for defense and to repair and fit out all the forts, until then dismantled and abandoned, and a bill was introduced in the House of Representatives authorizing the Executive to have a fortress immediately erected on the spot held to be the boundary between Venezuela and British Guiana, without indicating it.

The intense excitement of the public feeling already referred to did not fail to attract the notice of the English Government, who, foreseeing the possibility of hostile acts on the part of the Venezuelan authorities of Guiana, anticipated

them by communicating to the Lord's Commissioners of the Admiralty the instructions they deemed convenient to transmit to the Vice-admiral of Her Majesty's naval forces in the West Indies, to be carried out in case the aforesaid authorities should insist upon fortifying the territory in dispute between Great Britain and Venezuela. On the other hand, they authorized their Chargé d'Affaires at Caracas to deny the popular report attributing to Her Majesty's Government certain intentions, in every respect unfounded and contrary to the truth, and likewise to declare that, while his Government did not intend to occupy or encroach upon the territory in dispute, nor would order or sanction at any time such occupancy or encroachment by British authorities, they could not see with indifference the aggressions of Venezuela upon that territory. They accordingly expected that the Venezuelan Government would make a similar declaration and would consent to send their agents in Guiana positive orders to refrain from taking any steps that might justly be regarded as aggressive by the English authorities.

In reply, Venezuela likewise manifested that she entertained no intention whatever to encroach upon or occupy any portion of the territory the possession of which was controverted by the two States; neither would she look with indifference upon a contrary proceeding on the part of Great Britain, and that, moreover, she would enjoin her authorities in Guiana to take no steps that might violate the obligation which that agreement imposed upon the Government.

Such was the *status quo* of the question in 1850.

In 1848 and 1849 Venezuela had just started on the path of internal disturbances and armed revolutions, which afflicted her during more than a quarter of a century, and prevented her from attending to the boundary question with Great Britain, no action either having been urged by the latter country during that period.

It was scarcely on two occasions, and perhaps only in a dissembling way, that Great Britain was seen to take any steps in regard to Venezuelan Guiana. I allude to the steps she took

in 1857, through her Chargé d'Affaires at Caracas, intended to obtain a permission of the Executive, by virtue of which scientific expeditions composed of British subjects might visit the mining region of Venezuela, with the purpose of not infringing her rights, but simply of ascertaining the situation and prospect of the gold deposits, and report about them. The Government replied that they would admit without objection the announced expeditions, and would treat them with the benevolence due to their object, provided they entered through the capital of the province of Guiana. The other occasion occurred in 1874, when the English subject, Thomas Garret, suspected of homicide, was captured in Venezuelan territory by agents proceeding from Demerara. Venezuela demanded his delivery and obtained the suspension of the trial, though later on the case was taken up again by order of Her Britannic Majesty's Government, on the ground that, as asserted by the British Resident Minister at Caracas, the arrest had been made in places claimed by both countries, and that it was improper that such places should serve as a refuge for criminals of either nationality, under protection of the agreement of 1850, since nothing was more distant from the mind of His Government than to sanction any violation of the territorial rights of the Republic.

In 1876, new indications of a decided purpose to carry onward the discussion were evinced by the Venezuelan Foreign Department. Such may be considered the note, dated November of the same year, which it addressed to the British Foreign Office, and which was subsequently communicated in form of memorandum bearing the same date, to the Hon. Mr. Fish, for the information of the Government of the United States ; the appointment of Dr. José Maria Rojas as Resident Minister in London, and, finally, the President's Message to Congress in 1877.

Though Señor Rojas acted diligently from the outset to the effect of promoting the issue of the negotiations interrupted in 1844 by the death of Señor Fortique, he did not succeed any better than his predecessor.

The ground of strict right having been abandoned by mutual accord, Señor Rojas entered upon that of compromises and suggested that Venezuela would willingly accept the Moroco line, which had been spontaneously offered by Lord Aberdeen thirty-seven years before. Lord Granville this time refused to concede it, without stating any reason for his refusal, and, after rejecting another line devised by the Venezuelan negotiator, proposed the following, which, in his opinion, was not very different:

The starting-point will be a spot on the seashore, exactly twenty-nine miles longitude east of the right bank of the Barima river, whence the line would be carried south over the Mountain or Hill of Yarikita to the 8° parallel of latitude; thence westerly along this parallel till it crossed the boundary line drawn by Schomburgk; then to the Acaribisi and along this river until it entered the Cuyuni; along the left bank of the latter river up to its sources, and thence, in a southeastern direction, to Schomburgk's line, as far as the Essequibo and Corentyn rivers. That indicated by Mr. Rojas, referred to at the commencement of this paragraph, was to start from the coast, one mile north of the mouth of the Moroco, where a post would be planted; then run directly southward as far as the boundaries of both countries, along a vertical line beginning at the aforesaid post and extending between the 59° and 60° meridians, west of Greenwich[1].

Lord Granville, consequently, stood considerably apart from the Minister of Venezuela, still more from Lord Aberdeen, his predecessor in 1844, and still more even from Señor Fortique, the opponent of Lord Aberdeen, who had advocated the historical line of the Essequibo river. Moreover, he made reference in various points to Schomburgk's uncertain and capricious demarcation; he did not comprehend in his proposal the whole extent of the frontier to be designated, and, above all, he conferred upon Great Britain, without any valuable reason, a vast tract in regard to which she appeared to have renounced her vague intentions through Lord Aberdeen. In consequence thereof the Government of Venezuela deter-

[1] By some inadvertance the 'Rojas Line' is here described erroneously. For correct description, see Dr. Rojas' note to Lord Granville, dated February 21, 1881; also map herewith.

mined to refuse their assent to the proposal and to discontinue the interchange of projects of adjustment which, so far, had only succeeded in convincing them how difficult it was to conciliate the rights and interests of the antagonistic parties through direct negotiations between them. Four years, from 1841 to 1844, had been wasted away by the Republic in fruitless attempts to bring about an understanding with her neighbor, while Dr. Rojas's mission, equally unsuccessful, had already lasted a longer period, from 1877 to 1881. The Colony of Demerara, profiting by the interval between this mission and the previous one, had silently advanced its settlements on the Orinoco and Caroni, projected the opening of roads into Venezuela, sent expeditionists to the mining regions of the country, etc. And, finally, at the close of 1880, while Dr. Rojas was still negotiating in London, the press of Ciudad, Bolivar, the capital city of the State of Guiana, had reported the appearance of a man-of-war and merchant vessel, both British, at the mouth of the river Orinoco, provided with posts, wire, and other telegraphic articles.

Notice of the occurrence was given to the Government of the United States by Señor Simón Camacho, Resident Minister of Venezuela at Washington, in his note dated the 21st of December of the same year, 1880, to which the Hon. Mr. William M. Evarts returned the following answer on the 31st of January, 1881:

"In reply, I have to inform you that in view of the deep interest which the Government of the United States takes in all transactions tending to attempted encroachments of foreign powers upon the territory of any of the republics of this continent, this Government could not look with indifference to the forcible acquisition of such territory by England, if the mission of the vessels now at the mouth of the Orinoco should be found to be for that end. This Government awaits, therefore, with natural concern the more particular statement promised by the Government of Venezuela, which it hopes will not be long delayed."

On the 28th of February, 1881, when he was on the point to retire from office the Hon. Mr. Evarts wrote:

"Referring to your note of the 21st of December last, touching the operations of certain British war vessels in and near the mouth of the Orinoco river, and to my reply thereto of the 31st ultimo, as well as to the recent occasions in which the subject has been mentioned in our conferences concerning the business of your mission, I take it to be fitting now, at the close of my incumbency of the office I hold, to advert to the interest with which the Government of the United States cannot fail to regard any such purpose with respect to the control of American territory as is stated to be contemplated by the Government of Great Britain, and to express my regret that the further information promised in your note with regard to such designs had not reached me in season to receive the attention which, notwithstanding the severe pressure of public business at the end of an administrative term, I should have taken pleasure in bestowing upon it. I doubt not, however, that your representations in fulfillment of the awaited additional orders of your Government, will have like earnest and solicitous consideration at the hands of my successor."

The information announced by Mr. Camacho did not reach the department until November, 1882, at which time Mr. Frederick F. Frelinghuysen was already Secretary of State. It contained, besides other documents, a copy of a "memorandum" by Mr. Seijas on the boundary question with British Guiana; a copy of the note, dated September 15th, 1881, wherein Lord Granville communicated to Mr. Rojas his proposal above mentioned, and of the memorandum subjoined to it; and a copy of the minute of the negative response the Venezuelan Government intended to give to that note, resorting to arbitration as the only resource available in future for the satisfactory arrangement of the difference. The President of the Republic thus submitted the matter to the Government at Washington, "hoping that it would give him their opinion and advice, and soliciting such support as they esteemed possible to offer Venezuela in order that justice should

be made to her." I beg to present an extract of Mr. Frelinghuysen's reply, as set forth in his dispatch dated January 31st, 1883, to Mr. Jehu Baker, who was then the United States diplomatic representative at Caracas:

"This Government has already expressed its view that arbitration of such disputes is a convenient resort in the case of failure to come to a mutual understanding, and intimated its willingness, if Venezuela should so desire, to propose to Great Britain such a mode of settlement. It is felt that the tender of good offices would not be so profitable if the United States were to approach Great Britain as the advocate of any prejudged solution in favor of Venezuela. So far as the United States can counsel and assist Venezuela, it believes it best to confine its reply to the renewal of the suggestion of arbitration and the offer of all its good offices in that direction. This suggestion is the more easily made, since it appears from the instruction sent by Señor Seijas to the Venezuelan Minister in London on the same 15th of July, 1882, that the President of Venezuela proposed to the British Government the submission of the dispute to arbitration by a third power.

"You will take an early occasion to present the foregoing consideration to Señor Seijas, saying to him that, while trusting that the direct proposal for arbitration already made to Great Britain may bear good fruit (if, indeed, it has not already done so by its acceptance in principle) the Government of the United States will cheerfully lend any needful aid to press upon Great Britain, in a friendly way, the proposition so made, and at the same time you will say to Señor Seijas (in personal conference and not with the formality of a written communication) that the United States, while advocating strongly the recourse of arbitration for the adjustment of international disputes affecting the States of America, does not seek to put itself forward as their arbiter; that, viewing all such questions impartially and with no intent or desire to prejudge their merits, the United States will not refuse its arbitration if asked by both parties, and that, regarding all such questions as essentially and distinctively American, the United States would

always prefer to see such contentions adjusted through the arbitrament of an American rather than a European power."

The response of Venezuela to Lord Granville's proposal, adverted to by the Hon. Mr. Frelinghuysen, had not been yet sent to its destination, nor could it be sent after the opinion of the United States was communicated, as Dr. José María Rojas had meanwhile retired from his post by resignation, and no one had been as yet nominated in his place. This, however, did not prevent the questions pending between Great Britain and Venezuela from becoming soon again the subjects of candid discussion, through the initiative of Great Britain. These questions were three, relating severally to boundaries, discriminating duties on merchandise imported from the West Indies, and pecuniary claims. Great Britain solicited that they should be treated and resolved conjointly, and thus brought on a long and amicable correspondence between her representative at Caracas and the Department of Foreign Affairs, which was in proper time communicated to the Government of the United States, as also the appointment of General Guzmán Blanco, Ex-President of the Republic, as Envoy Extraordinary and Minister Plenipotentiary near Her Britannic Majesty's Government.

The new Diplomatic Agent of Venezuela visited this city on his way to England, and held several conferences relating to the various objects of his mission with the Honorable Secretary of State, by whom he was recommended to Mr. Lowell in a confidential note, dated July 7, 1884, the two last paragraphs of which read as follows:

"It will necessarily be somewhat within your discretion how far your good offices may be profitably employed with Her Majesty's Government to these ends, and at any rate you may take proper occasion to let Lord Granville know that we are not without concern as to whatever may affect the interests of a sister Republic of the American Continent and its position in the family of nations.

"If General Guzmán should apply to you for advice or assistance in realizing the purposes of his mission, you will show

him proper consideration, and without committing the United States to any determinate political solution, you will endeavor to carry out the views of this instruction."

This time Venezuela could for a moment cherish the belief that she had reached the desired close of her boundary dispute, for, in spite of the adverseness of Great Britain to arbitration, as manifested beforehand by her Resident Minister at Caracas, and now steadily maintained in London by Lord Granville, General Guzmán Blanco had succeeded in obtaining his assent to sign a treaty of amity, commerce, and navigation, substituting that of 1825, wherein an article (XV.) was admitted in the following terms:

"If, as it is to be deprecated, there shall arise between the United States of Venezuela and the United Kingdom of Great Britain and Ireland any difference which cannot be adjusted by the usual means of friendly negotiation, the two contracting parties agree to submit the decision of all such differences to the arbitration of a third power, or of several powers in amity with both, without resorting to war, and that the result of such arbitration shall be binding upon both Governments.

"The arbitrating power or powers shall be selected by the two Governments by common consent, failing which, each of the parties shall nominate an arbitrating power, and the arbitrators thus appointed shall be requested to select another power to act as umpire.

"The procedure of the arbitration shall in each case be determined by the contracting parties, failing which, the arbitrating power or powers shall be themselves entitled to determine it beforehand."

Lord Granville's acceptance, as given in his note to General Guzmán, dated 15th of May, 1885, reads thus:

"M. LE MINISTRE: I have the honor to acknowledge the receipt, on the 12th instant, of your note dated the 6th instant, respecting the proposed new treaty between Great Britain and Venezuela.

"In reply, I have the honor to inform you that Her Majesty's Government agree to the substitution of the phrase

'power' to be chosen by the high contracting parties, instead of 'arbitrators,' in the article respecting arbitration, and that they further agree that the undertaking to refer differences to arbitration shall include all differences which may arise between the high contracting parties, and not those only which arise on the interpretation of the treaty."

And in a subsequent note, dated June 18, 1885, he said:

"M. LE MINISTRE: I have the honor to acknowledge the receipt of your note of the 8th instant, forwarding the draft of a new treaty of friendship, commerce, and navigation between Great Britain and Venezuela, to replace the treaties of 1825 and 1834, founded on the text of the treaty recently concluded between Great Britain and Paraguay, and on correspondence that has passed between us. . . .

"The clause in *italics* at the end of Article XV. would seem to render that article more explicit and to be useful for this purpose."

To which General Guzmán replied, on the 22d of June, 1885:

"MY LORD: I have had the honor of receiving Your Excellency's dispatch of the 18th, accompanying a copy in print of a draft treaty of friendship, commerce, and navigation between the United States of Venezuela and Great Britain, with certain corrections to which Your Excellency asks me to express my consent in order to avoid any misapprehension.

"I proceed accordingly to reply, that I see no objection to adding to Article XV. 'the award of the arbitrators shall be carried out as speedily as possible in cases where such award does not specifically lay down a date.'"

Shortly after, a change occurred in Her Britannic Majesty's Government, by virtue of which Lord Salisbury entered upon the duties of Chief Secretary of State at the Foreign Office, and so it was incumbent on him to finish the negotiation that Lord Granville had left close to its conclusion.

On the 27th of July Lord Salisbury addressed a note to General Guzmán stating, in regard to the clause on arbitration, which had already been accepted by Lord Granville, that—

"Her Majesty's Government are unable to concur in the

assent given by their predecessors in office to the General Arbitration Article proposed by Venezuela, and they are unable to agree to the inclusion in it of matters other than those arising out of the interpretation or alleged violation of this particular treaty. To engage to refer to arbitration all disputes and controversies whatsoever would be without precedent in the treaties made by Great Britain. Questions might arise, such as those involving the title of the British Crown to territory or other sovereign rights, which Her Majesty's Government could not pledge themselves beforehand to refer to arbitration."

He accordingly inclosed a printed copy of the draft treaty, wherein the said clause of Article XV. appeared thus amended:

"If, as it is to be deprecated, there shall arise between the United States of Venezuela and Great Britain any controversies respecting the interpretation or the execution of the present treaty, or the consequence of any violation thereof, the two contracting parties agree——"

The Venezuelan negotiator gave the following response, which proved to be wholly ineffectual:

"With respect to arbitration, it appears to me that the new Cabinet could not, by itself alone, repeal the article to which its predecessor had given formal assent, and thereby placed it beyond its competence, and still less so after Your Lordship's declaration in the House of Lords that an engagement of the previous Government would be respected. I should be pained to think that this declaration did not include Venezuela.

"I think that boundary questions are of the number of those which it is most expedient to submit to the award of an impartial third party. As is shown in practice, other nations are also of this opinion, and that the same view is also shared by Great Britain I think may be inferred from her action during 1829 and during 1872, in agreeing to submit two controversies respecting territory to the decision of the King of Holland and of the Emperor of Germany, respectively. In the last case it proposed the arbitration no less than six times to the

United States, as they allege, and it was only the seventh time that they accepted this means of deciding whether or not the line should pass by the Haro Canal. It appears from the correspondence of the Venezuelan Plenipotentiary, Señor Fortique, that the same proposal was made to him orally for the termination of the dispute respecting Guiana.

"In fine, arbitration, in addition to having been employed on various occasions by Great Britain, has been so favorably entertained in her Parliament, and by her statesmen, and in the public opinion of the United Kingdom, that its general adoption could not fail to merit applause. Moreover, I proceeded in this matter conformably with the Constitution of Venezuela, which requires the Executive to stipulate for arbitration in comprehensive terms and without any restriction."

Lord Salisbury confined his answer to an expression of regret that the instructions communicated to General Guzmán did not allow him to agree to the restricted form of the article on arbitration, requesting at the same time that the points on which differences had arisen should be referred for modification to the Government of the Republic. General Guzmán had done so more than a month previously, and the Government in reply confirmed his original instructions and approved his action in the fulfillment of the same. He addressed himself again to Lord Salisbury and invoked the arguments he had repeatedly presented before, proving that the clause on arbitration applicable to all kinds of disagreements was already a right acquired by Venezuela, which Great Britain was bound to respect. His representations, however, were utterly fruitless.

On the 19th of July, 1886, the day of his return to Venezuela being then near, he ventured to write again to Lord Rosebery, Lord Salisbury's successor, manifesting his natural desire not to quit the country without settling the questions he had been negotiating ever since his arrival in London, by the middle of 1884. On the 20th of the same month, Lord Rosebery replied :

"I am anxious to profit by your permanence in Europe for the purpose of making every effort to come to an understand-

ing with you about the questions which are matter of dispute between our respective countries, and in conformity with the offer I made in my note of the 23d of last month. I send you now a memorandum of the bases according to which I should be disposed to enter into negotiations."

"I. BOUNDARY.

"It is proposed that the two Governments shall agree upon considering as territory disputed between the two countries the land situated between the two boundary lines indicated, respectively, in the eighth paragraph of Senor Rojas's note of February 21st, 1881, and Lord Gransville's note of September 15th, 1881, and to draw a dividing line within the limits of this territory, either by arbitration or by a mixed commission, on the principle of equal division of said territory, and in due regard to natural boundaries. The Government of Her Majesty give especial importance to the possession of the River Guaima by British Guiana, and wish, therefore, to make the stipulation that the boundary line is to begin at the coast point, and a proper compensation to be found in any other part of the disputed territory for this deviation from the principle of equal division. In connection with the boundary there shall be considered the cession of the Island of Patos to Venezuela.

"The River Orinoco shall be entirely free to commerce and navigation.

"II. TREATY OF COMMERCE.

. . . . . .

"It will likewise be convenient to add in the treaty the clause 'by arbitration' proposed by Venezuela, limited to those differences that may arise after the treaty is signed, with exclusion of the questions of the boundary and the Island of Patos, which the Government of Her Majesty is ready to consider separately in the manner indicated before.

"III. DIFFERENTIAL DUTIES."

. . . . . .

The distribution of the bases set forth in the foregoing

memorandum shows that Lord Rosebery again considered separately the three parts of the negotiation, in order to apply to each a different method, and that as regards arbitration, he only accepted it on condition that it was restricted, in the treaty of commerce, to the ordinary prescriptions of such treaties, and, in the controversy on boundaries, to the new division of the territory in dispute proposed by himself. He thus rather lessened the probability of soon reaching the longed-for end of the question, since, according to the constitution of Venezuela, the clause on general arbitration was a necesssry provision embracing all treaties of amity, commerce, and navigation, as well as the settlement of the boundary question ; and so it was explained at length by General Guzman in the memorandum which, in turn, he sent to Lord Rosebery, in conjunction with his communication of July 29th, 1886. And if it be stated that the present proposal was more unfavorable than others already rejected by Venezuela, it will be acknowledged that she was justified in disregarding it, as she did. Thus ended the third negotiation so eagerly solicited by Great Britain and willingly met by Venezuela.

Furthermore, when the two Governments sought in London to adjust their contention in peace and amity, British officers, both civil and naval, commissioned by the Governor of British Guiana, appeared at the mouth of the Orinoco river, on board the steamship "Lady Langden." They sailed up stream without a pilot, the Venezuelan authorities having declined to give them one ; they made incursions into places that had always belonged to Venezuela ; they planted posts, fixed placards, declaring British laws in vigor, appointed officers of their own nationality as substitutes for those of the Republic or endeavored to allure them into their service, and finally took one of them away under pretext that he had illtreated a Portuguese subject, and caused him to be tried and punished by a court of justice at Demerara.

The placards read thus :

"GOVERNMENT NOTICE.

"Notice is hereby given that any persons infringing the

right of Her Majesty, or acting in contravention of the laws of British Guiana, will be prosecuted according to law.

" By command,

" FRANCIS VILLIERS,

"Acting Government Secretary.

" Georgetown, Demerara, &c. "

One Mr. Michael McTurk, entitling himself acting special Magistrate and Superintendent of the Crown-lands and forests in the Pomaron district, had been at Amacuro, Barima, Morajuana, and Guaima. He had posted similar announcements, in English, at the principal places along these rivers, which he had revisited on different occasions, in performance of his duties as Magistrate in charge of the District whereof they were parts.

In September, 1883, the Executive of Venezuela had concluded a treaty, approved by Congress in May, 1884, granting to Mr. Cyrinius C. Fitzgerald (Manoa Company) the exclusive right to colonize with such national lands as were included within a tract which, on the side of the Orinoco river, extended as far as the boundary line with British Guiana, along the mountains of Imataca, and there to develop agriculture and cattle-breeding as well as any resource contained in the soil. Now, the acting Governor Secretary of Demerara had written to Mr. Fitzgerald, on the 25th of October, 1884, what I here transcribe :

" I am directed by His Excellency, the Governor of British Guiana, to acknowledge receipt of your three letters noted in the margin with reference and transmitting documents respecting the Manoa Company and the concession made by the Venezuelan Government, and to convey to you the expression of His Excellency's thanks for the information and the documents supplied.

" With regard to the British Guiana boundary, I am directed by His Excellency to intimate to you that the Colonial Government exercises authority and jurisdiction within the limits laid down in the accompanying map, starting from the right bank of the Amacuro river, and that within these limits

the Colonial Government enforce the law of British Guiana.

"I am further to intimate to you that any person disregarding or acting in contravention of the laws of British Guiana within these limits will be liable to be prosecuted according to the laws of the Colony.

"The whole of the territory therefore between the Amacuro and Moruca rivers is part of the Colony of British Guiana, and the Colonial Government will maintain jurisdiction over this territory and prevent the rights of Her Majesty or of the inhabitants of the Colony being in any way infringed."

And in two letters, dated November 22d, 1884, the aforesaid Mr. McTurk had declared to Señor Tomas A. Kelly, Administrator and President of the Manoa Company, who purposed to set up a sawing-machine at the mouth of the Barima river:

"I deem it my duty as the officer now in charge of the Pomeroon river judicial district, and which district extends to the limits of the Colony on its Venezuelan or western side, to notify you that the Barima river is in the county of Essequibo and Colony of British Guiana, and forms parts of the judicial district, over which I exercise jurisdiction.

"No settlements of any kind, whether for the purpose of trade or any other purposes, can be made within the limits of the Colony unless in accordance with its existing laws, and those that may become resident therein will be required to obey them."

. . . . . .

"I have the honor to inform you that you are now within the limits of the Colony of British Guiana and those of the district under my jurisdiction, as one of the special magistrates and Superintendent of Crown-lands and forests of this Colony, and therefore you are outside your jurisdiction as a functionary of Venezuela. . . . Whatever notification you should make to the inhabitants will be void, and all persons residing in this or any part of this Colony, or visiting it, will have to conduct themselves in accordance with its laws. I must likewise call your attention to the notifications put upon trees on

the banks of this river, as also on the Rivers Waini and Barima. These notifications were fixed where they are by order of the Government of British Guiana."

The British Legation at Caracas had, on its part, made similar warnings with regard to the Manoa Company. They were, however, more deferent to the rights of Venezuela, as shown in the note it addressed to the Department of Foreign Affairs on the 8th of January, 1885:

"In a dispatch dated London the 28th of November, I am directed by Her Majesty's Government to attract the attention of that of Venezuela to the proceedings of the agents of the Manoa Company in certain districts, the sovereignty of which is equally claimed by Her Majesty's Government and that of Venezuela.

"Earl Granville further instructed me to request the Venezuelan Government to take steps to prevent the agents of the Manoa Company or of Mr. H. Gordon, who has also a concession for colonization from the Venezuelan Government, from asserting claims to or interfering with any of the territory claimed by Great Britain.

"Her Majesty's Government, in the event of that of Venezuela declining to move in this matter, would, to their great regret, feel themselves under the necessity of adopting measures for preventing the encroachment of the Manoa Company, and the Governor of British Guiana would even be instructed to employ an adequate police force for the prevention of such encroachment and maintenance of order.

"Lord Granville goes on to inform me, however, that no steps will be taken by the Governor of British Guiana pending this reference to the Venezuelan Government.

"I need hardly remind Your Excellency that the question of the boundary of British Guiana is one of long standing, and that communications upon the subject are at the present moment taking place between Her Majesty's Government and the Venezuelan Minister in London, and it is therefore all the more important that incidents calculated to cause grave inconvenience should be prevented. The territories, irrespective

of those disputed by Venezuela and Great Britain, conceded to the Manoa Company are enormous in extent; but without entering into that portion of the question, I feel certain that his Excellency, the President of the Republic, will duly appreciate the immense importance of obviating the possibility of any collision between the agents of that company and the British authorities in the territories the sovereignty of which is still a disputed question."

Posts had been set up along the eastern bank of the Amacuro river and on other spots as far back as the 11th of October, 1884, in pursuance of orders issued by the Governor of British Guiana, but Her Majesty's Minister did not give any notice of the fact to the Minister of Foreign Relations until the 26th of January, 1885, when the Venezuelan authorities in Guiana had already ordered their removal in evidence that Venezuela did not acquiesce to their significance of British dominion.

A like occurrence had taken place in regard to the pledge he gave in his note of January 8th, 1885, that the Governor of British Guiana would take no action against the proceedings of the Manoa Company or of Mr. W. Gordon's agents, so long as the petition he addressed to the Venezuelan Government in the same note remain undecided. Indeed, when he offered the above assurance, the measures of the British Government to which he adverted had been already executed.

The British Legation had also notified the Government, on the 26th of the same month, that the Governor of British Guiana had been instructed to send Mr. McTurk, Stipendiary Magistrate, to the eastern bank of the Amacuro river, with the purpose of investigating the conduct of the Manoa Company and especially that of Mr. Roberto Wells, Civil Commissary of Delta Territory, and others. Coincident with this advice, a Commission of English officers had entered the Amacuro and had carried away the Venezuelan Commissary under arrest.

The Department of Foreign Affairs of Venezuela had maintained that, according to the contract with the Manoa Com-

pany, the words "as far as British Guiana," did not purport that the bounds of the concession reached beyond the territory in dispute. It had expressed to the Minister of Great Britain its deep surprise on receiving intelligence of the events of Amacuro, and had finally urged the adoption of such measures as might retrieve those proceedings and bring matters back to the extant *status quo*, according to which neither nation could exercise jurisdiction over any portion of the territory in contest.

In the note he addressed in London to Lord Rosebery, dated the 28th of July, 1886, General Guzmaz Blanco earnestly propounded, in the name of his Government, the just complaints of the Republic for the successive recent violations of the national territory and acts against Venezuelan jurisdiction that had been committed. He closed his note with the following demands:

1. Removal of all the marks of sovereignty that had been placed on the disputed lands by direction of the Governor of British Guiana.

2. Recall of the officers and public forces that might have been posted on those lands.

3. Satisfactory explanations concerning the non-fulfillment of the convention proposed to Venezuela by Great Britain and concerning the violation of the laws of the Republic in regard to ports not open to foreign vessels.

4. Annulment of the action brought against Mr. Roberto Wells, his liberty and indemnification for the damages that had been caused him by his arrest, imprisonment, trial, and punishment for imputation of an offence committed in Venezuelan territory.

5. Complete restoration of affairs to their State in 1850, date of the aforesaid agreement, and strict orders to the Governor of British Guiana, enjoining the careful observance of it pending the settlement of the boundary question by the two Governments.

Great Britain not having done anything towards giving satisfaction to Venezuela, the Minister of Foreign Affairs wrote

to Mr. F. R. Saint John, Her Britannic Majesty's Resident Minister, a note dated at Caracas, the 7th of December, 1886, to the following tenor:

"In accordance with the order of the President of the Republic, as the result of the Conference we held with him yesterday, I have the honor of addressing Your Excellency and stating in substance what he then expressed.

" He said that his attention had been seriously called to the grave character of the intelligence received as to occurrences taking place, it is affirmed, in Guiana in regard to its boundary with British Guiana. He remembered the agreement concluded in 1850 by an interchange of notes between the two Governments on a spontaneous proposal of the British Government, and upon the ground of information sent from Ciudad Bolivar by Vice-Consul Mathison to Mr. Wilson, Chargé d'Affaires at Caracas, respecting the transmission of orders to the authorities of the province of Guiana to put the same in a state of defence and to repair and arm the dismantled forts, and the language used by Governor José Tomás Machado as to the erection of a fort at the Barima Point; and on account also of a rumor spread to the effect that Great Britain intended to claim the province of Venezuelan Guiana. Besides giving it the lie by affirming that not only was it destitute of any foundation, but also that it was precisely the reverse of the truth, Mr. Wilson declared, in the name of his Government, that the latter had no intention to occupy or encroach upon the territory in dispute, and that they would not ordain or sanction such occupation or encroachments on the part of British authorities. At the same time he requested and obtained from the Government of the Republic analogous declarations. She has kept such an agreement by preserving the *status quo*, while Great Britain has infringed it since. Besides the acts of jurisdiction consummated from 1884, it has been ascertained that she has just now in the channels formed by the rivers Amacuro and Barima, about which there has been no question before, a commissary provided with two vessels containing arms and policemen, who levies taxes and pro-

hibits persons going there on mercantile business from carrying out their operations; that she has had built a Government house on which the British flag has been and is constantly hoisted; that a church and school-houses are being constructed; that in October last a small war steamer was there; that a revenue-cutter often runs on the track between Amacuro and Barima, and that they have begun to form on the same spot an agricultural Colony.

"Even in the denied assumption that those places were a part of the disputed territory, Great Britain might not have occupied them without violating the above compact. And if, in spite of everything, she occupies them, with still greater reason they should be reoccupied by Venezuela, relieved as she is from any obligation on the ground of its infraction by the other contracting party, and being, as she is, fully conscious of her undebatable right of property.

"The President said likewise that the concessions to the Manoa Company could not have given to Great Britain a just ground of complaint as, according to their unequivocal terms, they only extended as far as 'British Guiana': that is to say, as far as points not contentious, and, moreover, that the contract on the subject had expired.

"On the above statement, and on the strength of an application made by the British Legation, with the utmost instancy, in an official note to this ministry, on May 26th, 1836, for the erection of a beacon at the Barima Point, thus recognizing *motu proprio* the incontestable sovereignty of Venezuela over the same, the President added that he was going to send there an engineer instructed to erect the beacon, and new officers to exercise authority for the Republic in said place and in those lying between the rivers Barima and Amacuro, and to notify to the foreign occupants their withdrawal from them. And he ended by saying that if the Government of Her Britannic Majesty would occupy such a point as Barima, the possession of which would render them joint proprietors of the Orinoco, and decide in this manner by themselves and in their favor this, for Venezuela, the most grave question, wresting from

her by force the exclusive domain of that river and presenting thus to her an indubitable *casus belli*, he should be compelled, by the requirements of patriotism and by his high duties as the guardian of the territorial integrity of Venezuela, to break up the relations between the two countries.

"The President has instructed me to write this note in order that Your Excellency may communicate to me the information and antecedents you may know of in regard to so unheard of and almost incredible occurrences.

Mr. Saint John replied that, since the President, before resorting to the occupancy of a portion of the disputed territory, had refused to await the result of the notification of his purpose to the British Government, he did not see what could be gained by assenting to his petition or by persevering in the discussion. In order to avoid error, however, he would remark in connection with two of the points treated in the communication of the Minister of Foreign Relations, that, in the first place, the territory between the Barima and Amacuro rivers, which, according to the assertion contained in that communication, was only now claimed by Her British Majesty's Government, had been already mentioned in Lord Aberdeen's note to Mr. Fortique, dated the 30th of May, 1844, as a part of British Guiana; secondly, that the petition addressed to the Venezuelan Government on the 26th of May, 1836, by the British Agent at Caracas, respecting the erection of a light-house at Punta Barima, had been made without the knowledge or authorization of the British Government, to whom the Agent did not even notify such petition; and ultimately, that the doctrine assuming that every act or word of a diplomatic agent binds his Government is utterly incompatible with international law, it being perfectly recognized that not even a formal treaty concluded and signed by a plenipotentiary is valid unless it be duly ratified by his Government."

In reference to the two points in question the minister of Foreign Relations replied, on the 8th of January, 1887, in this manner:

"Venezuela has never admitted, neither will she ever ad-

mit, that Dutch Guiana bounds upon the Orinoco; and this is proved by the text of the note with which Señor Fortique opened the negotiation on limits, by the previous ones in which he demanded the removal of the flags, posts, and marks placed at Barima and other places by Engineer Schomburgk in 1841, and by the conferences he held on the subject with their Excellencies, the Ministers of Foreign Affairs and of the Colonies. It was precisely the placing of these marks of foreign dominion at the places mentioned, to which Great Britain had no right, that created such a sensation in Venezuela, and caused the sending of Messrs. Lic. José Santiago Rodriguez and Juan José Romero to Demerara, in the character of commissioners, to demand an explanation of those surprising facts. In a note dated the 11th of December, 1841, Lord Aberdeen wrote to Señor Fortique that the marks had been placed as a means of preparation by his Government for the discussion of the boundary question with the Government of Venezuela; that they were placed precisely with this object and not, as Venezuela seemed to fear, with the intention of indicating dominion or empire on the part of Great Britain. Lord Aberdeen added that he had learned with pleasure that the two commissioners sent by the Republic had been able to ascertain, through the information given them by the Governor of said Colony, that Point Barima had not been occupied by the English authorities.

"The usurpations which Spain made legal by the Münster Treaty were those concerning the Colonies of Essequibo, Demerara, Berbice, and Surinam, and were afterwards confirmed by the extradition treaty made at Aranjuez, in which your Excellency may see that the Dutch Colonies of Essequibo, Demerara, Berbice, and Surinam, together with Curaçoa, and Saint Eustace, are mentioned in juxtaposition with the Spanish Colonies of the Orinoco, Coro, and Porto Rico. Of these Colonies the Netherlands transferred to His Britannic Majesty by the London Treaty of the 13th of August, 1814, those of Essequibo, Demerara, and Berbice. Whence comes, then, the right of England over the Spanish Colonies of the Orinoco?

"The second remark made by your Excellency is to the effect that the British agent in Caracas, that is, Sir Robert Ker Porter, who in 1836, was the Chargé d'Affaires in this Republic, requested from this Government the erection of a lighthouse at Point Barima, without the knowledge or the consent of his Government; and your Excellency adds, quoting a note from the British Legation to this department, dated on the 26th of September, 1851, that the doctrine that all acts or words of a diplomatic agent bind his Government, is incompatible with international law, it being a well known fact that not even a treaty made by a plenipotentiary is valid unless ratified by his Government.

"On these points the President has instructed me to state that the Government of Venezuela cannot admit that after the long period of fifty years has elapsed since the date of Sir Robert's communication, the British Government having been informed by him or his successors of the step he took, should not have apprised that of Venezuela of the lack of authorization which your Excellency, on account of what has happened, communicates to-day for the first time, after fifty years have elapsed, and which nothing could make this Government presume upon."

The correspondence passed between the Minister of Foreign Affairs and the British Legation at Caracas, of which the preceding extracts have been offered, was sent to the Department of State by Sr. J. A. Olavvaria, in two pamphlets printed in English, along with his notes of May 4th and 21st, 1887. It closed with the rupture of diplomatic relations between Venezuela and Great Britain, on the 20th of February of the same year.

The report of the Commission sent to the Orinoco in 1886, by the Venezuelan Government, had confirmed all the previous advices regarding the extensive occupation of territory and acts of sovereignty that Great Britain had accomplished in Guiana in detriment of the rights of Venezuela, while the two nations were negotiating in Europe a treaty of amity, in-

cluding a clause of arbitration, for the settlement of their boundary controversy.

In reply to the note of January 5th, 1887, to which the Venezuelan Consul at Demerara annexed another from the members of the aforesaid Commission, stating the object of their visit to British Guiana, the Government of the Colony had referred to the notice published in the *London Gazette*, under date of 21st of October, 1886, and had manifested that the Districts mentioned in the official communication of the Venezuelan Commissioners were comprised within the bounds which that notice established, and formed part of the Colony of British Guiana. In fact, the notice, which Mr. Charles Bruce, Secretary of the Government of Demerara, certified to have been copied from the *London Gazette* of October 21, 1886, runs thus:

"COLONIAL OFFICE, DOWNING STREET.
October 21, 1886.

"WHEREAS, The boundary line between Her Majesty's Colony of British Guiana and the Republic of Venezuela is in dispute between Her Majesty's Government and the Government of Venezuela; and whereas, it has come to the knowledge of Her Majesty's Government that grants of land within the territory claimed by Her Majesty's Government, as part of the said colony, have been made or purport to have been made, by or in the name of the Government of Venezuela, notice is hereby given that no title to land, or to any right in or over or affecting any land, within the terrritory claimed by Her Majesty's Government as forming part of the colony of British Guiana, purporting to be derived from or through the Government of Venezuela, or any office or person authorized by that Government, will be admitted or recognized by Her Majesty or by the Government of British Guiana, and that any person taking possession of or exercising any right over any such land under color of any such title or pretended title will be liable to be treated as a trespasser under the laws of the said colony.

"A map showing the boundary between British Guiana and Venezuela, claimed by Her Majesty's Government, can-

be seen in the library of the Colonial Office, Downing Street, or at the office of the Government Secretary, Georgetown, British Guiana."

Of course the boundary laid down in that map was not the Essequibo river, which Venezuela, supported by the treaties of Münster (1648), Aranjuez (1791), London (1814), and Madrid (1845), had always claimed to be the eastern line dividing her from British Guiana.

Neither was it the Pomeron River, which Great Britain had adopted *motu proprio* until 1844;

Nor the Moroco, proposed by Lord Aberdeen in 1844;

Nor Lord Granville's line, in 1881, which started 29 miles east of the eastern bank of the Barima River;

Nor Lord Rosebery's, in 1886, beginning on the coast, west of the Guaima river.

It was nothing short of the limit capriciously indicated by Engineer Schomburgk, in 1841, which Lord Aberdeen had then considered to be exaggerated and of mere convenience so far as the Cuyuni river was concerned, its marks having been removed by order of Her Britannic Majesty's Government by way of satisfaction to the complaints of Venezuela.

The same limit that Great Britain and Venezuela, by the agreement of 1850, had mutually engaged not to occupy or encroach upon, nor to allow it to be occupied or encroached upon by their respective authorities.

The same referred to in the Report No. 2 of the Department of Agriculture of the United States for the year 1892 (Report on the Agriculture of South America, with maps and latest statistics of trade), in the following terms:

"It ought to be noted, perhaps, that the British authority, known as The Statesman's Year Book for 1885, gives the area of British Guiana, bounding Venezuela on the east, as 76,000, and that the same annual for 1886 gives the area as 109,000 square miles, an increase during the year of 33,000 square miles to European possessions in America, and an equal loss to the Republic of Venezuela, so far unaccounted for by treaty or recognized conquest, and claimed by the latter

country to be against her hitherto unbroken and undisputed right of possession acknowledged in the treaty of Münster, 1648, the definitive treaty of Aranjuez, 1791, and the treaty of London, 1814, which conferred what is now British Guiana upon Great Britain with the Essequibo as its permanent western boundary."

With a view to include that increase of 33,000 square miles within the bounds of British Guiana, the *Court of Policy* had sanctioned a new territorial division, in July, 1886, reforming that of 1868 in vigor until then. The act reads thus:

"Registration division No. 1, to compromise the settlements on the Moruca, Waini, and Barima rivers, and their tributaries, the right bank of the Amacuro river and its tributaries on that bank, and all the country lying between the above-named rivers and as far back as the limits of the colony extend."

According to the ordinance of 1868, the legal boundary of the Colony, ever since the beginning of the controversy in 1841, did not extend beyond the Pomaron river.

The country inclosed between the Pomaron and Barima rivers and Punta Barima was the principal object of the dispute between the two States. Neither could take possession of it or occupy it so long as the difficulty subsisted, especially so Great Britain, after the agreement of 1850, which she had proposed herself. Nevertheless, she had gradually occupied the whole territory and had subjected it to her exclusive domain, by reason of its being under litigation, at the same time that in London she baffled the expectations of Venezuela and her exertions to bring about the final arrangement of the question by arbitration. She had twice declined to evacuate the land and retire back to the Pomaron.

Offended at the double refusal of Great Britain to submit the difference to arbitrament, Venezuela, deprived by her material weakness of every immediate and efficient means of obtaining justice, determined, as before said, to suspend her diplomatic relations with Great Britain and "to protest before Her British Majesty's Government, before all civilized

nations, and before the world in general, against the acts of spoliation committed to her detriment by the Government of Great Britain, which she at no time and on no account will recognize as capable of altering in the least the rights which she has inherited from Spain, and respecting which she will ever be willing to submit to the decision of a third power."

General Guzmán Blanco, the last negotiator for the Republic in England, had been again elected to the Presidency of Venezuela. In order to close this period of the controversy, I present here the account of General Guzmán's mission and of the subsequent acts of the Government he headed, until the relations with Great Britain were severed, as given in his Message to Congress in 1887:

"The Guiana boundary question has taken so grave a turn that it is with deep regret that I must speak to you about our relations with Great Britain.

"While in London in the character of Minister of Venezuela, I discussed our three questions with Her British Majesty's Government, namely, diplomatic claims, differential duties relating to the British Antilles and the Guiana boundaries.

"It may be said that the first one was finally settled; as for the other two, they were included in a project of a new treaty in substitution for the present one, which has been extant 58 years, because of the inconceivable interpretation of perpetuity imposed upon us by England, under color that no date was established in it for its expiration.

"After a year's discussion, the project of a new treaty was agreed upon with Lord Granville, then Minister of Foreign Affairs. The taxes on the British West Indies were made equal to those of the metropolis; arbitration was accepted by both parties as the only means of settling such questions as could not be adjusted by common accord, and a period of ten years was fixed, after which it would rest with each of the parties to denounce the treaty.

"This, however, was not signed, as the clause of the most favored nation was required from us in an absolute way, and Venezuela could enter into no engagement with other ends or

on other terms than those stipulated with the other friendly Nations.

"This difference might have been easily surmounted, for England maintained the same pretension respecting the United States of America, and finally withdrew it because the latter Nation alleged the same reasons that we have alleged."

"So, then, the Treaty with Great Britain was well-nigh being signed, when Lord Salisbury's Ministry came into office and categorically declined to conclude the negotiation on the same terms on which it had been conducted by his predecessor, notwithstanding my remark that in the question between Afghanistan and Russia the agreement negotiated by his predecessor had been signed, and that the Marquis of Salisbury himself had just said in Parliament that he had signed it because it was unworthy of a serious Government to retract their word when once given; which afforded me the opportunity to maintain that, the case with the negotiation of Venezuela being the same as that of Russia. we had a right to be treated in the same way, unless Great Britain applied one jurisprudence to Russia and a different one to Venezuela, of which I should much regret to notify my Government.

"The last month of my delay in Europe was due to the circumstance that the Minister, Lord Rosebery, requested a last effort on my part in order to settle in two or three more weeks this important negotiation. The time having expired without any fruit, because the Minister did not accept the arbitrament and demanded the Guaima river, tributary to the Orinoco, I took my leave in a note, wherein it was stated, in substance, that Venezuela had accredited me with the most ample powers to bring the three questions at issue to a definitive end; that the question concerning the course to be followed for the payment of the diplomatic claims being almost settled, the other two were comprehended in the new Treaty intended to replace the present one, no longer possible after fifty-eight years of existence, in which the period of its duration was not determined, according to the same treaty; that unfortunately during the two years elapsed no adjustment could be reached

in regard to the treaty solving the difficulty of the differential duties on the British West Indies and that of the Guiana boundaries, the latter to be decided by arbitration, the only available means for Venezuela, since our Constitution prohibits the alienation of territory and establishes our limit on the Essequibo river, which was the one held by Spain, whose territorial rights Venezuela inherited; and that, it being necessary to entrust the discussion of the question to a man thoroughly familiar with the voluminous archives embracing it, the study of which requires a long time, and it having been agreed moreover, that the three questions at issue should be resolved, it was urgent to suspend for the present time the negotiations which had occupied our attention.

"Instead of replying to this note, the British Government, doubtlessly because they were told that our boundary reached as far as the Essequibo, has discontinued the discussion and, by decree, has taken possession of and occupied the territory, not only along the Pomaron, but as far as Punta Barima and Amacuro, thus dispossessing us of the exclusive dominion over the Orinoco, the great artery on the north of the Continent, the Mississippi river of South America.

"In view of this condition of affairs, what could I do? Could I inform the Congress of my country that a foreign power had occupied part of our territory, without adding that I had protested in the name of the Nation and severed diplomatic relations with a Government that acts in such a way towards us?

"On the 26th of January of the present year, I demanded the evacuation of the territory as far as the Pomaron river.

"On the 31st of January, Her Britannic Majesty's Minister sent his reply confirming the occupancy to a certain extent.

"I answered him under the same date, that contrary to the agreement of the 18th of November, 1850, establishing that neither Venezuela nor Great Britain should exercise jurisdiction over the country lying west of the Pomaron river, England had occupied the said territory and its rivers as far as the mouth of the Orinoco, thus infringing the agreement and com-

pleting the despoliation; and that, in consequence thereof, Venezuela would discontinue her diplomatic relations with Great Britain and raise a most solemn protest against so grievous a despoliation, if the state of affairs was not brought back to what it was in 1850, before the date for the constitutional meeting of Congress, or if the submission to arbitration of the Guiana boundary question was not assented to, in accordance with our Constitution, and with the sound criterion of civilized people.

"This was done on the 21st of last month, at 4 o'clock P. M., but Her Britannic Majesty's Minister has not yet asked for his passport.

"At any rate, honor is at stake and its fate will be that of the Nation."

Anticipating the impending rupture between Venezuela and Great Britain, the Hon. Mr. Bayard, desirous to avert it, had offered the British Government in December, 1886, the co-operation of the United States as arbiters for the adjustment of the difference.

"It does not appear," said the Honorable Secretary of State on that occasion, "that at any time heretofore the good offices of this Government have been actually tendered to avert a rupture between Great Britain and Venezuela. As intimated in my No. 58, our inaction in this regard would seem to be due to the reluctance of Venezuela to have the Government of the United States take any steps having relation to the action of the British Government which might, in appearance even, prejudice the resort to our arbitration or mediation, which Venezuela desired. Nevertheless, the records abundantly testify our friendly concern in the adjustment of the dispute; and the intelligence now received warrants me in tendering, through you, to Her Majesty's Government, the good offices of the United States to promote an amicable settlement of the respective claims of Great Britain and Venezuela in the premises. As proof of the impartiality with which we view the question, we offer our arbitration, if acceptable, to both

countries. We do this with the less hesitancy as the dispute turns upon simple and readily ascertainable historical facts.

"Her Majesty's Government will readily understand that this attitude of friendly neutrality and entire impartiality touching the merits of the controversy, consisting wholly in a difference of facts between our friends and neighbors, is entirely consistent and compatible with the sense of responsibility that rests upon the United States in relation to the South American Republics. The doctrines we announced two generations ago, at the instance and with the cordial support and approval of the British Government, have lost none of their force or importance in the progress of time, and the Governments of Great Britain and the United States are equally interested in conserving a status the wisdom of which has been demonstrated by the experience of more than half a century.

"It is proper, therefore, that you should convey to Lord Iddesleigh, in such sufficiently guarded terms as your discretion may dictate, the satisfaction that would be felt by the Government of the United States in perceiving that its wishes in this regard were permitted to have influence with Her Majesty's Government." (The Hon. Mr. Bayard to Mr. Phelps. Confidential. 30th of December, 1886.)

England declined the offer on the following grounds:

"Her Majesty's Government fully appreciates the friendly feelings which have prompted your Government to offer their mediation in this matter.

"The attitude, however, which General Guzmán Blanco has now taken up in regard to the questions at issue precludes Her Majesty's Government from submitting those questions at the present moment to the arbitration of any third power.

"An offer to mediate in the questions at issue between this country and Venezuela has already been received by Her Majesty's Government from another quarter, and has been declined on the same grounds.

"I beg that you will convey to the Secretary of State the cordial thanks of the Queen's Government for your communi-

cation, and that you will inform him that they have not yet abandoned all hope of a settlement by direct diplomatic negotiations with Venezuela." (Lord Salisbury to Mr. Phelps. 22d of February, 1887.)

On the 11th of March the *Times* of London published an abstract of the *Report of Parliamentary Papers* of the preceding day, relating to the suspension of relations with Venezuela. It said:

"Mr. Stavely Hill asked the Under Secretary of State for Foreign Affairs whether, considering the increasing importance of the subject and the breach of diplomatic relations between this country and Venezuela, Her Majesty's Government would consider the advisability of sending a commission to settle the boundary between British Guiana and Venezuela.

"Sir J. Fergusson: Her Majesty s Government have every wish to arrive at a settlement of the boundary question, but no such steps as that suggested can be taken so long as the Venezuelan Government maintains the suspension of diplomatic relations with this country."

His mission in Venezuela being now at an end, the British Minister sailed, with his family, from La Guayra for Trinidad, on the 14th of March. Great Britain remained in possession of the contested territory as far as the mouth of the Orinoco River. She had declined the mediation of the United States and that of another power, and the offices of the former, as arbiters, for the settlement of the controversy, when she still held amicable relations with Venezuela, and now she refused to take the steps pursuant to an agreement because of the cessation of those relations by the action of Venezuela.

Certain British men-of-war, which, since the latter part of February, had been permanently seen in the Gulf of Paria, withdrew also from the Venezuelan coast in the subsequent month of June, while the Governor of Demerara declared before the Colonial Assembly that England would not guarantee any protection or compensation in case the boundary question should be decided in favor of Venezuela. This, together with the news in circulation that one Mr. Hill would soon arrive at

Caracas, in the capacity of a Commissioner, for the purpose of discussing the matter, created the belief that Great Britain had quitted her former position, and that the ties between the two countries were likely to be soon re-established. But the belief proved to be a vain one ; it lasted only a moment.

After a short while Great Britain was seen to prosecute with renewed activity the process of her invasions, her claims including this time the rich territory of Yuruari, the great mining district of Venezuela. On the 29th of November a motion was introduced in the Legislature of Demerara authorizing the construction of a railroad extending to the boundaries of the Colony, across the Mazaruni and Cuyuni rivers, within which boundaries, as alleged by the Queen's Attorney, the said District of Yuruari was comprised. And a month later the Governor issued the following proclamation:

"BRITISH GUIANA.

"By his Excellency, Charles Bruce, esquire, companion of the Most Distinguished Order of St. Michael and St. George, Lieutenant-Governor and Commander-in-Chief in and over the Colony of British Guiana, Vice-Admiral and Ordinary of the same, etc.

"Whereas, It has come to the knowledge of the Government of British Guiana that certain concessions have been granted by the President and by and with the sanction of the Government of the United States of Venezuela, purporting to give and grant certain rights and privileges for constructing a railway to Guacipati, and in and over certain territories and lands within and forming part of the Colony of British Guiana;

"Now, therefore, I do hereby intimate to all whom it may concern that no alleged rights purporting to be claimed under any such concession will be recognized within the said Colony of British Guiana, and that all persons found trespassing on or occupying the lands of the Colony without the authority of the Government of this Colony will be dealt with as the law directs.

"Given under my hand and the public seal of the Colony, Georgetown, Demerara, this 31st day of December, 1887, and in the fifty-first year of Her Majesty's reign. God save the Queen.

"By His Excellency's command.

"GEORGE MELVILLE,
"Acting Government Secretary.

It was to this new and exorbitant pretension that the Hon. Mr. Bayard adverted in the note from which the following passages are quoted:

"The claim now stated to have been put forth by the authorities of British Guiana necessarily gives rise to grave disquietude, and creates an apprehension that the territorial claim does not follow historical traditions or evidence, but is apparently indefinite. At no time hitherto does it appear that the district, of which Guacipati is the center, has been claimed as British territory or that such jurisdiction has ever been asserted over its inhabitants, and if the reported decree of the Governor of British Guiana be indeed genuine, it is not apparent how any line of railway from Ciudad Bolivar to Guacipati could enter or traverse territory within the control of Great Britain.

"It is true that the line claimed by Great Britain as the western boundary of British Guiana is uncertain and vague. It is only necessary to examine the British Colonial office list for a few years back to perceive this. In the issue for 1877, for instance, the line runs nearly southwardly from the mouth of the Amacuro to the junction of the Cotinga and Takutu rivers. In the issue for 1887, ten years later, it makes a wide detour to the westward, following the Yuruari. Guacipati lies considerably to the westward of the line officially claimed in 1887; and it may perhaps be instructive to compare with it the map which doubtless will be found in the colonial office list for the present year.

"It may be well for you to express anew to Lord Salisbury the great gratification it would afford this Government to see

the Venezuelan dispute amicably and honorably settled by arbitration or otherwise, and our readiness to do anything we properly can to assist in that end.

"In course of your conversation you may refer to the publication in the London *Financier* of January 24th (a copy of which you can procure and exhibit to Lord Salisbury), and express apprehension lest the widening pretensions of British Guiana to possess territory over which Venezuelan jurisdiction has never heretofore been disputed may not diminish the chances for a practical settlement.

"If, indeed, it should appear that there is no fixed limit to the British boundary claim, our good disposition to aid in a settlement might not only be defeated, but be obliged to give place to a feeling of grave concern." (Mr. Bayard to Mr. Phelps, 17th of February, 1888.)

Subsequently to the proclamation of the Governor of Demerara a force was sent off to take possession of the new territories and lands, and several projects were presented for the construction of a road to Yuruari, which was never executed, and of railway and telegraphic communications with the mines.

In June, 1888, while the Republic, through her Representative in Europe, was negotiating in a confidential way the preliminaries to the reinstallment of the question on a diplomatic ground and to the re-establishment of harmony with Great Britain, the Government of British Guiana decreed the creation of one more colonial district, under the name of Northeast District, within the compass of which was included the Venezuelan territory of Barima. Officers were also appointed for its permanent occupancy and the collection of taxes, and the sum of $10,000 was appropriated for administration expenses, etc.

The report of the Department of Agriculture of the United States, previously mentioned, shows that the acquisitions of land in Guiana in detriment of the Venezuelan territory amounted to an area of 33,000 square miles only in the year of 1885 and 1886. The increase of English possessions can

be estimated in view of the extent of the appropriations from 1884 to 1885, and of those effected after 1886, previously to the last decree of the Governor of Demerara, and at a later period. It will suffice to remember that reliable geographers situated the English Colony between the Corawin and Essequibo rivers at the first quarter of this century; that several of them assigned to it a surface of 50,000 to 60,000 square kilometers, while others considered it to be 65 leagues long by 30 wide, bounded on the Atlantic coast by the mouth of the Corentyn and Cape Nassau; that, according to the allegation of Venezuela, British Guiana, as succeeding Dutch Guiana, possesses only such extent of territory as is limited to the west by the Essequibo river (58° 30′ longitude west of Greenwich) and by the 4° 2′ and 6° 50′ parallels north latitude, and that, as it appears from the Map of the *Foreign Office List* for 1892, it has now been stretched out to the 62° meridian west longitude, and to the 1° and 9° parallels north latitude.

Venezuela protested against the grievances committed in June, 1888, by the authority and settlers of Demerara, with or without the consent of the British Cabinet, as she had previously done against similar proceedings in 1887; and renewed her protest in October of the same year, 1888, when the advice reached the Department of Foreign Relations that the English had two schooners in Barima, which relieved each other every fortnight; that they prevented the cutting of wood, did not allow the pontoon lighthouse of the Republic to anchor less than a half mile away from the land, and also continued to occupy Amacuro. The Department of State is acquainted with all these formal declarations of Venezuela in defence of her territorial rights ignored by Great Britain.

Great Britain took no heed to such declarations. On the contrary, scarcely had a year elapsed since the last was made, the Government of Demerara took formal possession (proclamation of December 4th, 1889) of the main mouth of the Orinoco, declared the city of Barima to be a British part of the Colony, and established there a police station, thus calling

forth a new protest on the part of Venezuela, on the 16th of December, 1889, which was also communicated in proper time to the Government of the United States, through its Legation at Caracas.

The Department of State was not indifferent to the above mentioned communication; on the contrary, it hastened to authorize Mr. White to confer with Lord Salisbury respecting the re-establishment of diplomatic relations between Great Britain and Venezuela, on the basis of a temporary return to the *status quo*, as suggested by the Venezuelan Minister. (Mr. Blaine to Mr. White, telegram of December 30th, 1889.) And in another telegraphic dispatch of a posterior date it carries still further the offer of its friendly co-operation:

"Mr. Lincoln is instructed to use his good offices with Lord Salisbury to bring about the resumption of diplomatic intercourse between Great Britain and Venezuela as a preliminary step toward the settlement of the boundary dispute by arbitration. The joint proposals of Great Britain and the United States toward Portugal, which have just been brought about, would seem to make the present time propitious for submitting this question to an international arbitration. He is requested to propose to Lord Salisbury, with a view to an accommodation, that informal conference be had in Washington or in London of representatives of the three Powers. In such conference the position of the United States is one solely of impartial friendship toward both litigants." (Mr. Blaine to Mr. Lincoln. Telegram 1st of May, 1890.)

The instruction contained in the foregoing telegram was confirmed and amplified in a subsequent note, where, after briefly considering the obstruction which the abrupt rupture of diplomatic intercourse with England opposed to the renewal of negotiations on the basis of the *status quo*, and the surrender of the entire question to arbitration, the Honorable Secretary of State goes on to say:

"It is nevertheless desired that you shall do all you can consistently with our attitude of impartial friendliness to induce some accord between the contestants by which the merits of

the controversy may be fairly ascertained and the rights of each party justly confirmed. The neutral position of this Government does not comport with any expression of opinion on the part of this Department as to what these rights are, but it is evident that the shifting footing on which the British boundary question has rested for several years past is an obstacle to such a correct appreciation of the nature and grounds of her claim as would alone warrant the foundation of any opinion. (Mr. Blaine to Mr. Lincoln. 6th of May, 1890.)

The following considerations, among others, were offered by the Marquis of Salisbury:

"Her Majesty's Government are very sensible of the friendly feelings which have prompted this offer on the part of the United States Government. They are, however, at the present moment in communication with the Venezuelan Minister in Paris, who has been authorized to express the desire of his Government for the renewal of diplomatic relations and to discuss the conditions on which it may be effected.

"The rupture of relations was, as your Government is aware, the act of Venezuela, and Her Majesty's Government had undoubtedly reason to complain of the manner in which it was effected. But they are quite willing to put this part of the question aside, and their only desire is that the renewal of friendly intercourse should be accompanied by arrangements for the settlement of the several questions at issue.

"I have stated to Señor Urbaneja the terms on which Her Majesty's Government consider that such a settlement might be made, and am now awaiting the reply of the Venezuelan Government, to whom he has doubtless communicated my proposal.

"Her Majesty's Government would wish to have the opportunity of examining that reply, and ascertaining what prospect it would afford of an adjustment of existing differences, before considering the expediency of having recourse to the good offices of a third party.

"I may mention that, in so far as regards the frontier between British Guiana and Venezuela, I have informed Señor

Urbaneja of the willingness of Her Majesty's Government to abandon certain portions of the claim which they believe themselves entitled in strict right to make and to submit other portions to arbitration, reserving only that territory as to which they believe their rights admit of no reasonable doubt. If this offer is met by the Venezuelan Government in a corresponding spirit, there should be no insuperable difficulty in arriving at a solution. But public opinion is, unfortunately, much excited on the subject in Venezuela, and the facts of the case are strangely misunderstood." (The Marquis of Salisbury to Mr. Lincoln. 26th of May, 1890.)

Lord Salisbury had, indeed, communicated two memoranda to Señor Urbaneja, one on the 10th of February, and the other on the 19th of March, 1890.

In both it is categorically stated that "Her Majesty's Government cannot accept as satisfactory any arrangement not admitting as English property the territory included within the line laid down by Sir R. Schomburgk."

And in the second of them he further says: "That in order to facilitate an arrangement and in evidence of good-will towards Venezuela, Her Majesty's Government are disposed to relinquish a part of a certain pretension, and that, in regard to the portion of territory not comprised between Schomburgk's line and England's extreme pretensions, they are disposed to submit to the arbitration of a third power."

This last begins at the Mountains of Imataca, opposite to the source of the river bearing the same name, and of the Aquire. It bends to the southwest and extends along the Yuruari river down to the point where Lord Granville's line joins that of Schomburgk, now altered; thence it continues westward until it reaches the confluence of the Yuruari with the Cuyuni; then turns northward along the course of the Yuruari to a certain distance above the town of Nueva Providencia, which it encircles; and embracing the whole of the Avechica river and of the Sierra of Usupamo as far as the spot where the latter runs together with that of Carapo, it skirts the Mountains of Rinocoto up to the source of the Caco

river. To this line a portion of land is to be added, thus bounded: From the spot previously mentioned, opposite to the Aquire and Imataca rivers, it spreads southeasterly to a certain nameless river (perhaps the Paraguayaira); thence to the southwest towards the Cuyuni, the left bank of which it follows as far as the source of the Camarate river, from which it now turns away in a curved direction to reach the origin of the above mentioned Caco river. The part of pretension which she abandoned was that limited by the line which, starting from the vicinity of the mouth of the Amacuro, descends to the southwest as far as the origin of the Yariquita Mountains, proceeds along the ridge of Imataca, to the town of Upata, intersects the Usupamo and Carapo at the place where they flow into the Caroni, and extends along the Carapo and Rinocoto Mountains till it blends with the original line of Schomburgk.

In fine, of the three sections into which Lord Salisbury divided this time the territory in dispute, that which Her Majesty's Government held in possession as exempt from all discussion regarding titles was no other than the portion including Barima, one of the mouths of the Orinoco, precisely the knot of the controversy; the same that had been explored by Sir R. Schomburgk and constantly rejected by Venezuela since 1840, which now appeared considerably altered to the benefit of Great Britain, as it can be seen by comparison with the original line of the same English engineer as figured in the map showing the various boundaries proposed by Venezuela and England until 1890. A copy of this map is in the possession of the Department of State.

Before the reply of Venezuela to the proposals of Lord Salisbury had reached Doctor Urbaneja, Doctor Lucio Pulido arrived at London as his substitute, with the powers of a Plenipotentiary *ad hoc* and Envoy Extraordinary and Minister Plenipotentiary of the Republic. The main object of this diplomatic mission was the resumption of relations with Great Britain, through the good offices of the Minister of the United States, a condition *sine qua non* of such resumption being the

pre-establishment of cardinal points—among them the settlements of the conflict by arbitration—intended to govern the discussion concerning any definite agreement.

Sir Th. Sanderson, Under-Secretary at the *Foreign Office*, with whom Dr. Pulido negotiated, proposed to him a line which, commencing at Punta Mocomoco, between Punta Barima and the Guaima river, was to border upon the Amacuro river on the west, in compensation for which the boundary line was to follow the course of the Uruan or Yuruari river, up from its junction with the Cuyuni, and could be stretched as far as the Mountains of Usupamo and Rinocoto. He promised, moreover, according to Dr. Pulido's official report, that Her Majesty's Government, being willing to negotiate directly with that of Venezuela for the purpose of establishing a frontier of mutual convenience between the two Guianas, approaching as far as possible the natural limits, would lengthen Sir Th. Sanderson's line from Cape Mocomoco towards the southeast, and would renounce any claim or compensation whatever for the abandonment or, to speak more properly, for the restitution of the mouths of the Orinoco and the adjoining territories.

It cannot be observed that, by this proposition, Great Britain again admitted discussion concerning her right over the territory explored by Schomburgk, a right formerly asserted to be unquestionable, and even promised to withdraw all claims to the Orinoco and the neighboring country. The proposition was thus rendered more advantageous than the one which had been made to Senor Urbaneja in the previous month of March ; but since Venezuela's aim had been not to propose the adjustment of the difference at once, but to promote a renewal of diplomatic intercourse on condition that the English Government should agree to submit the question to international arbitration, a purpose which had not been realized, Señor Pulido returned to Caracas in September of the same year, 1890, leaving the boundary dispute in the state above described, and the good understanding between the two Nations interrupted as before.

As a testimony of her sincere desire to re-establish her relations and facilitate by that means the removal of all the difficulties, Venezuela finally appointed Señor Tomas Michelena, Confidential Agent of the Republic, to resume negotiations with Her Majesty's Government in pursuance of that purpose. I offer here an excerpt of the clauses presented by him at the outset of his proceedings :

First. After the renewal of the official relations between the two counties, subsequently to the ratification of this preliminary agreement by the respective Governments, each of them shall appoint one or more delegates invested with full powers, to sign a treaty on boundaries, founded on a conscientious and thorough examination of the documents, titles and antecedents supporting their claims ; it being moreover agreed that the decision of the doubtful points, or the delineation of a divisional line, concerning which no accord may be reached by the delegates, shall be submitted to the final and unappealable decision of an *arbiter juris* who, the case occurring, shall be nominated by mutual concert between the two Governments.

Second. In order that the re-establishment of relations with Her Majesty's Government may be accomplished on a footing of the greatest cordiality, the Government of Venezuela will proceed to the conclusion of a new treaty of commerce, revoking the 30 per cent. additional duty, and substituting in its place one of limited duration, such as that proposed by Lord Granville in 1884.

Third. The claims which Her British Majesty's subjects and the citizens of the Republic of Venezuela may have a right to produce against each other's Government, shall be investigated by a Commission appointed *ad hoc*, Venezuela agreeing to such a proceeding so far only as this special case is concerned, since, by a decree of the Republic, the judgment and decision on foreign claims are committed to the Supreme Federal Court, and it shall consequently be declared that, as regards future claims, Great Britain accepts the foregoing regulation.

Fourth. It shall be stated in the preliminary agreement that both Her Majesty's Government and the Government of Ven-

ezuela acknowledge and declare the *status quo* of the boundary question to be that which existed in 1850, when the Hon. Sir B. Wilson, Chargé d'Affaires of England at Caracas, formally manifested, in the name and by express order of Her British Majesty's Government, that no portion of the disputed territory would be occupied, and solicited and obtained a similar declaration on the part of the Venezuelan Government. This *status quo* shall be maintained until the treaty on boundaries adverted to in clause 1 shall have been concluded.

Fifth. The agreement to be made on the preceding bases, signed by the Confidential Agent of Venezuela in exercise of the powers with which he is invested, and the person duly authorized to that effect by Great Britain, shall be forthwith submitted to ratification by both Governments, and, after exchange, the diplomatic relations between the two countries shall be considered re-established *ipso facto*.

London, the 26th of May, 1893.

Lord Rosebery replied on the 3d of the following July. He offered no immediate remark concerning the propositions contained in clauses 2, 3 and 5 presented by Señor Michelena; but, referring only to clauses 1 and 4 on the boundary question between Venezuela and British Guiana, which in his opinion, was the most important of all the questions to be considered, he pointed out that, although the present proposal of the Venezuelan Government admitted the possibility of settling the boundary controversy by treaty, the fact that it also involved reference to arbitration, in case of difference between the delegates of the two Governments intrusted with the negotiation of that treaty, practically reduced it to the form which has repeatedly been declined by Her Majesty's Government, namely, the reference to arbitration of a claim advanced by Venezuela to a great portion of a long established British Colony.

Her Majesty's Government, therefore, considered that the clause 1 of the *Pro Memoria* could only be accepted by them under the conditions specified in the memorandum communicated in Sir Th. Sanderson's note to Señor Urbaneja, dated

the 19th of March, 1890. They would propose the amendment of clause 1 of the *Pro Memoria* in the manner indicated by the additions marked with red ink in the copy therein inclosed.

With regard to clause 4 of the *Pro Memoria* in which it is proposed that both Her Majesty's Government and the Government of Venezuela shall acknowledge and declare that the *status quo* of the boundary controversy is that which existed in 1850, Her Majesty's Government considered it quite impossible that they should consent to revert to the state of affairs in 1850, and to evacuate what had for some years constituted an integrant portion of British Guiana. They regretted, therefore, that they could not entertain that proposition. Great Britain believed herself entitled to incontestable rights over the territory now occupied by her. Those rights she was unable now to abandon, and she could not consent that any *status quo*, except that now existing, should remain in force during the progress of the negotiations.

The alteration of clauses 1 and 4, as proposed by Lord Rosebery, reads textually as follows, the words which are in italic being those which appear in red ink in the original:

"Whereas, the Government of Great Britain claims certain territory in Guiana, as successor in title of the Netherlands, and the Government of Venezuela claims the same territory as being the heir of Spain, both Governments being inspired by friendly intentions, and being desirous of putting an end to the differences which have arisen in this matter, and both Governments wishing to pay all deference to the titles alleged by either to prove its jurisdiction and proprietary rights over the territory in question, they agree and stipulate that, as soon as the official relations shall have been re-established between the two countries, and after the ratification of the present preliminary convention by both Governments, one or more delegates shall be named by each party, with full powers to conclude a frontier treaty, founded on a conscientious and complete examination, by said delegates, of the documents, titles, and past events supporting the claims of either party; it being

agreed *that the said territory in dispute lies to the west of the line laid down in the map communicated to the Government of Venezuela on the 19th of March*, 1890, *and to the east of a line to be marked on the same map running from the source of the river Cumano down that stream and up the Aima, and so along the Sierra of Usupamo*, and that the decision of doubtful points and the laying down of a frontier on the line of which the delegates may be unable to agree, shall be submitted to the final decision, from which there shall be no appeal, of a Juridical Arbiter, to be appointed, should the case arise, by common agreement between the two Governments."

This frontier impairs the right of Venezuela, if compared with that proposed in 1886 by Lord Rosebery himself to General Guzmán Blanco, and also to a greater extent, with the line described on the map sent by Lord Salisbury to Señor Urbaneja on the 19th of March, 1890, through Sir Th. Sanderson, since the aforesaid limit intended to be drawn to the west of the latter necessarily and finally confers on Great Britain the proprietorship, actually and by right, of a greater portion of territory not subject to the decision of the delegates and of the Juridical Arbiter.

Venezuela had declined the first and second lines, and so had stronger reasons not to accept the third. Señor Michelena communicated forthwith her refusal, reiterating at the same time her desire that the British Government should consent to resume the discussion of the preliminary treaty, inspiring themselves in the declarations which, in their name, had been recently made by Mr. Gladstone before the Parliament in behalf of arbitration.

On the 12th of September, Lord Rosebery replied :

" Her Majesty's Government have carefully examined the arguments contained in your note of the 31st of last July, concerning the settlement of the boundary question between the Republic of Venezuela and the Colony of British Guiana.

" I regret to inform you that it does not appear to Her Majesty's Government that the contents of your note open the

way to an agreement that they can accept concerning this question.

"They are still desirous, however, to come to an understanding in regard to the frontier between the possessions of the two countries, and they are disposed to give their best attention to any practicable proposals that might be offered them to that effect."

Señor Michelena analyzed this note in a communication to the Foreign Office, dated the 29th of the same month of September, 1893, wherein he briefly sketches the history of the controversy from Señor Fortique's mission in 1840 up to his in 1893, and expresses his regret that he must acquaint the Government of the Republic with the last reply given by that of Great Britain. He closes with the following protest:

"It now remains for me to declare in the most solemn manner, in the name of the Government of Venezuela, that they deeply regret that the condition of affairs created by the events, which occurred during the late years in the disputed territory, must remain subject to the serious disturbances which *de facto* proceedings cannot fail to produce, and that in no time will Venezuela consent that such proceedings be adduced as valid titles to legitimize an occupancy interfering with her territorial jurisdiction."

Under the direction of Dr. Chittenden, Secretary of the Board of Agriculture of Trinidad, a sloop had been fitted out some days before for the purpose of carrying twenty-nine expeditionists to High Barima, who were to further the works of the Dixon Company. Together with this news the *Port-of-Spain Gazette* of the 25th of July announced vast schemes of enterprise to be carried out, with the aid of companies and capitalists from the Colony, in the territory now called Northwest District by the English, extending as far as the mouth of the Orinoco. The Executive of Venezuela considered this occurrence and the said schemes no less of a nature to embarrass the agreement in furtherance of the settlement of the boundary question than contrary to the good cause of the negotiations commenced at London, inasmuch as the Republic had always

defended as her property the territory of that District. The Executive accordingly instructed its Confidential Agent to make them known to Her Majesty's Government, which the Agent did.

Lord Rosebery replied on the 22d of September:

"With reference to my note of the 2d instant, I have the honor to inform you that Her Majesty's Government have given their careful attention to the representations contained in your note of the 26th ultimo, complaining of acts on the part of the Authorities of British Guiana, which are considered by the Venezuelan Minister for Foreign Affairs to be in contravention of the rights of Venezuela.

"Her Majesty's Government are desirous of showing all proper respect for the recognized rights of Venezuela, but the acts of jurisdiction to which you refer in your note do not appear to them to constitute any infraction of or encroachment upon those rights. They are in fact no more than part of the necessary administration of a territory, which Her Majesty's Government consider to be indisputably a portion of the Colony of British Guiana, and to which, as it has been their duty to state more than once, they can admit no claim on the part of Venezuela."

And Mr. Michelena closed the discussion with his reply of the 6th of October, the last two paragraphs whereof I may conveniently insert here, as they include the last declaration of Venezuela against the illegal and grievous proceedings of Great Britain:

"I perform a most strict duty in raising again, in the name of the Government of Venezuela, a most solemn protest against the proceedings of the Colony of British Guiana, constituting encroachments upon the territory of the Republic, and against the declaration contained in Your Excellency's communication, that Her Britannic Majesty's Government consider that part of the territory as pertaining to British Guiana, and admit 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 29th of last Sep-

tember and those which have been exhibited by the Government of Venezuela on the various occasions they have raised this same protest.

"I lay on Her British Majesty's Government the entire responsibility of the incidents that may arise in future from the necessity to which Venezuela has been driven to oppose by all possible means the disposition of a part of her territory, for by disregarding her just representation to put an end to this violent state of affairs through the decision of arbiters, Her Majesty's Government ignores her rights and imposes upon her the painful though peremptory duty of providing for her own legitimate defence."

Thus ended the sixth and last negotiation promoted by Venezuela for the adjustment of the present dispute.

The circumstances which gave rise to this dispute was the commission entrusted to Sir R. H. Schomburgk by Her British Majesty's Government in 1840, so that the difference has lasted more than half a century.

The right claimed by Venezuela to the territory lying between the rivers Essequibo and Orinoco is founded on the following titles:

I. Those acquired from Spain by virtue of independence, belonging to the Captaincy-General of Venezuela, and afterwards transferred to the Republic by the treaty of peace and recognition of the 30th of March, 1845, namely: (a) Treaty of Münster, 1648; (b) Note of the Governor of Cumaná, to the Council of the same city, 1st of February, 1742; (c) Treaty of 1750 between the Portuguese and Spaniards; (d) Reply of the Governor of Cumaná, through the Commander of Guiana, to the note of the Director-General of the Dutch Colony of Essequibo, dated September 30th, 1758; (e) Royal Schedules of 1768, two in number; (f) Declaration of the Spanish Ministry in 1769, rejecting certain pretensions of the Dutch to the right of fishing in the mouth of the Orinoco river; (g) Instructions of the intendancy for peopling the eastern part of Guiana, 1779; (h) Royal order of 1780, directing Don Felipe de Inciarte to found the town of San Carlos; (i) Report of Don

Antonio Lopez de la Puente, who had been commissioned to explore the Cuyuni river, February 26th, 1788; (j) Treaty of the 23d of June, 1791, between Spain and Holland for the extradition of fugitives and deserters from either Guiana; (k) Communication of the Secretary of the Dutch Company of the West Indies to the Minister of the Spanish Government in Holland, 8th of January, 1794.

II. Those corresponding to the time of the Republic: (l) Petition of Her British Majesty's Chargé d'Affaires near the Government of Venezuela for the construction of light-houses and other signals at Punta Barima, and for the establishment of beacons in the main mouth of the Orinoco, 26th of May, 1836; (m) Dispatch of the Governor of Demerara; (Parliamentary Papers), 1st of September, 1838; (n) Note from the Venezuelan Governor of Guiana to the Government, August 23d, 1841, on the acknowledgment of Venezuelan jurisdiction over Caño Moruco by a court of Demerara; (o) A similar act of virtual recognition of Venezuelan jurisdiction in 1874, on account of the homicide committed by the English subject, Thomas Garrett.

The right of Venezuela has been contested by Great Britain on the following grounds:

1. The forts of New Zealand and New Middleburgh erected by the Dutch in 1657 on the Pomarón and Moroco.

2. The concessions granted by the Dutch Company, successor in 1674 to the West Indies Company, for trading with the colonies of Essequibo and Pomarón, the latter extending, according to Great Britain, as far as the Orinoco.

3. The combat at Fort New Zealand in 1797, between Dutch and Spaniards, in which the latter were defeated and driven away.

4. The treaty of London, dated August 13th, 1814, by which Holland ceded Great Britain to Colonies of Demerara, Essequibo and Berbice.

Venezuela has sought to bring about the adjustment of the controversy by the various diplomatic means known in in-

ternational law, direct negotiations, and the good offices and mediation of States friendly to both parties.

Great Britain has not listened to the Powers which have been good enough to offer the interposition of their good offices, neither has she accepted their mediation. And as for direct discussion,she has not admitted it as an expedient means of clearing the reasons in support of the pretensions of either party, but to render less possible their conciliation by her ever-growing claims.

Venezuela has always believed that she can rightfully establish the limit between herself and British Guiana along the Essequibo river, for this has been no reason to prevent her from showing her readiness to reduce her claim for the sake of an amicable adjustment, as she has twice done when her National Constitution has permitted.

Great Britain had not advanced beyond the Pomaron river in 1840. All at once, in the same year, she made an attempt to extend her dominion as far as Barima, where she fixed the starting point of the frontier line between the two Guianas—Schomburgk's line ; she retrograded in 1844, and proposed that the line should commence at the River Moroco, between the Pomarón and Punta Barima—Aberdeen's line ; in 1881 she removed the starting-point to a distance of 29 miles from the Moroco, in the direction of Punta Barima—Granville's line ; thence, in 1886, to a place on the coast west of the Guaima river, between the former spot and the Punta Barima —Rosebery's line ; in 1890, she set it in the mouth of the Amacuro, west of Punta Barima, on the Orinoco—Salisbury's line ; and finally, in 1893, constantly advancing west and south in the interior of the country, she carried the boundary from a point to the west of the Amacuro as far as the source of the Cumano river and the Sierra of Usupamo—Rosebery's new line.

Venezuela has always abode by the convention of 1850, by which both parties engaged not to occupy the territory in dispute so long as the question remained unsettled.

Great Britain has violated that convention without any con-

sideration whatever of the other party. She has gradually occupied the disputed territory, has incorporated it with British Guiana, has submitted it to her absolute dominion and administers it at her own will.

Venezuela has demanded a just reparation for this offence. Great Britain has refused it.

The diplomatic recourses having proved fruitless, Venezuela has esteemed it her duty since 1883 to resort to juridical means, and to propose the submission of the difference to the decision of a court of arbitration.

Great Britain has declined this agreement.

Out of dignity, Venezuela has suspended friendly relations with her opponent.

Great Britain has considered this act a lawful motive for adopting more violent and offensive measures.

Venezuela has been ready to adhere to the conciliatory counsel of the United States, that a conference consisting of their own representatives and those of the two parties, should meet at Washington or London for the purpose of preparing an honorable re-establishment of harmony between the litigants.

Great Britain has disregarded the equitable proposition of the United States.

Venezuela has carried her spirit of peace and conciliation so far as even to appoint three diplomatic representatives with a private character from 1890 up to this time, with the view of promoting the renewal of friendship through a prior engagement to submit the question to arbitration.

In response Great Britain has insisted on treating Venezuela as a minor State to which she can dictate the sacrifice of its right and territory, while deciding of her own accord what right and territory belong to herself unquestionably and without further discussion.

Venezuela has not been able to obtain respect for her juridical equality. She has met each violation with a representation and a formal protest.

Such is the summary account of this long and vexing contest from its outset to the present time.

(Signed) José Andrade.

Washington, D. C., March 31st, 1894.

Dr. Rojas to Cardinal Rampolla.

[Translation.]

United States of Venezuela.
Department of Foreign Relations,
Direction of Foreign Public Law.—No. 734.
Caracas, June 19, 1894.

His Excellency:

For some time General Joaquin Crespo, President of the Republic, has been considering the idea of soliciting the interposition of the Holy Father to bring to a peaceful, just, and decorous end the grave question yet existing between Venezuela and England regarding the limits of Guiana. And because the presence here of a Representative of the Holy See facilitates and makes this occasion still more propitious to bring about that purpose, the Chief Magistrate has conferred upon me the duty of communicating his ideas to His Excellency, Señor Tonti, to whom I have already spoken, in the confidence that the case demanded, of the opinion of the Chief of the Government in respect to the importance and efficacy of that mediation.

The voyage to Rome of the Representative of the High Pontiff offers still greater facilities for the attainment of the object, since thus, His Excellency Señor Tonti will be enabled to treat in the most direct manner possible and with the knowledge already possessed on the matter, as to the efficacious and practical means of giving the Holy See, in so delicate and transcendental a subject, the beneficial mediation which the Venezuelan Government so much desires.

The Government trusts that His Holiness will be inclined to consider this solicitation with the same fatherly interest which he has always shown in all that pertains to the welfare of the Republic.

Annex 40

Letter from Mr. Gresham to Mr. Bayard, 13 July 1894

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available from: https://www.loc.gov/item/04010002/

OFFICIAL HISTORY

OF THE

DISCUSSION BETWEEN VENEZUELA AND GREAT BRITAIN

ON THEIR

GUIANA BOUNDARIES.

ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

As an expression of that gratitude, Your Excellency inclosed therein two letters, so that I send them to their destination, one from His Excellency General Crespo, President of the Republic, for the Holy Father, and another of yours for His Eminence Cardinal Rampolla, Secretary of State of His Holiness.

On assuring you, Mr. Minister, that at the first occasion I shall send them to Rome, I make haste to express my entire satisfaction for the noble sentiments by which the two mentioned letters, worthy of a Catholic nation, are inspired.

The flattering expressions in Your Excellency's note, concerning me personally, impressed me much, and therefore it is my special duty, Mr. Minister, to attest to you and to His Excellency the President, not less than to the members of the Government, my highest gratitude for them.

I shall feel very happy, whenever within the limits of my power, I may lend any service to the Republic of Venezuela, which Government and citizens have not ceased in giving me, since my arrival, undoubted proofs of their affectionate sympathy.

Be pleased to accept, Mr. Minister, the expressions of my most high consideration.

JULIO,
Apostolic Delegate and Envoy Extraordinary
of the Holy See.

To His Excellency Señor Don P. Ezequiel Rojas, Minister of Foreign Relations.

Mr. Gresham to Mr. Bayard.

DEPARTMENT OF STATE,
WASHINGTON, July 13, 1894.

No. 442.

Sir:

During your incumbency of the office of Secretary of State you became acquainted with a long-pending controversy between Great Britain and Venezuela concerning the boundary between that Republic and British Guiana.

The recourse to arbitration, first proposed in 1881, having been supported by your predecessors, was in turn advocated by you in a spirit of friendly regard for the two nations involved. In the meantime, successive advances of British settlers in the region admittedly in dispute were followed by similar advances of British colonial administration, contesting and supplanting Venezuelan claims to exercise authority therein.

Toward the end of 1887 the British territorial claim, which had, as it would seem, been silently increased by some 33,000 square miles between 1885 and 1886, took another comprehensive sweep westward to embrace the rich mining district of the Yuruari as far as Guacipati; and this called forth your instruction to Mr. Phelps of February 17, 1888, respecting the "widening pretensions of British Guiana to possess territory over which Venezuelan jurisdiction" had never theretofore been disputed.

Since then repeated efforts have been made by Venezuela as a directly interested party, and by the United States as the impartial friend of both countries, to bring about a resumption of diplomatic relations, which had been suspended in consequence of the dispute now under consideration. The proposition to resume such relations has, however, been intimately bound up with the ultimate question of arbitration. Until recently Venezuela has insisted upon joining to the agreement to arbitrate a stipulation for the restoration of the *status quo* of 1850 pending the proposed arbitration; but it seems that this condition is now abandoned. On the other hand, Great Britain has on several occasions demanded, as a preliminary to an understanding touching arbitration, that Venezuela shall definitely abandon all claim to a large part of the territory in dispute and limit the eventual arbitration to that portion only to which Great Britain has more recently laid claim.

In May, 1890, replying to a note of Mr. Lincoln, tendering the good offices of this Government to bring about a resumption of relations, by means of a conference of representatives of the three powers, or in any friendly way, Lord Salisbury

offered to submit to arbitration any questions in respect to territory west of Schomburgk's line of 1840, but insisted on admission of the British claim to all parts to the east of that line.

The Venezuelan Government has on three occasions since the rupture sent accredited agents to London to negotiate for a restoration of diplomatic intercourse. Dr. Urbaneja having failed, Señor Pulido succeeded him, and insisted, as his predecessor had done, upon a preliminary agreement for unreserved arbitration, but he was met by a counter proposal for a conventional boundary line, which was somewhat more favorable to Venezuela than that formerly insisted upon, in that it departed importantly from the Schomburgk line and relinquished claim to the Barima district, on the main branch of the Orinoco. Not reaching an accord, Señor Pulido returned to Caracas in September, 1890, and the matter rested for a time.

In 1893 Señor Michelena was sent to London as a confidential agent, bearing a modified proposal to resume diplomatic relations on the basis of the *status quo* of 1850, and to appoint commissioners to determine a conventional boundary, leaving to arbitration any question as to which they might fail to agree. Lord Rosebery, replying July 3, 1893, treated this proposal as a substantial renewal of Venezuela's claim for unconditional arbitration, and in effect declared that the proposed settlement of the boundary by a commission could only be entered upon after Venezuela should have relinquished all claim to any territory eastward of the line laid down on a map submitted to Venezuela 19th March, 1890. This line appears to substantially follow Schomburgk's, with some modification.

Señor Michelena declined this proposition and advanced a counter proposition July 31, 1893, to which Lord Rosebery replied, September 12, that it did not appear to Her Majesty's Government that Señor Michelena's note opened the way to any agreement that they could accept concerning this question, but that they were "still desirous to come to an under-

standing in regard to the frontier between the possessions of the two countries," and were "disposed to give their best attention to any practicable proposals that might be offered them to that effect."

A discussion soon followed touching a scheme for the British occupation of High Barima and the region to the northwest as far as the Orinoco, which elicited from Lord Rosebery, September 22, 1893, the declaration that the acts of jurisdiction complained of did not encroach upon Venezuela's rights, but were, "in fact, no more than part of the necessary administration of a territory which Her Majesty's Government consider to be indisputably a portion of the colony of British Guiana, and to which, as it has been their duty to state more than once, they can admit no claim on the part of Venezuela." Against this declaration Señor Michelena protested October 6, 1893; and there the matter now rests.

The President is inspired by a desire for a peaceable and honorable adjustment of the existing difficulties between an American State and a powerful trans-Atlantic nation, and would be glad to see the re-establishment of such diplomatic relations between them as would promote that end.

I can discern but two equitable solutions to the present controversy. One is the arbitral determination of the rights of the disputants as the respective successors to the historical rights of Holland and Spain over the region in question. The other is to create a new boundary line in accordance with the dictates of mutual expediency and consideration. The two Governments having so far been unable to agree on a conventional line, the consistent and conspicuous advocacy by the United States and England of the principle of arbitration, and their recourse thereto in settlement of important questions arising between them, make such a mode of adjustment especially appropriate in the present instance, and this Government will gladly do what it can to further a determination in that sense.

With these considerations I commit the matter to your hands, leaving it to you to avail yourself of any convenient

opportunity to advance the adjustment of the dispute in question.

I append for your convenient perusal copy of a memorandum[1] on the controversy, which has recently been handed to me by the Venezuelan minister at this capital.

I am, etc.,

W. Q. GRESHAM.

Foreign Relations of the United States, 1894.

[Urgent.]

The German Chargé d'Affaires at Caracas to Dr. Rojas.

IMPERIAL LEGATION OF GERMANY IN VENEZUELA.

CARACAS, November 12th, 1894.

Mr. Minister:

Last Thursday, by virtue of a telegraphic communication from my Government, I had the honor, in my character of being charged with the protection of British interests in Venezuela, to present a claim, in the name of the Royal Cabinet of Great Britain, against a violation of the frontier of British Guiana, perpetrated by Venezuelan soldiers on the Cuyuni river. At the same time I expressed the desire of the English Government that the officer who commands the Venezuelan troops of the Cuyuni river should receive orders to prohibit his soldiers from crossing the river, as well as from cutting trees on its right bank.

His Excellency had the kindness to offer me an answer, after having consulted the Council of Ministers. Wishing a solution of the matter satisfactory to the parties interested, I would be very grateful to His Excellency if a reply were given to me as soon as possible.

I also take advantage of this opportunity to renew, Mr. Minister, the assurances of my most distinguished consideration.

BODMAN.

To His Excellency the Minister of Foreign Relations of the United States of Venezuela, Mr. P. Ezequiel Rojas.

[1]Not printed.

Annex 41

Letter from Lord Rosebery to Dr. Michelena, 22 September 1893

Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company

Available at: https://www.loc.gov/item/04010002/

OFFICIAL HISTORY

OF THE

DISCUSSION BETWEEN VENEZUELA AND GREAT BRITAIN

ON THEIR

GUIANA BOUNDARIES.

ATLANTA, GA.:
Franklin Printing & Publishing Company,
GEO. W. HARRISON, Manager.
1896.

Same to Same.

[Copy.]

FOREIGN OFFICE, September 22d, 1893.

Sir:

With reference to my note of the 2d instant, I have the honor to inform you that Her Majesty's Government have given their careful attention to the representations contained in your note of the 26th ultimo, complaining of acts on the part of the authorities of British Guiana which are considered by the Venezuelan Minister for Foreign Affairs to be in contravention of the rights of Venezuela.

Her Majesty's Government are desirous of showing all proper respect for the recognized rights of Venezuela, but the acts of jurisdiction to which you refer in your note do not appear to them to constitute any infraction of or encroachment upon those rights. They are in fact no more than part of the necessary administration of a territory which Her Majesty's Government consider to be indisputably a portion of the Colony of British Guiana and to which, as it has been their duty to state more than once, they can admit no claim on the part of Venezuela.

I have the honor to be, Sir, your most obedient humble servant,

ROSEBERY.

Señor Michelena.

Dr. Michelena to Lord Rosebery.

[Translation.]

HOTEL DE BADE, BOULEVARD DES ITALIENS,
PARIS, September 29th, 1893.

My Lord:

I have had the honor to receive Your Excellency's note of the 12th inst., in which I am informed that Her Britannic Majesty's Government, after carefully considering the contents of my note of the 31st of July last proposing adjustment of

OFFICIAL STATEMENTS AND DECLARATIONS

Annex 42

Joint Communiqué, 10 December 1965

(Excerpt)

Government of the United Kingdom, *Record of Discussions between the Foreign Secretary, the Venezuelan Minister for Foreign Affairs and the Premier of British Guiana at the Foreign Office on 9 December, 1965*, No. AV 1081/326 (9 Dec. 1965), Guyana Memorial, vol. II Annex 28.

ANNEX

JOINT COMMUNIQUE

In accordance with what had been agreed in the joint communiqué of 7 November, 1963, talks took place in London on 9 and 10 December between the Minister of Foreign Affairs of Venezuela on the one side and the Foreign Secretary of the United Kingdom and the Premier of British Guiana on the other on the basis of the following agenda:

Agenda for the continuation at Ministerial level of governmental conversations concerning the controversy between Venezuela and the United Kingdom *over the frontier* with British Guiana, in accordance with the joint communiqué of 7 November, 1963

(i) Exchange of views on the experts' report on the examination of documents and discussions of the consequences resulting therefrom. Necessity of resolving the dispute.

(ii) To seek satisfactory solutions for the practical settlement of the controversy which has arisen as a result of the Venezuelan contention that the 1899 Award is null and void.

(iii) Concrete plans for collaboration in the development of British Guiana.

(iv) Determination of time limits for the fulfilment of whatever may be agreed with reference to points 1, 2 and 3 above.

(v) Joint communiqué on the present talks.

2. In addition to considering the experts' reports on the documentary material relating to the Arbitration Award of 1899, the Ministers considered ways and means of putting an end to the controversy which threatens to damage the traditionally cordial relations between Venezuela on the one hand and the United Kingdom and British Guiana on the other.

3. Ideas and proposals for a practical settlement of the controversy were exchanged. It was agreed that some of these should receive further consideration and that the Ministers should continue the present discussions in the week starting 13 February, 1966, at Geneva in order to consider those proposals as well as others that might be suggested under the above agenda. Neither side having been able to accept the conclusions of the experts appointed by the other side, Item I will therefore not be considered. It was further agreed that preparatory talks between officials should start at an early date.

4. The text of this communiqué will be made available to the Secretary-General of the United Nations.

Foreign Office, London, S.W. 1,
10 December, 1965.

Annex 43

Letter of 16 December 1965 to the Secretary General from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland, and Venezuela before the United Nations, 18 December 1965

United Nations, Twentieth session, Theme 23 of the program, A/6205, Aplicación de la declaración sobre la concesión de la independencia a los países y pueblos coloniales.

Available at: https://digitallibrary.un.org/record/847252?ln=es&v=pdf

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/6205
18 December 1965
ENGLISH
ORIGINAL: ENGLISH/SPANISH

Twentieth session
Agenda item 23

IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

Letter dated 16 December 1965 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and Venezuela to the United Nations addressed to the Secretary-General

We have the honour to transmit with this letter a copy of the joint communiqué issued in London on 10 December 1965 after the talks on the Venezuelan frontier with British Guiana between the Minister of Foreign Affairs of Venezuela on the one side and the Foreign Secretary of the United Kingdom and the Premier of British Guiana on the other.

We request Your Excellency to arrange for this letter and the text of the joint communiqué to be circulated as documents of the General Assembly.

(Signed) Carlos SOSA-RODRIGUEZ
(Signed) CARADON

65-33822

/...

Joint Communiqué

1. In accordance with what had been agreed in the joint communiqué of 7 November 1963, talks took place in London on 9 and 10 December between the Minister of Foreign Affairs of Venezuela on the one side and the Foreign Secretary of the United Kingdom and the Premier of British Guiana on the other on the basis of the following agenda:

AGENDA FOR THE CONTINUATION AT MINISTERIAL LEVEL OF GOVERNMENTAL CONVERSATIONS CONCERNING THE CONTROVERSY BETWEEN VENEZUELA AND THE UNITED KINGDOM OVER THE FRONTIER WITH BRITISH GUIANA IN ACCORDANCE WITH THE JOINT COMMUNIQUE OF 7 NOVEMBER 1963

1. Exchange of views on the experts' report on the examination of documents and discussion of the consequences resulting therefrom. Necessity of resolving the dispute.
2. To seek satisfactory solution for the practical settlement of the controversy which has arisen as a result of the Venezuelan contention that the 1899 Award is null and void.
3. Concrete plans for collaboration in the development of British Guiana.
4. Determination of time-limits for the fulfilment of whatever may be agreed with reference to points one, two and three above.
5. Joint communiqué on the present talks.

2. In addition to considering the experts' report on the documentary material relating to the arbitration award of 1899, the Ministers considered ways and means of putting an end to the controversy which threatens to damage the traditionally cordial relations between Venezuela on the one hand and the United Kingdom and British Guiana on the other.

3. Ideas and proposals for a practical settlement of the controversy were exchanged. It was agreed that some of these should receive further consideration and the Ministers should continue the present discussions in the week starting 13 February 1966, at Geneva in order to consider these proposals as well as others that might be suggested under the said agenda. Neither side having been able to accept the conclusions of the experts appointed by the other side, item one will therefore not be considered. It was further agreed that preparatory talks between officials should start at an early date.

4. The text of this communiqué will be made available to the Secretary-General of the United Nations.

London, 10 December 1965

Annex 44

Statement read by Sir Donald Jackson on behalf of the Guyanese Delegation in the Mixed Commission on the 2nd April 1968

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Declaración del honorable Sir Donald Jackson, 1968, Box: E-01.

APPENDIX "D"

Statement read by Sir Donald Jackson on behalf of the Guyanese Delegation in the Mixed Commission on the 2nd. April, 1968.

The history of international negotiations is no doubt littered with recriminatory statements, but it is difficult to imagine any of a more self-serving character than that read in the Mixed Commission on Saturday, 30th March, 1968, by the Hon. Dr. Loreto in the name of the Venezuelan delegation. Recrimination never helps in matters of this kind, and for this reason it might perhaps have been wise to let the Venezuelan statement pass unanswered, but as the statement sought to put on record all sorts of unfounded accusations against Guyana with respect to the work of her representatives both in the Mixed Commission and in the Sub-Commission of Experts, the Guyanese delegation are regretgully constrained to reply.

It has been suggested that Guyana has been intransigent in her attitude from the very beginning of the work of the Mixed Commission. Why? Beacuse her delegation did not approve in its entirety the draft rules of procedure submitted by Venezuela at the first meeting of the Commission in Caracas. But, what was the true position? To begin with, the first meeting was hurriedly arranged soon after the independence of Guyana. Venezuela knew how inconvenient it was for Guyana to meet at that time. Yet Guyana exerted herself to demonstrate her willingness to meet and speak, regardless of the inconvenience to herself. Venezuela, for her part, had given out the impression that the meeting would be merely in the nature of a first get-together. Nevertheless, Guyana did not object when Venezuela, exceeding this expectation, sought to have rules of procedure fortwith made. Most of the rules were in fact approved at the first meeting, and the remainder were approved at the second. As Guyana pointed out, the rules were of considerable importance since they were intended to regulate the substantive work of the Mixed Commission. It cannot be denied that both sides raised many material points relating to the Venezuelan draft which in the course of debate was amended by agreement in several vital respects. In these circumstances to say that the failure of the Guyanese delegation to approve the Venezuelan draft in its entirety at the first meeting indicated an intransigent attitude on the part of the Guyanese delegation, is itself an alarming indication of the overbearing attitude of the Venezuelan delegation by which the work of the Mixed Commission and of the Sub-Commission has been continously afflicted, impeded and delayed.

From the second meeting onwards, the parties have been devided on the question whether any territorial issues could be examined without the Mixed Commission first dealing with the fundamental Venezuelan contention that the arbitral award was null and void. The controversy referred to in the Geneva Agreement relates to this contention. The Mixed Commission is to find satisfactory solutions for the practical settlement of the controversy relating tothis contention. How is this to be done unless the contention is first examined? It is idle to repeat the full arguments advanced

by each side on this issue. They are to be found in the records of the Mixed Commission. Each side continues to adhere to its own position on the issue, but what is distressing is that while the Venezuelan delegation make bold to assert the indisputability of their position, they make the astonishing statement that the Guyana position has been taken with the intention of nullifying the effects of the charge flowing from the Geneva Agreement. This surely attacks the good faith of the Guyanese delegation, and in our submission it does not help to make the difficult task of the Commission any easier.

The Honourable Representatives of Venezuela referred to provocative acts against the dignity of the Venezuelan representatives in Guyana and attacks against Venezuelan consulate and its flag, but forget the violation by Venezuela of the existing boundary, her strong armed accupation of the Guyanese part of the Island of Ankoko and consequential violation of the Geneva Agreement. They omit to refer to various provocative Venezuelan statements accompanying these outrageous acts. They omit to mention that on the other hand not one word of penitence or apology has been heard from Venezuela for her own acts and statements which led to the acts to which they find it convenient to refer. They also omit to make reference to the possibility damaging effects of these and other Venezuelan acts and state - ments on the work of the Mixed Commission.

The Honourable Representatives of Venezuela referred to their proposal for the joint development of the area to the west of the Essequibo River. They omitted to refer to the fact that it was agreed that any proposals relating to development would be submitted without prejudice to the basic position adopted by each party on the interpretation of the Geneva Agreement. The Guyana delegation pointed out ad nauseam that joint development necessarily preju - diced their country's position onthis issue because such development would constitute an erosion of Guyana's sovereignty over the area and that no such erosion could be permitted without first dealing with the Venezuelan conten - tion that the arbitral award, under which Guyana holds the land, was a nullity.

It is astonishing that the Venezuelan delegation should say that the Fourth Meeting the Guyanese delegation offered to give a reply at the Fifth Meeting on the Venezuela proposal for joint development. This is completely inaccurate and the inaccuracy has been pointed out before, as the records would show. The records show that at the Fourth Meeting each party undertook to seek the views of its Government and in the light thereof to resume discussion on development at the Fifth Meeting. This is precisely what the Guyanese delegation did. The discussion was duly resumed at the Fifthe Meeting, and further particulars asked for so as to bring out the full implications of the Venezuelan proposal and thereby aid the discussion. Why this should be a ground for complaint passes all understanding.

The Venezuelan delegation complain that when they submitted their elaborated plan at the Sixth Meeting the Guyanese delegation sought to bring the discussion to marginal points, to small and insignificant details of it, and wished to bring back the negotiations to the stage reached at the Second Meeting. The Venezuelan draft plan consisted of 29 pages and it was surely

reasonable to hold discussions to clarify points arising from it. Or was Guyana to accept it lock, stock and barrel without query or comment ? This is another sad example of the dictatorial attitude of the Venezuelan delegation. The allegation that the Guyanese delegation sought to bring back the discussions to the stage reached at the Second Meeting is presumably a reference to the delegation's observation that the plan violated the basic position taken by Guyana at that meeting, which position Venezuela has undertaken to respect in submitting any proposals for development. The Guyanese delegation could not fairly be expected to allow this position to be taken by the back door. If Venezuela wishes to move Guyana away from this position she is welcome to do so by engaging in a full discussion of her contention of nullity. This, however, she resolutely refuses to do. Instead of doing so she has sought to apply pressure in various ways, some of which have been already mentioned.

At the international level she has sought to put forward her claims, in spite of the Geneva Agreement, at conferences as far divorced in subject matter from territorial claims as meetings of the F. A. O. and the Pan American Road Conference, and through the issue of stamps and other literature in international circulation. At the regional level she has sought to exclude Guyana from participation in regional arrangements such as O. A. S. and the Treaty of Denuclearisation. She has even indulged in unwarranted interference in Guyana's domestic affairs, in particular, with respect to a conference of Amerindian Chiefs at Kaba Kaburi, Guyana, which was organised by a member of the Venezuelan Embassy and to which objection has already been taken by Guyana both in and out of the Mixed Commission. Venezuelan attempts to apply pressure have been made in the Mixed Commission itself, as witness the various threats and belligerent statements made by her delegation from time to time and high-handed walk-out from the Sixth Meeting.

The Venezuelan delegation say that the Guyanese delegation communicated with them by cable to say that they were prepared to enter into the substance of the question, and that the Venezuelans then returned to resume the Sixth Meeting. The suggestion here is that Guyana was indicating a change of attitude. There was no such change. The cable read:

> *"The Guyana Commissioners have the honour to address the Venezuela Representatives on the Mixed Commission and to convey their regret that the Venezuela Commissioners left the Meeting of the Mixed Commission in progress in Georgetown on Monday, November 6, without affording the Guyana Commissioners an opportunity of having translated into English the statement made by the Venezuela Commissioners inmediately before their withdrawal.*
>
> *The Guyana Commissioners wish also to convey their disappointment that the Venezuela Commissioners withdrew from the Meeting before affording the Guyana Commissioners an opportunity of conveying to them their further views on the proposals then before the Meeting of the Commission, more particularly since the Commission had adjourned its deliberations over the previous week-end at the*

request of the Venezuela Representatives to provide an opportunity for further consideration by both sides of these proposals and a further exchange of views upon them on the resumption of the Commission on Monday, November 6.

In the circumstances, the Guyana Commissioners wish to place on record their continued readiness to discuss all substantive aspects of the proposals before the Commission and await the views of the Venezuela Commissioners as to the date and place at which the proceedings of the Commission say be resumed.

Guyana has at all material times been willing to discuss all substantial issues involved, but these issues involve matters which the Venezuelan delegation should be accepted without question. The Venezuelan attitude does not help.

The Honourable Representatives of Venezuela say that the Venezuelan members of the Sub-Commission have disagreed with the report. This statement is not understood as it is observed that the report has been signed without reservation by all members of the Sub-Commission, Venezuelan as well as Guyanese.

This fact is in no way affected by the letter written by the Venezuelan members of the Sub-Commission have disagreed with the report. This statement is not understood as it is observed that the report has been signed without reservation by all members of the Sub-Commission, Venezuelan as well as Guyanese.

This fact is in no way affected by the letter written by the Venezuelan members of the Sub-Commission to their Guyanese counterparts and in which they said that they were not satisfied with the result obtained Two of the three Venezuelan members had signed the report before the letter was written and after it was written the third member signed. There after the report was duly submitted by Venezuela to the Mixed Commission. As so submitted it appears to be a unanimous report containing no dissent or reservation whatsoever.

The Venezuelan delegation ask, "what is the practical solution for Venezuela?", and they answer: "that the territory of which she has been despoiled should be restored to her". The Guyanese delegation say, very respectfully, that they are surprised that the question-begging character of this statement should be dignified by being described by the Venezuelan delegation as a practical solution. For the statement imperiously assumes not only that the arbitral award was null and void, but that the evidence led before the tribunal was clearly in favour of Venezuela, and in favour of her as to the whole of the region claimed! So ample and admission begs all relevant question before the Mixed Commission and renders the existence of the Commission absolutely without point.

The Venezuelan delegation then ask what is the practical solution proposed by Guyana for the settlement of the controversy. Guyana has from the beginning pointed out that no solution could be satisfactory or could result in a practical settlement of the controversy relating to the Venezuelan contention that the arbitral award was a nullity, within the meaning of the Geneva Agreement, unless it first dealt with the contention of nullity itself, since this contention was central to the whole controversy. But for the refusal of the Venezuelan delegation to grapple with this question, the question itself might well have been solved by now and the way made clear for the finding of a satisfactory solution for tne practical settlement of the controversy.

Instead of dealing with this question the Venezuelan delegation have made certain proposals for development, there stated object that the area under consideration should not stagnate pending the search for a satisfactory solution for the practical settlement of the controversy. They have expressly said that their proposal for development is not intended to be such a solution. Apart from the question-begging statement "that the territory of which she has been despoiled should be restored to her", Venezuela herself has never presented any such solution. While this is so, she nevertheless refuses to go with Guyana along the only sensible road leading to a practical solution, namely, the examination of her contention that the arbitral award is a nullity. Guyana is therefore at a loss to understand the question as to what is the practical solution proposed by Guyana for Venezuela

The Sixth Meeting was the longest ever held. At the resumed half it was understood that the discussions would relate to the principle of establishing a Sub-Commission. After a great deal of effort agreement was reached in principle that a Sub-Commission of Experts should be established. This naturally concluded the work of the Sixth Meeting. It was impossible for detailed matters relating to the precise composition and workings of the Sub-Commission to be dealt with, for, as Guyana explained, these matters could not be dealt with until it was ascertained how many experts the Government of Guyana could afford to release and for how long. This explanation was accepted by the Honourable Representatives of Venezuela and it was agreed that the other matters should be dealt with at the Seventh Meeting. These matters were then duly dealt with at the Seventh Meeting. It is therefore difficult to appreciate the Venezuelan complaint that the Guyanese delegation refused to allow these matters to be discussed at the Sixth Meeting, or why this alleged refusal should be regarded as proof of Guyana's supposed intransigence and obstruction.

The Venezuelan delegation also complains of the attitude of the Guyanese experts in the Sub-Commission. There was no decision whatsoever by the Mixed Commission that advisers should attend members of the Sub-Commission. The Guyanese members of the Sub-Commission were clearly right in objecting to the presence of advisers to the Venezuelan members as the attendance of advisers without authority of the Mixed Commission inevitably constituted a violation of the secrecy of the work of the Commission. Even so, the Guyanese members merely objected to their attendance at the formal sessions. Why this should be made a cause of complaint is a-

gain difficult to understand. In the view of the Guyanese delegation the only error made by the Guyanese members of the Sub-Commission was in allowing the presence of such advisers at the informal sessions of the Sub-Commission, as such attendance violated the secrecy of the work of the Commission as much as in respect of the formal sessions.

The Venezuelan delegation also complains of the refusal of the Guyanese members of the Sub-Commission to admit as a working paper the Venezuelan plan, which, they say, had been requested by the Guyanese delegation on the Mixed Commission itself. In the first place, it is completely misleading to suggest that the Guyanese delegation requested the plan. The Venezuelan delegation had put forward a bare proposal for joint development, which the Guyanese delegation said they could not fully appreciate until it was elaborated. The plan was then submitted by way of elaboration. In the second place, the plan became the subject of dead-lock in the Mixed Commission. The object of appointing the Sub-Commission was to make an entirely fresh start in exploring possible areas of cooperation, and therefore, in objecting to the admissibility of the plan as a working paper, the Guyanese members of the Sub-Commission were acting within the true intent of the decision of the Mixed Commission to appoint the Sub-Commission.

The Venezuelan allegation that the Guyanese members of the Sub-Commission wished that Venezuela should grant Guyana loans to pay her debts in untrue. Guyana is not an international mendicant and does not seek to benefit from the largest of nations even richer than the Republic of Venezuela.

It is a complete misrepresentation of events in the Sub-Commission to say that the Guyanese representatives adopted an attitude of obstruction and dilatoriness. At every session of the Sub-Commission while the Guyanese delegation remained in the Conference room ready to work the Venezuelan delegation were on the 31st January, half an hour late, on the 1st February, one and one-half hours late, on 2nd February two and one-half hours late and on 3rd February three hours late.

It is inaccurate too to suggest, as the Honourable Representatives of Venezuela have done, that the question of construction relating to the expression "economic development" in the terms of reference of the Sub-Commission was raised by the Guyanese members of the Sub-Commission, or that it was discussed by Guyana for the purpose of stalling for time. Stalling for time for what? The matter was raised by the Venezuelan members themselves. For her part, Guyana took the position that the expression was clear in that it involved social development insofar as this was relevant to economic development. The Venezuelan members wished the Sub-Commission to amend its terms of reference so that the expression "economic development" should read "economic and social development". The Guyanese members rightly pointed out that only the Mixed Commission was competent to do this. This is why the question has been presented by the Sub-Comission for the ruling of the Mixed Commission. The Guyanese delegation has accordingly invited the Honourable Representatives of Venezuela to join with them in examination of this and other issues raised in the Sub-Commission's report. This Venezuela has however refused to do, being content to rest

upon her general condemnation of the report which she has totally rejected notwithstanding that it is in respect of a preliminary meeting of the Sub-Commission.

Despite the consistent disregard by the Venezuelan delegation of the fundamental requirements of the Geneva Agreement and their unwilling ness to deal with the central issue of the controversy so that practical solutions of it may be considred and agreed upon, the Guyanese delegation will continue to observe and pursue the procedures for discussion laid down by the Agreement. The Guyanese delegation recognise and invite the Venezuelan delegation to acknowledge that the Geneva Agreement itself proceeded on the footing that solutions to the controversy might not necessarily be found within the first two years of the life of the Commission. It was implicit in the Agreement that the search for such solutions should continue throughout the life of the Commission and, indeed, if necessary beyond it in accordance with the terms of the Agreement. The Guyanese delegation are prepared to adhere to the Geneva Agreement and to continue to engage in the search for solutions.

The Commission itself has already established a Sub-Commission charged with the responsability of examining possible areas of cooperation between Venezuela and Guyana for the financing and carrying out by them of plans of economic development and inter-cultural exchange. The Guyanese delegation consider that that the establishment of the Sub-Commission represented a substantial step forward in the work of the Commission. It believes that the Sub-Commission should be permitted and assisted by the Commission to continue its work and with this view the Guyana delegation propose that the Commission should clarify the point of abiguity in the Sub-Commission's terms of reference on which the Sub-Commission has sought directions from the Mixed Commission. In this regard the Guyana delegation propose that the Commission should formally agree that the expression "economic development" as used in the Sub-Commission's terms of reference includes social development in so far as it is relevant to what might otherwise be considered strictly economic development.

This clarification by the Commission itself will materially advance the work of the Sub-Commission and define its field of examination and the Guyana delegation trust that the Venezuela delegation will not decline to thus promote the work of the Sub-Commission in this way through an unreasonable refusal to consider the matters specifically raised in the unanimous report of the Sub-Commission.

The Guyana delegation do not wish to prejudge or anticipate the work of the Sub-Commission but they have avery reason to believe that with these questions of interpretation clarified and the preliminary meeting of the Sub-Commission concluded the technical examinations contemplated in the establishment of the Sub-Commission will now be embarked upon. Proceeding on the assumption that the Mixed Commission would deal with the various matters raised in the report of its preliminary meeting, the Guyanese Members of the Sub-Commissiona have prepared for consideration be the Sub-Commission at its subsequent meetings specific proposals for cooperation in economic development. It is the wish of the Guyanese delegation that the Sub-Commission should have an apportunity of considering

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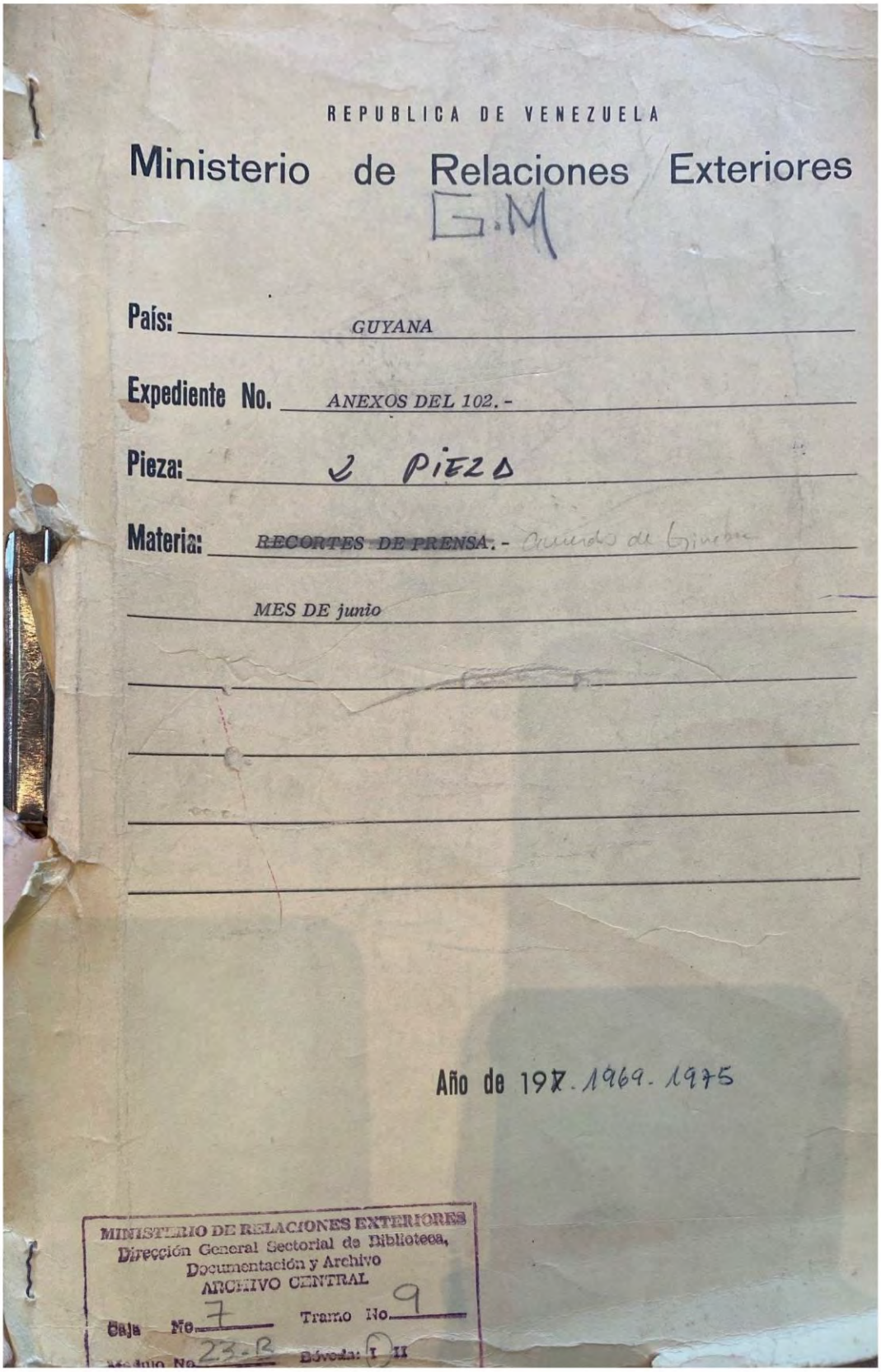
these proposals and that therefore a date for the meeting of the Sub-Commission be now fixed by the Mixed Commission. The Guyanese delegation repeat and reaffirm their readiness to adhere to the terms of the Geneva Agreement and to be guided in their work on this Commission and any of its agencies by the spirit no less than the letter of the Agreement.

Annex 45

Statement by the Prime Minister, Hon. L. F. S. Burnham in the National Assembly, Georgetown, 18 June 1970

Ministerio de Relaciones Exteriores, Archivos, Bibliotecas y Divulgación Casa Amarilla, país Guyana, expediente: anexos del 102, pieza: 2, materia: Acuerdo de Ginebra, año 1969-1975.



REPUBLICA DE VENEZUELA

Ministerio de Relaciones Exteriores

G.M

País: GUYANA

Expediente No. ANEXOS DEL 102.-

Pieza: 2 PIEZAS

Materia: ~~RECORTES DE PRENSA.~~ - Asuntos de Guyana

MES DE junio

Año de 197. 1969. 1975

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ARCHIVO CENTRAL
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Módulo No. 23-B Bóveda: I II

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STATEMENT BY THE PRIME MINISTER, HON. L.F.S. BURNHAM, IN THE NATIONAL ASSEMBLY, GEORGETOWN.

THURSDAY, JUNE 18, 1970.

Mr. Speaker,

At 10.00 a.m. today the Hon. Attorney General and Minister of State, on behalf of the Government of Guyana, signed in Port-of-Spain, Trinidad, a Protocol to the Geneva Agreement of 1966.

2. The signing of the Protocol came at the conclusion of discussions between the Hon. Minister and the Foreign Minister of Venezuela, Dr. Aristedes Calvani. Also signing the Protocol was the High Commissioner for the United Kingdom of Great Britain and Northern Ireland, Mr. Roland Hunte, acting on behalf of the British Government. The Government of the United Kingdom, it will be recalled, were parties to the Geneva Agreement and remained parties after Guyana became independent.

3. Immediately prior to the Ministerial discussions, the Mixed Commission established under the Geneva Agreement had submitted to the Governments concerned their Final Report in which they formally notified the Governments of their failure to find a solution to the controversy referred to them under the Agreement. The Ministerial discussions were primarily concerned with the steps to be taken consequent on the submission of that Report.

12. What we have done today is to bring an immediate end to tension and spiralling discord between our countries. What lies ahead is to build on this foundation of accord so that all differences between us may be resolved by peaceful means.

13. The Protocol, of course, will not transform our relations overnight. Much patient effort will be needed to overtake 5 years of strained relations and to secure that harmony which the Protocol now makes possible.

14. Outstanding problems, having their origins in policies of the last 5 years could further increase these difficulties. Thus the continued occupation by Venezuela of the eastern half of Ankoko Island will make all our tasks more difficult. We must continue to work for its termination, even as we explore the possibilities of better understanding in other areas.

15. The conclusion of the Protocol and the arrangements associated with it represent a new period of mutual respect and of patient search for understanding. These principles must guide us in the years ahead. If they do, the Protocol will have served well, not only Guyana and Venezuela, but the Hemisphere itself - AND THERE WOULD BE NO REASON THEN WHY THE REGIME OF PEACE WHICH THE PROTOCOL ESTABLISHES SHOULD EVER END.

18 June, 1970.

Annex 46

Intervention by the Minister of Foreign Affairs of Guyana, Rashleigh Jackson during the 37th General Assembly, 11 October 1982

(Excerpt)

United Nations, General Assembly, Thirty-seven session, 26th Plenary Meeting, October 11, 1982.

the principles and purposes of the Charter. We have thus noted that the Security Council and the General Assembly have not always made the same assessment of situations that threatened international peace and security. The Security Council itself has to some extent distorted its role by using procedures of informal consultations among its members, instead of concerning itself, as it ought to, with handling matters falling directly within its jurisdiction and finding adequate solutions for them.

175. My country saw a good example of that when we submitted to that body our petition opposing the admission of Belize to the United Nations. The Security Council, in open violation of the principles of the Charter, refused to be seized of the matter. It did so without any reason, forgetting that there had been an open controversy to be resolved within the principles of the Charter.

176. It is necessary to establish a solid basis of equity and justice for the development of international relations. My delegation believes that we must return to the sources that gave birth to this Organization. The light which then shone at San Francisco, when the Organization was created, should become a beacon for present and future generations; one which will light our way and enable us to build a better and more balanced world, one founded on the pillars of fraternity and solidarity, where peace, social justice, freedom and dignity to which all human beings without exception are entitled will prevail.

177. Mr. JACKSON (Guyana): My first and pleasant duty is to extend warm felicitations and congratulations to the President, a distinguished son of Hungary, upon his unanimous election. I and the other members of my delegation pledge our full co-operation with him in his efforts to make this session of the Assembly a successful one. May I at the same time pay a tribute to Mr. Kittani of Iraq who, with patience, tact and wisdom, guided the Assembly through the various and bewildering demands of the last year. We owe him a debt of gratitude. May I also reiterate my congratulations to the Secretary-General, Mr. Javier Pérez de Cuéllar of Peru, on his election to this most important office at this most critical period. I have personally had the pleasure and good fortune of working with him in earlier years when he gave dedicated and unstinting service to his country and to the Organization. The seriousness and forthrightness which characterize the approach of the Secretary-General to the challenges facing the Organization and its Member States have won praise and well-deserved recognition within the Organization as well as outside it. We wish him every success.

178. The Secretary-General aptly observed in his frank and perceptive report on the work of the Organization "we are perilously near to a new international anarchy" [*A/37/1, p. 1*]. Guyana shares that assessment. The world economic crisis deepens even as political relations are beset by tension and turbulence. Within recent years there has been an intensification of global crises, political and economic, and a manifest trend towards the exacerbation of existing situations and the creation of new ones, of so-called local and regional conflicts, some of them with devastating effect. Turbulence is pervasive. No region, indeed no country, has escaped unscathed. More than ever before States need in their bilateral relations to be conscious of the impact of their national policies on others and to take the appropriate and necessary steps to avoid conflict, preserve pluralism and promote security and the economic and social development of peoples throughout the world.

179. Underlying current global tensions is the heightening of the contestation between social systems. Nowhere is that more clearly reflected than in the increase in expenditure on, and the sophistication of, armaments and weapons systems, fuelling the movement towards conflict and global conflagration. The language of co-operation has been superseded by that of confrontation and the relations among the great Powers are now dangerously adversarial. Thus military and political rivalries have reached a new level, creating in their wake deep fissures in international relations and the frustration of the process of democratization of those relations.

180. Our global political preoccupations are matched by economic preoccupations; equitable international economic relations are necessary prerequisites to political stability. The present international economic system is undoubtedly in disarray and its debilitating effect on all States, especially on the small and the weak, is manifest.

181. The solution to that state of affairs demands collective, reasoned efforts. But the global community has not responded in that manner often enough. Instead of a greater surge towards multilateralism in international economic relations, there is today a retreat from it, resulting in frustration and impasse. Meanwhile, efforts to fashion solutions upon partisan, bilateral criteria are being renewed. Indeed, the retreat from multilateralism that threatens economic relations among States has been finding expression in a reassertion of the dominance of single-minded ideological approaches to economic development, in essence a return to economic determinism. In the retreat from multilateralism, in this return to economic determinism, we are faced today with a dual strategy. There is a steadfast refusal to remodel existing international institutions in a way that would render them more responsive to the serious problems which imperil us all and, more particularly, the developing countries. Simultaneously, we witness a tendency to deny those multilateral institutions the resources required for their normal operations. In that regard, the position of UNDP demands our special attention and we must urge a genuine commitment to meaningful resource allocation to allow that agency to continue its useful work in an effective manner.

182. The disturbing trend towards a bilateral resolution of global economic woes is demonstrated in other ways. We cannot ignore the evidence of three years of continued stalemate in the effort to launch the global round of negotiations. There have been periodic signs during the process which indicated movement but, just as rapidly, there has been another impasse. The failure to agree on that launching has seriously weakened the much-needed resolve

to undertake collective solutions. The consequence is a growing indication that the global manifestation of the economic woes can be set aside until the national endeavours at a solution have been pursued. Thus the absence of global negotiations to help to resolve global problems of a structural nature has resulted in almost a total dearth of measures to address the immediate issues which beset the global community. The individual, partisan adjustment measures are being forged with an increasing incidence of the attendant burdens, costs and pains of that adjustment being borne by the developing countries.

183. The problems of depressed prices for commodities, the prevalence of inflation and high interest rates, the barriers to trade expansion and the chaos that characterizes the international financial system have been repeatedly assessed, examined and analysed from this rostrum over the last few days. Those analyses notwithstanding, we in the developing countries are acutely aware of the limits to growth we now face as a result of those problems. Nowhere are those limits more manifest than in our efforts at debt management. The problems posed by our spiralling debt burdens present us with tremendous difficulty. Efforts at adjustment to inflation in the developed world have had a very grave effect on its economies. All of these problems —high rates of interest, mounting debt burdens and the very nature of the international financial system—demand that we seek collective redress. It is our most compelling concern and one that necessitates urgent and immediate consideration.

184. For our part, we in the developing world have been willing to seek ways and means to contribute collectively to the solution of the global problems, as evidenced in the Caracas Programme of Action[6] on economic co-operation among developing countries. Our attempts to pool our individual strengths and resource bases and thus promote our collective self-reliance are noteworthy and offer promise for the future. But, as has been noted on repeated occasions, economic co-operation among developing countries, South-South co-operation, is but one part of the whole. It is not a substitute for genuine progress in North-South relations. The quest for solutions based on multilateral and collective methods should be pursued unceasingly.

185. Guyana notes with satisfaction the successful conclusion of the negotiating sessions of the Third United Nations Conference on the Law of the Sea and the emergence of a final text which truly reflects the concerns of many who have laboured long and hard to establish an international legal régime for the ocean space. It is Guyana's hope that when we meet in Jamaica to sign the Final Act and Convention, the number of signatories to the Convention will be a source of great satisfaction to those whose primary motivation over the past several years has been the promulgation of just and equitable arrangements for the most effective use of the sea and the utilization of its resources for the benefit of all mankind, without discrimination.

186. It is, not unnaturally, a source of profound concern that some States should have seen fit to stand aside from this historic effort. It is also a matter for regret that a few developed States have moreover chosen instead to conclude between them a mini-multilateral treaty in defiance of the wishes of the overwhelming majority of the world's States.

187. If I now turn to international political relations, it is to say that these have deteriorated markedly over the past few years. The diagnoses of the malaise afflicting international relations are many and varied. They range from the crisis in the multilateral approach in international affairs to the proliferation of armaments with the concomitant incentive and urge to utilize them; the collapse of co-operative endeavours evolved in the aftermath of the Second World War—so called; an increasing disregard for the fundamental norms and principles of international law; and a widespread tendency —too widespread—to resort to lawless conduct based on confrontation, threats and violence and, unhappily, intervention.

188. These negative manifestations have both encouraged and facilitated behaviour antagonistic to full respect for the sovereignty and independence of States—small States in particular.

189. Interventionist behaviour is undoubtedly on the increase. It is at once cause and effect of the crisis in international relations, a distinguishing feature of many conflicts. The extant cases are numerous—in the Middle East, in Europe, in Africa and in Latin America.

190. Non-intervention in the affairs of other States has served as one of the main pillars and guiding principles of a system of stable international relations. The proscribing of intervention is at the core of several international instruments adopted by this world body over the years. The most recent of these is the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, adopted at the thirty-sixth session [*resolution 36/103, annex*]. This Declaration represents a comprehensive instrument codifying the rights and duties of States that inhere in the principle of non-intervention.

191. Yet, despite its existence as a well-established and fundamental principle of international relations, non-intervention has increasingly been respected more in the breach. The whole gamut of interventionist techniques, ranging from overt military action to the more insidious and subtle forms of indirect pressures and destabilization tactics, has been brought into play in recent years.

192. The motivation for intervention varies from case to case. Yet certain broad patterns are clearly discernible. Some manipulate local situations of controversy and exploit international conflicts to serve perceived broader geo-strategic interests. Further, intervention is oftimes designed to frustrate national liberation and the struggle against colonialism. No less problematic is interventionist behaviour undertaken in pursuit of expansionist ambitions—territorial, ideological and economic.

193. Some of our countries possess enough human and material resources to ensure for their people an adequate and satisfying standard of living. Yet some of these very countries, in what can only be seen as

a fit of greed, seek to covet the territory and resources of their neighbours. In pursuit of their expansionist claims, such countries disregard hallowed principles and norms of an international legal edifice painstakingly constructed over the years.

194. But even as we resolve to banish intervention as an instrument of policy in relations among States, it becomes imperative to strengthen and advance the process of collective security and disarmament. The second special session devoted to disarmament, held here last June, did not realize the high hopes of our peoples for a world free from the spectre of the catastrophic uses of the destructive weapons at man's disposal. This happens at a time in which we witness the proliferation and perfection of a plethora of weapons systems possessing mass destructive capability.

195. It is indeed a sad commentary on the position of some major Powers that in the face of a clear demonstration of the public throughout the world in favour of disarmament, these Powers have not exercised the necessary political judgement to facilitate agreement on the various disarmament issues and the preparation of a comprehensive programme on disarmament.

196. The recent horrors which accompanied the ruthless Israeli invasion of Lebanon and senseless slaughter of innocent men, women and children in west Beirut heighten the necessity for a comprehensive, just and lasting solution to the Middle East situation and the Palestinian question. There has undeniably been a quickening of the conscience of peoples to the urgent need to terminate the Palestinian diaspora and to bring about the creation of a homeland for the Palestinians in Palestine, as envisaged by early resolutions of the Assembly.

197. Let me repeat the position of Guyana: the acquisition of territory by force cannot be condoned; the Palestinian people, led by their authentic representative, the PLO, must have their national rights restored; and all States in the region should be enabled to live in peace and security.

198. We must be equally firm in dealing with the racist entity in Pretoria. The independence of Namibia must be achieved in conformity with Security Council resolution 435 (1978) and there must be no question of further conditionalities. South Africa must be made to vacate Namibia and to do so quickly. At the same time, South Africa must show full respect for the sovereignty and territorial integrity of neighbouring independent African States. Within South Africa itself, the systems of *apartheid* and bantustanization must be condemned. The members of the international community individually and collectively must desist from giving the racists in South Africa succour to maintain their oppressive policies.

199. Unhappily, the tragedy of a divided Cyprus remains, despite the fact that the Assembly in its resolution 3212 (XXIX) set an adequate framework for the withdrawal of foreign troops and the reconciliation of the communities in the territory. Guyana gives every encouragement to the Secretary-General to continue unceasingly in his search for an urgent solution. We also support the proposals made by the President of Cyprus before the Assembly [*21st meeting*].

200. Likewise the people of Korea deserve our support for the peaceful reunification of their territory without outside interference. Guyana continues to urge the implementation of the provisions of the 4 July 1972 joint communiqué[7] and the more recent constructive proposals advanced by the Democratic People's Republic of Korea.

201. We are particularly concerned about the continuing war between Iraq and the Islamic Republic of Iran. We call for strict implementation of the relevant resolutions of the Security Council relating to this matter, in particular resolutions 514 (1982) and 522 (1982).

202. Central America and the Caribbean—indeed, Latin America—is in a state of ferment. Already this state has culminated in a full-fledged war that took a heavy toll of young lives and continues to do so. Threats of destabilization and armed intervention are made in relation to Central America and the Caribbean. Indigenous impulses for change are being violently confronted by a tandem force of local interests and their external supporters. Deliberate policies of pressure and intimidation are implemented, policies aiming at ideological conformity. Guyana firmly believes that a system of peaceful and stable relations in the Latin American and Caribbean region must of necessity be premised on an end to all types of economic pressures and political interference and on respect for ideological pluralism. The Caribbean must be made a zone of peace.

203. In his statement to the Assembly at the 5th meeting, the Foreign Minister of Venezuela adverted at length to the relations between our two countries. Unfortunately that presentation contained egregious distortions; it was contumacious, and it bordered on calumny. It was tendentious and selective in its account of history.

204. Last year, in addressing the Assembly my Prime Minister, Mr. Ptolemy A. Reid, laid bare the history of our relations with Venezuela. The nature of those relations has been profoundly affected by a Venezuelan desire to redraw the boundary between our two countries, a boundary which was settled by Treaty in 1899 and demarcated on the ground between 1901 and 1905.

205. The Foreign Minister of Venezuela stated that Venezuela's claim is based neither on territorial ambition nor on covetousness of the wealth of others but on the need to correct an historical wrong perpetrated against it. And this Venezuela asserts as the successor to Spanish colonial imperialism. He also asserted that Guyana refuses to understand the need for this correction because it wishes to enjoy the fruits of British colonial imperialism.

206. Guyana hardly needs to reject these pejorative Venezuelan asseverations. Moreover, our reputation as an anti-imperialist nation is well known. The anti-imperialist policies my country pursues are in accordance with the tenets of the non-aligned movement, of which it is a full member.

Annex 46

207. The Foreign Minister of Venezuela, in disavowing any motive of covetousness and expansionism, and in persisting in his country's territorial claim, asserts that no exploitable mineral resources have been discovered in the Essequibo region, which Venezuela claims. On the contrary, to give but a few examples, oil has recently been discovered there; our long-established gold and diamond mines are developing as centres of economic activity; and there has been an intensification in the evaluation of our uranium potential. And Venezuela knows this.

208. With these activities and the potential which exists, can we accept Venezuela's portrayal of the Essequibo as a land without exploitable mineral resources? And are we to understand that its claim to this land, whose people are moreover of a different culture, is motivated simply by a desire to redress an historical wrong? We are convinced that the Venezuelan territorial claim is an unjustified attempt to satiate a thirst for the land and resources of others.

209. The Venezuelan Foreign Minister also asserted that there has been no aggression by Venezuela against Guyana. I cannot permit that statement to go unchallenged. Indeed it must be categorically rejected. Let the record speak.

210. Can Venezuela deny that its troops are still in occupation of Guyanese territory that it violently seized in 1966? Can Venezuela honestly—and I stress the word "honestly"—deny that there have been numerous violations of our air and land space by Venezuelan aircraft and armed forces? And what of Venezuela's actions against us in the economic field? Can Venezuela deny that it has been endeavouring to dissuade Governments and organizations both in the developed and in the developing world from participating in Guyana's economic development, especially in that part of our territory that it claims? Does Venezuela deny that in June last year, as we were preparing for a global conference on new and renewable sources of energy, its Foreign Minister wrote to the President of the World Bank opposing the construction of a hydroelectric facility in the Upper Mazuruni region of Guyana on the political ground that the proposed dam was to be located in the area claimed by Venezuela and that it was not economically important to Guyana? And can it deny that such action was taken after the World Bank had itself assessed the project as being economically and technically feasible? Is that not economic aggression?

211. There are several international treaties and legal instruments that relate to the border between Guyana and Venezuela. The most important one is the Arbitral Award of 1899, which all parties, including Venezuela, had by an earlier treaty agreed to accept as a "full, final and perfect settlement". Pursuant to that Award, as I stated earlier, the boundary was demarcated on the ground and registered in a separate Agreement in 1905. There is also the Geneva Agreement of 1966,[8] which has as its purpose the solution of the controversy which "has arisen as a result of the Venezuelan contention that the Arbitral Award of 1899 is null and void".

212. Under the Agreement Guyana and Venezuela were required to choose one of the means provided in Article 33 of the Charter of the United Nations for the settlement of the controversy. Venezuela proposed negotiation; we proposed judicial settlement, and recommended the International Court of Justice. Unfortunately, Venezuela not only challenged our competence to suggest the International Court of Justice but persistently refused to consider our proposal for a judicial settlement. As a consequence our two countries are now, in strict accordance with the provisions of the Geneva Agreement, required to consider the selection of an appropriate international organ to choose the means of settlement.

213. From the inception of the Geneva Agreement in 1966 there have been repeated violations of it by Venezuela. I have already alluded to some of them. Notwithstanding those provocations, Guyana remains willing, in keeping with its policy of respect for legally binding treaties and peace and good-neighbourliness, to continue to honour the Geneva Agreement and to fulfil its obligations under it. On Friday last Guyana proposed to Venezuela that our two countries, in fulfilment of that Agreement, seek to agree on an appropriate international organ to choose a means of pacific settlement.

214. There are a number of organs of a regional nature, some of which may not be acceptable to Venezuela and others which may not be acceptable to us. However, there are three organs of such a wide international character that in our opinion any of them should be acceptable to both parties. These organs are: the International Court of Justice, the Security Council and the General Assembly of the United Nations.

215. We are therefore now suggesting for the consideration of the Government of Venezuela recourse to one of those organs. It is Guyana's belief that their international character recommends them as suitable. We put our confidence in them. We trust that Venezuela would be prepared to do likewise.

216. Let me repeat what my Prime Minister said at the thirty-sixth session of the Assembly:

> "We have no other wish than that of establishing a régime of peace, harmony and friendship with the people of Venezuela, with whom we share aspirations for a just and satisfying life and with whom we can together make a contribution to our development and that of our region and our continent". [*12th meeting, para. 64.*]

To that goal Guyana remains committed.

217. In the complexities which beset the international community the non-aligned movement continues to play an influential and beneficial role. As we speak out against intervention and interference, the non-aligned are aware that external efforts to divide and subvert us will continue. But we must stick resolutely and uncompromisingly to our principles and our policies.

218. Despite its imperfections, the United Nations system still offers mankind the best hope for a régime of international relations based on the rule of law.

219. In his courageous report on the work of the Organization the Secretary-General not only has analysed the weaknesses of that system but has also made constructive proposals for the improvement of its vitality and the enhancement of its effectiveness. The decline in its authority and the credibility dilemma facing the United Nations are as much functions and consequences of certain deficiencies of the system as of the growing propensity of an increasing number of nations to marginalize the Organization or to ignore its decisions.

220. We owe it to ourselves and to the Secretary-General to ponder seriously his assessment of the international situation, his views on the crisis of confidence facing the United Nations and the various ideas he has submitted for reinvigorating the process of multilateral diplomacy. We believe that the opportunity to do so which this session provides should be fully utilized. Guyana supports his proposals. We are particularly interested in his argument for a role for the Security Council which emphasizes a preventive, rather than a reactive, orientation.

221. As my President said in a statement on 5 October 1982 in Brasilia:

> "I believe the time is ripe for us to examine once again the possibility of establishing a United Nations security force with sufficient authority and strength to forestall aggression and prevent disputes from degenerating into armed conflicts."

222. Man's impulse is to survive and to live in peace with his fellow man. Our task as representatives of Governments is to give effect to this impulse. The pursuit of this task requires us to undertake serious dialogue, to act in concert, to adhere to the norms of international law and to make a reality of peaceful coexistence. History, I suggest, would indeed be unkind to us if we did not seek to build a world that is safer and in which justice prevails.

223. Mr. MASHINGAIDZE (Zimbabwe): It is my privilege to deliver the statement of the Republic of Zimbabwe to the Assembly on behalf of my Minister for Foreign Affairs, who has had to go home on urgent business. The following is his statement.

224. The Government and people of the Republic of Zimbabwe warmly greet the Secretary-General and all delegations and wish the session success. I should like to take this opportunity to congratulate Mr. Hollai on his election to the presidency of the thirty-seventh session of the General Assembly. He has my best wishes and those of my delegation in the very important responsibility which the Assembly has placed on his shoulders. He can certainly count on my delegation's co-operation with him in his work. May I also join other speakers who have paid a thoroughly deserved tribute to Mr. Kittani of Iraq, for the way in which he presided over the thirty-sixth session of the General Assembly, as well as the special sessions.

225. As this is the first opportunity for me to offer my personal congratulations to Mr. Pérez de Cuéllar, on his election to the highest office in the Organization, I wish to do so now. This is, of course, in addition to the messages of felicitation and good wishes which the Government of Zimbabwe communicated to the Secretary-General through the normal channels soon after his election and also during the recent special session of the General Assembly devoted to disarmament. The Government of the Republic of Zimbabwe is particularly satisfied at his election for several reasons, the most important of which are his outstanding qualities both as a person and as a diplomat, which are well known to all in this Assembly, and, equally important, the great honour which his election represents to his country, Peru, to the non-aligned movement and to the third world.

226. There can be no denying the fact that the thirty-seventh session of the General Assembly is taking place against the background of a critically deteriorating international situation. I wish to refer to some of the things which contribute to this atmosphere of fear, tension and insecurity in our world. In so doing it is my sincere hope that when we conclude this session we shall all, as individuals and nations, rededicate and recommit ourselves to the high principles of the Charter and to world peace.

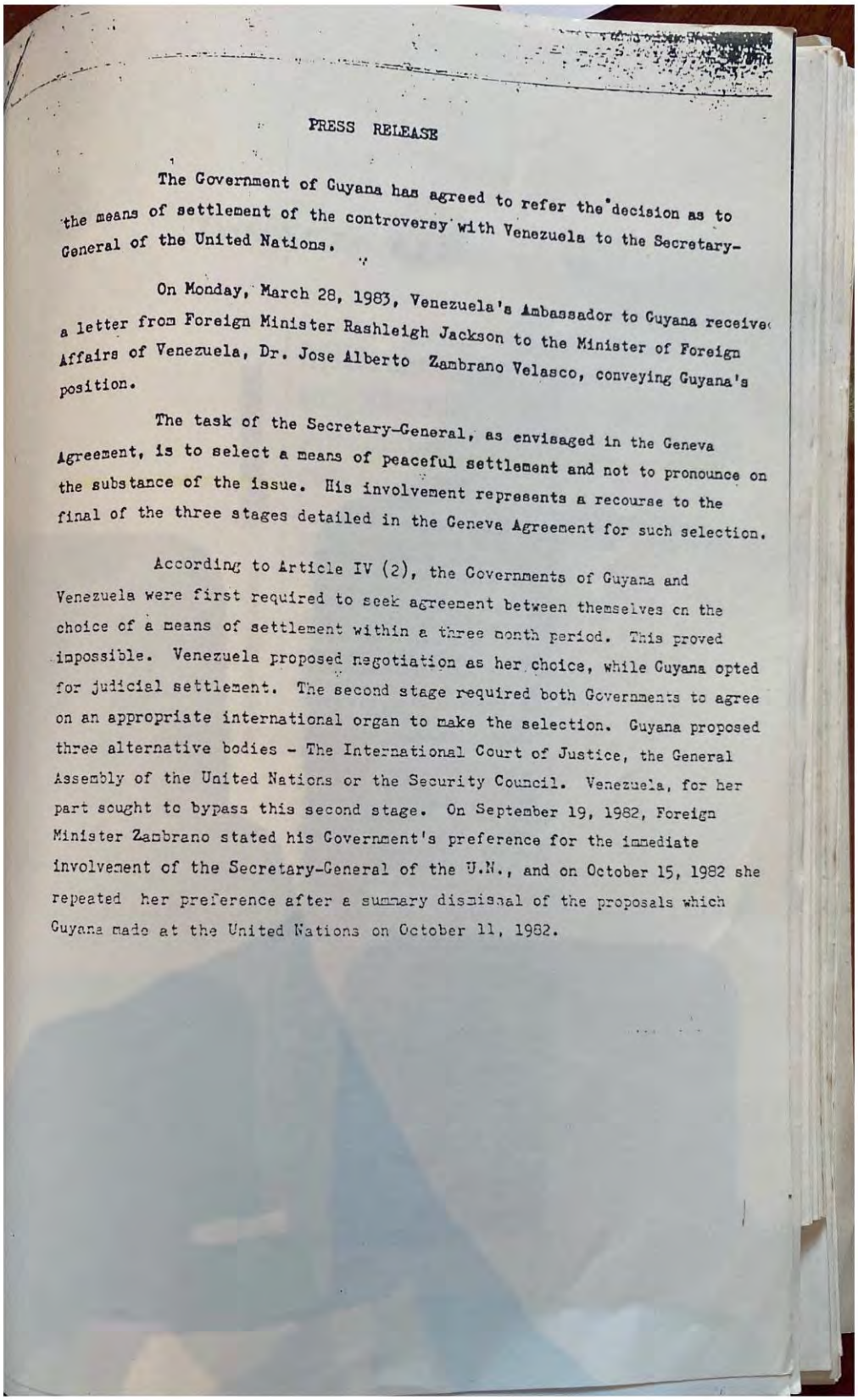
227. The current vicious arms race, especially the nuclear arms race, if it is not quickly and effectively checked, could lead only to a nuclear conflict, resulting in the complete destruction of this planet; and, as the Secretary-General has already warned in his report on the work of the Organization, nothing worth-while will survive a nuclear holocaust if one comes. Let us remind ourselves, therefore, that what is at stake here is the survival of the human race. If so far, however, we have been spared this 'no-victor, no-vanquished' war, it is perhaps because the world has not yet been so unfortunate as to produce persons sufficiently crazy and foolish to wish to inscribe their own names on the pages of history which no one will ever survive to recount.

228. It has already been observed by speakers before me that another serious threat to world peace and security is the production and stockpiling of more sophisticated conventional weapons. Although they know full well the destructive capacities of such inhuman weapons, some of the nations possessing them seem most eager to employ them in the pursuit of so-called national interests and objectives, the achievement of which does not seem beyond means that are more acceptable under civilized international law. In fact, those who possess these dangerous weapons of death and destruction often assume postures and positions which render ineffectual the mediatory and peace-keeping efforts of the United Nations and other international bodies concerned with seeking peaceful solutions to conflicts. Such has been the common frustration of the Security Council, the OAU, the non-aligned movement and other international and regional organizations. In most conflicts threatening regional or international stability, peace and security, such as, for instance, those in the Middle East, the Persian Gulf, the South Atlantic recently, Afghanistan, South-East Asia or southern Africa—to mention some of the current areas of tension and conflict—resolutions and decisions of those organizations are met more with defiance and violation than with compliance.

Annex 47

Press Release, Ministry of Foreign Affairs of Guyana, 30 March 1983

Ministerio de Relaciones Exteriores, Archivos de Fronteras, Box: E-04.



PRESS RELEASE

The Government of Guyana has agreed to refer the decision as to the means of settlement of the controversy with Venezuela to the Secretary-General of the United Nations.

On Monday, March 28, 1983, Venezuela's Ambassador to Guyana received a letter from Foreign Minister Rashleigh Jackson to the Minister of Foreign Affairs of Venezuela, Dr. Jose Alberto Zambrano Velasco, conveying Guyana's position.

The task of the Secretary-General, as envisaged in the Geneva Agreement, is to select a means of peaceful settlement and not to pronounce on the substance of the issue. His involvement represents a recourse to the final of the three stages detailed in the Geneva Agreement for such selection.

According to Article IV (2), the Governments of Guyana and Venezuela were first required to seek agreement between themselves on the choice of a means of settlement within a three month period. This proved impossible. Venezuela proposed negotiation as her choice, while Guyana opted for judicial settlement. The second stage required both Governments to agree on an appropriate international organ to make the selection. Guyana proposed three alternative bodies - The International Court of Justice, the General Assembly of the United Nations or the Security Council. Venezuela, for her part sought to bypass this second stage. On September 19, 1982, Foreign Minister Zambrano stated his Government's preference for the immediate involvement of the Secretary-General of the U.N., and on October 15, 1982 she repeated her preference after a summary dismissal of the proposals which Guyana made at the United Nations on October 11, 1982.

Annex 48

Communiqué issued at the conclusion of the 14th Meeting of the Conference of Heads of Governments of the Caribbean Community, 5-8 July 1993, Nassau, The Bahamas.

The Caribbean Community.

COMMUNIQUES PRESS RELEASES

COMMUNIQUE ISSUED AT THE CONCLUSION OF THE FOURTEENTH MEETING OF THE CONFERENCE OF HEADS OF GOVERNMENT OF THE CARIBBEAN COMMUNITY, 5-8 JULY 1993, NASSAU, THE BAHAMAS

· JULY 9, 1993 496 18 MINUTES READ

The Fourteenth Meeting of the Conference of Heads of Government of the Caribbean Community was held in Nassau, The Bahamas, 5-8 July 1993. It marked the Twentieth Anniversary of the signing of the Treaty of Chaguaramas which led to the establishment of the Caribbean Community and the formation of a Caribbean Common Market.

Heads of Government in attendance were:

The Rt. Hon. Erskine Sandiford, Prime Minister and Minister of Finance and Economic Affairs, Barbados; The Hon. Hubert A. Ingraham, Prime Minister of The Bahamas; The Rt. Hon. Manuel Esquivel, Prime Minister of Belize; The Rt. Hon.

development in Guyana-Venezuela relations. They took note of the contribution of the official visit by President Cheddi Jagan to Venezuela to that process and the fruitful exchanges which have taken place in both the public and private sectors since then.

Heads of Government welcomed the decision of the Governments of Guyana and Venezuela to pursue actively the search for a peaceful resolution to the controversy over the border under the auspices of the United Nations Secretary-General through the Good Offices of Sir Alister Mc Intyre. They expressed the hope that discussions within the Good Offices procedure would continue to be valuable.

Heads of Government reaffirmed support for the sovereignty and territorial integrity of Guyana.

Request for Observer Status in the Community

Heads of Government agreed to the establishment of a Joint Technical Group as the mechanism for pursuing co-operation with the French overseas Departments in the Caribbean particularly in the areas of Agriculture, Trade, Transportation, Education and Culture, Environment, Health, Industry and Tourism.

They agreed that in light of current activities towards the establishment of an Association of Caribbean States, of which Costa Rica is a potential member, relations with that country be further developed within that context.

CARICOM/UN Relations

Heads of Government welcomed the development of relations between the Community and the United Nations through the implementation of programmes of co-operation

Annex 49

Joint Communiqué issued on the occasion of the State visit to Venezuela to the President of the Cooperative Republic of Guyana, H. E. Mrs. Janet Jagan, Caracas, 23 July 1998 (Translation)

AHMPPRE. Archivo Histórico. Relaciones Bilaterales Venezuela-Guyana. Unidad Especial de Guyana. Proceso de Buenos Oficios. 1991-1999.

JOINT COMMUNIQUÉ ISSUED ON THE OCCASION OF THE STATE VISIT TO VENEZUELA OF THE PRESIDENT OF THE COOPERATIVE REPUBLIC OF GUYANA, H.E. MRS JANET JAGAN

Caracas, 23 July 1998

Upon the invitation of the President of the Republic of Venezuela, Dr. Rafael Caldera, the President of the Cooperative Republic of Guyana, H.E. Mrs Janet Jagan, accompanied by a high-level Delegation, paid a State Visit to Venezuela, from 21 to 23 July 1998.

During her visit, the President of the Cooperative Republic of Guyana laid a floral tribute at the sarcophagus that preserves the remains of the Liberator Simón Bolívar in the National Pantheon.

The Guyanese President was declared Distinguished Guest of the city of Caracas and was presented with the keys of the city by the Mayor.

President Caldera bestowed on the President of the Cooperative Republic of Guyana the Collar Order of the Liberator.

The Guyanese Head of State was welcomed by the Congress of the Republic of Venezuela in Joint Session of the Houses.

During her stay in Venezuela, President Jagan had talks with President Caldera, with whom she reviewed issues of bilateral, regional, and international interest. In turn, the other members of the Official Delegation accompanying the President held various working meetings with their Venezuelan counterparts.

The Presidents noted that year 1998 marked the anniversary of the signature of the Amazon Cooperation Treaty. They expressed their satisfaction with the progress achieved to institutionalise the Pro Tempore Secretariat. They renewed their commitment with the principles and objectives of the Treaty.

As neighbouring countries, located in the same Amazonian and South American geographical context, both Presidents reiterated the need of further consolidating their efforts to ensure the progress of their peoples and, at the same time, ensuring a balanced human and social development and the perpetuation of democratic government principles in the region.

Both presidents reiterated the firm commitment of their countries to the preservation of democracy and respect to human rights. They underscored their firm adherence to the principles of sovereign equality of the States, respect to the self-determination of peoples and non-intervention enshrined in the Charter of the United Nations.

The Presidents highlighted the open cordiality and friendship atmosphere that has characterised relations between the two countries and the direct dialogue they have had as a result of presidential meetings held over the last ten years.

Furthermore, they expressed their satisfaction with the progress achieved in bilateral relations, emphasising that this is the result of the dynamic contact made by different personalities at the highest political, economic, and commercial levels of both nations. In this respect, both Presidents expressed their desire to further expand and deepen these relations.

The Presidents evaluated the progress of the process for a mutually satisfactory solution to the territorial controversy between Venezuela and Guyana, and they reiterated their firm commitment to resolve it peacefully. In this sense, they expressed their satisfaction with the efforts made by Sir Alister McIntyre, Personal Representative

of the United Nations Secretary-General, and reaffirmed their decision to continue supporting the McIntyre Process towards achieving a definitive settlement, as provided by the Geneva Agreement of 1966.

Aware of the extreme importance of sustainable environmental management for economic and social development, both Presidents agreed that, under the aegis of the McIntyre Process, Venezuela and Guyana shall initiate negotiations towards an Agreement on environmental issues.

For the purposes of deepening and providing a more dynamic content to bilateral relations, both Presidents agreed to take a comprehensive and global approach to the common agenda, having therefore decided the following scheme:

-A Binational High-Level Commission, regularly chaired by the Ministers of Foreign Affairs, shall supervise the work of sub-commissions in the following areas:
Politics
Environment
Commercial exchange and economic integration
Consular matters
Culture
Health
Agriculture, livestock and agro-industry
Transport

A meeting of officers shall be convened within forty-five (45) days, using the diplomatic channels, to finalise the terms of reference and the work programme. The date and venue shall be agreed through diplomatic channels.

In recognising the relevance of rational development and exploitation of marine living resources, both Presidents agreed on designating, through diplomatic channels, within thirty days, the respective work teams aimed at identifying the specific

cooperation areas in the field of exploration and exploitation of marine living resources. This encompasses the establishment of joint ventures for the processing and commercialisation of said resources.

Concerned by the threat posed by the unlawful traffic of narcotic substances and related crimes, the Presidents acknowledged the need to collaborate in this area under the Anti-Drug Strategy in the Hemisphere. They agreed to treat as urgent the meeting of the Joint Commission Venezuela/Guyana for the Prevention, Control and Suppression of the Unlawful Consumption and Traffic of Narcotic and Psychotropic Substances.

They called for further effort to pursue cooperation on health matters and encouraged competent bodies to continue joint efforts under the programme agreed by the two countries, particularly concerning malaria and the vector control of other illnesses.

Both Presidents agreed that, at bilateral level, they should promote measures to improve cooperation and exchange between the Armed Forces of both countries.

Both Heads of State expressed the opinion that the fight against crime requires joint action by the Parties and that increased collaboration between police authorities of both countries shall provide protection and greater peacefulness to the respective communities.

During the visit, President Jagan met with authorities of the Venezuelan Investment Fund, with whom she exchanged viewpoints concerning the continuity of Economic Cooperation Agreements and to identify other sources of funding for development programmes. Likewise, she had an interview with the President of the Foreign Trade Bank. The talks included the possibility of granting a line of credit to fund exports of Venezuelan non-traditional goods. A meeting was also held with the Board of Directors of Petróleos de Venezuela S.A. (PDVSA). Representatives of the Guyanese private sector attended these meetings.

The Guyanese President met with Venezuelan and Guyanese entrepreneurs, convened under the auspices of FEDECÁMARAS. A Binational Business Committee was created following this meeting.

President Caldera expressed his satisfaction with the presence of the private sector Delegation accompanying President Jagan during her visit to Venezuela. The talks with their Venezuelan counterparts were a good omen to enhance economic and commercial relations between the two countries, particularly in promoting trade, investment and strengthening their institutional liaisons.

Aware of the importance for both countries of education and cultural ties, both Presidents agreed on highlighting the work of the Venezuelan Institute for Culture and Cooperation, based in Georgetown, for the teaching of the Spanish language and other cultural activities.

Both Heads of State deemed it favourable for bilateral relations to further promote cultural activities that may benefit both communities. They encouraged the promotion of youth exchange between the two countries, including the Venezuela's National System of Youth Orchestras.

Both Presidents reiterated their satisfaction with the decision adopted by the Heads of State and Government at the 2nd Summit of the Americas, held in April this year in Santiago de Chile, of initiating negotiations for the establishment of a Free Trade Area of the Americas (FTAA.) They expressed their strong desire that special attention is accorded to the needs and particularities of both small vulnerable economies and the economies of intermediate-development countries to allow their effective participation in the free-trade process. Against this background, President Jagan indicated that the establishment of a Regional Integration fund may help alleviate the condition of the smallest and more vulnerable economies.

They recognised the role played by the Organisation of American States (OAS) in the Summit of the Americas process. In their exchange of views on the issue of the Inter-American Convention against Corruption, the Presidents expressed their satisfaction with the progress achieved and expressed their hope that it could be signed and ratified by all the countries of the Hemisphere.

In recognising the need for increased ties between the two countries within the Caribbean Basin, the Presidents expressed their commitment towards supporting the activities of the Association of Caribbean States. In this respect, both Heads of State were of the opinion that a Summit of the A.C.S. should be convened early next year to add impetus to the work developed by the Association.

President Jagan thanked President Caldera for attending the 19th Meeting of Heads of Government of the Caribbean Community (CARICOM), held in Saint Lucia, from 30 June to 4 July 1998.

The Presidents noted the progress made by the CARICOM countries for the creation of a single economy and market, which would facilitate the remotion of barriers to free trade among the countries of the Community and would contribute to further strengthening the integration process in the sub-regions.

Both Presidents also expressed their interest in identifying different ways to contribute to the economic growth in the region, through the expansion of bilateral and multilateral trade. In this respect, they supported facilitating the negotiation of a Free Trade Agreement between CARICOM and Venezuela.

They expressed their satisfaction with the ongoing approach between the Andean Community and the Caribbean Community, aimed at initiating negotiations for the establishment of a free trade area between the two sub-regions.

They reaffirmed their commitment with the eradication of poverty and unemployment. President Jagan seized the occasion to renew the call for a new Human Global Order for the universal improvement of economic, social and political conditions.

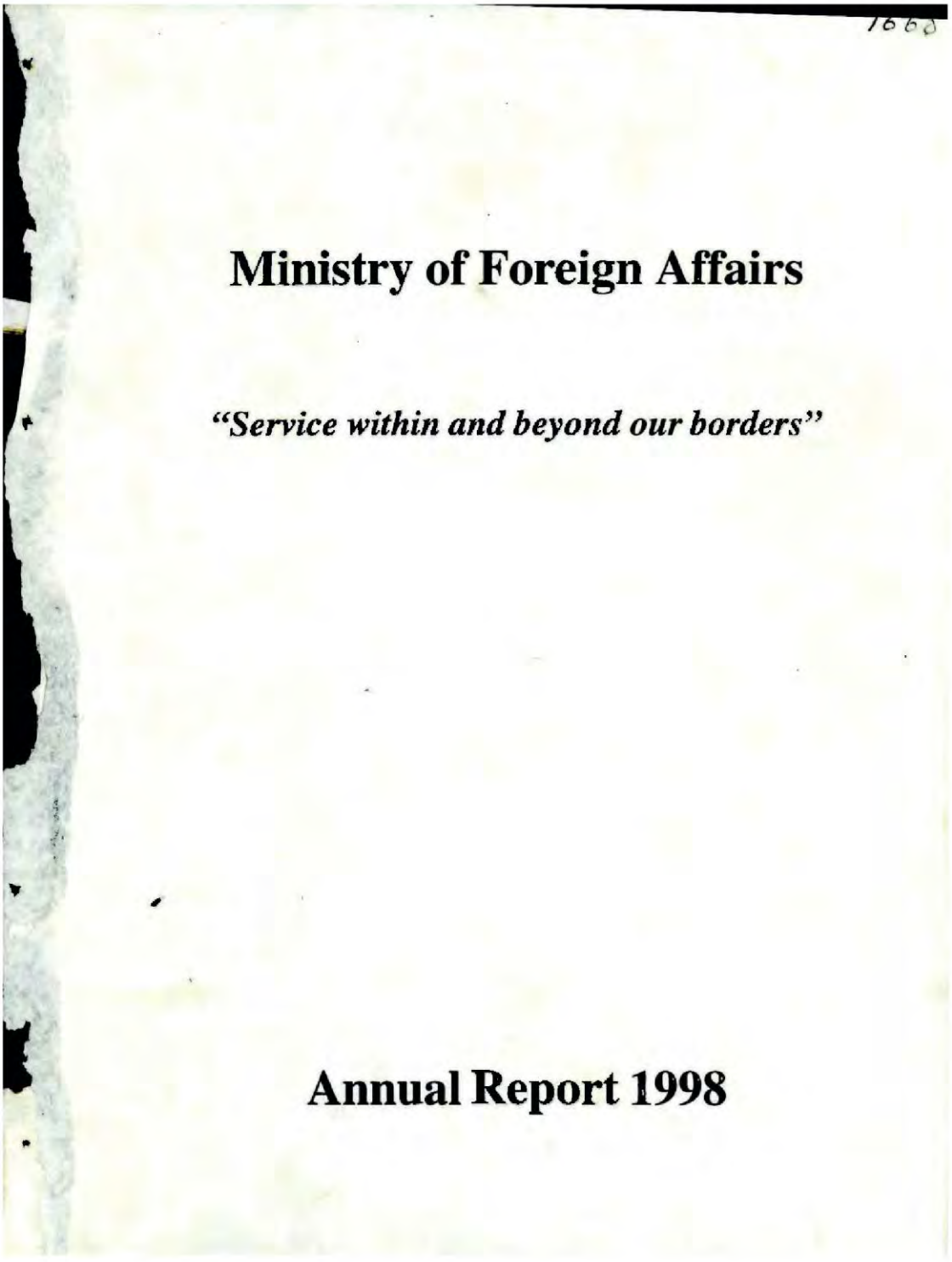
During her visit, President Jagan took the opportunity to meet with Guyanese nationals living in Venezuela.

The President of the Cooperative Republic of Guyana was most grateful for the warm hospitality she and her delegation received from the Government and People of Venezuela during their stay in the country.

Annex 50

Ministry of Foreign Affairs, Service within and Beyond our Borders, Annual Report, 1998 (Excerpt)

Ministerio del Poder Popular para Relaciones Exteriores, Archivos, Bibliotecas y Divulgación
Casa Amarilla.



Ministry of Foreign Affairs

"Service within and beyond our borders"

Annual Report 1998

CARACAS

EMBASSY OF GUYANA

INTRODUCTION

A number of events combined to give stimulus to the relations between Guyana and Venezuela in 1998. The Embassy simultaneously managed all aspects of Guyana/Venezuela bilateral relations including political, commercial and trade relations; Consular affairs and Guyana's relations with 16 other countries in what turned out to be an inordinately busy year.

The following report sets out the main highlights of the work of the Embassy in 1998.

BILATERAL RELATIONS

The year 1998, the last of Rafael Caldera's presidency of Venezuela, was marked by a significant milestone in the Guyana-Venezuela bilateral relationship following a period of relative sluggishness. The trajection in the relationship was provided by President Janet Jagan's state visit to Venezuela in July of that year which featured a meeting between herself and President Caldera, several meetings among business leaders of the two countries as well as a meeting of President Jagan and her delegation with Guyanese nationals resident in Caracas.

The principal result of the state visit was an agreement on the part of the two leaders to establish a High Level Bilateral Commission between the two countries. In October the same year officials of the respective Foreign Ministries finalised the terms of reference and work programme of the High Level Bilateral Commission at a meeting in Georgetown. The Commission is composed of sub-committees tasked with promoting bilateral cooperation in the following areas: Consular Matters; Health; Agriculture & Livestock; Trade and Economic Cooperation; Political Consultations; Culture; Transportation; the Environment; Marine Resources and Prevention, Control and Suppression of the Unlawful Consumption and Traffic in Narcotic and Psychotropic Substances. The agreements arrived at, were embodied in a

joint communiqué which was issued at the conclusion of the state visit.

Given that Venezuela's general elections were scheduled for December 1998, the outgoing Caldera administration elected to provide the incoming government the opportunity of approaching the work programme of the Commission with a disposition of its own, with the result that the Commission held no further meetings for that year.

President Jagan was accompanied on her state visit by reportedly the largest business delegation to have left Guyana up to that time. Deliberations between national and business leaders of the two countries were upbeat and fruitful. They yielded an agreement to establish a Joint Business Council which was foreseen as the precursor to a bi-national Chamber of Commerce. Other aspects of trade and commerce with Venezuela are set out in the commercial section of this report.

THE TERRITORIAL CONTROVERSY

During the state visit, the two Presidents reaffirmed the will of their respective countries to continue the search for a peaceful solution within the framework of the United Nations' Good Officer process as provided for in the 1966 Geneva Agreement.

Nonetheless, the Joint Communiqué which was issued at the end of the visit indicated that the two countries would initiate negotiations to arrive at an agreement on environmental issues. Venezuela stirred a controversy over this issue with a statement by its Foreign Minister to the effect that the proposed environmental agreement would relate only to Essequibo. Guyana consistently reiterated its position that the proposed agreement was to be based solely on multilateral treaty obligations entered into by Guyana and Venezuela and must therefore relate to all the national territory of each country. Sir Alister McIntyre expressed an opinion on the issue which was perceived to be favourable to Guyana and which led some in Venezuela to call for his substitution as the United Nation's Good Officer. At the end of 1998 this matter was still in abeyance.

In November, President Caldera surprised his Brazilian hosts by using the occasion of the inauguration of the Santa Elena de Uairen - Manaus Highway to reaffirm Venezuela's

claim to Essequibo. The Venezuelan President pointed out that "Venezuela has rights in that area" upon seeing a Brazilian map which excluded a depiction of the "zona en reclamación".

During a seminar on Venezuela's borders in early February, however, the Venezuelan Foreign Minister Miguel Angel Burelli Rivas remarked that "it seems difficult, at this point, that Venezuela can recover the entire 159,500 square kilometres of Essequibo". He added that this was because Guyana was in possession of the territory and was small and weak compared to Venezuela. The Venezuelan Foreign Minister probably did not expect his remarks to have been published. This was one of the scarce occasions in the evolution of the controversy when Venezuela publicly qualified its goal of acquiring all of Guyana's territory west of the Essequibo river.

During the Venezuelan electoral campaign of 1998, the controversy, unexpectedly, was not an issue on the front burner. Remarks attributed to the eventual winner of the elections, Lieutenant-Colonel Hugo Chavez, evinced a disposition on his part during the campaign to be patient and flexible on the issue, even though he was forthright in his conviction that all of Essequibo belonged exclusively to Venezuela.

However, in December, immediately after Venezuela's elections were over and President Chavez was declared the winner, Guyana's territorial integrity was violated by a Venezuelan army aircraft which swooped close to a Guyanese military outpost near the western border. Guyana protested the incident. Venezuela's explained unconvincingly that the incident was part of an annual salute to border garrisons and that no hostile intention lay behind the manoeuvre.

President Chavez won the elections on promises to eliminate corruption, raise the standard of living of Venezuela's lower classes, stimulate economic development and guarantee human rights. In foreign affairs he undertook to strengthen cooperation and integration with the countries of the Caribbean and South America based on the visionary pan-americanist outlook of Simon Bolivar. As the year came to a close there was much to look forward to.

Annex 51

Joint Communiqué issued at the end of the State visit to Guyana of H. E. Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, 19-20 February 2004 (Translation)

AHMPPRE. Archivo Histórico. Política Internacional: Relaciones Bilaterales Venezuela-Guyana. Proceso Buenos Oficios. 2000-2007.

Translation

JOINT COMMUNIQUÉ ISSUED ON THE CONCLUSION OF THE STATE VISIT TO GUYANA BY HIS EXCELLENCY HUGO CHÁVEZ FRÍAS, PRESIDENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Georgetown, February 19-20, 2004

At the invitation of His Excellency Bharrat Jagdeo, President of the Republic of Guyana, His Excellency Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, paid a State Visit to Guyana on February 19-20, 2004.

2. During his State Visit, President Chávez held official talks with President Bharrat Jagdeo and members of the cabinet of Guyana. He received courtesy calls from the Honorable Hari Narayen Ramkarran, Speaker of the National Assembly, the Honorable Robert Corbin, M.P., leader of the opposition, and His Excellency Dr. Edwin Carrington, Secretary General of the Caribbean Community.

3. His Excellency President Hugo Chávez Frías addressed a gathering of parliamentarians and civil leaders.

4. In their review of the relations between Guyana and Venezuela, their Excellencies Presidents Bharrat Jagdeo and Hugo Chávez Frías took note of the steady progress which was being made in strengthening the bonds of friendship, cooperation and understanding between their two countries. They noted, in particular, that a spirit of cordiality had permeated the approach to the dialogue between the two sides under the auspices of the United Nations Good Offices Process in the search for a peaceful and practical settlement of the controversy in accordance with the Geneva Agreement of 1966.

5. The Heads of State reiterated their countries' commitment to the Good Offices Process ad expressed their appreciation for the work of Mr. Oliver Jackman, the Personal Representative of the United Nations Secretary General.

6. The Presidents exchanged ideas on their national programs for poverty alleviation, social justice and the deepening of their national democratic processes. They reaffirmed their commitment to the fight against poverty, which constitutes the main threat to international peace and development.

7. They therefore expressed their governments' continuing support to the United Nations Millenium Development Goals aimed at reducing poverty by fifty percent by the year 2015. They however noted if international donor assistance to developing countries does not increase appreciably, the goal of reducing poverty will not be realized.

8. The Presidents decided that the bilateral cooperation programs should be linked with the poverty alleviation strategies and plans of both states.

9. The Presidents noted that both the New Global Human Order and the International Humanitarian Fund, initiatives that have been promoted by Guyana and Venezuela, respectively, have similar objectives and could make significant contributions towards the realization of the strategies to eradicate poverty globally. They therefore agreed to coordinate their efforts and

activities aimed at achieving international acceptance and support for the objectives of the two proposals. In this respect they recognized the efforts being made through the Latin American Economic System (SELA) and the Adean Cooperation Fund (CAF) to support the feasibility studies for the establishment of the International Humanitarian Fund.

10. The Heads of State reviewed the efforts aimed at the implementation of programs for the intensification of cooperation between their two countries. They directed that strategies be developed for the acceleration of the rate of implementation of the cooperation activities of the various Subcommittees and Working Groups established under the Guyana-Venezuela High Level Bilateral Commission. They requested their respective Foreign Ministers to conduct a thorough review of the cooperation programs and to monitor their further execution.

11. President Bharrat Jagdeo briefed President Hugo Chávez on Guyana's recent qualification for assistance under the Highly Indebted Poor Countries (HIPC) initiative and the positive impact which this assistance could have on the poverty alleviation and social sector programs in Guyana.

12. It was noted that because of its HIPC conditions, Guyana will not be able to access the benefits of the Caracas Energy Cooperation Agreement. At the request of His Excellency the president of Guyana, President Chávez agreed that Venezuela would favorably consider adjusting the terms and conditions of the agreement so that it can be made compatible with Guyana's HIPC obligations. It was agreed that the relevant technical officials would meet before the end of March 2004 to resolve this issue.

13. The president of Venezuela agreed to a cancellation of the debt owed by Guyana to Venezuela. A technical working group would be established to give effect to this decision.

14. The presidents emphasized the importance of constitutional reforms, the rule of law, citizens' participation, and the consolidation of democratic governance to social and economic stability. In this context, they exchanged views on the initiatives taken by their governments to build consensus and consultation across the political spectrum in their countries.

15. President Jagdeo briefed President Chávez on the developments in the integration process within the Caribbean Community (CARICOM) and highlighted in particular the progress being made towards the establishment of the CARICOM Single Market and Economy. President Jagdeo observed that the integration arrangements would establish a solid basis for the development of the Region and allow for closer foreign policy coordination to address regional and international developments.

16. Both presidents emphasized the importance of trade to regional development and requested the early resumption of negotiations aimed at strengthening the trade agreement between Venezuela and CARICOM.

17. The Presidents reviewed the achievements of the Association of Caribbean States (ACS) since the third Summit in Margarita, Venezuela, in 2001. They took note of the fact that significant progress was made towards greater integration in the areas of air transport and tourism. They emphasized the importance of the ACS Summit of Heads of State and Government as the appropriate forum for strengthening the Association and for guiding it towards the new challenges and objectives.

18. They placed on record their appreciation for the services of the outgoing Secretary General, Dr. Norman Girvan, and expressed their support for the newly elected Secretary General, Mr. Rubén Arturo Silié.

19. The Presidents of Guyana and Venezuela discussed the Integration of Regional Infrastructure of South America (IIRSA) Initiative and reiterated their commitment to the realization of its objectives. In this regard they endorsed the proposal for a Guyana-Venezuela road link and agreed to jointly seek international resources to conduct the feasibility studies needed to implement this proposed project.

20. In this context the Presidents noted the importance of creating an environment to allow for the realization of the economic potential of the areas that would be opened up as a result of the proposed road link. Both Presidents therefore agreed to adopt policies and measures that would encourage economic activities to ensure the viability of the proposed road link.

21. The Presidents reaffirmed their commitment to continue to play active roles in the Amazonian Cooperation Treaty Organization to develop, consolidate and coordinate national strategies for the preservation of their environmental heritage and the sustainable development of their countries.

22. The Presidents took note of the decisions adopted at the Special Summit of the Americas held in Monterrey, Mexico. They agreed that the interests of the smaller economies of the hemisphere must be safeguarded in any project of economic integration.

23. The two Heads of State praised the role of the Organization of American States (OAS) as a key regional organization concerned with the preservation of peace and the promotion of development in the Americas. In this regard they recognized the need to strengthen the OAS mechanisms for combating poverty and agreed to jointly work with the organization to hasten the consideration of the proposed Inter-American Social Charter.

24. The Presidents agreed to closer collaboration in the context of the Rio Group and the Latin American-Caribbean and European Union Summit. They noted that these groupings offered welcome opportunities for extended political dialogue and wider economic and social partnerships.

25. Presidents Bharrat Jagdeo and Hugo Chávez Frías discussed the current international trading system, and the efforts being made through the World Trade Organization to ensure the development of a balanced, fair and equitable trading system that is based on internationally acceptable rules for all nations. They underscored the fact that international trade, investment and economic cooperation are critical to the welfare of all states, especially those with small and vulnerable economies.

26. They called on the international community to guarantee, in an increasingly challenging international environment, characterized by trade liberalization and the erosion of trade preferences, special and differential treatment that takes into account the structural differences and special needs of developing countries.

27. The Presidents reaffirmed their commitment to multilateralism as a guiding principle in international relations and expressed their support for the initiatives aimed at the reform and

restructuring of the United Nations given the continuing relevance of this organization to the maintenance of international peace and security; the strengthening of international cooperation, the promotion of social and economic development and respect for international law. In this framework, they agreed to promote initiatives, with special emphasis on the social programs carried out by the United Nations.

28. Their Excellencies Presidents Bharrat Jagdeo and Hugo Chávez Frías recognized the threats to the security of states posed by international terrorism and other trans-boundary crimes, such as drugs and arms trafficking and money laundering. They noted the heavy toll which the HIV/AIDS pandemic continues to take on the region's health. They stressed the importance of a coordinated and integrated approach within regional fora to respond effectively to these challenges.

29. In concluding their discussions both Presidents expressed their satisfaction with the results of their dialogue and welcomed its promise for the further enhancement of relations between Guyana and Venezuela. They were convinced that their meeting would give added impetus to cooperation in regional and international matters.

30. His Excellency President Hugo Chávez Frías expressed his gratitude to the government and people of Guyana for the hospitality afforded him and his delegation during his State Visit and extended an invitation to His Excellency President Bharrat Jagdeo to pay a state visit to Venezuela at a mutually convenient time.

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Hugo Chávez Frías
President of the
Bolivarian Republic of Venezuela

[Illegible signature]

Bharrat Jagdeo
President of the
Republic of Guyana

BOLIVARIAN REPUBLIC OF VENEZUELA

[COAT OF ARMS]
MINISTRY OF FOREIGN AFFAIRS

Annex 52

Joint Statement of Presidents Hugo Chávez Frías and Bharrat Jagdeo on the occasion of the official visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela, 21 July 2010
(Translation)

AHMPPRE. Archivo Histórico. Relaciones Bilaterales Venezuela-Guyana. Unidad Especial de Guyana. Proceso de Buenos Oficios. 2008, 2010, 2011, 2012, 2013, 2014.

Translation

JOINT STATEMENT OF PRESIDENTS HUGO CHAVEZ FRÍAS AND BHARRAT JAGDEO ON THE OCCASION OF THE OFFICIAL VISIT OF THE PRESIDENT OF THE COOPERATIVE REPUBLIC OF GUYANA TO THE BOLIVARIAN REPUBLIC OF VENEZUELA.

Caracas, July 21, 2010.

The President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, and the President of the Cooperative Republic of Guyana, Bharrat Jagdeo, meeting on the historical occasion of the first official visit of President Jagdeo to Venezuela, expressed their satisfaction over the current status of the relations between Guyana and Venezuela which were founded on the principles of solidarity, cooperation and complementarities. They discussed issues of mutual interest on the global and regional agenda and reviewed the bilateral program of cooperation.

President Hugo Chávez Frías and President Bharrat Jagdeo:

1. Verified the good level at which relations are developing between the two countries, which consolidate and fortify on the basis of the principles of solidarity, cooperation and complementarities.
2. Mandated their respective Foreign Ministries to work on the convening of the Fifth High-Level Binational Commission Meeting (COBAN) to be held in Caracas.
3. Expressed their determination to advance the necessary arrangements to execute the Feasibility Study and the Environmental Impact Study of the Venezuela-Guyana Road Link (Tumeremo to Georgetown), as a necessary undertaking for development and integration between both countries, in particular putting in place the process in the Caribbean Development Bank (CDB) for the selection of Consultants. In that context, they agreed to instruct the Guyana-Venezuela Joint Technical Working Group on the proposed Guyana-Venezuela Road Link to immediately commence discussions with the

Caribbean Development Bank with a view to having that institution act as the conduit for the resources for the conduct of the pre- and feasibility studies of the Road Link.

4. Expressed their satisfaction over the effective functioning of the petroleum cooperation program under the PETROCARIBE Scheme. Likewise, they welcomed the progress of the social project financed through the Alba-Caribe Fund, concerning the construction of the Centre for Rehabilitation and Reintegration for Homeless Persons.
5. President Jagdeo expressed his appreciation at the timely decision of the Venezuelan Government to purchase Guyanese rice, which has brought benefit to the small farmers of the rice industry, highlighting the values of fair trade.
6. Noted the progress of the Project for the Improvement of the Cold Chain for Non-Traditional Agricultural and Dairy Products, from which small Guyanese producers would benefit by having access to markets further afield.
7. The Venezuelan President informed his Guyanese counterpart of the recent approval of the necessary resources for carrying out the exercise of updating the hydrographical data of the Mahaica, Mahaicony and Abary rivers in Guyana, needed to execute the dredging works in cooperation with Venezuela.
8. Recognized the help that regional and subregional organizations can offer for the peaceful resolution of local controversies, and for preventive diplomacy. In this sense, they highlighted the value and importance of the Union of South American Nations (UNASUR) as a mechanism for consensus and an effective political space to solve our differences in South America, reinforcing their commitment for their development and consolidation. The Venezuelan President congratulated his Guyanese counterpart for the recent appointment of his country to assume the Pro Tempore Chairmanship of this regional organization and confirmed his participation in the next Summit to be held in Georgetown in August this year.

9. President Jagdeo announced his Government's willingness to purchase 100 VENIRAN tractors, in a demonstration of the commitment to intensify the commercial links between both countries.
10. Expressed their satisfaction over the signing of the following Bilateral Agreements, which would pave the way for enhanced cooperation between their two countries in different fields: (a) Letter of Commitment between the Ministry of the People's Power for Food of the Bolivarian Republic of Venezuela and the Ministry of Agriculture of the Cooperative Republic of Guyana; (b) Memorandum of Understanding between the Ministry of the People's Power for Energy and Petroleum of the Bolivarian Republic of Venezuela and the Ministry of Foreign Affairs of the Cooperative Republic of Guyana for the Supply of Urea; c) Memorandum of Understanding between the Ministry of People's Power for Energy and Petroleum of the Bolivarian Republic of Venezuela and the Ministry of Foreign Affairs of the Cooperative Republic of Guyana for the Supply of Jet A I; and d) Memorandum of Understanding between the Government of the Bolivarian Republic of Venezuela and the Government of the Cooperative Republic of Guyana for the Creation of a Committee for the Prevention, Investigation and Settlement of Fishing Incidents.
11. Finally, they reaffirmed their confidence in the Good Offices Process as a mechanism that would assist the Parties to advance towards a practical and satisfactory solution for the border controversy, without affecting good bilateral and regional relations. In this sense, both Presidents welcomed the appointment of and expressed their confidence in the work of Professor Norman Girvan as the Personal Representative of the United Nations Secretary General responsible for the Good Offices Process. President Chávez announced the designation of Ambassador Roy Chaderton as the Facilitator for Venezuela. President Jagdeo announced the designation of the Honorable Ralph Ramkarran as Guyana's Facilitator.

President Bharrat Jagdeo expressed his sincere gratitude to President Hugo Chávez and the Venezuelan people, on his own behalf and on behalf of his delegation for the kindness and hospitality received during his visit to the Bolivarian Republic of Venezuela.

Signed in Caracas on July 21, 2010.

[Illegible signature]	[Illegible signature]
Hugo Chávez Frías	**Bharrat Jagdeo**
President of the Bolivarian Republic of Venezuela	President of the Cooperative Republic of Guyana

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Annex 53

Joint Declaration issued on the conclusion of the State visit to Guyana by H. E. Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, 31 August 2013

AHMPPRE. Archivo Histórico.Comisión Bilateral de alto nivel Venezuela-Guyana (COBAN). 2011, 2012, 2013, 2014.

JOINT DECLARATION ISSUED ON THE CONCLUSION OF THE STATE VISIT TO GUYANA BY HIS EXCELLENCY NICOLÁS MADURO MOROS, PRESIDENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

GEORGETOWN, AUGUST 31, 2013

1. At the invitation of His Excellency Donald Ramotar, President of the Cooperative Republic of Guyana, His Excellency Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, paid a one day visit to Guyana on August 31, 2013.

2. In their review of the relations between Guyana and Venezuela, Their Excellencies Presidents Donald Ramotar and Nicolás Maduro Moros noted the accelerated progress which was being made to enhance the bonds of cooperation, friendship, and understanding between their two countries.

3. They noted, in particular, that greater impetus was given to the United Nations Good Offices Process since the appointment of the current Personal Representative of the United Nations Secretary General, Professor Norman Girvan and recommitted that the search for a peaceful and practical settlement of the controversy in accordance with the Geneva Agreement of 1966, was one that should be pursued under the Good Offices Process. In this regard, they agreed to pursue with the United Nations Secretary General the reappointment of Professor Girvan for a further term.

4. The Heads of State received the report of the 5th Meeting of the Guyana/ Venezuela High Level Bilateral Commission which was held on Friday, August 30, 2013, under the areas of Political Consultation; Food and Agriculture; Air, Land and Sea Transportation; Energy; and Education and Culture.

5. Arising out of these discussions, the Presidents noted with satisfaction the continuity of the exports of rice and paddy to Venezuela and the supply of petroleum to Guyana. Also, they acknowledged the potential cooperation under the Petrocaribe mechanism and the new cooperation initiatives proposed, which include the bilateral drugs agreement, furtherance of the proposals for cultural cooperation and capacity building in the area of Spanish language training for Guyanese and English language training for Venezuelans.

6. They agreed to start a direct air link between the two countries through CONVIASA airline, with two flights weekly and a capacity of 70 passengers. In this sense, in order to realize the complementarity in this sector, the Bolivarian Republic of Venezuela offered to the Government of Guyana technical training through an exchange of air inspectors.

7. They directed that strategies be developed to hasten the rate of implementation of the outstanding and the new cooperation initiatives under the Guyana/ Venezuela High Level Bilateral Commission. They requested their respective Foreign Ministers to closely monitor the further execution of these activities.

8. Both Presidents emphasized the importance of trade to regional development and recalled the views expressed by His Excellency Nicolás Maduro Moros, at the recently concluded 34th Regular Meeting of the Conference of Heads of Government of the Caribbean Community regarding the strengthening of the trade relations between Venezuela and CARICOM. They noted also the proposals for cooperation between CARICOM and Venezuela including areas such as security, air and sea transportation, energy and the development of a social and cultural plan.

9. Both Presidents expressed optimism for the potential that exists for an enhanced relationship between CARICOM and Venezuela that would redound to the benefit of their peoples.

10. The Presidents reviewed the achievements of the Petrocaribe mechanism. President Ramotar congratulated President Maduro on the initiative by Venezuelan to establish the Petrocaribe Economic Zone (PEZ), which has been created to safeguard and manage the resources in the region. The Presidents express their commitment to build up emphasized the importance of the Petrocaribe Summit of Heads of State and Government as the appropriate forum for strengthening the initiative and guiding it towards the new challenges and objectives that are imminent.

11. They acknowledged the roles of UNASUR and CELAC in bringing the Latin American and Caribbean region closer together and in providing a voice for the region on international fora to address issues of interest and concern to the region, including peace and security, climate change and sustainable development.

12. President Nicolás Maduro Moros commended Guyana on attaining the Associate Membership status of MERCOSUR. Within this context, the two Presidents emphasized the importance of MERCOSUR not only

with respect to integration in the area of trade, but also in the development of cooperation in many sectors.

13. His Excellency President Nicolás Maduro Moros and His Excellency President Donald Ramotar addressed a gathering of several groups from civil society and social movements. They underscored the importance of the participation of all groups in the democratic process. Their Excellencies engaged in meaningful exchanges with participants from the agriculture sector, trade unions, the various ethnic organizations, women's movements, the religious community, youth and others.

14. In concluding their discussions, both Presidents expressed their satisfaction with the results of their dialogue and welcomed its promise for the further enhancement of relations between Guyana and Venezuela. They were convinced that their meeting would give added impetus to cooperation in bilateral, regional and international matters.

15. His Excellency President Nicolás Maduro Moros expressed his gratitude to the Government and People of Guyana for the hospitality afforded him and his delegation during his State visit and extended an invitation to His Excellency President Donald Ramotar to pay a visit to Venezuela at a mutually convenient time.

Done and signed on this 31th day of August, 2013, in Georgetown, in the English and Spanish languages, both texts being equally authentic.

Donald Ramotar
President of the Cooperative Republic of Guyana

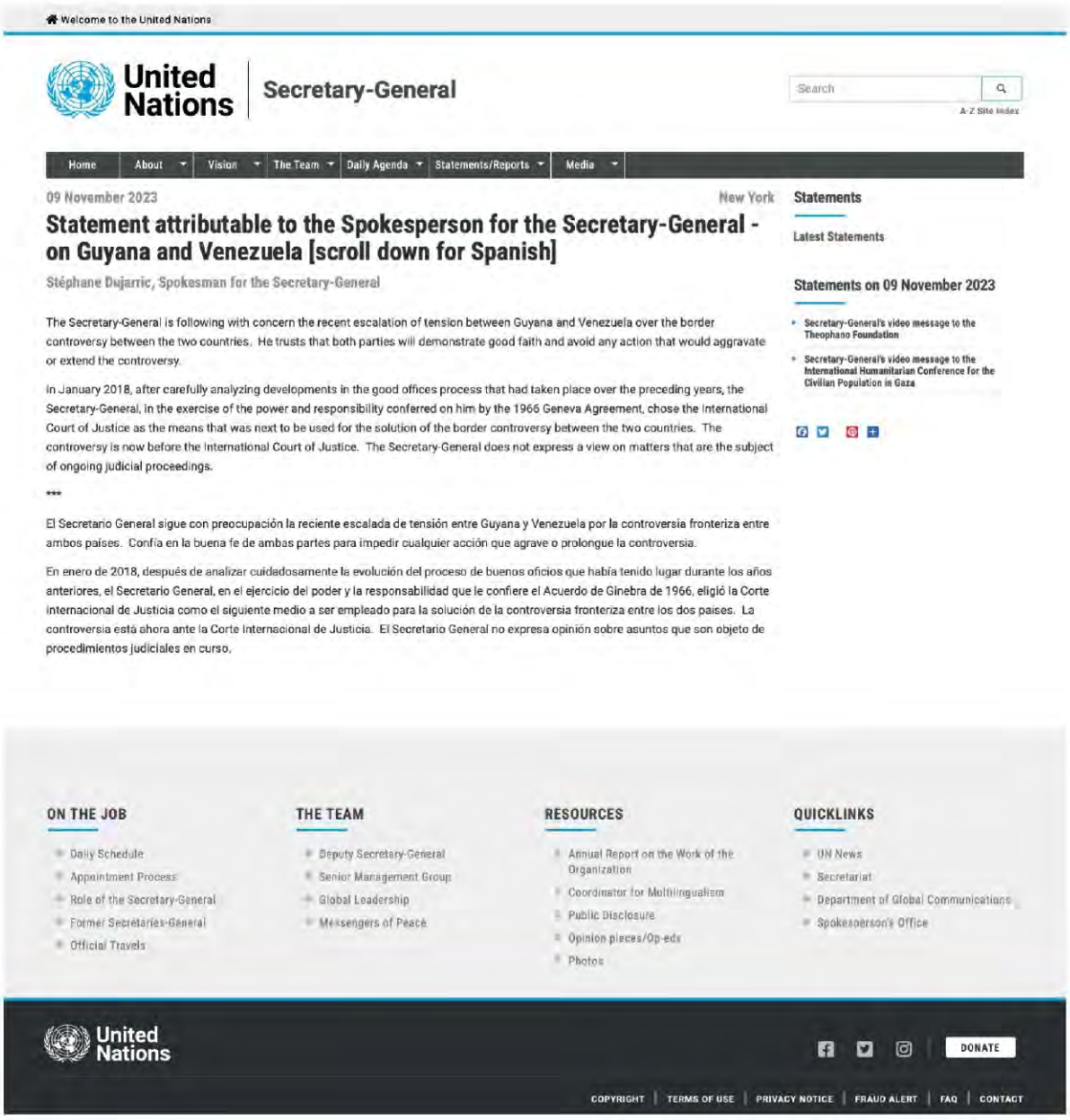
Nicolás Maduro Moros
President of the President of the Bolivarian Republic of Venezuela

Annex 54

Statement attributable to the Spokesperson for the Secretary General, on Guyana and Venezuela, 9 November 2023

United Nations, Secretary-General Statement attributable to the Spokesperson for the Secretary-General - on Guyana and Venezuela, 9 November 2023, Stéphanie Dujarric, Spokesman for the Secretary-General.

https://www.un.org/sg/en/content/sg/statement/2023-11-09/statement-attributable-the-spokesperson-for-the-secretary-general-guyana-and-venezuela%C2%A0scroll-down-for-spanish



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09 November 2023 — New York

Statement attributable to the Spokesperson for the Secretary-General - on Guyana and Venezuela [scroll down for Spanish]

Stéphane Dujarric, Spokesman for the Secretary-General

The Secretary-General is following with concern the recent escalation of tension between Guyana and Venezuela over the border controversy between the two countries. He trusts that both parties will demonstrate good faith and avoid any action that would aggravate or extend the controversy.

In January 2018, after carefully analyzing developments in the good offices process that had taken place over the preceding years, the Secretary-General, in the exercise of the power and responsibility conferred on him by the 1966 Geneva Agreement, chose the International Court of Justice as the means that was next to be used for the solution of the border controversy between the two countries. The controversy is now before the International Court of Justice. The Secretary-General does not express a view on matters that are the subject of ongoing judicial proceedings.

***

El Secretario General sigue con preocupación la reciente escalada de tensión entre Guyana y Venezuela por la controversia fronteriza entre ambos países. Confía en la buena fe de ambas partes para impedir cualquier acción que agrave o prolongue la controversia.

En enero de 2018, después de analizar cuidadosamente la evolución del proceso de buenos oficios que había tenido lugar durante los años anteriores, el Secretario General, en el ejercicio del poder y la responsabilidad que le confiere el Acuerdo de Ginebra de 1966, eligió la Corte Internacional de Justicia como el siguiente medio a ser empleado para la solución de la controversia fronteriza entre los dos países. La controversia está ahora ante la Corte Internacional de Justicia. El Secretario General no expresa opinión sobre asuntos que son objeto de procedimientos judiciales en curso.

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- Secretary-General's video message to the International Humanitarian Conference for the Civilian Population in Gaza

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DIPLOMATIC CORRESPONDENCE, OTHER COMMUNICATIONS

Annex 55

Translation of the Cipher Telegram relating to a letter that Olney sent to Bayard, American Ambassador in London, 14 January 1986

Telegram from Richard Olney to Thomas Bayard, 14th de January 1896, Library of Congress, Washington D.C., Richard Olney Papers, Box 43-44, Reel 16, Jan 14, 1896- Feb 11, 1896, NDI 203, pp. 9-13.

2/572

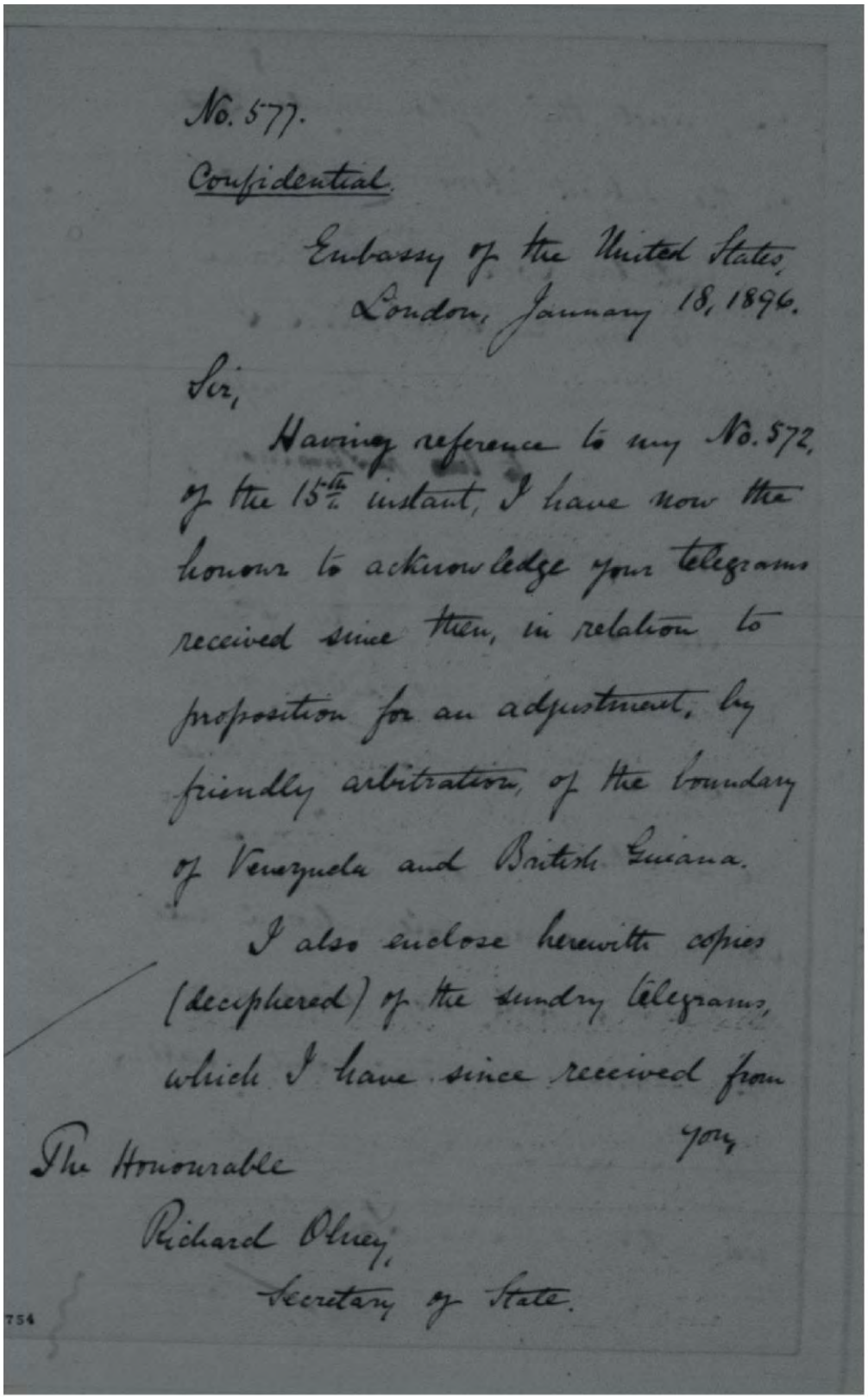
Translation of cipher telegram received at the Embassy at 11.30 p.m., January 14, 1896:--

Bayard, American Ambassador, London.

Suggestions coming through Lord Playfair highly appreciates, and desire for speedy, as well as rightful, adjustment of Venezuelan boundary controversy fully reciprocated. But the United States is content with existing status of Monroe doctrine which, as well as its application to said controversy, it regards as completely and satisfactorily accepted by the people of the Western Continents. It does not favor therefore proposed Conference of Powers. Solution it suggests is this: let appropriate clause be added to Behring Sea Convention, or if deemed wisest, let there be an independent Convention, which shall provide for settlement by arbitration of all controversies between the two countries, including Venezuelan boundary, and which, as to that controversy, shall explicitly provide that long-continued occupation of territory by Venezuelans or by British subjects, shall, with all the attending circumstances, be considered by Tribunal of Arbitration, and be given all the weight belonging to it in reason and justice, or by the principles of international law. Tribunal to consist of two members present American Commission, of two persons chosen by Great Britain, and of a fifth agreed upon by the two Governments or, in case of failure to agree, nominated by

Olney.

4686



No. 577.

Confidential.

Embassy of the United States,
London, January 18, 1896.

Sir,

Having reference to my No. 572, of the 15th instant, I have now the honour to acknowledge your telegrams received since then, in relation to proposition for an adjustment, by friendly arbitration, of the boundary of Venezuela and British Guiana.

I also enclose herewith copies (decyphered) of the sundry telegrams, which I have since received from you,

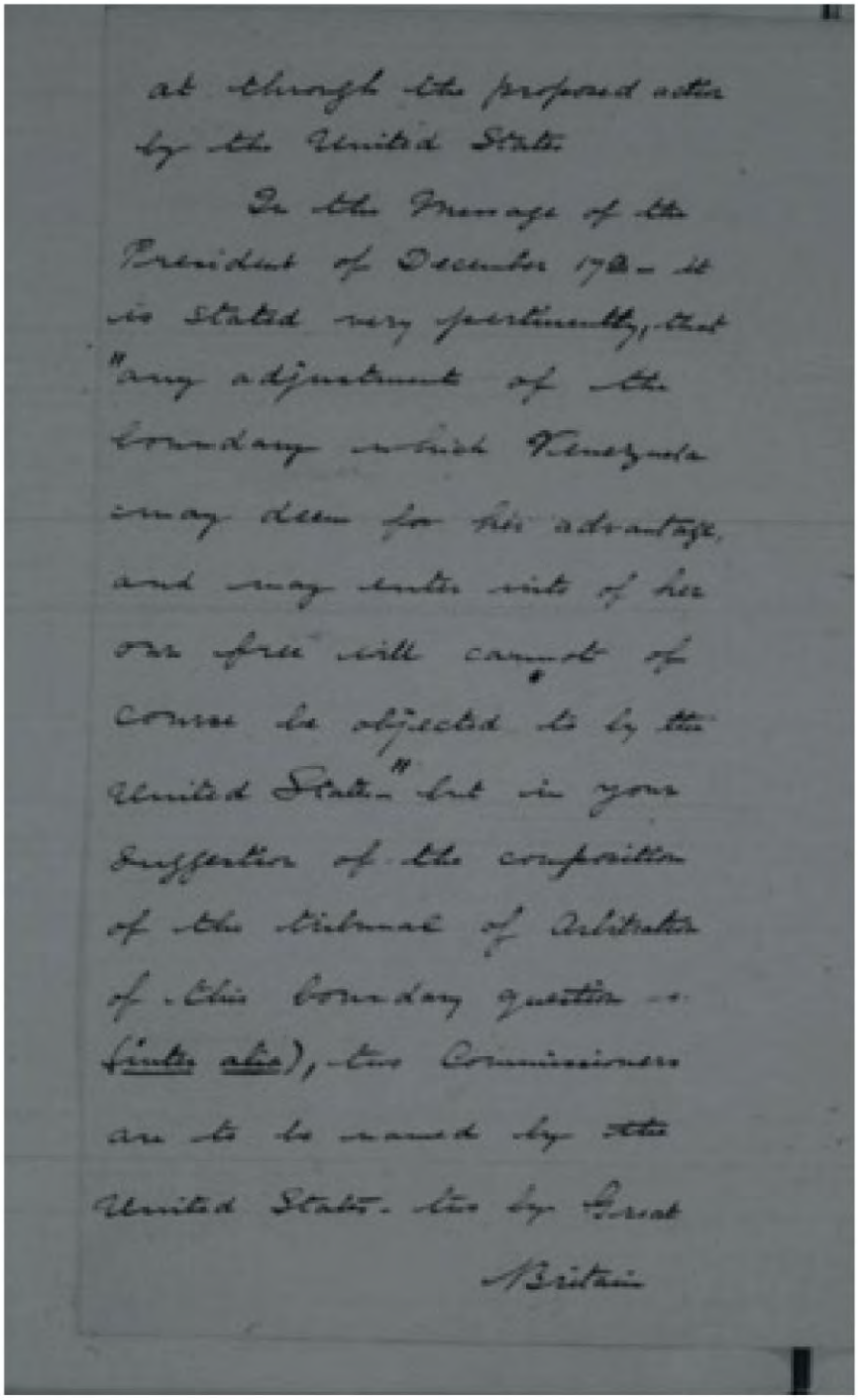
The Honourable
Richard Olney,
Secretary of State.

754

Annex 56

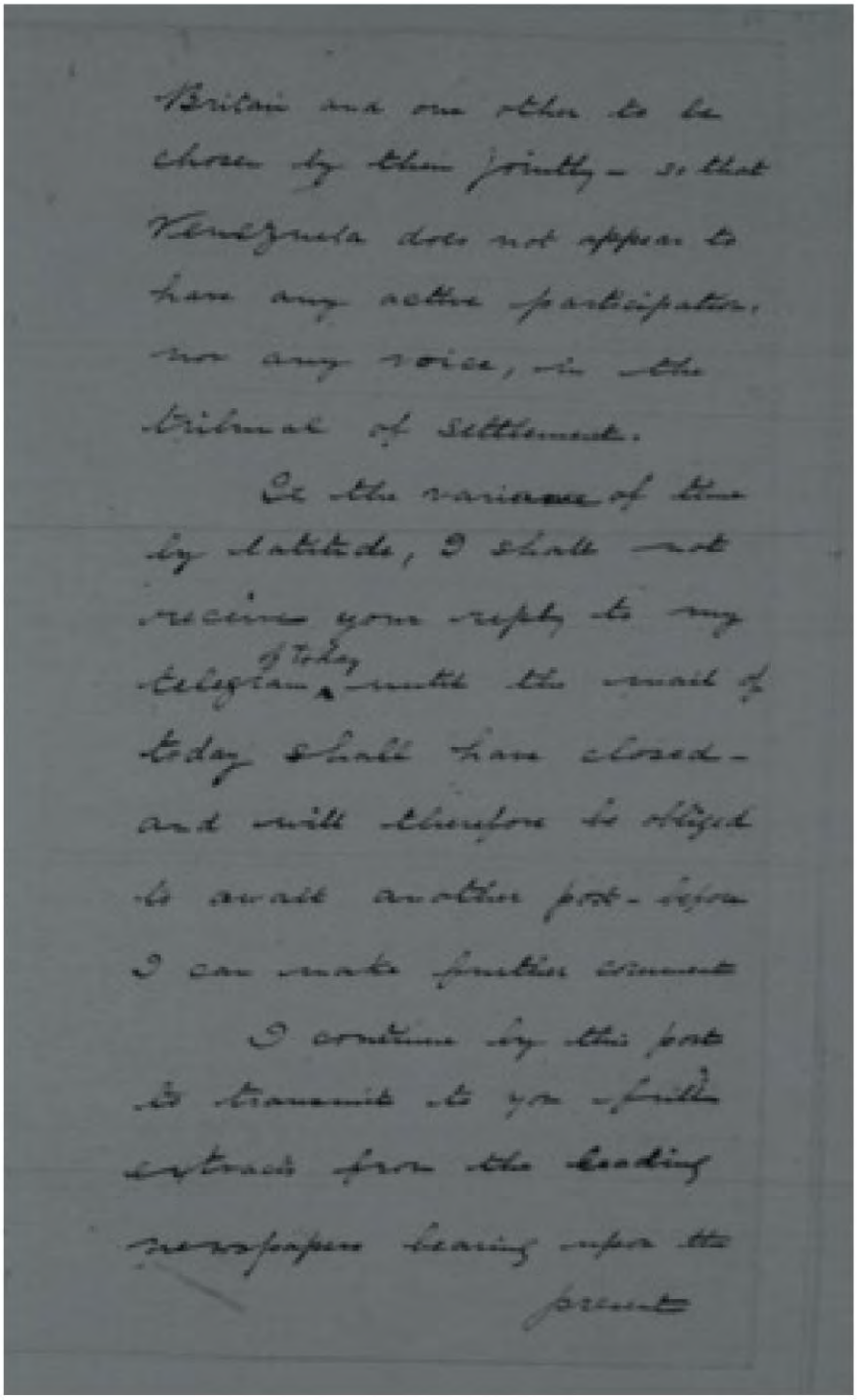
Letter from Thomas Bayard to Richard Olney, 15 January 1896
(Excerpt)

Library of Congress, Washington D.C., Richard Olney Papers, Box 43-44, Reel 16, Jan 14, 1896-Feb 11, 1896, NDI 203, pp. 50-62.



at through the proposed action
by the United States

In the Message of the
President of December 1895 it
is stated very pertinently, that
"any adjustment of the
boundary which Venezuela
may deem for her advantage,
and may enter into of her
own free will cannot of
course be objected to by the
United States" but in your
suggestion of the composition
of the tribunal of Arbitration
of this boundary question
(inter alia), the Commissioners
are to be named by the
United States, one by Great
Britain



Britain and one other to be
chosen by them jointly - so that
Venezuela does not appear to
have any active participation,
nor any voice, in the
tribunal of settlement.

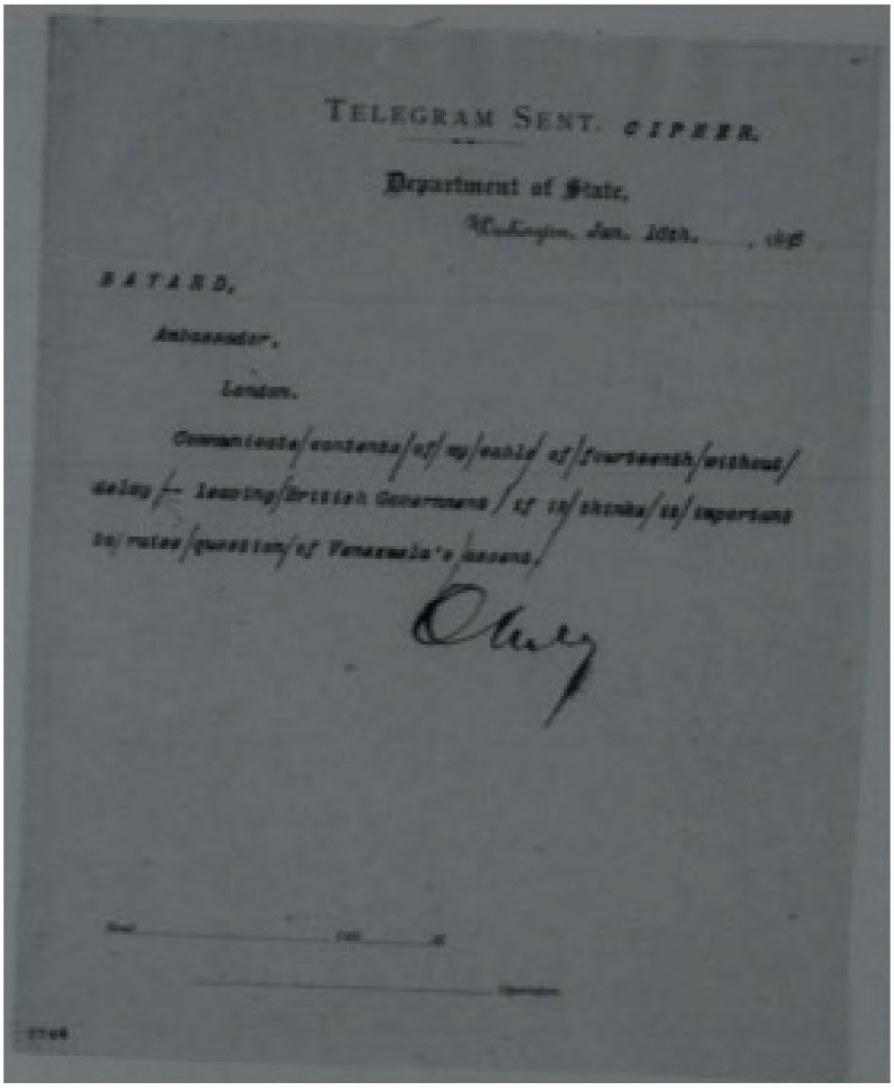
As the variance of time
by latitude, I shall not
receive your reply to my
telegram of today until the mail of
today shall have closed -
and will therefore be obliged
to await another post - before
I can make further comment

I continue by this post
to transmit to you - further
extracts from the leading
newspapers bearing upon the
present

Annex 57

Telegram from Olney, Department of State of the United States, to Bayard, Ambassador to London, 16 January 1896

Manuscript Division, Library of Congress, Washington, D.C. Richard Olney Papers, Box 43-44, Reel 16, Jan 14, 1896 - Feb 11, 1896 NDI 203, p. 93



TELEGRAM SENT. CIPHER.

Department of State,

Washington, Jan. 10th, 1896

BAYARD,

Ambassador,

London.

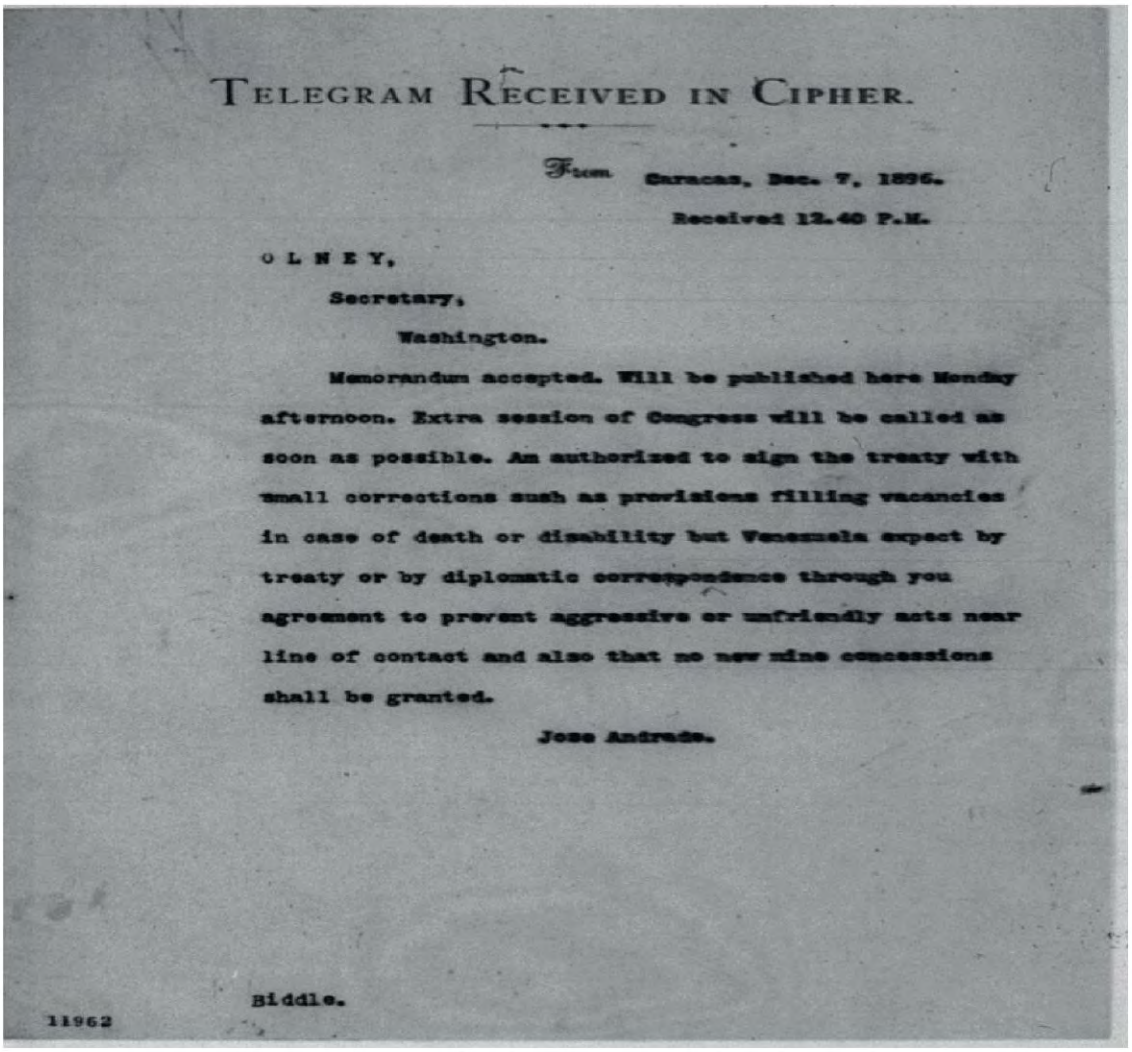
Communicate contents of my cable of fourteenth without delay to Lansdowne if it shall be important to raise question of Venezuela's lessons.

Olney

Annex 58

Telegram received in Cipher from José Andrade to Olney, 7 December 1896

Manuscript Division, Library of Congress, Washington, D.C.; Richard Olney Papers General Correspondence and Related Material, 1830-1925 (BOX, BOX 66-68, REEL 24), (1896: Nov 11 - Dic 26) p. 404-406.



TELEGRAM RECEIVED IN CIPHER.

From Caracas, Dec. 7, 1896.

Received 12.40 P.M.

OLNEY,

Secretary,

Washington.

Memorandum accepted. Will be published here Monday afternoon. Extra session of Congress will be called as soon as possible. Am authorized to sign the treaty with small corrections such as provisions filling vacancies in case of death or disability but Venezuela expect by treaty or by diplomatic correspondence through you agreement to prevent aggressive or unfriendly acts near line of contact and also that no new mine concessions shall be granted.

Jose Andrade.

Biddle.

11962

Annex 59

Letter from Ezequiel Rojas to José Andrade, 9 December 1896
(Translation-Excerpt)

Ministerio de Relaciones Exteriores, Estados Unidos de Venezuela, Gran Bretaña, Límites de Guayana, bases propuestas por los Estados Unidos, 1896-1897, folio 303.

UNITED STATES OF VENEZUELA

MINISTRY OF FOREIGN AFFAIRS

GREAT BRITAIN

BOUNDARIES OF GUAYANA

GROUNDS PROPOSED BY THE UNITED STATES

1896 to 1897

FOLIOS 303

Caracas, 9 December 1896

[...]

The third addition is as follows:

"The High Contracting Parties confirm the agreement concluded between them on 18 November and 20 December 1850, by which they declared that they had no intention of occupying any part of the territory in dispute and that they would refrain from taking any measures which might justly be considered as aggressive".

...

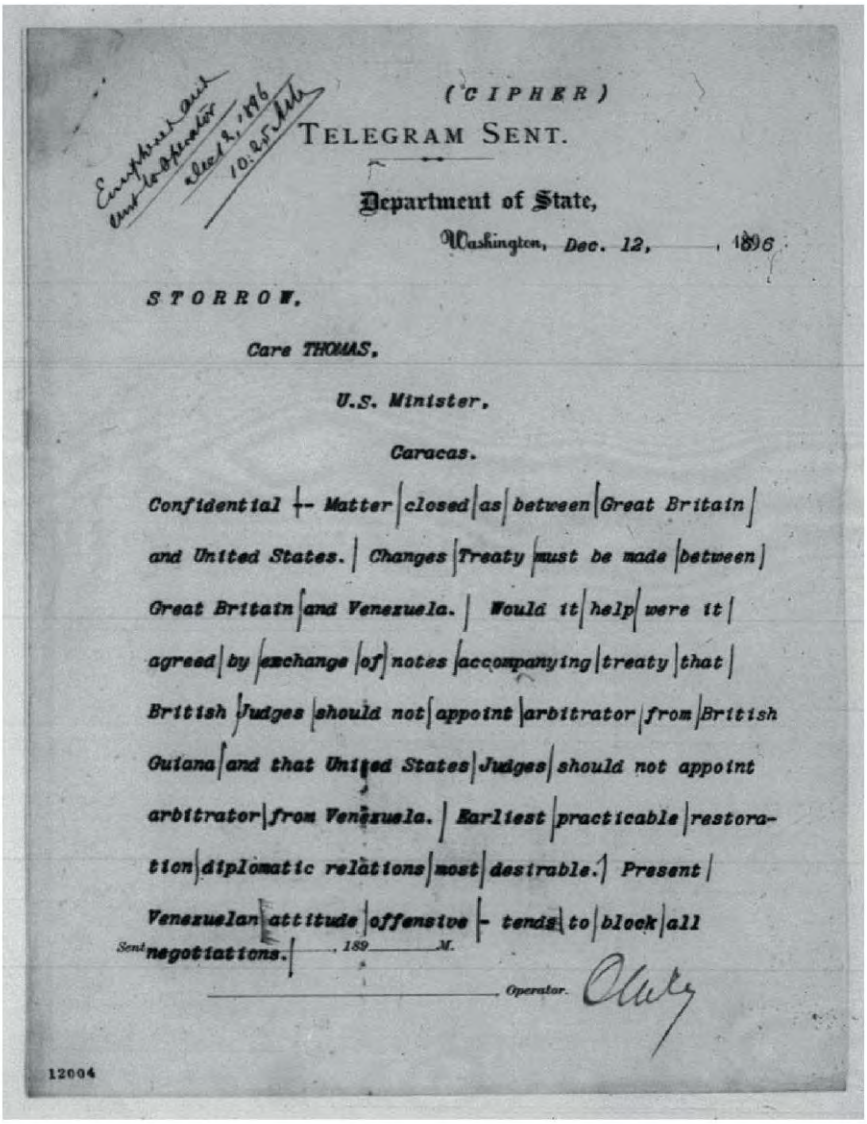
Although the project [of treaty] raises serious difficulties, the Government, taking into consideration, on the one hand, what it owes to the United States of America, and on the other, the dangerous consequences of the abandonment in which the refusal would place Venezuela, has decided to accept, not simply and flatly, but with certain modifications, the proposed articles, in whose preparation, unfortunately, it was not included

p.37

Annex 60

Telegram from Olney to Storrow, 12 December 1896

Manuscript Division, Library of Congress, Washington, D.C.; Richard Olney Papers General Correspondence and Related Material, 1830-1925 (BOX 66-68, REEL 24), (1896: Nov 11 - Dic 26), p. 458



(CIPHER)

TELEGRAM SENT.

Department of State,

Washington, Dec. 12, 1896

STORROW,

Care THOMAS,

U.S. Minister,

Caracas.

Confidential -- Matter closed as between Great Britain and United States. Changes Treaty must be made between Great Britain and Venezuela. Would it help were it agreed by exchange of notes accompanying treaty that British Judges should not appoint arbitrator from British Guiana and that United States Judges should not appoint arbitrator from Venezuela. Earliest practicable restoration diplomatic relations most desirable. Present Venezuelan attitude offensive -- tends to block all negotiations.

Sent ____ 189__ M.

_____ Operator.

12004

Annex 61

Letter from Calcaño to José Andrade, 23 March 1899
(Translation-Excerpt)

Ministerio de Relaciones Exteriores, Controversia en la interpretación del arbitramiento entre Venezuela y Gran Bretaña sobre los límites de Guayana, vol. 170, país: Estados Unidos de América, 1898, bóveda I, módulo 2, tramo 15, caja 385.

Translation

BOLIVARIAN REPUBLIC OF VENEZUELA

Ministry of Foreign Affairs

Country: UNITED STATES OF AMERICA

File N° 170

Item N°

Matter:

CONTROVERSY IN THE INTERPRETATION OF THE ARBITRATION BETWEEN VENEZUELA AND GREAT BRITAIN ON THE BOUNDARIES OF GUAYANA

Year: 1898

Vaul I Module N° 2 N° 15 Number of folios: 7	Box N° 385 Side A (B)

To Mr. José Andrade, Envoy Extraordinary and Minister Plenipotentiary of Venezuela to the United States. Washington DC.

[...]

Caracas, 23 March 1899

Dear Sir:

I have had the honour to receive your letter, number 75, and the papers to which it refers, except one of the most important, namely the letter from Mr. Mallet-Prevost, which is the reason thereof. A strange claim has been raised by Mr Richard E. Webster, Attorney General and one of the Lawyers for Great Britain in the boundary question of Guayana, denying to those of Venezuela the right to argue that Rules A and B of Article 4 of the Arbitration Treaty concluded between the two nations on 2 February 1897, for the settlement of the dispute, do not apply to the period after 1814. It is believed that such an argument is contrary to the understanding on which Lord Salisbury and Mr Olney negotiated on behalf of Venezuela; and it is announced that, if the allegation is not withdrawn, it will serve as the grounds for a formal protest by the British Lawyers before the Arbitrators.

The Government of Venezuela cannot understand by what authority the British Lawyers demand the Lawyers of Venezuela to retract the points of our defence. The latter may have been right or wrong in their opinions, but that is of little consequence to the outcome of the case. If Great Britain interprets the Treaty in another sense, Venezuela understands it, as its defenders, in the opposite sense. Neither party being able to impose its opinion on the other, it is for the Arbitrators to enforce the pact according to the dictates of their impartiality and wisdom. Here there is no reason to raise protests or to do anything to hinder the course of the trial. Should Venezuela or his sponsors have erred, the difficulty would be obviated if only the British could prove it to the Arbitrators.

Annex 62

Letter from Calcaño to José Andrade, 7 April 1899
(Translation- Excerpt)

Ministerio de Relaciones Exteriores, Controversia en la interpretación del arbitramiento entre Venezuela y Gran Bretaña sobre los límites de Guayana, vol. 170, país: Estados Unidos de América, 1898, bóveda I, módulo 2, tramo 15, caja 385.

Translation

BOLIVARIAN REPUBLIC OF VENEZUELA

Ministry of Foreign Affairs

Country: UNITED STATES OF AMERICA

File Nº 170

Item Nº

Matter:

CONTROVERSY IN THE INTERPRETATION OF THE ARBITRATION BETWEEN VENEZUELA AND GREAT BRITAIN ON THE BOUNDARIES OF GUAYANA

Year: 1898

Vault I
Module Nº 2
Section Nº 15
Number of folios: 7

Box Nº 385
Side A (B)

Caracas, 7 April 1899

[...]

In my preceding reply on this matter, I communicated to you the Government's views, namely: not to withdraw the contention in any way, but to insist that it is for the Tribunal to rule on the dissent between the parties as to the meaning of the Treaty; and not to oppose to the British Lawyers submitting those heretofore unknown documents, except for one, and let the Arbitrators decide which of the parties is right.

Annex 63

Letter from Sir Richard Webster to Lord Salisbury, 19 July 1899

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Memorandum de Sir. E. Herslet, Bibliotecario del Foreign Office, 1886, Box: E-04

Palace Hotel
Champs Elysees
Paris
19 July 99

Dear Lord Salisbury,

I have just received Mr. Barrington's letter. In reply I only send a line to assure you that I am fully alive to the importance of obtaining Point Barima for Great Britain if it is possible to do so. I had no intention of making any suggestion in the contrary sense. I was however anxious to obtain the guidance and approval of yourself and Mr. Chamberlain in the event of questions being put to me by members of the Tribunal. I do not propose to make any concession. If I have any reason to believe the Tribunal is against me on this part of the case I shall endeavour to let the British Arbitrators know our view of the position.

I am faithfully yours

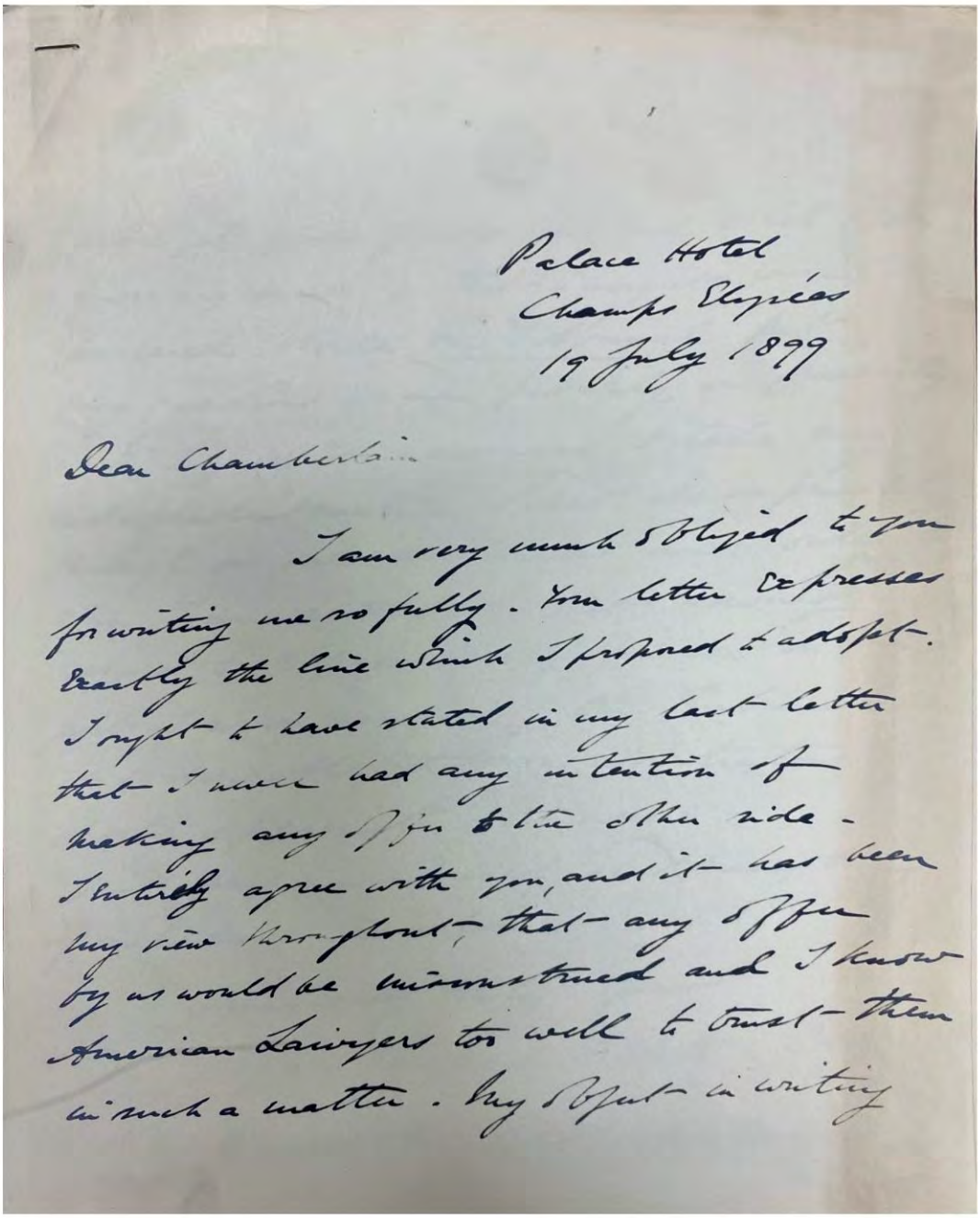
Richard E. Webster

The Most Noble
The Marquis of Salisbury, K.G.

Annex 64

Letter from Sir Richard Webster to Joseph Chamberlain, 19 July 1899

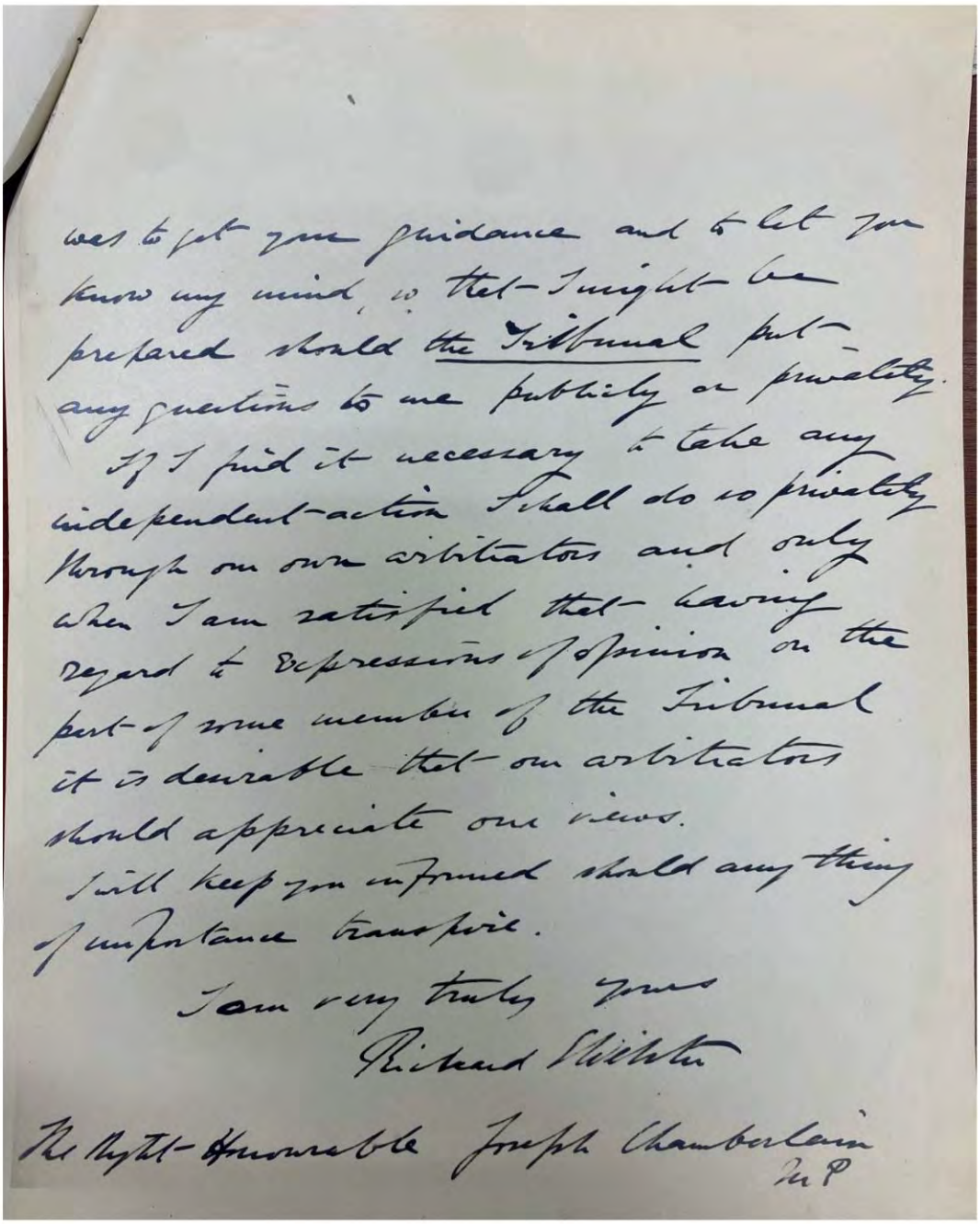
Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Memorandum de Sir. E. Herslet, Bibliotecario del Foreign Office, 1886, Box: E-04



Palace Hotel
Champs Elysées
19 July 1899

Dear Chamberlain

I am very much obliged to you for writing me so fully. Your letter expresses exactly the line which I proposed to adopt. I ought to have stated in my last letter that I never had any intention of making any offer to the other side. I entirely agree with you, and it has been my view throughout, that any offer by us would be misconstrued and I know American Lawyers too well to trust them in such a matter. My object in writing



was to get your guidance and to let you know my mind, so that I might be prepared should the Tribunal put any questions to me publicly or privately.

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 some members of the Tribunal it is desirable that our arbitrators should appreciate our views.

I will keep you informed should anything of importance transpire.

I am very truly yours

Richard Webster

The Right Honorable Joseph Chamberlain
M.P.

Annex 65

Letter from Rojas to the Foreign Officer Minister of Venezuela, 4 October 1899 (Translation)

Ministerio de Relaciones Exteriores de los Estad Unidos de Venezuela, Gran Bretaña, Límites de Guayana, Instalación del Tribunal de Arbitramento, 1899-1900, folios 366, vol. 187.

Translation

UNITED STATES OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

GREAT BRITAIN
-
BORDERS OF GUYANA
-
INSTALLATION OF THE ARBITRAL COURT
-

1899 to 1900
-

Folios 366

Volume 187

49
Paris, 4 October 1899

No. 84

Mr. Minister:

The sessions of the Court concluded yesterday at noon, and it has passed judgement, a copy of which is attached, as I consider it inconvenient to put the original at risk, which remains in the archives.

The judgement, as you will see, gives Venezuela absolute possession of de Orinoco Delta, and England will have to leave Punta Barima, but it sets a completely biased demarcation line in favour of England.

(To Mr. Minister
of Foreign Affairs of the United States of Venezuela.
Caracas).

Things happened this way. The English arbitrators claimed the Schomburg line. Mr. de Martens, against all hope, expressed he was ready to adhere the extraordinary British aspiration. The American Arbitrators, after they heard the news on the Chief Justice's Resolution, resolutely opposed it and decided to protest publicly against such decision. There was a large discussion among justices and Mr. de Martens proposed to the American justices, as a transaction, that he will consent to modify the line on the coast, thus that the Orinoco Delta would exclusively correspond to Venezuela if they accepted the rest, to which they agreed as a conscience duty as, given the seriousness of the case, it would have been worse to consent, under protest, the dispossession of the Orinoco.

This is the unanimity Mr. de Martens has boasted about in his speech.

I find Mr. de Martens' conduct inexplicable surprise and, as I am not used to qualify other people's actions without evidence, in line with my belief, I refrain myself from qualifying that of him. Besides, what happened between said Mr. de Martens and the American Arbitrators did not happen in my presence, but I learned about it through truthful channels. What we may never know is Mr. de Martens' motive for proceeding in this way. Perhaps the revolutionary situation of our country has contributed in some way to this.

Having completed the mission that the government was kind enough to entrust me with, I should be grateful to you, Mr. Minister, if you would kindly tell me whether I should send to Caracas the archive of this Agency or deliver it over by inventory to Mr. Andrade, Plenipotentiary Ministry of the Republic in London.

I remain your most attentive and reliable servant.
D. José M. Rojas

Copy.

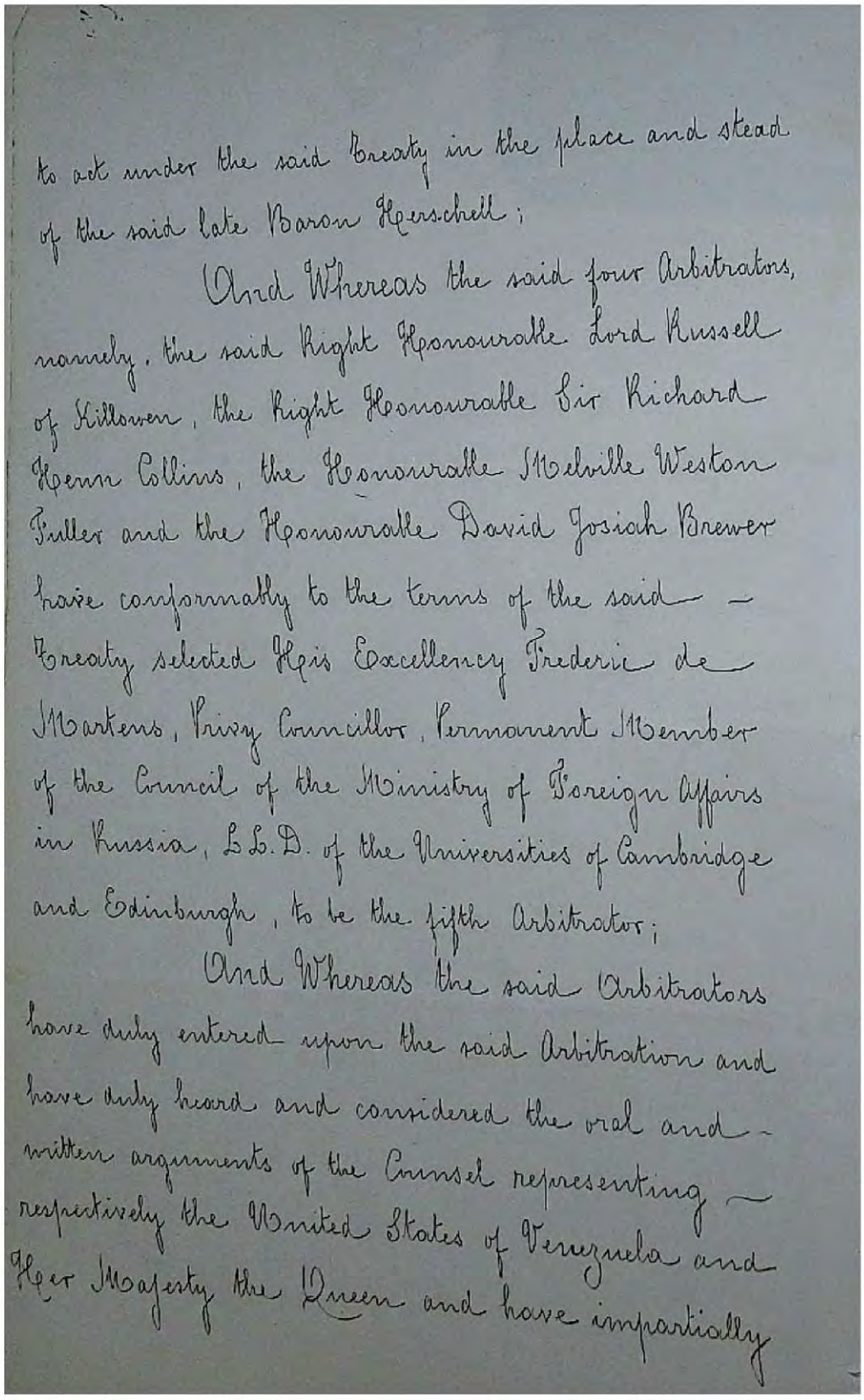
. . . . . .

. . . . . .

. . . And Whereas the said Treaty was duly ratified and the ratifications were duly exchanged in Washington on the 14th day of June 1897 in conformity with the said Treaty;

And Whereas, since the date of the said Treaty and before the Arbitration thereby contemplated had been entered upon, the said Right — Honourable Baron Herschell departed this life;

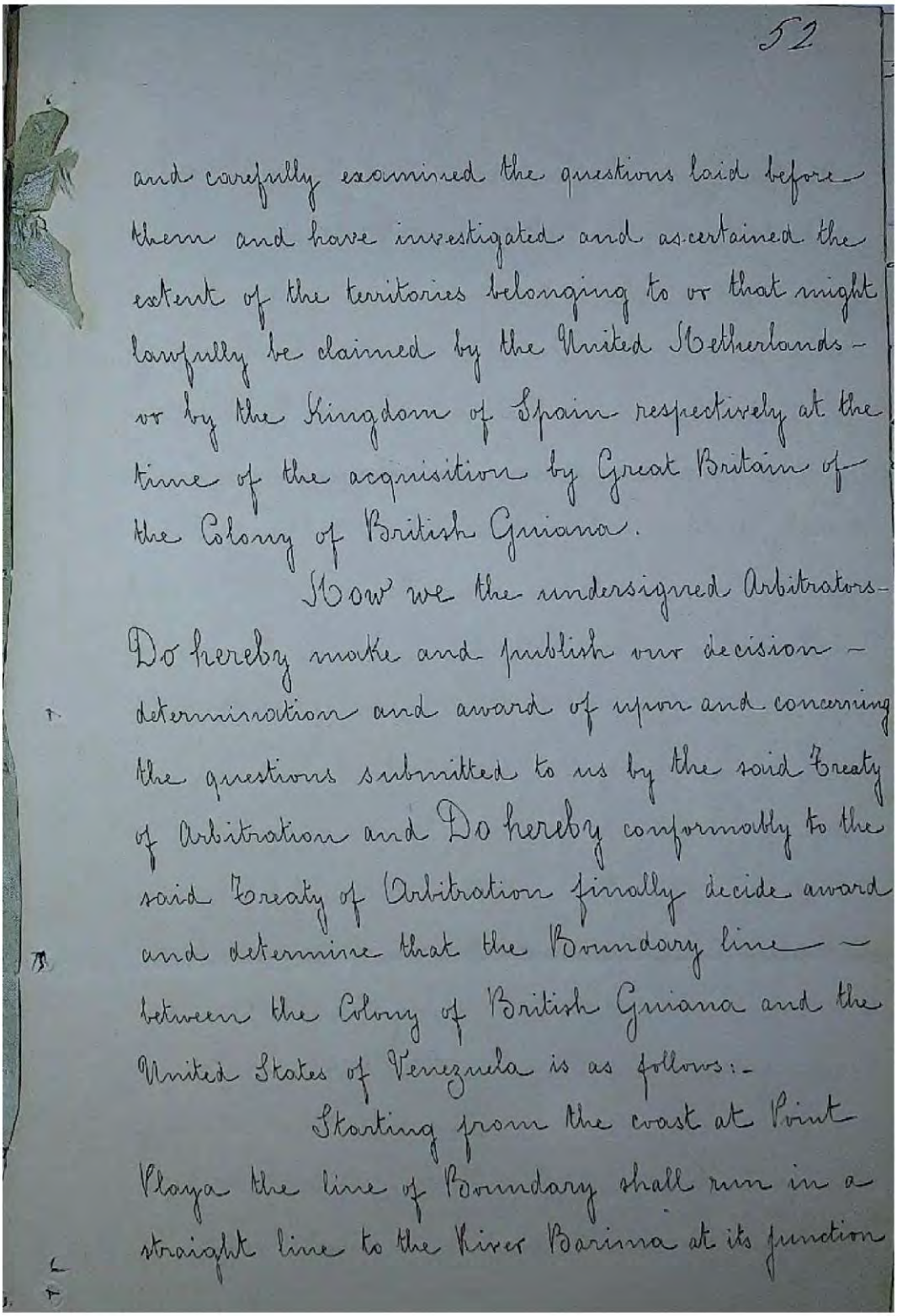
And Whereas the Right Honourable — Charles Baron Russell of Killowen, Lord Chief Justice of England, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, has conformably to the terms of the said Treaty been duly nominated by the Members of the Judicial Committee of Her Majesty's Privy Council



to act under the said Treaty in the place and stead of the said late Baron Herschell;

And Whereas the said four Arbitrators, namely, the said Right Honourable Lord Russell of Killowen, the Right Honourable Sir Richard Henn Collins, the Honourable Melville Weston Fuller and the Honourable David Josiah Brewer have conformably to the terms of the said Treaty selected His Excellency Frederic de Martens, Privy Councillor, Permanent Member of the Council of the Ministry of Foreign Affairs in Russia, LL.D. of the Universities of Cambridge and Edinburgh, to be the fifth Arbitrator;

And Whereas the said Arbitrators have duly entered upon the said Arbitration and have duly heard and considered the oral and written arguments of the Counsel representing respectively the United States of Venezuela and Her Majesty the Queen and have impartially



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and carefully examined the questions laid before them and have investigated and ascertained the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana.

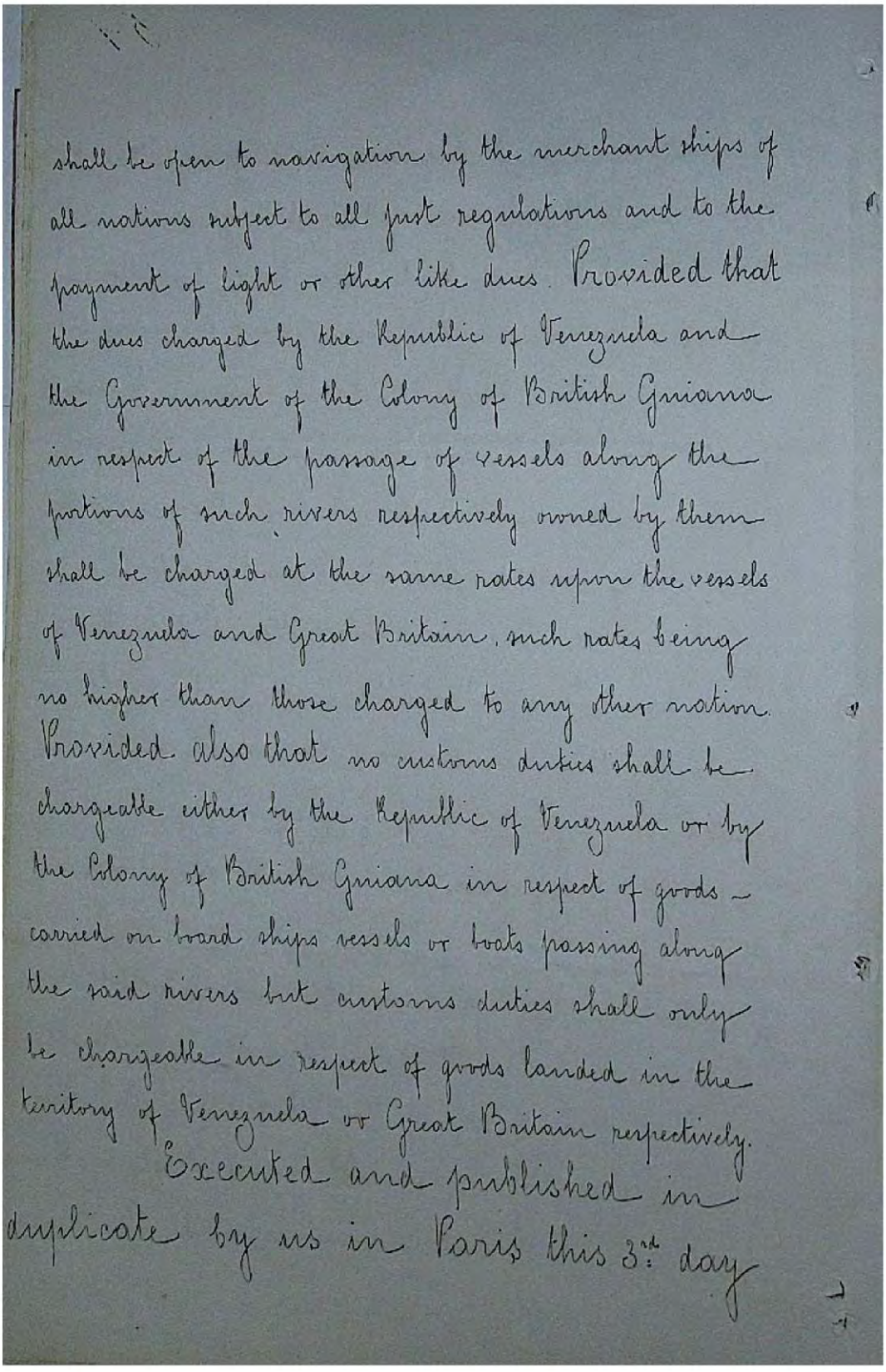
Now we the undersigned Arbitrators Do hereby make and publish our decision determination and award of upon and concerning the questions submitted to us by the said Treaty of Arbitration and Do hereby conformably to the said Treaty of Arbitration finally decide award and determine that the Boundary line between the Colony of British Guiana and the United States of Venezuela 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 Mowumma and thence along the mid-stream of the latter river to its source and from that point to the junction of the River Kpaiowa with the Amakuru and thence along the mid-stream of the Amakuru to its source in the Imatakka Ridge and thence in a South Westerly direction along the highest ridge of the spur of the Imatakka Mountains to the highest point of the main range of such Imatakka Mountains opposite to the source of the Barima and thence along the summit of the main ridge in a South Easterly direction of the Imatakka Mountains to the source of the Acarabisi and thence along the mid-stream of the Acarabisi to the Cuyuni and thence along the Northern bank of the River Cuyuni Westward to its junction with the Wenamu and thence following the mid-stream of the Wenamu to its western-most source and thence in a direct line to the

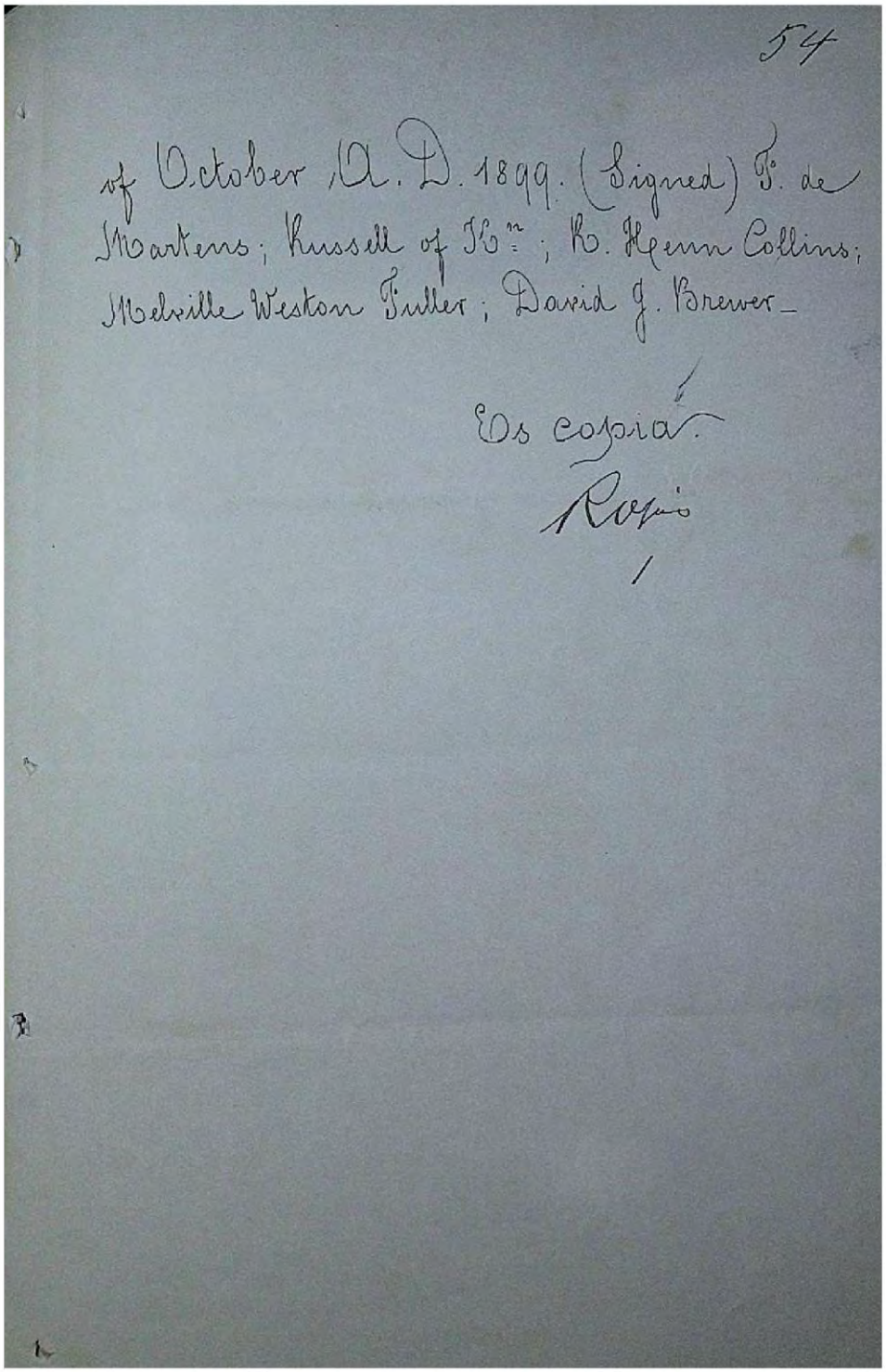
summit of Mount Roraima and from Mount Roraima to the source of the Cotinga and along the mid-stream of that river to its junction with the Takutu and thence along the mid-stream of the Takutu to its source. Thence in a straight line to the westernmost point of the Akaraí Mountains and thence along the ridge of the Akaraí 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 question 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 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 the Republic of 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 the Republic of 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.

Executed and published in duplicate by us in Paris this 3rd day



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of October A. D. 1899. (Signed) F. de Martens; Russell of Kᵗᵒⁿ; R. Henn Collins; Melville Weston Fuller; David J. Brewer.

Es copia.

Rojo

Annex 66

Letter from Buchanan, 5 October 1899

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Carta de Buchanan, 1899, Box: E-04

C

rame from Mr. Buchanan, Paris 7 11.15 a.m. Oct 3
R.J.S. 1899.

Clair

Venezuela Boundary Award delivered this morning: Line starts from Point Playa on coast and runs in a South westerly direction to junction of Haiowa creek with Amakura below first bend in Cotica river It then follows Schomburgk line to Cuyuni, goes along north bank of that river to Venamu and proceeds up Venamu to Mount Roraima where it rejoins Schomburgk line. Navigation of Barima and Amakura declared free.

Annex 67

Letter from Lord Russell to Lord Salisbury, 7 October 1899

J. Gillis, Wetter (1979) The International Arbitral Process: Public and Private, Volume III, New York: Oceana Publications Inc, pp. 126-129

4. Previously Unpublished Testimony by One of the British Arbitrators, Lord Russell, Reporting to Lord Salisbury

Letter of Lord Russell to Lord Salisbury, dated 7 October 1899. Hatfield House, Herts., Papers of 3rd Marquess of Salisbury, Vol. A/94, Doc. No. 2. Accuracy of Transcription Verified by Mr. R.H. Harcourt Williams, Librarian and Archivist to the Marquess of Salisbury.

Dear Lord Salisbury,

This letter does not call for any immediate notice. I know many serious concerns must at present engross your attention; but, as I think that you will desire to hear from me as to the conduct, course and result of the Venezuelan arbitration, I judge it best to write now when my recollection and impressions are fresh and vivid.

It is due to the British Counsel to say nothing could exceed their zeal and assiduity. Sir R. Webster was naturally anxious, and occupied a very considerable time in an elaborate discussion of the facts and history of the case - a course which enabled Sir R. Reid and Mr. Askwith to devote themselves to the legal aspects of the question - with which they very effectively dealt. It must be admitted that the speeches (with hardly an exception) were unnecessarily long, but in this regard the American Counsel were by far the greater offenders. The arbitrators did not feel warranted in taking any strong measures and were obliged to content themselves with occasional suggestions. In this course I think we were right. We felt we ought to do nothing which would make it possible for either side to say hereafter that it had not been fully heard.

As to the course of discussion: - the fundamental question was - had Spain acquired the right to Guiana by discovery followed by possession of such a kind and extent as to give her a complete title. If this were established the result would be that Great Britain could only succeed as to such territory as the Dutch and Great Britain actually possessed - acquired by conquest or by adverse possession from Spain.

There were not wanting plausible grounds for urging this view, and, it must be admitted that the official correspondence during the Dutch period and much of the diplomatic correspondence since, did read as if the Dutch claims extended to little more than the pedis - possessio and as if all the "beyond" were Spanish.

However in view especially of the Treaties of 1648 (Munster) and of 1714 (Utrecht) and of the conduct of both the Powers subsequent to those Treaties we (Collins, L.J. and I) thought this view untenable.

Fuller C.J. to the end adhered to the Venezuelan contention but it must be admitted he subsequently assented to a delimitation which ignored it. Mr. Justice Brewer on the other hand while refusing assent to the Spanish view

yet in fact worked out a line of delimitation in the first instance, which I think could only have been justified by the substantial adoption of that view.

After long debate, the 5th Arbitrator (Mr. de Martens) endorsed the British view.

This important position determined I confess I thought that the concession of the Schomburg line, substantially, would have followed as a matter of course. Not at all! The Venezuelan arbitrators claimed the control of the waterways of the Amakura and the Barima down to the Waini and including the Morawheri, in the first instance, and that a line should be drawn from the latter point to about the Junction of the Essequibo, Cuyuni and Mazaruni. This view was subsequently materially modified and after such weary and wearing discussion the Award line was unanimously agreed to - the Venezuelan Arbitrators coming in very reluctantly.

I must say here that in one very important respect L.J. Collins and I were grievously disappointed by the attitude assumed by Mr. de Martens. He had up to this, shown that he had a good grasp of the legal questions involved and of the facts, but having expressed his opinion on the governing principle in favour of the British contention, he, instead of applying that principle rigidly and fearlessly, seemed to cast about for lines of compromise and to think that it was his duty, above all else, to secure, if he could, a unanimous award. I am sorry to be obliged further to say that he intimated to L.J. Collins, in a private interview, while urging a reduction of the British claims, that if we did not reduce them he might be obliged in order to secure the adhesion of the Venezuelan Arbitrators to agree to a line which might not be just to Great Britain. I have no doubt he spoke in an opposite sense to the Venezuelan arbitrators, and fear of possibly a much worse line was the inducement to them to assent to the Award in its present shape. However this may be I need not say the revelation of Mr. de Martens state of mind was most disquieting.

I will not weary you with a discussion of details.

I think the Award gives Her Majesty no territory or advantage to which she is not justly entitled and I think it does give to her substantially all to which she is entitled.

The result may be described thus: - Venezuela gets much less than Lord Aberdeen's offer would have given her 50 years ago: much less than Lord Rosebery's offer would have given her a few years /ago/ and about the same amount of territory as Lord Granville's offer would have given in '80. But Lord Granville's offer did not stipulate for that which is, by the Award, secured by Great Britain, viz: - the free navigation of the Barima and the Amakura as approaches to and exits from the Orinoco. Nor did Lord Granville's offer secure, as the Award does, both banks of the Cuyuni to Great Britain along the Frontier line.

The result is a signal vindication of Schomburg's ability and fairness. In two points only is there any departure from his line.

The 1st difference is as to Barima point. As you know successive British Ministers have offered to give up what I conceive to have been a very doubtful claim to this point. The British case explicitly admitted that the Orinoco was Venezuelan, and, seeing (what the British case did not admit) that (we thought) both the Amakura and the Barima were in fact tributaries of the Orinoco for they clearly fall inter fauces terrae -we thought it just to concur in giving the control of the mouth wholly to Venezuela. Nor were reasons wanting in point of Law which I think pointed to the same result.

I learn that Mr. Im Thurn attaches no importance to the possession by Venezuela of the Land between Point Playa and Barima Point so long as Great Britain holds the Waini and the Morawheri passage. The intervening land is described as principally low lying swamp - largely covered by the sea at High Tide.

The 2nd and only other departure from the Schomburg line is that the Wenamu and not the Southward bend of the Cuyuni is adopted as a Western boundary. As to this it is to be noted, that the Wenamu was named by Schomburg himself, as an alternative boundary, and, it is, indeed, the only one of these two boundaries of which he knew anything. He had never in fact been down this part of the Cuyuni at all and he had been down the Wenamu and knew its course and direction. Moreover this part of the Cuyuni and its neighbourhood has never even been surveyed and little apparently is known about it.

If the Award is to be judged from the standpoint of Venezuelan claims the result would seem to be disastrous to Venezuelans. They claimed the whole coastline from the Orinoco to the Essequibo and in fact admitted a legal footing for Great Britain at and in the immediate neighbourhood of Kykoveral only. Even in argument, the Counsel for Venezuela were prepared to concede to Great Britain only a narrow strip from the Moruka to the junction of the three Rivers.

However these are matters of no concern to the arbitrators: as one of them I am glad to think that consistently with justice the result has been to demonstrate that the political conduct of the Ministers of the Queen afforded no justification for the violent action of the Politicians of U.S. of America in 1893.

To one incidental matter I must call attention since it may affect the course of events in the future. When the discussion in detail arose as to what the line ought to be, a use, which we considered unfair, was made of the various diplomatic offers to compromise. In private litigation all reference of this kind would be forbidden if and so far as the correspondence was expressly or implicitly written without prejudice in the course of an attempt to settle a dispute. The suggestion which naturally arises is that in any like case in the future, it will be well to preface the correspondence with the stipulation that if the proposed arrangement fall through the Correspondence is not thereafter to be used or referred to in any future stage of the controversy.

I cannot conclude without saying how great was my satisfaction in having as my able and loyal colleague my friend L.J. Collins. On no single point of moment did we differ.

So much for the Arbitration of which I must confess I am heartily sick.

May I, as I am writing, mention a point pressed upon my attention by the incidents of the Dreyfus case?

It is this: - Is it right that British Military attaches should any longer be in any way engaged in the business of spying? I am not alluding to their duty to keep their ears and eyes open and to report what they hear and see - as at manoeuvres, etc. to which they are invited. But is it right, for example, Col. Douglas Dawson - received courteously and on terms of equality in clubs and private Houses, should yet, as a matter of duty, be on the look out for men, who, for money, will betray their masters and their country? The attaché may to-night be dining with M. de Gallifét and tomorrow night may be negotiating with M. de Gallifét's secretary for the purchase of an important document fetched from his master's Bureau! If such services are required ought they not to be rendered by persons created ad hoc and not by gallant officers? I understand that France does not allow any military attaché to be in any way concerned with their spy system in Foreign Capitals.

Finally before I close I take the liberty of mentioning one other matter:- I have spoken of the zeal of the British Counsel but I ought not to omit mention, in this connection, of the British Agent, Mr. George Buchanan. Nothing could exceed the courtesy tact and dignity with which he discharged his duties. It incidentally came to my knowledge, but not from him, that he is very anxious to be moved from Darmstadt. He has been at Darmstadt, I believe for a considerable time and is tired of having nothing to do. Being a man of energy and I think of ability he is anxious to be placed where there really is work to be done. You will admit that this is a laudable ambition in a public servant. I hope I may be forgiven this reference to Mr. Buchanan: my excuse for making it is, in part, that he is the nephew of an old friend of mine, the late Lord Justice Mellish, and, that his Brother was a member of my old Circuit - the Northern.

With apologies for the length of this Letter, I am, Dear Lord Salisbury, with much respect.

Faithfully

RUSSELL OF KILLOWEN

Annex 68

Letter from José Andrade to General J. Calcaño, Minister of Foreign Affairs of Venezuela, 7 October 1899
(Translation)

Ministerio de Relaciones Exteriores de los Estad Unidos de Venezuela, Gran Bretaña, Límites de Guayana, Instalación del Tribunal de Arbitramento, 1899-1900, folios 366, vol. 187.

Translation

UNITED STATES OF VENEZUELA

MINISTRY OF FOREIGN AFFAIRS

GREAT BRITAIN

BOUNDARIES OF GUAYANA

CONSTITUTION OF THE ARBITRAL TRIBUNAL

1899 to 1900

FOLIOS 366

Vol 187

63

Paris, 7 October 1899

Honourable Minister,

The Arbitral Tribunal , to which the boundary dispute between Venezuela and British Guiana was submitted via the Treaty of Washington of 2 February 1899, rendered its decision pertaining to the case on February 3, 1897.

Without further ado, Mr. José M. Rojas

To Honourable General J. Calcaño Mathieu
Minister of Foreign Affairs
No. 66 Caracas

Agent of the Government before the Arbitral Tribunal, Dr. José M. Rojas, and I sent to you in a telegram the Award that I insert hereto reading as follows:

Decision of the Tribunal: England gives up Punta Barima and the coast until Punta Playa, from hence the line goes until Schomburgk's line, which it follows until the junction of the Cuyuni and Wenamu. This gives us five thousand square miles east of the Schomburgk line. Arbiters and Counsel for Venezuela were brilliant. Important details ....

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Important details by French mail.

The Minister will find the complete determination of the boundary in the copy of the award that Doctor Rojas sends to you herein. Without knowing clearly the geographical position of Punta Playa, which is marked on very few maps, it is difficult to estimate the extension of territory that has been awarded to Venezuela in the Barima - Amacuro region: Mr. Mallet Prevost, upon exploring it on the map of British Guiana, first in the English atlas, considers that it is more than one thousand square miles; but it may be larger once it is marked on the land. The same gentleman notices that the piece of land awarded to Venezuela is approximately four thousand square miles, to the east of the Schomburgk line on the Cuyuni River from its confluence with the Wenamu river to Mount Roraima.

Whatever the area may be, the right of Venezuela to a great part of the territory which has been left under the dominion of Great Britain was

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-2-

absolutely clear, as was demonstrated to satiety by its Counsel before the Tribunal. The award does not appear to be based on reason and justice, as Mr. de Martens affirmed in his closing speech, and

the Venezuelan arbiters only gave their adhesion in order to avoid an even greater flouting of the essential attributes of any faultless judgment.

But, however, unjust, the award nevertheless proves that Venezuela did well in forcing England to submit the question to arbitration in 1897.

In 1890 the English government had already taken possession of Punta Barima and declared in its memorandum of that date that the grounds on which Great Britain relied to claim the whole part of the Cuyuni and Yumari basin was solid, and that the greater part of that District had been separated for three centuries by establishments of the Dutch and the English, their successors: That His Majesty's Government had constantly stated that it held

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strict right to the territory comprised within the line described in Lord Salisbury's letter to Mister Rojas of January 10, 1880, in other words, until the heights of Upata, but until the Orinoco itself, and that any Venezuelan establishment in the east of that line was an usurpation of the rights of Great Britain, and finally that Great Britain could not admit any doubt raised about its right to the territory located within the line explored by Sir Robert Schomburgk in 1841.
Well now, within the Schomburgk

line of 1841 are contained the four or five thousand square of miles which have awarded to the Republic on the coast and in the interior: within this same line are situated the police stations which England must now give up on the Amacuro and the Cuyuni Rivers and within it are the Punta Barima and the mouth of the Orinoco which the arbitration hands back to us at the same time as it assures to us, once and forever, the possession of the all valley of the Yuruari to which the English extended their claim in 1890. To this extent,

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-3-

if for us the sentence is hardly satisfactory as regards that to which our right was clear, for them (Britain) it has been to a certain extent a costly defeat. For my part in view of the impression made by the chaotic condition of the country (Venezuela) on the minds of those concerned with the result of the verdict I had thought that our cause was completely lost. Greatly indeed did justice shine forth when in the determination of the frontier we were given the exclusive dominion over the Orinoco which was the principal aim we sought to achieve through arbitration. I consider as well employed the humble efforts which, in order to achieve this, I dedicated during the last six years of my official life.

I will say nothing concerning the final clause which declares open to free navigation by merchant ships of all nations, the Barima and Amacuro rivers in their English section as in the Venezuelan. Therein is seen an application of a theory of international law which, wherever it has been put in practice, has

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greatly contributed to the prosperity of States. Venezuela herself has at times applied it to the navigation of the Orinoco.

Yours truly
José Andrade

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Paris, 7 October 1899

Honourable Minister

I take advantage of the departure of the mail to forward to the Minister the clippings of the newspapers of England and some newspapers of this capital, which have articles on the award issued by the Guaya boundary tribunal.
I also have the honour to forward to the Honourable Minister of Foreign Affairs

And to you volume No. 8 of the corrected minutes of the Arbitral Tribunal.

Truly yours,

José Andrade
No. 67

Caracas

Annex 69

Note Verbale from the Foreign Secretary of the United Kingdom to the U.K. Ambassador to Venezuela, 25 February 1966

Case concerning Arbitral Award of 3 october 1899, Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela, Memorial of Guyana, vol. III, November 19, 2008, annex 32. https://www.icj-cij.org/sites/default/files/case-related/171/171-20181119-WRI-01-01-EN.pdf

CONFIDENTIAL

No. 12
(AV 1081/116)

FOREIGN OFFICE, S.W.1.
25 February 1966.

Sir,

You will have seen a copy of the text of the Agreement signed by the Venezuelan Foreign Minister, the Prime Minister of British Guiana and myself in Geneva on the 17th of February, regarding the controversy over the validity of the Arbitral Award of 1899 which determined the frontier between British Guiana and Venezuela. The signing of this Agreement, shortly before Midnight, was the outcome of two days' continuous discussion. Technically, the Geneva meeting constituted the second round of the talks adjourned in London on the 10th of December, 1965, which in turn stemmed fr the Joint Communiqué issued on the 7th of November, 1963 at the conclusion of talks between the then Venezuelan Foreign Minister, Dr. Marcos Falcón Briceño, and Mr. Butler.

2. The meetings in December and February differed markedly. At the first, much time was spent discussing the mutually contradict reports prepared by the experts appointed by the three Government to study the documentary material relating to the 1899 Award. Neither side having been able to accept the conclusions of the other, this item was excluded from the agenda at the Geneva meet In London all meetings were formal and every word had to be tran lated by an interpreter: in Geneva, except for the opening and closing sessions, all meetings were informal and conducted in English. Whereas in December the Venezuela delegation consis of officials and had little latitude for negotiation, at Geneva

/Include

His Excellency,
Sir Anthony Lincoln, K.C.M.G., C.V.O.,
etc., etc., etc.,
C.A.B.I.S.

CONFIDENTIAL

included members of all parties represented in the Venezuelan Congress. Although their presence made proceedings cumbersome, it had the advantage that the Minister of Foreign Affairs was able to inform and consult them at every stage. Finally, it became clear at an early stage that the Foreign Minister had instructions to work for an agreement of some kind.

3. The difficulties remained formidable. Neither side could afford to yield an inch on its legal position. The essential question, therefore, was whether a basis of agreement could be found which would satisfy Venezuelan opinion without committing the United Kingdom and British Guiana to a concession of substance. The best way of squaring the circle seemed to be to include in the Agreement provisions similar to those used in Article IV of the 1959 Antarctic Treaty, whereby the legal position as to territorial rights and claims was frozen for thirty years.

4. At the opening plenary meeting, the Minister of Foreign Affairs began by restating his case at some length and then asked me whether I had considered comments to offer on the proposals which he had put forward in London or any new proposals for solving the controversy. As he refused to show his hand further, I circulated to the meeting the text of the United Kingdom draft agreement (Annex 3 to the delegation's brief, a copy of which was sent to Your Excellency on the 14th of February), incorporating an article freezing rights and claims. The plenary session ended after Mr. Burnham had restated the Guianese case, recalling the circumstances of the 1897 Treaty, the 1899 Award and the demarcation of the frontier in 1905, and illustrated his points with contemporary quotations.

/5.

5. At the informal meetings which followed discussion centred on the idea of a Mixed Commission first put forward by Dr. Iribarren in London last December. The Venezuelans wished to use this Commission as an avenue leading ultimately to settlement of the controversy either by a fresh arbitration or by mediation. Towards the end of the day we seemed to be heading for deadlock. As a way out I suggested to Mr. Burnham that there should be agreement to refer the controversy, after a period of years, to the International Court of Justice, but he argued vigorously against this. By the time we adjourned for dinner, therefore, we had reached the point where it seemed inevitable that we should again suggest to the Venezuelans that the matter should be referred back to the United Nations. This would have created a most serious situation. Admittedly, the Venezuelans would have been gravely embarrassed as the Afro-Asian majority in the General Assembly is well disposed towards Mr. Burnham. On the other hand, the Venezuelans were in a position to do great harm to the very important British Commercial interests in their country. After rapid lobbying of the Venezuelan Ambassador and consultation with my Guianese colleagues, I decided to modify the proposed recourse to the United Nations by suggesting that if the Mixed Commission could not settle the controversy, in the first instance the two Governments should seek to agree among themselves which of the means of settling disputes peacefully under Article 33 of the United Nations Charter should be applied to this controversy, and, failing agreement, the United Nations should be asked to choose a means for them. (By good fortune, it had been the Venezuelans themselves who had introduced the idea of Article 33 into one of the drafts which they had put

/forward

forward during the afternoon). When I put the Article 33 proposal to the Venezuelan Foreign Minister at our session after dinner, he asked to consider it overnight before giving me his reply. That evening the Venezuelan Government was asked for fresh instructions. This was the turning point of the meeting.

6. The 17th of February was spent in discussing formulae based on my proposal. The first problem was to decide to whom the Governments of Venezuela and British Guiana were to refer if they themselves were unable to decide which of the methods provided in Article 33 they should adopt. In the formula finally agreed in Article IV of the Agreement ("an appropriate international organ", or, failing that, the Secretary General of the United Nations) we suggested the first and the Venezuelans the second alternative. My suggested term for the Mixed Commission the previous evening had been ten years: this was reduced by bargaining to four, during which no claim of any kind may be asserted by any party to the Agreement except within the Commission itself. The Venezuelans were anxious to avoid any freezing clause which followed closely the wording of Article IV of the Antarctic Treaty. In the end, however, Article V of the Geneva Agreement, while superficially different, is the same in substance. The 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 the Venezuelan Foreign Minister to accept a compromise wording which reflected the known positions of both sides.

/7.

CONFIDENTIAL

7. At the end of the final meeting the Venezuelan Foreign Minister, Mr. Burnham and I each expressed our satisfaction with the Agreement. Dr. Iribarren drew attention at the end of his concluding statement to the presence in his delegation of representatives of every political grouping, including independents, and stressed their support of the Agreement. I note that this statement was subsequently handed out to the press and reproduced in Venezuelan newspapers of the 18th of February.

8. Legally, the Geneva Agreement has not prejudiced the position of either side: we and the Guyanese continue to regard the 1899 Award as valid, while in Venezuelan eyes it is null and void. Politically, it is an honourable compromise. Venezuela can now look forward to a definitive settlement of the controversy some time in the 1970s. British Guiana is not committed to any particular means of settlement provided for under Article 33; and meanwhile the threat to some two-thirds of her territory posed by the Venezuelan claim has been dispelled. I hope that the Mixed Commission will not simply be a time-wasting device and that it will carry out constructive work, not necessarily confined to the political field. If it does, the Agreement will have paved the way for a friendly and lasting relationship between Venezuela and independent Guyana. As for the United Kingdom, I trust that the Agreement will have averted the grave damage to which our large interests in Venezuela would have been exposed if the Geneva meeting had ended in deadlock.

9. I should be grateful if the Governor of British Guiana would be good enough to convey to Mr. Burnham and Mr. Ramphal my thanks for their help, which played an important part in concluding this Agreement. On the Venezuelan side special mention must be made of

/Dr.

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Dr. Hector Santaella, Ambassador in London, a skilful negotiator who worked hard for agreement throughout.

10. I am sending a copy of this despatch to Her Majesty's Ambassador in Washington, the Permanent Representative at the United Nations and to the Governor of British Guiana.

I am, with great truth and respect,
Sir,
Your Excellency's obedient Servant,
(For the Secretary of State)

CONFIDENTIAL

FROM FOREIGN OFFICE TO CARACAS

Cypher/OTP and By Bag — DEPARTMENTAL DISTRIBUTION

No. 61 — D. 16.08 7 February, 1966
7 February, 1966

IMMEDIATE
CONFIDENTIAL

Addressed to Caracas telegram No. 61 of 7 February.
Repeated for information to: Governor British Guiana
And Saving to: Washington No. 470

Your telegrams Nos. 38 and 39 [of 4 February: British Guiana frontier].

In your written reply to the Venezuelan aide-mémoire you should inform the Foreign Minister as follows: Lord Walston has been mis-reported. Neither he nor any representative of Her Majesty's Government has made the statement quoted in the first paragraph of the aide-mémoire. So far as Her Majesty's Government are concerned, the agenda for the meeting remains exactly as agreed in the joint communiqué of 10 December 1965.

2. You should add orally that I am looking forward to meeting Dr. Iribarren and the Prime Minister of British Guiana next week as arranged. At your discretion you may also draw the Foreign Minister's attention to the mis-quotation in paragraph 4 of his aide-mémoire.

3. Please do not deliver reply to M.F.A. until we can confirm that British Guiana Government have no comments. Governor has been asked to reply by 09.00 hours London time 8 February.

4. You may make the terms of your reply public.

DISTRIBUTED TO:
F.O.
American Dept.
U.N. Dept.
J.I.P.G.D.
News Dept.
C.R.O.
Atlantic Dept.

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CONFIDENTIAL

Annex 70

Note GM-210 from the Minister of Foreign Affairs of Venezuela, Dr. José Alberto Zambrano Velasco, to the Minister of Foreign Affairs of the Cooperative Republic of Guyana, 19 September 1982
(Translation)

Note GM-212 from the Minister of Foreign Affairs of Venezuela, Dr. José Alberto Zambrano Velasco, to the Secretary of State for Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland, Mr. Francis Pym, 19 September 1982
(Translation)

Note GM-214 from the Minister of Foreign Affairs of Venezuela, Dr. José Alberto Zambrano Velasco, to the Secretary General of the United Nations, Mr. Javier Cuéllar, 19 September 1982
(Translation)

República de Venezuela, Ministerio de Relaciones Exteriores, Dirección General Sectorial de Fronteras, 1988, *El reclamo a la Guayana Esequiba,* Caracas.

Translation

YELLOW BOOK

OF THE

REPUBLIC OF VENEZUELA
SUBMITTED TO THE
NATIONAL CONGRESS
AT ITS 1983 REGULAR SESSIONS

BY THE
MINISTER OF FOREIGN AFFAIRS

(Coat-of-Arms of the Republic of Venezuela)

GRÁFICAS FRANCO, S.R.L. - CARACAS 1983

GM 210

Caracas, September 19, **1982**

Dear Mr. Minister:

I have the honor to address Your Excellency on this opportunity to refer to compliance with the procedures established by the Geneva Agreement of February 17, 1966.

Since the three-month period provided for in Article IV, 2) of the Geneva Agreement has elapsed without it having been possible to reach agreement on one of the means of peaceful settlement of disputes referred to in Article 33 of the Charter of the United Nations, it is necessary to apply the other provisions of the same paragraph.

The Government of Venezuela is convinced that the most appropriate international body to propose a solution is the Secretary-General of the United Nations, who assumed this responsibility in the note of April 4, 1966, signed by U Thant, and whose action was expressly agreed upon by the parties in the text of the Geneva Agreement itself.

Consequently, the Government of Venezuela intends to bring the matter to the attention of the Secretary General and would be pleased if the Government of Guyana would make a similar request.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

José Alberto Zambrano Velasco
Minister of Foreign Affairs
of Venezuela

To His Excellency
Rashleigh Jackson
Minister of Foreign Affairs of
the Republic of Guiana
Georgetown

GM 212

Caracas, September 19, 1982

Your Excellency:

I have the honor to transmit to Your Excellency a copy of note number GM-210 dated September 19, 1982, addressed by me to His Excellency Mr. Rashleigh E. Jackson, Minister of Foreign Affairs of the Cooperative Republic of Guyana, regarding compliance with the procedures established by the Geneva Agreement of February 17, 1966.

The Government of Venezuela wishes to bring to the attention of Her Britannic Majesty's Government, by virtue of its status as a party to the Geneva Agreement, the contents of the said communication.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

José Alberto Zambrano Velasco
Minister of Foreign Affairs
of Venezuela

To His Excellency
Francis Pym
Minister of Foreign Affairs of the
United Kingdom of Great Britain and
Northern Ireland
London

Attached: As indicated

NOTE No. GM 214 FROM THE MINISTER OF FOREIGN AFFAIRS OF VENEZUELA, MR. JOSÉ ALBERTO ZAMBRANO VELASCO, TO THE SECRETARY GENERAL OF THE UNITED NATIONS, MR. JAVIER PÉREZ DE CUELLAR, IN WHICH HE REPORTS ON THE NOTE TO THE GOVERNMENT OF GUIANA ON THE EXPIRATION OF THE THREE-MONTH PERIOD PROVIDED FOR IN ARTICLE IV.2 OF THE GENEVA AGREEMENT, CARACAS, SEPTEMBER 19, 1982.

GM 214

Caracas, September 19, 1982

Dear Mr. Secretary General:

I have the honor to transmit to you, for your information, a copy of note number GM-210, dated September 19, 1982, addressed by me to His Excellency Mr. Rashleigh E. Jackson, Minister of Foreign Affairs of the Cooperative Republic of Guiana, regarding compliance with the procedures established by the Geneva Agreement of February 17, 1966.

The contents of this communication have also been brought to the attention of the Government of the United Kingdom of Great Britain and Northern Ireland.

Accept, Sir, the assurances of my highest consideration and esteem.

José Alberto Zambrano Velasco
Minister of Foreign Affairs of Venezuela

To His Excellency
Javier Pérez de Cuéllar
Secretary General of the
United Nations
New York

Annex 71

Note GM-251, from the Minister of Foreign Affairs of Venezuela, José Alberto Zambrano Velasco, 15 October 1982
(Translation)

República de Venezuela, Ministerio de Relaciones Exteriores, Dirección General Sectorial de Fronteras, 1988, *El reclamo a la Guayana Esequiba,* Caracas.

Translation

YELLOW BOOK

OF THE

REPUBLIC OF VENEZUELA
SUBMITTED TO THE
NATIONAL CONGRESS
AT ITS 1983 REGULAR SESSIONS

BY THE
MINISTER OF FOREIGN AFFAIRS

(Coat-of-Arms of the Republic of Venezuela)

GRÁFICAS FRANCO, S.R.L. - CARACAS 1983

GM- 251

Caracas, October 15, 1982

Dear Mr. Minister:

I have the honor to address Your Excellency on the occasion of your note of October 8, 1982, as well as the proposals you formulated in the speech you delivered on the 11th of the same month and year before the General Assembly of the United Nations, of which we had no knowledge through ordinary diplomatic channels. With this note, the Government of Venezuela reiterates its desire to maintain communication between the parties in order to deal with this matter at the level of bilateral relations.

As I stated to Your Excellency in my note dated September 19, 1982, the Government of Venezuela is convinced that, in order to comply with the provisions of Article IV.2 of the Geneva Agreement, the most appropriate international body is the Secretary General of the United Nations.

The Government of Venezuela has taken note of the position of the Government of Guiana, both as expressed in its communication of October 8, 1982, and as regards the propositions contained in its address to the General Assembly. Your Excellency has proposed three alternatives for the selection of an appropriate international body to indicate one of the means of peaceful settlement of disputes in accordance with Article IV.2 of the Geneva Agreement, which according to your proposal would be the International Court of Justice, the General Assembly or the United Nations Security Council.

After a careful analysis of these alternatives, the Government of Venezuela reiterates its conviction that the most practical and appropriate option is to entrust the signaling of the medium directly to the Secretary General of the United Nations.

Since it is obvious that there is no agreement between the parties on the choice of an international body to carry out the function provided for in Article IV.2, it is obvious that it will be entrusted to the Secretary General of the United Nations.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

José Alberto Zambrano Velasco
Minister of Foreign Affairs
of Venezuela

Annex 72

Letter from Forbes Burnham to Carlos Andrés Pérez, 3 November 1976

Ministerio de Relaciones Exteriores, Archivos, Bibliotecas y Divulgación Casa Amarilla, Dirección de Política Internacional, asuntos bilaterales, pieza: 1-A-77, Guyana, Proyecto Hidroeléctrico del Alto Mazaruni, año 1977.

4/30/48/1/2/9/22/B/I

Gobierno Bolivariano de Venezuela | Ministerio del Poder Popular para Relaciones Exteriores

Dirección de Política Internacional
Asuntos Bilaterales

CODIGO: [ ][ ][ ] SECCION [ ][ ][ ][ ][ ][ ][ ][ ][ ] SERIE

NUMERO DE EXPEDIENTE: _____

PIEZA: 1-A-77

DESCRIPTOR GEOGRAFICO: Guyana

DESCRIPTOR TEMÁTICO: Proyecto Hidroeléctrico del Alto Mazaruni

AÑO (S): 1977

SELLO DE LA DIRECCIÓN

MPPRE/SGE/DAB/008

AB

Copy

[illegible] September, 1976.

(My dear Carlos Andres,)

A few days ago I had a communication from your Ambassador, who had recently returned from Caracas, concerning an offer from you to assist in the realisation of the Upper Mazaruni Hydro-Electric Project.

Sometime earlier this year your Ambassador had indicated to my Minister of Energy & Natural Resources that Venezuela would be interested in purchasing power from the Upper Mazaruni Hydro-Electric Project when the Station had been built. As a result of that indication, my Ambassador to Caracas, Rudy Insanally, made some enquiries from Coplanarh, which was the organisation indicated by Marquez as the agency which would purchase electric power. Up to the present Insanally has been unable to get any definite response to his enquiries.

The suggestions which have been conveyed to me by your Ambassador contain interesting features, and I believe we should immediately nominate representatives from both sides to work out the details, alternatives and modalities before we meet for the final agreement.

As the same time, I wish to propose a regime which, proceeding by stages can result in mutually beneficial and material cooperation. That in my view would demonstrate to both our peoples the advantages to be gained by the settlement of outstanding issues, and the growth in friendly economic relations.

We have at hand now the Final Feasibility Study prepared by SWECO. That study offers alternatives of production of power in the first stage of the development of the project, of a range between 750 megawatts and 1200 megawatts.

I would see an advantage in a long term contract for the supply of power to Venezuela, coupled with a political arrangement which would remove from our relation the nagging problem of the border.

In other words, I would propose that simultaneously with the agreements for mutual cooperation with respect to the Upper Mazaruni Hydro-Electric Project and the supply of power to Venezuela, there should be signed, an Accord which would lay at rest the border question.

His Excellency Señor Carlos Andres Perez,
President of Venezuela.

His Excellency
Señor Carlos Andres Perez

3rd November, 1976

I am confident that the sense of mutual assurance and security thereby generated in Guyanese and Venezuelansminds by the signing of such an Accord, would make it easy for both our peoples to accept the implications of such a significant example of economic cooperation.

The question of the supply of wood from the area to be flooded, could easily be settled favourably against such a background.

Indeed, Guyana is anxious to have as much of the marketable timber as possible, removed from the area to be flooded, and believes that the supply of lumber therefrom to Venezuela is an obvious first choice. In such circumstances further benefits are sure to accrue to both countries from the development of our timber resources in the Mazaruni area as a whole, with Venezuela as an important market.

On the question of financing, we would of course welcome Venezuelan assistance. We are at present building a road of 180 miles to the dam site, and if you believe that the regime of cooperation I have outlined forms a basis for development of economic relations between our two countries, I would ask you to consider an early discussion at official level with respect to the funding of that road.

While the proposals I have made, differ somewhat from those which your Ambassador has indicated, I trust that you will find them a basis for a staged development of cooperation between our two countries, which, having regard to the political realities of the present time and the nature and history of the relations between our two states, offers good prospect of being acceptable to both our peoples. I share with you the understanding that economic cooperation holds the best prospect for the development of South America.

The Hydropower Project has reached an important stage. Having completed the Feasibility Study, we are now considering a number of possible sources of financing and assistance, and have already received indications of interest of varying levels of intensity from certain countries and organisations, and would need, with in the next few months, to take the far reaching decisions.

I wish to assure you that we will pay special attention to Venezuelan interest in this project, which interest could have an effect upon the manner in which we seek the financing for the project.

It is for this reason that I would be most grateful if I could have an early indication from you as to your reaction to the matters I have raised in this letter.

(Cooperatively yours)

(Sgd.) Forbes

Prime Minister.

Annex 73

Telefax from the Embassy of Venezuela in Guyana to the General Direction, to the Sectorial Director of Frontiers, to the Sectorial Director General of International Policy and to the Sectorial Director or International Cooperation, 3 March 1994
(Translation- Excerpt)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Telefax de la Embajada de Venezuela en Guyana. Información sobre programa de exploración geofísica en el área de la región Esequiba, 1994, Box: E-10.

BOLIVARIAN GOVERNMENT
OF VENEZUELA | PEOPLE'S MINISTRY FOR FOREIGN AFFAIRS
BORDER OFFICE
DOCUMENTATION AREA

FILE NUMBER: 70

ITEM:

GEOGRAPHIC DESCRIPTOR: VENEZUELA

THEMATIC DESCRIPTOR: TELEFAX FROM THE VENEZUELAN EMBASSY IN GUAINA. INFORMATION REGARDING THE GEOPHYSICAL EXPLORATION PROGRAM IN THE ESSEQUIBO AREA

YEAR(S): 1994

I AM PLEASED TO INFORM YOU THAT I HAVE MET WITH ENGINEER HILBERT N. SHIELDS, VICE-PRESIDENT AND GENERAL MANAGER FOR GUIANA AND VENEZUELA OF GOLDEN STAR RESOURCES, LTD., WHO INFORMED ME THAT THEY WILL SOON BEGIN AN AERIAL EXPLORATION PROGRAMME TO SEARCH FOR GOLD AND DIAMONDS IN THE CONCESSIONS LOCATED IN THE ESSEQUIBO TERRITORY GRANTED TO THE COMPANY BY THE GOVERNMENT OF GUIANA, ONE OF WHICH CONCESSIONS BORDERS THE CURRENT BOUNDARY BETWEEN THE TWO COUNTRIES .....

AS THIS MISSION HAS REPORTED ON OTHER OCCASIONS, THE ESSEQUIBO TERRITORY HAS BEEN PARCELLED OUT AND HANDED OVER TO TRANSNATIONAL COMPANIES WITH THE SERIOUS RISK THAT, REGARDLESS OF THE TERRITORIAL CLAIM, SUCH COMPANIES MAY CAUSE IRREVERSIBLE DAMAGE TO THE AREA.

Annex 74

Telegram received from the Embassy of Venezuela in Guyana to the Minister's Cabinet, about Concessions in the Essequibo, 14 February 1995
(Translation- Excerpt)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Informes, 1995, Box: E-25.

EMBASSY OF VENEZUELA TO GUYANA
296 THOMAS STREET, GEORGETOWN
DATE: 02-14-95
TELEFAX
TO: MINISTER'S CABINET
FROM: EMBASSY OF VENEZUELA TO GUYANA
SUBJECT: IN THE TEXT
Embajada de Venezuela en Guyana

AMBASSADOR JONES ASKED ME IF THIS MEANT THAT VENEZUELA WAS OPPOSED TO THE GRANTING OF CONCESSIONS IN THE ESSEQUIBO. I REPLIED THAT VENEZUELA'S POSITION ON THIS MATTER WAS VERY CLEAR AND HAD BEEN ESTABLISHED MANY YEARS AGO, THAT OUR CURRENT CONCERN WAS DUE TO THE PROLIFERATION OF CONCESSIONS BEING GRANTED IN THE REGION, WHOSE IRRATIONAL MANAGEMENT COULD ALTER THE ECOLOGICAL BALANCE WITH SERIOUS REPERCUSSIONS IN VENEZUELA AND ON THE CONTINENT. THAT OUR CONCERN IS ALSO BASED ON THE VERY SCARCE RESOURCES, BOTH HUMAN AND TECHNICAL, THAT GUYANA HAS TO SUPERVISE THE MANAGEMENT OF THE AREAS GRANTED.

Annex 75

Letter from the Ambassador of Venezuela in Guyana to the Minister's Cabinet, about the Amendments to the Forestry Law if Guyana, 14 August 1997
(Translation)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Oficio para el Gabinete del Ministro, de Héctor Azócar, Embajador, enmienda a la Ley Forestal de Guyana, 1997, Box: E-09.

II 2.G12.E1.F.60.3/384

[Rubber stamp]

"MINISTRY OF FOREIGN AFFAIRS
MINISTER'S OFFICE
COMMUNICATIONS DEPARTMENT
16 SEP 1997
OFFICE OF BORDER AFFAIRS – 166
RECORDED"

"MINISTRY OF FOREIGN AFFAIRS
16 SEPT 1997
[Illegible] 06
Dated 15/08/97"

[Rubber stamp]

34997

Georgetown, 14 August 1994

SUBJECT: Amendments to Guyana's Forestry Act.

TO: Minister's Office DGSPI/DA, DGSECI/DCCA, DGSF/ Legal Department.

Mr. Minister:

I have the pleasure to forward to you a photocopy of the English text of the amendments to the Forestry Act of Guyana, which were passed by the National Assembly in July 1997.

This legal instrument, which will be cited or titled as the Forestry Act of 1997 (Exploration Permits) (Amendments), closes a legal gap regarding the exploration permits that the Guyanese government, through Memoranda of Understanding, has been signing with foreign companies — mainly from Malaysia and Canada— to carry out exploration activities both in the area under reclamation and in the regions near Berbice River.

Based on the content of the amendment, it can be inferred that what the Guyanese government is seeking, in addition to providing a legal framework for what it has already agreed with the companies Berjaya, Kwitaro Investment and Solid Timbers, is to back up the work carried out by the Forestry Commission, established under the Forestry Act of 1996. Note that the bill was submitted to the National Assembly by Satyadeow Sawh, Minister in the Ministry of Agriculture and former Ambassador of Guyana to Venezuela. The opposition parties represented in Parliament criticized the government's forestry policy and voted against it, arguing that the bill was not sufficiently consulted with the organizations representing the Amerindian populations and the communities that will be affected by the exploration activities, and eventually by the exploitation activities, should they be carried out.

In this regard, during the 5th Congress of Indigenous Organizations of the Amazon Basin (COICA) held in this city last May, a resolution was approved (the Spanish and English versions

of which are also herewith attached) on the Land Rights of Indigenous People in Guyana. The resolution called on the Guyanese government to suspend the passage of the Forest Exploration Act by Parliament, to grant land titles and to resolve pending land claims, to put the Environmental Protection Agency into operation, and to review the Amerindian Peoples Act in accordance with current international standards in this matter.

Minister Sawh informed the undersigned that the exploration contracts Guyana has signed and intends to sign do not mean that these areas will automatically be commercially exploited. He added that the idea is to know concretely what the country's true potential is in terms of forest resources.

Sincerely yours,
Héctor Azócar
Ambassador
[Signed illegible]

[Round rubber stamp bearing Coat of Arms]

"REPUBLIC OF VENEZUELA – Embassy to Guyana"

Annex 76

Fax from the Ambassador of Venezuela in Guyana to the Minister's Cabinet about the Environmental Agreement, Relations Venezuela/Guyana, 31 August 1998 (Translation)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Expediente n. 107 Acuerdo Ambiental entre Venezuela y Guyana, reunión técnica sobre el programa de cooperación en materia ambiental, 1998, Box: E-09.

Fax No. (592-2) 53241
No. II.2.G12.E1.A.40.3/ 309

TELECOPY

TO:	Ministry of Foreign Affairs Caracas Minister's Office DGSPI
FROM:	Venezuelan Embassy to Georgetown
SUBJECT:	Environmental Agreement, Venezuela/Guyana Relations
DATE:	31/08/1998
Nº of pages:	2

In follow-up to the draft Environmental Agreement between Venezuela and Guyana, it has come to the attention of this Mission that Guyanese government sources stated last week that the draft agreement is still pending consideration by President Jagan's Executive Cabinet. Differences have emerged between the two countries over the scope of the treaty, which is a commitment provided for in the Joint Communiqué issued on the occasion of the Guyanese President's official visit to Venezuela.

In this regard, unofficial sources said that Foreign Minister Rohee himself had invited the opposition political parties represented in Parliament to be briefed on the current status of Venezuela/Guyana relations, in the light of the events related to the above-mentioned Environmental Agreement. In this connection, both the PNC, the main opposition party, and the TUF have reportedly accepted the invitation for next week. The attendance of the WPA has yet to be confirmed.

Meanwhile, the PNC Secretary General described the meeting as very important, and said the issue of Venezuela/Guyana relations is above any partisan interest, adding that the current Government should take advantage of all the experience and knowledge that comes from experts in the field, regardless of their political affiliation.

Annex 77

Telefax from the Embassy of Venezuela in Guyana to the Cabinet of the foreign Minister in Caracas, about Explorations made by the Company Barama Co., Ltd, 10 March 1999 (Translation)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Telecopia para el MRE, de la Embajada de Venezuela en Guyana, exploraciones mineras por parte de la empresa Barama LTD, 1999, Box: E-08.

EMBASSY OF VENEZUELA IN GUYANA
FAX Nr (592-2) 53241
II.2.G12.E1.F.60.3 / 065

GENERAL DIRECTION
Office of the General Director
PREPARE ACCOUNT: _____
FOR INFORMATION: _____
COORDINATE WITH: _____

TELECOPY
GENERAL DIRECTION

TO: FOREIGN AFFAIRS – CARACAS
ATTENTION: MINISTER'S OFFICE
D.G.S.P.I.
D.G.S.F.
D.G.S.E.C.I.

FROM: EMBAVENEZ GUYANA

SUBJECT: MINING EXPLORATIONS BY THE COMPANY BARAMA CO. LTD.

DATE: 03/10/99

NR PAGES: 2

According to information provided by the Executive Director of the firm Barama Company Ltd. (a Korean-Malaysian timber concessionaire company), Mr. S. K. Loong, said enterprise would have signed an agreement with Golden Star Resources Ltd. (a Canadian operator of the mine OMAI in the zone under reclamation) to start exploratory works to search for precious metals in the area where the former operates under concession in the Northwest District of the country (zone under reclamation).

The agreement, signed on 21 January with a validity of two years, foresees a geophysical and geological survey to be carried out on ground and air over an area of one million acres at an approximate cost of between 300.000 and one million US dollars, depending on the dimensions of the exploratory works. In accordance with the results stemming from the studies to be conducted, the firm Barama Company Ltd. would have the first option for a joint venture with Golden Star Resources Ltd. for the prospection of minerals. The Executive Director of Barama also pointed out that the licence fees were reportedly paid to the Guyanese government and that the studies would be carried out in an environmentally favourable manner and would not affect the company's forestry operations.

This information has raised concerns among some small and medium-sized miners who wonder whether foreign companies that are concessionaires of the Timber Sale Agreement

(Barama Co. Ltd. and Caribbean Resources Ltd.) are also authorized to carry out exploratory works in the field of mining.

Barama has been actively trying to promote the development of an African palm project, for which it has organized and financed visits by the Ministry in charge of Forestry Affairs (Satyadeow Sawh, former Ambassador to Venezuela) to Malaysia, as well as experts of that nation to Guyana, in order to identify the most favourable areas to develop such plantations, having already recommended an area located to the south of the current concession held by Barama, all of which are in the zone under reclamation. According to information obtained by high-level officials of the Forestry Commission of Guyana, the plans or intentions of Barama are to take advantage of the deforestations that would be derived by the African palm project for its timber processing plant without apparently obtaining new concessions.

Sincerely,
(illegible signature)
Héctor Azócar
Ambassador

(There appears a seal of the Embassy of Guyana of the Republic of Venezuela).

Annex 78

Report of Projects and Developments, and other Physical and Socio-Economic Aspects of the Essequibo's Territory, 10 June 1999
(Translation- Excerpt)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Remisión de informe sobre proyectos y desarrollos, así como aspectos físicos y socioeconómicos del territorio Esequibo, 1995, Box: E-09.

Translation

REPORT ON PROJECTS AND DEVELOPMENTS, AS WELL AS OTHER PHYSICAL AND SOCIOECONOMIC ASPECTS OF THE TERRITORY

...

I) Mining and Oil:

...

The investment made in this mining project, which is considered the largest and most important in this country, exceeds US$ 250 million, with gold production in 1998 amounting to 327,546 ounces. It should be recalled that in 1995 Omai was responsible for the accidental spill of cyanide waste into one of the tributaries of Essequibo River, which affected the ecosystem of the area. On that opportunity, the Venezuelan Ministry of the Environment and Natural Resources sent a team of experts to assess damage and provide advice.

...

It is worth remembering that in July 1997, the Guyanese Parliament approved an amendment to the Guyana Forestry Act, known as the Forestry Exploration Act, which allows the Government of Guyana to grant three-year exploration permits in the forestry sector as a precondition for the possible execution of timber harvesting and processing agreements with foreign companies. Under the Act, applicant companies must comply with a series of specific requirements and carry out a series of environmental impact studies before obtaining the corresponding license.

...

3) Rocket Launch Site Project: U.S. firm Beal Aerospace Technologies, Inc., based in Dallas, Texas, sent a team of executives in May this year to start talks with the Guyanese Government regarding the possible establishment in this country of a launch base for commercial satellite-carrying rockets.

...

V) Socio-economic Exchange with Venezuela

The socio-economic exchange between the regions located in the Essequibo and Venezuela could be defined as "informal" in nature. This means that many of the goods purchased in Venezuela, such as canned food, detergents, flour, cookies, liquor, plastic products and in some cases fuel and lubricants, are brought to Guyana by people engaged in informal trade.

...

Annex 79

Telefax from the Embassy of Venezuela in Guyana to the Cabinet of the Minister of Foreign Affairs in Caracas, 18 June 1999
(Translation)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Cartas, Telecopia para el MRE, de la embajada de Venezuela en Guyana, Georgetown, concesión forestal, Box: E-08.

ON FILE

EMBASSY OF VENEZUELA
IN GUYANA
FAX No. (592-2) 53241

No. II.2.G12.E1.F.60.3.2/ 194

TELECOPY

TO: FOREIGN AFFAIRS, CARACAS
CABINET OF THE MINISTER
DGSPI/DA
DGSF

FROM: EMBAVENEZ GEORGETOWN

SUBJECT: FOREST CONCESSION

DATE: JUNE 18, 99

No. of pages: 1

Journalistic sources reported that the Dutch-owned "Guiana Forest Fund NV", based in Curaçao, has reportedly concluded a 20-year agreement with the Government of Guiana for the processing of timber in a concession covering an area of approximately 330,000 acres in the Region 1Barima-Waini. This company would be in partnership with the firm "Buckingham Forest Enterprises Inc." which has been registered in that country by a group of foreign investors, also of Dutch nationality. It should be noted that details of this concession are included in the Political-Economic Report of this Mission for the period January to April of this year, as well as in the Report on the Essequibo Projects and Developments.

According to spokesmen for the Buckingham company, the Guiana Forest Fund's forestry operations are expected to start next year, without specifying a precise date. The latter company is also in the process of preparing a management work plan to be submitted to the Guiana Forestry Commission, which would include, among other things, the corresponding environmental impact studies.

The objective of the Guiana Forest Fund's operations would be to market timber products processed in Guiana in the Netherlands.

Sincerely,
(Signed)
Héctor Azócar

Note by translator: There are two lineal stamps from the Foreign Affairs Ministry acknowledging receipt of the information dated June 21, 1999.

Annex 80

Suit brought to the High Court of the Supreme Court by Mr. Frank Beckles and other Members of the Organization "Guyana is First" and Mr. Ashton Simon on behalf of the Amerindians and People of the Country against the President of Guyana, Prime Minister, Minister of Finance, Attorney General and the Beal Guyana Launch Services, L.L.C., 31 May 2000

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Punto de cuenta al Presidente sobre solicitud de concesión aurífera en la Guayana Esequiba ante la comisión de minas de Guyana por la compañía "King David Enterprises Guyana Ltd", 1991, Box: E-21.

2000 No. 1074/ DEMERARA.

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CONSTITUTIONAL JURISDICTION

In the matter of the Constitution of the Co-operative Republic of Guyana.

BETWEEN:

1. Dr. FRANK BECKLES, in his own behalf and on behalf of each and every one of the members of the public interested in the maintenance of the sovereignty of the people of Guyana and the supremacy of the Constitution of the Co-operative Republic of Guyana.
2. Dr. FRANK BECKLES, in his own behalf and on behalf of each and every one of the members of Guyana is First.
3. Sherwood Kendall, in his personal capacity and as a member of Guyana is First
4. Johnathan Adams, in his personal capacity and as a member of Guyana is First
5. ASHTON SIMON, in his own behalf and on behalf of the Amerindians in Guyana.
6. ASHTON SIMON, in his own behalf and on behalf of the the hinterland people of Guyana.
7. KATHLEEN RAJKUMAR.

Plaintiffs.

And

1. The President of the Co-operative Republic of Guyana, Mr. Bharrat Jagdeo, in his official capacity as President of Guyana.
2. The Prime Minister of the Co-operative Republic of Guyana, Mr. Samuel Hinds.
3. The Minister of Finance.
4. The Attorney General of Guyana.
5. Beal Guyana Launch Services, L.L.C.

Defendants, jointly and severally.

ORIGINATING NOTICE OF MOTION

Take Notice that this Court will be moved on Monday the 12th day of June, 2000, or such other day and hour of which you shall be informed by the Registrar, by Messrs. Stephen G.N. Fraser, C.A. Nigel Hughes and Teni Housty of Counsel on the part of the Plaintiffs for the following relief, that is to say:

(a) A declaration on that the agreement of the 19th day of May, 2000, purportedly signed between 'Guyana' and the fifth named defendant is illegal, null and void.

(b) A conservatory order prohibiting and/or restraining the 1st, 2nd, 3rd, 4th and 5th named defendants, and each and every one of the from taking any or any further steps in the implementation of the aforesaid agreement until after the hearing and determination of this motion.

(c) A conservatory order prohibiting and/or restraining the the 5th named defendants, their servants and/or agents and each and every one of the from draining the Waini location and its surroundings, identified for the spaceport under aforesaid agreement, until after the hearing and determination of this motion.

(d) A declaration that those clauses of the agreement purporting to oust access to the spaceport facility by the police and army compromise the sovereignty and the national security of the people of Guyana and Guyana.

(e) A declaration that the purported 99 year tax holiday under the aforesaid agreement is unconstitutional, unlawful ultra vires, null and void.

(f) A declaration that the purported decision to sell the lan in the area identified under the agreement at the US$3.0 sale price without any proper or any consultation and/o without providing and opportunity for the people affecte by such decision to be heard, constitutes an arbitrar exercise of executive authority on the part of th Government and is therefore ultra vires, null and void.

(g) A declaration that the aforesaid agreement purported allows for the creation of an American state subject

within the constitutionally delimited boundaries of Guyana, and constitutes a ceding of territory to a foreign entity.

(h) A declaration that such purported ceding of territory is unconstitutional, null and void.

(i) A declaration that the government of Guyana is not constitutionally entitled to sign the aforesaid agreement, a private international agreement, on behalf of the State of Guyana.

(j) A declaration that it is unconstitutional for the Government of Guyana to sign the aforesaid agreement, a private international agreement, purporting to be binding on the Legislative and Judicial arms of the state.

(k) A declaration that the government of Guyana has purportedly attempted to usurp and/or to circumvent the constitutional functions and authority of the Parliament and the Judiciary.

(l) A declaration that the aforesaid usurpation and/or circumvention is unconstitutional.

(m) A declaration that the government of Guyana has by various terms contained in the aforesaid agreement offended against the principal of separation of powers and accordingly the aforesaid agreement is null and/or void at least insofar as it offends that principle.

(n) A declaration that the purported undertakings to relocate or remove the inhabitants from the Waini area, the area identified for the spaceport, are unconstitutional and are ultra vires articles 40 and 142 142 of the Constitution of the Co-operative Republic of Guyana.

(o) A declaration that the ancient rights enjoyed by the Amerindians to the Waini area are rights in property

are protected by the Constitution of the Co-operativ Republic of Guyana from compulsory acquisition.

(p) A declaration that Amerindians are entitled to continue t exercise their ancient rights in the Waini area witho interference from the defendants or any of them.

(q) A declaration that any bill or other legislative instrume purporting to carry out or implement the terms of t aforesaid agreement is inconsistent with the Constitutio null and void ab initio and, therefore, cannot be present to Parliament by the government of the day.

(r) A declaration that article 9 of the Constitution of Cooperative Republic of Guyana is enforceable.

(s) A declaration that the government of Guyana has by vari terms contained in the aforesaid agree unconstitutionally derogated from the sovereignty vested the people of Guyana by virtue article 9 of Constitution of the Co-operative Republic of Guyana.

(t) A Declaration that article 9 of the Constitution of Cooperative Republic of Guyana is not affected by amendment purportedly made by Act No. 1 or 1988, which amendment purported, inter alia, to make the afore article 9 unenforceable.

(u) A declaration that the purported agreement unconstitutionally fettered the discretion of the Presi of Guyana.

(v) A declaration that the right to the enjoyment protection of eminent domain is an inalienable right of state and a necessary incident of sovereignty and tha government can fetter or surrender same.

(w) A declaration that the or any derogation from the aforesaid inalienable right to eminent domain as purported by the aforesaid agreement is unconstitutional, null and void.

(x) A declaration

(y) A declaration that the right to sovereignty and the right to the protection of the principal of separation of powers are constitutional rights enjoyed by each and every person in Guyana.

(z) A declaration that the government of Guyana by virtue of the terms of the aforesaid agreement have acted in derogation of the rule of law.

(aa) Such further or other relief as to the Court is just.

(bb) Costs.

AND THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

1. The plaintiffs bring these proceedings in their own behalf and on behalf of numerous persons having the same interest in the matters herein, respectively.

2. Guyana is First is a non-Government public interest organisation having its offices at 302 Church Street, Queenstown, Georgetown, Demerara, Guyana.

3. ASHTON SIMON am an Amerindian.

4. The first named defendant is sued in his official capacity and not in his personal capacity.

5. The first named defendant is the Commander-in-Chief of the military forces in Guyana.

6. The first named defendant is purportedly bound by the hereinafter-mentioned agreement to grant tax waivers/remittances to the fifth named defendant.

7. The third named defendant, like the first named defendant is contractually bound by the hereinafter mentioned agreement to grant tax waivers/remittances.

8. The said fifth named defendant, claims to be a limited liability company formed under the laws of the State of Texas, United States of America.

9. The fourth named defendant is sued in his official capacity as the Government representative.

10. It does not appear that the fifth named defendant has an address for service in Guyana.

11. On Friday the 19th day of May, 2000, a Commercial Space Launch Facility Agreement was purportedly signed by the Prime Minister, Mr. Samuel Hinds, on behalf of the Co-operative Republic of Guyana between, Guyana, and the Beal Guyana Launch Services, L.L.C. the fifth named defendant.

12. The area identified for the siting of the spaceport contemplated by the agreement is important not only to the Amerindians residing in the area but to all Amerindians in Guyana since it is the area to which most Amerindians have resorted to since ancient times for traditional inputs into the maintenance of their heritage and their life ways and to ensure their continued existence as a people.

13. The Waini area comprises part of the ancestral lands of the Amerindian people.

14. In order to continue enjoying those lands allocated to Amerindians by successive governments our ancient rights of passage to the Waini and other areas are necessary.

15. The preservation of Amerindian heritage and culture is an imperative and all Amerindian peoples affected by the proposed spaceport are entitled as of right to be heard before their previously unhindered ancient rights to the area, which they enjoyed for centuries, is truncated,

16. Many Amerindians live in the swamp area of the Waini and have lived there for several centuries.

17. The bones of the Amerindians' forefathers have been entombed in the Waini region.

18. To allow the proposed establishment of the spaceport in the Waini region would disturb both ancient and traditional Amerindian gravesites.

19. Amerindians believe that the remains of their ancestors are the source of the spiritual linkages essential to the continuum of their cultural and religious beliefs.

20. Further, the ancestral lands are an essential part of the identity of the Amerindian in his community. Their ancestral lands are as vital to the Amerindians as names are to individuals in western cultures.

21. The Amerindians believe that their communal ancestral lands are their birthright.

22. The communal ancestral lands have been used by the Amerindians for centuries and it us upon these lands that they nurture their culture.

23. Further the Amerindians are hunters and gatherers and live off of the land.

24. The Amerindians enjoy ancient routes of communication in the Waini area.

25. Further, the exclusion of the Amerindians from the Waini area would constitute a devastating impediment to the use and enjoyment of their tradition routes of communication used to maintain their culture.

26. Some of the Amerindians who live in the area are swamp people who live in homes suspended above, but, in the midst of the swamps.

27. It is a fundamental belief of the Amerindians that their

break such relationship of interdependence with nature will result in endless suffering and destruction.

28. Amerindians have been seeking the extension of government recognition of their ancestral land. Accordingly, the Amerindians have a legitimate expectation to be involved in the decision-making process regarding the use or disposal of the Waini area.

29. Further the government did not consult or give the Amerindian people an opportunity to be heard before agreeing to sell the aforesaid designated spaceport area to the fifth named defendant.

30. Further, the area identified for the siting of the spaceport contemplated by the agreement is important not only to the Amerindians residing in the area but to all hinterland people in Guyana since it is the area to which many hinterland people resort for traditional sources of food and shelter.

31. The plaintiffs are advised by their Attorneys-at-Law, Mr. Stephen G.N. Fraser, Mr. C.A. Nigel Hughes and Mr. Teni Housty, and verily believe that the aforesaid agreement is unconstitutional in several respects, unenforceable and violates the sovereignty of the people of Guyana.

32. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that the state of Guyana comprises of the Executive, the Legislature, and the Judiciary.

33. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that the Government of Guyana is not entitled to enter into a private agreement on behalf of the three composite elements of the state of Guyana. The aforesaid agreement can only properly be entered into by or on behalf of the Government of Guyana. Accordingly, therefore

is ultra vires the executive power conferred on the Government of Guyana.

34. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that significant portions of the content of the agreement purport to compromise the functions of the Legislature and the Judiciary and subvert or violate existing legislation and the Constitution and is therefore illegal, null and void, and/or unenforceable.

35. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that by virtue of the provisions of article 8 of the Constitution of the Co-operative Republic of Guyana that the Constitution is the supreme law of Guyana and that any agreement inconsistent with the provisions thereof or inconsistent with the fundamental principles of Constitutional law, including eminent domain, the rule of law and separation of powers is void ab initio.

36. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that by virtue of the provisions of article 9 of the Constitution of the Co-operative Republic of Guyana, sovereignty belongs to us, the people of Guyana.

37. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that the said article 9 is enforceable and capable of enforcement and has not been effectively amended by Act No. 1 of 1988 since the said article 9 can only be validly amended by referendum.

38. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that the government cannot derogate from our rights of

39. The plaintiffs and each and every one of them is advised by their aforesaid Attorneys-at-law and verily believe that by virtue of article 40 of the Constitution of the Cooperative Republic of Guyana each and every citizen of Guyana is guaranteed the protection of the law.

40. That we are further advised by our aforesaid attorneys at law and verily believe that the following clauses are unlawful and/or unconstitutional for, inter alia the reasons given therefor:

ARTICLE 2. DUTY OF GOOD FAITH AND FAIR DEALING.

Guyana and Beal recognize that this Agreement is entered into in good faith and that the success of Beal's proposed space launch facility is dependent on the co-operation of both Parties. Each party agrees to treat the other and to act in good faith and with fair dealing in all aspects of its relationship with and obligations to the other, including those created by this Agreement. Guyana pledges its utmost co-operation with Beal in the implementation and enforcement of U.S. controls overloads technology, and technical data used at the Facility. Each parties shall sign any additional documents, grant any additional authorizations, licenses and approvals, and take such other and further executive, administrative, or legislative actions as may be necessary to give full and complete effect to the provisions and purpose of this Agreement. This article is intended by the Parties to create legally enforceable obligations and duties, and its importance is highlighted by its placement near the beginning of this Agreement. Wherever this Agreement requires the consent, permission, or approval of a Party, such consent, permission, or approval shall not be unreasonably withheld.

The plaintiffs are advised as aforesaid and verily believe that:

The government is incompetent to bind Parliament to make the

violation of the most fundamental constitutional principle of separation of powers.

ARTICLE 5. IDENTIFICATION AND TRANSFER OF LAND BY GUYANA TO BEAL.

5.2 Conveyances by Absolute Grant. At Closing, Guyana shall convey the Primary Site and the Remote Site to Beal, absolutely and forever, by absolute grant. Guyana shall ensure that all persons occupying any portion of the Primary Site and Remote Site have vacated it or have been relocated from it no later than by sixty (60) days after Beal delivers written notice to Guyana requesting such relocation. Guyana shall allow Beal free and complete access to and from the Primary Site and the Remote Site.

The plaintiffs are advised as aforesaid and verily believe that:

This clause does not contemplate the rights of the Amerindians to the area. No opportunity to be heard was accorded the Amerindians before the decision was made to sell the area and exclude the Amerindians.

This clause contravenes the procedure prescribed and contemplated by the State Lands Act and the regulations thereunder.

The grant can only be made on application and the President must exercise his discretion in accordance with the Act. A pre-existing binding agreement ousts the exercise of discretion contemplated by the Act.

A prior binding undertaking and the exercise of discretion are mutually exclusive.

Guyanese cannot be deprived of the legal right to apply for or to enjoy the use of state lands except in accordance with existing law. Article 40 of the Constitution of the Co-operative Republic of Guyana guarantees the fundamental right to protection of the law.

5.2.2.2.1 Guyana shall also retain a right of first refusal to re-purchase from Beal the Primary and Remote Sites. If Beal receives a bona fide offer from a third party (other than from an Affiliated Company) for the purchase of all or any part of the Primary or Remote Sites, which offer Beal is willing to accept, Beal shall deliver written notice of the offer to Guyana, and shall deliver to Guyana a copy of the proposed contract of sale to such third party. Guyana shall have the right for ninety (90) days after the receipt of such notice to enter into a contract for the sale of the specified portions of the Primary or Remote Sites at the same price and upon the same terms as contained in the proposed contract of sale to the third party, which right of Guyana shall be paramount to the rights of the third party. Guyana shall exercise its right by providing written notice thereof to Beal. If Guyana fails to exercise any such right within the time specified, and if Guyana has not asserted a reasonable objection to the proposed Purchaser pursuant to paragraph 5.2.2.1, then Beal shall be at liberty to enter into and fulfill a contract for the sale of all or part of the Primary and/or Remote Sites with the third party at the same price and on the same terms as contained in the proposed contract of sale delivered to Guyana. The time periods for Guyana to either object to a proposed purchaser, or to exercise its right-of-first-refusal, may run concurrently.

The plaintiffs are advised as aforesaid and verily believe that:

This clause offers no protection

the sale of shares in the company and not of the actual property itself. All of the concessions purportedly granted to Beal by 'Guyana' can be sold by Beal to the Venezuelans or to any other person or county without reference to any Guyanese institution. This clause, therefore, seriously derogates from our rights of sovereignty.

5.3 Additional Buffer Area. Guyana shall grant to Beal a safety buffer in the form of an easement covering the Additional Buffer Area. The purpose of the safety buffer easement is to provide safety, to prevent encroachment upon the Facility, to prevent future complaints from individuals who may move near to the Facility, and to prevent any need for restrictions to be placed upon Beal's use of the Facility. The easement shall prohibit all construction, buildings, or human occupation or habitation within the Additional Buffer Area during the Term of the Agreement. Guyana shall ensure that all construction, buildings, or human occupation or habitation within the Additional Buffer have vacated it, have been relocated, or have been removed no later than one (1) year after Closing. However, Guyana may utilize the Additional Buffer Area for fishing and hunting by its citizens, and temporary structures and habitation for such purposes shall be allowed. Beal shall not have any liability for, or any responsibility for ensuring, the safety, protection, health or well-being of any person using, or for any temporary structure or habitation built within, the Additional Buffer Area.

The plaintiffs are advised as aforesaid and verily believe that:

There is no constitutional provision for relocation or removal or forced vacation of homes. That neither this clause nor the agreement contemplates articles 40 and 142 of the Constitution of

citizens from compulsory acquisition of property. Article 142 (1) provides, inter alia, as follows:

142(1) No property of any description shall be compulsorily taking possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by our under the authority of a written law: (a) providing for compensation for the property or any interest in or right over property so possessed or acquired and specifying the principles on which the compensation is to be determined and given; and (b) giving to any person claiming such compensation or right of access, either directly or by way of appeal, for the determination of his interest in or right over the property and the amount of compensation, to the High Court.

ARTICLE 6. CONSIDERATION PAYABLE BY BEAL TO GUYANA.

As full and complete consideration for this Agreement and all of the rights and privileges granted to Beal herein, and as consideration for the ***waiver of Taxes****, duties or tariffs on exports and imports, fees, and other payments by Beal to Guyana, as set forth herein, Beal shall make the following payments to Guyana and undertake the performance specified below:*

6.1 Payment for Land. Beal shall pay to Guyana a one-time payment of Three U.S. Dollars (US$3.00) per acre, based upon the acreage determined by the survey, as full and complete consideration for the Primary Site and the Remote Site. The Parties estimate that the Primary Site and Remote Site contain approximately 25,010 acres. Based upon that estimate, Beal shall deliver the sum of US$75,030.00 to Guyana within thirty (30) days after the date of this Agreement. At Closing, however, Guyana shall reimburse any overpayment to Beal, and Beal shall pay any shortfall in payment to Guyana.

6.2 Payment for Easement. Beal shall pay to Guyana an annual payment of One U.S. Dollar (US$1.00) per acre, based upon the acreage determined by the survey, as full and complete consideration for the Additional Buffer Area Easement. Such annual payment shall be made to Guyana on February 28 of each year, commencing on the first February 28 following Closing

6.3 Compensation for Administrative Expenses and Fees. On February 28 of each year, commencing on the first February 28 following Closing, Beal shall pay the following sums to Guyana as full and complete consideration for all administrative expenses and fees incurred or chargeable by the Government in connection with the Project during that calendar year, including, but not limited to, the cost of stationing and housing customs and administrative officers at the Facility:

6.3.1 One Hundred Thousand U.S. Dollars (US$100,000); and

6.3.2 A graduated sum determined by the number of Successful Launches Beal has conducted during the previous calendar year. The sum shall be calculated as follows:

a. If Beal has no more than six (6) Successful Launches in a calendar year - US$25,000 per Successful Launch.

b. If Beal has more than six (6) but no more than twelve (12) Successful Launches in a calendar year - US$50,000 per Successful Launch.

c. If Beal has more than twelve (12) but no more than eighteen (18) Successful Launches in a calendar year - US$75,000 per Successful Launch.

d. If Beal has nineteen or more Successful Launches in a calendar year - US$100,000 per Successful Launch.

e. Notwithstanding anything in this paragraph 6.3.2 or in the Agreement to the contrary, Beal's obligation to pay Guyana for a

contract amount between Beal and its Customer for any such launch.

The plaintiffs are advised as aforesaid and verily believe that:

The waiver of taxes contemplated by this article has been bought and paid for. None of the Tax acts contemplated a taxpayer purchasing a tax waiver. The limited discretions of the President and the Minister of Finance have been excluded by this clause. The parties have hereby sought to circumvent the Legislature by private agreement.

This clause is discriminatory, and ultra vires. Guyanese investors have been agitating for tax waivers and incentives for years. In addition to income and corporation taxes, Guyanese companies have to pay a 2% turnover tax.

ARTICLE 9. GUYANA GOVERNMENTAL APPROVALS.

Subject to, and with the exception of an EIA and any other necessary environmental approvals required by Law, Guyana hereby agrees to grant to, obtain for, and deliver to Beal all licenses, permits, waivers and approvals necessary for Beal to implement the Project and to exercise fully the rights granted to Beal under the Agreement, including this Article and Article 4 of the Agreement, including those required by Law from regional or municipal authorities. No right, license, permit, waiver or approval granted herein or otherwise by Guyana to Beal shall be revoked, canceled or modified by Guyana or by any public authority in Guyana during the Term of this Agreement. The promise to grant, obtain, deliver, and not cancel any or all such rights, licenses, permits, waivers and approvals is a material inducement for Beal to enter into and execute this Agreement.

rights under the Agreement, this Article and Article 4 of this Agreement are hereby deemed granted to Beal.

The plaintiffs are advised as aforesaid and verily believe that:

The grant of licences etc. and the undertaking/ agreement not to revoke cancel or modify them are ultravires the express discretions and authorities conferred or reserved by the respective Acts.

9.3 Customs, Customs Duties, Tariffs, and Immigration.

9.3.1 Guyana may place a customs and/or immigration officer(s) at the Facility as soon as Beal provides Notice to Guyana that it intends to import goods or bring non-citizens of Guyana to the Facility. Such officer(s) shall remain at the Facility for so long as necessary, after which they shall be removed.

9.3.2 In light of the material adverse business impact that would result to Beal and its Customers if goods are delayed in customs, Guyana agrees that all Legal Goods shall be cleared through customs expeditiously. Therefore, Legal Goods entering Guyana shall be cleared through customs within twelve (12) hours of arrival at the Facility. If any Legal Goods have not been cleared through customs within twelve (12) hours of arrival at the Facility because of a Force Majeure event or any reason outside of the control of Beal, then such goods shall be deemed cleared. In such case, Beal shall maintain a record of all such goods that are deemed cleared through customs and shall provide a copy of such record to Guyana's customs office at the Facility at the earliest reasonable opportunity. Payloads shall be cleared through Customs immediately upon arrival within Guyana. **No customs inspection shall be permitted of any technical items or data if such inspection is objected to or prohibited by the U.S. Government.**

9.3.3 Any goods that Beal brings into Guyana through a customs office other than at the Facility shall be cleared in the normal times and procedures applicable at such customs office.

9.3.4 All Beal Associates may enter Guyana at the dock or airstrip at the Facility, which Guyana hereby officially designates as a Port of Entry. If Guyana desires for such persons to pass through immigration, then Guyana shall place an immigration officer at the Facility. Any Associate not allowed through immigration within two (2) hours shall be deemed admitted into Guyana.

The plaintiffs are advised as aforesaid and verily believe that:

The government has subjugated itself to and surrendered our sovereignty to the U.S. government. Essential border control functions have been surrendered by virtue of this clause.

9.5 Responsibility for Ensuring Clear Guyana Airspace, Waters and Ground.

9.5.1 Beal shall deliver a Notice to the Minister and publish a notice to mariners and to airmen at least seventy-two (72) hours before the launch of any space Launch Vehicle from the Facility. It shall be the duty and responsibility of Guyana to ensure that Guyana airspace, waters and grounds around and downrange of the Facility are cleared, free from interference, and safe to conduct launches, in accordance with FAA requirements. If Guyana fails or is unable to fulfill its duty and responsibility, then Beal may take such actions as it deems appropriate to ensure that airspace, waters and grounds are clear, free from interference, and safe to conduct launches in accordance with FAA requirements.

The plaintiffs are advised as aforesaid and verily believe that:

This clause empowers the fifth named defendant to take any steps without reference to existing laws or legal limitations. The

the executive authority of the government. The constitutional rights of the Guyanese public are hereby seriously compromised.

9.5.2 It shall be the duty and responsibility of Guyana to take such steps and actions as might be necessary to make the Facility a restricted area and off-limits to all persons except those authorized by Beal. Beal may take such actions as it deems appropriate to ensure that no unauthorized persons enter the Facility.

The plaintiffs are advised as aforesaid and verily believe that:

Beal has, purportedly, been empowered to chose who it shall authorise to enter the facility. There is no limit on the class a person who may be excluded and accordingly the police and army in the context of the agreement fall to be excluded.

9.6 Work and Residence Permits. Guyana shall grant work and residence permits and visas (if necessary), promptly following the delivery to Guyana of the normal applications and other paperwork, for Beal's Associates. Such work and residence permits and visas shall be deemed granted seven (7) days after the delivery of applications therefore to Guyana. In the event of emergencies, Guyana shall process work permit applications within twenty-four (24) hours after delivery of the applications to it. Guyana shall not impose or require any limitation in the numbers, percentages or categories (or in any other manner whatsoever) of foreign Associates at the Facility or at any Beal location within Guyana. Guyana hereby exempts Beal and its Associates from any requirements for work permits or visas for any Associate who enters Guyana for less than forty-five (45) consecutive days. Guyana shall charge Beal its standard fee [illegible] any such

This clause waives the statutory discretion in respect of work and residence permits and visas.

9.7 Access into Guyana. Beal shall have ingress and egress rights, dock rights and landing rights at all ports of entry and all airports within Guyana. Beal shall have the sole and exclusive right of control and access to any dock or airport which it might construct or operate in, on, or, in the case of a dock, adjacent to, the Facility.

The plaintiffs are advised as aforesaid and verily believe that:

This clause unlawfully waives the statutory discretion in respect of port control.

9.9 Other Land. Beal may acquire by deed or lease, and may operate, offices, residences, lodgings, storage facilities, apartments, maintenance facilities and any other land in any location in Guyana that Beal may require subject to Law and to the same extent as any Guyanese corporation. Guyana shall grant to Beal any license that is required by Law in order for Beal to own or hold such land. Beal may sell, lease or otherwise dispose of any land that it might acquire.

The plaintiffs are advised as aforesaid and verily believe that:

This clause unlawfully waives the statutory discretion in respect of the licences contemplated herein.

9.10 Professional Licenses. Beal may hire, retain, and employ expatriate professionals exclusively for its own use. If such professionals are duly licensed to practice their professions in another country, the

Guyana, but shall register with the appropriate private professional organizations, if required by Law.

The plaintiffs are advised as aforesaid and verily believe that:

This is an unconstitutional executive attempt to circumvent the legislature.

9.11 All Other Approvals. With the exception of approval of an EIA and any other necessary environmental approvals required by Law, all other necessary or required licenses, permits, waivers, approvals or grants relating to or connected to the Project and not otherwise specified herein are hereby granted by Guyana to Beal. Beal shall not be required to obtain any further governmental approvals in order to operate, construct or dispose of any aspect of the Project or the Facility.

The plaintiffs are advised as aforesaid and verily believe that:

This clause unlawfully waives the statutory discretion in respect of the licenses, permits, waivers, approvals or grants contemplated herein..

ARTICLE 10. U.S. GOVERNMENT APPROVALS.

10.3 Guyana's Access to the Facility. Guyana recognizes and acknowledges that its access to the Facility, and to any goods, technology, or technical data used at the Facility, shall be limited or restricted in order for Beal to comply with the Export Regulations and other applicable U.S. laws and regulations. Guyana agrees to abide by any restrictions or requirements imposed by the U.S. Government, and any of its agencies, departments or other authorities, regarding the Facility and/or Beal's use thereof, including but not limited to restrictions

in the possession of Beal or Beal's Associates. Subject to the foregoing, the Government shall have access to the Facility at all reasonable times to exercise its legitimate governmental powers authorized by Law. Guyana agrees that it shall not exercise its right of access or powers of inspection in a manner that will interfere with Beal's business or operations at the Facility, or in violation of restrictions imposed on Beal by the U.S. Government.

The plaintiffs are advised as aforesaid and verily believe that:

This is in effect a suspension of Guyana laws and a reception of United States laws provision. The content of United States laws incorporated hereby is unknown. This clause violates the fundamental constitutional principle of Separation of Powers and seriously compromises the sovereignty of people in respect of the facility. The sovereignty of the people can only be compromised or modified by referendum.

Further, Guyana purportedly surrenders its right for the army and the police to enter the Beal facility. This is a signal indication of the purported surrender of sovereignty.

ARTICLE 12. NO NATIONALIZATION OR CONDEMNATION OF THE FACILITY.

12.1 Nationalization or Condemnation. Guyana agrees that it shall not take, nationalize, expropriate, confiscate, condemn, or acquire through eminent domain or by governmental or judicial action any of Beal's property, including immovable, personal, tangible, and intangible property at or related to the Facility or the Project.

The plaintiffs are advised as aforesaid and verily believe that:

Eminent domain is one of the fundamentals of a sovereign state governed by a written constitution. Sovereignty lies in the

The government of the day is incompetent to compromise the sovereignty of people.

This clause purports to be binding on Parliament, and on the Judiciary. This constitutes a serious violation of the fundamental constitutional principle of Separation of Powers.

12.2 Effect of Arbitral Decision. If any court or arbitral tribunal, whether constituted pursuant to the arbitration provisions of this Agreement or otherwise, ever determines or issues an award that (a) Guyana did take, nationalize, expropriate, confiscate, condemn, or acquire through eminent domain or by any executive, legislative, or judicial action all or any portion of Beal's property, including immovable, personal, tangible, and intangible property, or that (b) any of the rights or interests of Beal, including rights and interests granted, authorized, or provided for under this Agreement, have been altered, modified, or otherwise taken, then such court or arbitral tribunal shall award full, fair and prompt compensation for any such loss which shall include both actual damages and lost profits.

The plaintiffs are advised as aforesaid and verily believe that:

By this clause the parties have agreed to compromise the independence of the judiciary. The fundamental constitutional principles of Separation of Powers and Eminent Domain have been violated.

ARTICLE 14. TAXES.

14.1 Tax Exemption. Guyana acknowledges and agrees that it accepts the covenants and obligations made by Beal in this Agreement in lieu of, and as payment in full of, all taxes and

Companies, and its Customers, during the term of this Agreement. During the Term of this Agreement, Beal, its Affiliated Companies, and its Customers shall not pay any Tax to or charge by Guyana, except as expressly stated in this Agreement. Such taxes include but are not limited to corporation, income, capital gains, property, and withholding taxes. At Closing, Guyana shall issue and deliver to Beal the following two letters:

The plaintiffs are advised as aforesaid and verily believe that:

Income taxes are to be used for public purposes. No government can waive the collection of income taxes except in accordance with the law, that is by appropriate legislation. To waive income taxes by private agreement is not only unlawful it is discriminatory in favor of a foreign individual investor as opposed to local investors and other members of the public and, therefore, unconstitutional.

14.1.1 a letter signed by the President of Guyana remitting the taxes under Section 105 of the Guyana Income Tax Act, Chapter 81:01. Such letter shall be in the form of the letter which is attached hereto as Attachment A and which is incorporated in this Agreement fully by reference; and

The plaintiffs are advised as aforesaid and verily believe that:

The section referred to in this clause does not empower the President to remit taxes in the manner in which this agreement purports to remit taxes.

Further the legal obligation undertaken in the agreement to remit taxes unlawfully excludes the statutory discretion of the President.

14.1.2 a letter signed by the Minister of Finance of Guyana

Audit Act, and all other applicable laws of Guyana, remitting all of the aforementioned taxes, except taxes remitted under Section 105 of the Income Tax Act, Chapter 81:01. Such letter shall be in the form of the letter which is attached hereto as Attachment B and which is incorporated in this Agreement fully by reference.

14.2 Duties and Tariffs. During the Term of this Agreement, Guyana shall not impose upon Beal or upon Beal's Associates, and **Beal and its Associates shall be exempt from and shall not be required to pay, any consumption tax, duty or tariff on goods or services**, including household goods, with the sole exception of duties and consumption taxes upon food and other Day-to-Day Consumables. All such duties, consumption taxes, and tariffs are hereby remitted. With regard to food and other Day-to-Day Consumables, Beal and its Associates shall pay the lowest duties, consumption taxes, or tariffs charged in Guyana to any Guyanese individual or business entity, or to any non-Guyanese individual or business entity doing business in Guyana.

14.3 No Taxes on Launch Service Agreements or Launch Services. Subject to Article 6.3.2, but notwithstanding anything else in this Agreement to the contrary, Guyana shall **not impose upon or charge Beal, its Associates, its Affiliated Companies, or its Customers, any Tax upon any Launch Related Activities, any Launch Service Agreement between Beal and any of its Customers, or any launch service rendered by Beal or received by any of its Customers. All such taxes are hereby remitted.**

14.6 Irrevocable Commitments. Guyana's covenants, commitments, and obligations under this Article 14, including all subparts, are irrevocable and shall remain in full force and effect for the duration of the Agreement, including the exercise of any remedies under the Agreement by Beal.

The plaintiffs are advised as aforesaid and verily believe that:

Taxes cannot be waived by agreement. Further such agreement cannot bind Parliament.

ARTICLE 15. REPRESENTATIONS AND WARRANTIES BY THE PARTIES.

The Parties make the following express representations and warranties to each other, which supplement and add to any representations and warranties contained elsewhere in this Agreement:

15.2 Guyana Representations and Warranties. Guyana hereby represents and warrants to Beal and acknowledges that Beal is relying upon such representations and warranties:

. . . .

15.2.8 that it will relocate all families and households from the Primary Site and the Remote Site no later than by sixty (60) days after Beal delivers written notice to Guyana requesting such relocation; and

15.2.9 that it will relocate and remove all construction, buildings, or human occupation or habitation within the Additional Buffer Area no later than one (1) year after Closing pursuant to the terms of Article 5.3.

The plaintiffs are advised as aforesaid and verily believe that:

There is no constitutional provision for relocation. That neither this clause nor the agreement contemplates articles 40 and 142 of the Constitution of the Cooperative Republic of Guyana protecting citizens from compulsory acquisition of property.

The Government has no legal basis for the making of the warranties herein.

15.3 Covenants of Guyana. Guyana hereby covenants to Beal:

[illegible] at law for the

15.3.1 that Guyana will ensure that Beal's rights under this Agreement are not affected by any action of Guyana (including, without limitation, the passage of any new Law or regulation) which would (i) materially diminish the value of, or materially impair or adversely affect the operation of the Project in a manner or to an extent which is materially different than the effect of such action on other businesses generally in Guyana, or (ii) annul, amend, revoke or modify the provisions of, or prevent, hinder or interfere with the due and effective performance of the terms of this Agreement;

The plaintiffs are advised as aforesaid and verily believe that:

The government has no constitutional or other power to limit or restrict Parliament.

ARTICLE 19. REMEDIES IN THE EVENT OF DEFAULT.

19.1 Notice. Upon a default of this Agreement by either Party, the non-defaulting Party shall provide the defaulting Party with written Notice of such default and the opportunity to cure or remedy the default.

19.2 Remedies.

19.2.1 If a default by Beal occurs, then Guyana's sole remedies shall be either to seek specific performance of this Agreement or damages from Beal through an arbitration proceeding as set forth in Article 24 herein.

19.2.2 If a default by Guyana occurs, then Beal shall be entitled to seek specific performance of this Agreement, to seek damages, or to terminate this Agreement by sending a Notice of termination to Guyana. In the case of termination, the termination shall be effective sixty (60) days from the delivery of such written Notice of termination.

The State Liabilities and Proceedings Act is purportedly circumvented by this clause. This is not constitutionally permissible. It is discriminatory since Beal is accorded privileges which are not accorded to Guyanese citizens.

ARTICLE 22. CHOICE OF LAW.

Subject to Article 24 (Arbitration), this Agreement shall be governed by and construed in accordance with the laws of Guyana that are not inconsistent with the terms of this Agreement or with international law, and are in effect as of the date of this Agreement without reference to subsequent amendments or changes, including amendments to Guyana's Constitution or adoption of a new Constitution.

The plaintiffs are advised as aforesaid and verily believe that:

The government and a private individual cannot contract out of the Constitution and laws of Guyana. The Agreement is unlawfully declared to supersede the constitutional and laws of Guyana.

ARTICLE 24. ARBITRATION.

24.4 Application of Laws of Guyana. Any Arbitral Tribunal constituted pursuant to this Agreement, or any court or other adjudicative body interpreting this Agreement or resolving a dispute between the Parties, shall in all circumstances apply the Constitution and laws of Guyana relating to substantive matters, other than the laws of Guyana relating to arbitration, except to the extent that said Constitution or laws may materially breach, materially deny, or materially diminish:

24.4.1 the obligations of Guyana under this Agreement, including without limitation the covenants of Guyana pursuant to Article 15.3 hereof;

24.4.2 the rights of Beal under this Agreement (including, but

24.4.3 any of the terms of this Agreement; or

24.4.4 any generally accepted principle of international law, including those which have been applied by international tribunals.

The plaintiffs are advised as aforesaid and verily believe that:

The government and a private individual cannot contract out of the Constitution and laws of Guyana.

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*24.5 Authority of Tribunal Any Arbitral Tribunal constituted pursuant to this Agreement shall not have the authority, power or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement. Subject to the limitations on remedies contained elsewhere in this Agreement, the Arbitral Tribunal shall also have the power to award any remedy to which either Party might be entitled, including but not limited to declaratory orders; damages; **specific performance**; interim procedural, provisional, and other orders and awards as provided for in Article 24.6; attorney's fees; costs; and expenses.*

The plaintiffs are advised as aforesaid and verily believe that:

This clause is discriminatory. Ordinary members of the public cannot obtain the remedy of specific performance or other coercive order against the state.

24.9 Sovereign Immunity. Guyana hereby expressly and irrevocably waives the right to any claim for sovereign immunity against jurisdiction, enforcement and execution of any provisional or final arbitral award or order, or any judgment thereon entered in any court having jurisdiction.

The plaintiffs are advised as aforesaid and verily believe that:

Article 9 of the Constitution of the Cooperative Republic of Guyana provides that sovereignty belongs people of Guyana. The government does not have the power to waive sovereign [illegible]

the very existence of Guyana and renders the assets of Guyana liable to be taken in execution by Beal or its affiliates.

24.15 *Enforcement. Judgment on the arbitration award may be entered in any court having proper jurisdiction, and application may be made in such court for a judicial acceptance of the award and an order of enforcement.*

The plaintiffs are advised as aforesaid and verily believe that:

This clause compromises the very existence of Guyana and renders the assets of Guyana liable to be taken in execution by Beal or its affiliates. Further, this clause is discriminatory. Ordinary members of the public cannot obtain the remedy of specific performance or other coercive order against the state..

Dated the 31st day of May, 2000

Stephen G.N. Fraser

C.A. Nigel Hughes

Teni Housty

CERTIFIED A TRUE COPY:

ASSISTANT CROWN COUNSEL

Attorneys at law for the

An affidavit in support accompanies.

This notice of motion was prepared by Stephen G. N. Fraser, C.A. Nigel Hughes, and Teni Housty, Attorneys at law for the Plaintiffs of 62 Hadfield on Cross Streets, Werk-en-Rust, Georgetown, Demerara, Guyana.

2000. No. 1074 DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT
OF JUDICATURE

CONSTITUTIONAL JURISDICTION

In the matter of the Constitution of the Co-operative Republic of Guyana.

BETWEEN:

1. Dr. FRANK BECKLES, in his own behalf and on behalf of each and every one of the members of the public interested in the maintenance of the sovereignty of the people of Guyana and the supremacy of the Constitution of the Co-operative Republic of Guyana.
2. Dr. FRANK BECKLES, in his own behalf and on behalf of each and every one of the members of Guyana is First.
3. Sherwood Kendall, in his personal capacity and as a member of Guyana is First
4. Johnathan Adams, in his personal capacity and as a member of Guyana is First.
5. ASHTON SIMON, in his own behalf and on behalf of the Amerindians in Guyana who will be adversely affected by to sale of the land in the Waini area to the 5th defendant.
6. ASHTON SIMON, in his own behalf and on behalf of the hinterland people of Guyana who will be adversely affected by to sale of the land in the Waini area to the 5th defendant.
7. KATHLEEN RAJKUMAR.

Plaintiffs.

And

1. The President of the Co-operative Republic of Guyana, Mr. Bharrat Jagdeo, in his official capacity as President of Guyana.
2. The Prime Minister of the Co-operative Republic of Guyana, Mr. Samuel Hinds.
3. The Minister of Finance.
4. The Attorney General of Guyana.
5. Beal Guyana Launch Services, L.L.C.

Defendants, jointly and severally.

AFFIDAVIT IN SUPPORT OF MOTION

MR. STEPHEN G. N. FRASER,
Attorney-at-Law,
62 Hadfield and Cross Streets,
Werk-en-Rust, Georgetown, Demerara,
Guyana.

Annex 81

Note Verbale DM No. 000930 of 24 July 2020 from Venezuela's Minister of Foreign Affairs, Jorge Arreaza, to the then President of the Court, H.E. Abdulqawi Ahmed Yusuf.

El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela

DM N° 000930

Caracas, July 24, 2020

Your Excellency
Abdulqawi Ahmed Yusuf
President of the International Court of Justice
The Hague,

Excellency,

In its Order dated 19 June 2018, the International Court of Justice decided, "pursuant to Article 79, paragraph 2, of its Rules, that, in the circumstances of the case, it must resolve first of all the question of the Court's jurisdiction, and that this question should accordingly be separately determined before any proceedings on the merits". Since, as Venezuela informed the Court, the Court manifestly lacks jurisdiction (hence the decision of Venezuela not to take part in the proceedings), there is indeed no need to address issues other than jurisdiction (be it admissibility or merits) in relation to Guyana's Application submitted to the Court in March 2018.

In 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, Venezuela wishes to inform the Court that it does not find in the transcript of the hearing held remotely by the Court with the representatives of Guyana on June 30, 2020, concerning the Jurisdiction of the Court to hear the case, any argument that requires Venezuela to reconsider what has been expressed in its Memorandum of November 29, 2019 and the Annex of the same date. Guyana's presentation appears to Venezuela to have been nothing but a repetition of the arguments in its Memorial. The objections by Venezuela to the jurisdiction of the Court remain wholly valid, effective and relevant and should lead the Court to declare that it does not have jurisdiction to entertain Guyana's Application.

This conclusion is confirmed by the following considerations.

1. The nature of the controversy and the purpose of the Agreement of February 17, 1966, are reflected in the very title of the instrument: "Agreement to resolve the controversy... over the frontier...". It deals with the settlement of a territorial controversy. That controversy, according to the preamble, should be "amicably resolved in a manner acceptable to both parties". This spirit must prevail in the interpretation of the articles. The parties have maintained contradictory positions as to the validity of the Award of October 3, 1899, and **instead of agreeing to an arbitral or judicial settlement of this issue, to which they did not devote a single word in Geneva, they agreed to overcome them, thus establishing a mechanism enabling them to reach a practical and**

mutually satisfactory settlement of the territorial controversy. Those words are hardly compatible with a judicial or arbitral settlement of the controversy.

2. Guyana's assertion that the only subject of the negotiation of the agreement was the validity of the 1899 Award stands in marked contrast with the fact that during the negotiations of the Agreement in London and Geneva, the United Kingdom and Guyana fiercely resisted the juridical means of the settlement, including the recourse to the Court, proposed as a last resort by Mr. Iribarren Borges, who was then Foreign Minister of Venezuela. **What Venezuela was proposing and was finally signed by the parties has been a detailed negotiation leading to an agreement that would supersede 1899 Award.**

3. The preparatory works of the Geneva Agreement are instructive in several ways. They demonstrate that:

   3.1 Venezuela desired to reach a settlement of the territorial contention with the United Kingdom (and Guyana) on the borders with British Guiana as soon as possible.

   3.2 **It was Venezuela that, for the purpose of reaching that solution, suggested arbitration and judicial settlement of the territorial controversy as a last resort, and that it was the United Kingdom and Guyana that objected the inclusion of any direct reference to such means of settlement** – an attitude that would have been inexplicable if what was at stake really was deciding upon the validity of the 1899 Award, rather than settling the border and more sensitive matters that might arise for resolution notwithstanding that Award;

   3.3 The Venezuelan Minister understood that, should the political means of political negotiation provided for in Article 33 of the Charter of the United Nations be eventually exhausted in a successive, gradual and progressive manner, **the procedures of arbitration or judicial settlement could not operate in a mechanical or a unilateral manner, but needed to be subject to an express and specific agreement negotiated between the Parties which would make equity a fundamental source of the decision to be reached, under an imperative of substantial justice**. Historical justice, morality and equitable rectification were the foundations of Venezuela's proposals in London and Geneva. In his March 17, 1966 presentation on the Geneva Agreement signed on 17 February 1966, before the Congress of the Republic of Venezuela, former Foreign Minister Iribarren Borges concluded his address, asserting as follows.

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Evidently, the Geneva Agreement does not constitute the ideal solution to the problem, which is nothing else but to return back to Venezuela its territory. We did not go to the city of Lac Léman to dictate the terms of surrender of the adversary, placing on the scale of the dispute the sword of a warlike victory. We went there to find a satisfactory solution to the arduous territorial issue. As a fruit of the diplomatic dialogue, and not of the monologue of victors, the Geneva Agreement leads the extreme positions of those who demand the return back of the usurped territory under a null and void Award to a new situation and those who argued that harbouring no doubt of its sovereignty over the territory were not willing to take the case to any court.

4. Within the provisions of the Geneva Agreement, Article IV.2 put "the choice of the means of settlement" into the hands of the United Nations Secretary-General, providing that "if the means so chosen do not lead to a solution 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 here contemplated have been exhausted". The characteristic features of that provision are graduality progressiveness, and the condition that the choice of a further means may not be made unless the previous "means so chosen do not lead to a solution of the controversy".

5. The fact that, in his letter of January 30. 2018 choosing the Court, the UN Secretary-General also referred to negotiations and to its good offices confirms that political means for the settlement of the controversy were and still are certainly not exhausted.

6. In purportedly choosing the Court as a means of settlement, after deeming that the Good Offices have failed, the Secretary-General has acted contrary to both the letter and the spirit of Article IV.2, which contemplated the use of other political means (such as mediation), as a genuine assistance to the parties in the negotiation of a practical, acceptable and mutually-satisfactory settlement, which is the purpose of the procedure set forth in that provision. Choosing the Court without verifying the exhaustion of the political means of settlement not yet attempted is a leap that is not consistent with the procedure agreed and equally is clearly not the most suitable way to achieve the purpose and the objective of the Geneva Agreement.

7. In addition, **it should be noted that the Secretary-General made his choices and the successive appointments for Good Offices always and in all cases after obtaining the agreement of both parties**. By contrast, in choosing the Court, the Secretary-General has departed from the principle of equilibrium of the parties, which had been followed until that moment, thus aligning with one of them, which is not compatible with the letter and spirit and the object and purpose of the Geneva Agreement.

8. Above all, Article IV.2 of the Geneva Agreement does not constitute the certain and unequivocal expression of the consent of Venezuela to accept the jurisdiction of the Court regarding Guyana's Application, which is required by international law. To guarantee, as the Geneva Agreement seeks to do, that the controversy is "amicably resolved in a manner acceptable to both parties", both parties must progressively use the political negotiation means provided in Article 33 of the Charter of the United Nations, and should they fail to reach a mutually acceptable and satisfactory settlement through these mechanisms, both parties could conclude that the political means have been developed and exhausted, and only then, they should not only voluntarily accept the jurisdiction of the Court but also proceed, in a consensual manner, to negotiate a special agreement, which is indispensable to establish the role of the Court, the subject-matter of the controversy, and the sources of law and elements of equity that have to be taken into account to settle the controversy in conformity with the Geneva Agreement. Such a compromising agreement could include provisions on procedural aspects, as well as on the language in which the case would be heard to safeguard the equality of the parties. **Absent any such special agreement, it is not possible to seise the Court.**

9. In short, **Article 33 of the United Nations Charter already obliges Guyana and Venezuela to resort to one or more of the pacific means of settlement listed there and, consequently, ultimately to resolve their controversy by one or more of those means.** But **it is indisputable that Article 33 is not a "specific provision" conferring jurisdiction on the Court.** The mere fact that the UN Secretary-General has a duty to choose from that same list of means of settlement cannot transform it into a provision validly conferring jurisdiction on the Court.

10. In the same vein, the choice made in January 2018 by the UN Secretary-General could not be self-executing in that regard, because it does not specify any of the elements mentioned above that are indispensable to settle the controversy before the Court in accordance with the Geneva Agreement.

11. The fact that the nomination of the Court by the UN Secretary-General as a means of settling the controversy is not self-executing and requires an additional agreement is confirmed by Guyana's oral pleadings. **Guyana has been unable to define the exact subject-matter of the controversy it sought to submit to the Court. To the contrary, its counsels elaborated on contradictory views on this point**. According to Professor Akhavan, the controversy would be only on the validity of the Award.[1] By contrast, according to Professor Pellet, the controversy is a "wider one" (*"plus vaste"*): it is a "territorial dispute", which requires the Court to "delimit the boundary between the two countries" (*"définir[ir] la frontière entre les deux pays"*), and to decide on the validity of the Award only as a "preliminary issue" (*"à titre préliminaire"*).[2] This contradiction in the definition of the controversy in the Applicant's own pleadings confirms that a special agreement is needed before resorting to the Court.

Excellency,

To conclude, may I be permitted to recall some of the paragraphs with which the November 29, 2019 Memorandum closed:

Should the Court assert its jurisdiction over Guyana's claims, Guyana's application would be breaching the Geneva Agreement, thus preventing it from satisfying its subject matter and purpose that motivated its conclusion: namely, the achievement of a practical, acceptable and satisfactory settlement of the territorial controversy. Deciding on the validity of the 1899 Award alone will not serve this purpose: on the contrary, it will make its settlement more difficult, and will involve the Court in a process that is in breach of the Geneva Agreement.

Conversely, should the Court decide, as Venezuela believes, that it lacks jurisdiction over the unilateral application made by Guyana, it will reinvigorate the Geneva Agreement, allowing direct negotiations and enabling political means to regain their role in assisting the search for a practical, acceptable and satisfactory settlement for the benefit of both Parties. The controversy over the Essequibo, in any of its dimensions, should be settled through reciprocal concessions and resort to cooperation mechanisms.

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[1] See CR 2020/5, p. 20, para. 2: "The history of the controversy demonstrates that the dispute between the Parties was, and remains, about the legal validity and binding force of the 1899 Arbitral Award. (...) The Parties held "clearly opposite views" on the validity of the 1899 Award, and that was the dispute dividing them".
[2] CR 2020/5, pp. 67-69, paras. 31-35.

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Venezuela will not resort to force, not only because it is prohibited by the current international law, but also, and specially, because of its own regional policy of peace, integration, and solidarity. Venezuela once again invites Guyana to the negotiating table, in the fraternal and supportive spirit that has always animated its policy of good neighbourliness and integration. The treatment of the territorial controversy by Venezuela will always be in accordance with the principles of the UN Charter and the maintenance of peace.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Jorge Arreaza
Minister

REPÚBLICA BOLIVARIANA DE VENEZUELA
DESPACHO DEL MINISTRO

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Annex 82

Letter from the Minister of Foreign Affairs and International Cooperation Hugh Hilton Todd to H.E. Minister of People's Power for Foreign Relations of the Bolivarian Republic of Venezuela, Mr. Yvan Gil, 2 October 2023.

Ministry of Foreign Affairs and International Cooperation

254 South Road & Shiv Chanderpaul Dr.,
Georgetown, Guyana.
Telephone: 592-226-9080.
Email: minister@minfor.gov.gy
Website: www.minfor.gov.gy

October 2, 2023

His Excellency Yván Gil
Minister of People's Power for Foreign Relations
Of the Bolivarian Republic of Venezuela
Minister of People's Power for Foreign Relations
Of the Bolivarian Republic of Venezuela
Caracas.

Dear Minister Gil,

I acknowledge receipt of your letter dated 26th September 2023. Your communication is noted for its cordial tone, a development we view positively.

The ongoing controversy surrounding territorial claims, as you are well aware, is currently under the purview of the International Court of Justice (ICJ). This judicial process, initiated and sanctioned under the Geneva Agreement, represents a mutually agreed mechanism for a peaceful, just, binding and permanent settlement of the controversy over the validity of the 1899 Arbitral Award and the course of the land boundary between Guyana and Venezuela.

Guyana is irrevocably committed to the settlement process prescribed in the Geneva Agreement, which is binding on both Guyana and Venezuela.

Article IV(2) of the Geneva Agreement details the obligatory stages of the settlement process. After the parties failed to settle the controversy by diplomatic negotiation, they were required to refer to the Secretary-General of the United Nations to choose a means of settlement, and to accept his decision on said means. The Secretary-General initially chose mediation under his good offices, and Guyana and Venezuela duly participated in that process for more than two decades, without achieving a settlement.

In January 2018, the Secretary-General decided that the good offices/mediation process had failed to achieve any significant progress toward a settlement of the controversy, and that a new means of settlement was required. Acting pursuant to the authority delegated to him by the parties under Article IV(2) of the Geneva Agreement, he chose the International Court of Justice as the next means of settlement. Under Article IV(2), the parties were bound to accept his decision.

Accordingly, in March 2018, acting pursuant to the Secretary-General's decision and Article IV(2) of the Geneva Agreement, Guyana instituted proceedings in the ICJ to resolve the controversy over the validity of the 1899 Arbitral Award and the course of the land boundary. On two occasions, in response to objections filed by Venezuela, the Court confirmed its jurisdiction to resolve the controversy based on the Secretary-General's January 2018 decision and Article IV(2) of the Geneva Agreement. Guyana will not deviate from this path of law and justice, as prescribed by the Geneva Agreement, to which both our countries are bound. Indeed, we regard this settlement by the process of law on which both our countries agreed in 1966 - and the international community through the UN Secretary General has endorsed - as a new starting point of improved relations between our two Republics.

In light of the foregoing, Guyana must respectfully decline the invitation extended by His Excellency Nicolas Maduro, President of the Bolivarian Republic of Venezuela, to His Excellency Dr. Mohamed Irfaan Ali, President of the Cooperative Republic of Guyana, to engage in a bilateral dialogue under the auspices of the Geneva Agreement in regard to the 1899 Arbitral Award and the course of the land boundary, since these are the very subjects that, under Article IV(2) of that Agreement and the decision of the UN Secretary-General, our countries are bound to resolve by recourse to the ICJ – and by no other means.

Guyana is pleased that Venezuela has participated in both written and oral proceedings in the case before the ICJ, and that it has retained a team of highly experienced and talented international lawyers who appeared before the Court in connection with Venezuela's last preliminary objection. Guyana urges its sister Republic to remain engaged in the case, plead its case on the merits to the Court, and accept the Court's final Judgment, whatever it may be, as a final and binding settlement of this long-standing controversy. The Geneva Agreement and the United Nations Charter require no less.

Should his Excellency President Maduro desire to meet with His Excellency President Ali on any subject of interest to our two countries – other than the controversy over the 1899 Arbitral Award and the course of the land boundary, which awaits settlement by the ICJ – Guyana would look favourably on such an encounter.

I extend my sincerest wishes for a harmonious relationship between our nations, fortified by the principles of justice and international law. We envision a future characterized by mutual respect, cooperation, and shared prosperity following the resolution of the present matter at hand.

With the assurances of my highest consideration.

Hugh Hilton Todd
Minister of Foreign Affairs and International Cooperation

Annex 83

Diplomatic Note from the Ministry of Foreign Affairs of Venezuela to the Ministry of Foreign Affairs and International Cooperation of Guyana, I.DGD No. 000027, 17 January 2024

República Bolivariana de Venezuela, Ministerio del Poder Popular para Relaciones Exteriores, Dirección del Despacho, Nota N.000027, 17 de Enero de 2024.

República Bolivariana de Venezuela
Ministerio del Poder Popular para
Relaciones Exteriores
Dirección del Despacho

I.DGD N° 000027

EL MINISTERIO DEL PODER POPULAR PARA RELACIONES EXTERIORES DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA saluda atentamente al Ministerio de Relaciones Exteriores y Cooperación Internacional de la República Cooperativa de Guyana, con motivo de los recientes acontecimientos relativos a la promoción por parte de Guyana de un proyecto hidroeléctrico en el territorio de Guayana Esequiba.

El Gobierno de la República Bolivariana de Venezuela eleva formalmente su protesta por la decisión ilegal de la República Cooperativa de Guyana de convocar, el 28 de noviembre de 2023, una licitación y el establecimiento de un cronograma de trabajo para el "*Proyecto Hidroeléctrico de las Cataratas de Amaila*", mediante el cual el Gobierno de Guyana planea construir dos represas en los ríos Kuribrong y Amaila, ambos ubicados en el territorio de Guayana Esequiba, que es objeto de una controversia de larga data entre ambos países. De acuerdo con esta convocatoria, el 29 de diciembre de 2023, la Administración Nacional de Licitaciones y Adquisiciones de Guyana anunció la recepción de numerosas ofertas, confirmando su intención de llevar a cabo este proyecto.

El Gobierno de Guyana no puede realizar licitaciones y ofertas contractuales de largo alcance con respecto a la explotación de los recursos naturales de territorios reclamados por ambos países y sobre los cuales Guyana sólo tiene un poder limitado de administración. Venezuela recuerda que este territorio está sujeto a un régimen especial debidamente acordado por ambos Estados en virtud del Acuerdo de Ginebra de 1966, en particular su artículo V. También recuerda que, en virtud de la Declaración de Argyle, "ambos Estados se abstendrán, ya sea de palabra o de hecho, de intensificar cualquier conflicto o desacuerdo derivado de cualquier controversia entre ellos."

El Gobierno de Venezuela también observa con gran preocupación y protesta enérgicamente contra las intenciones del Gobierno de Guyana de realizar y promover este tipo de proyectos, que sin duda tendrán un impacto irreversible sobre los cursos de agua, alterará el equilibrio ecológico de los ríos y el medio ambiente circundante, y resultará en una modificación significativa y permanente del carácter físico del territorio actualmente en disputa entre nuestras dos naciones. La preocupación del Gobierno

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Ministerio del Poder Popular para
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Dirección del Despacho

también se ve aumentada por las dramáticas consecuencias que se producirían como resultado de dichos impactos para la población de Guayana Esequiba.

El Gobierno de la República Bolivariana de Venezuela se opone así, a cualquier actividad que pueda resultar en un perjuicio irreparable de sus derechos en el territorio de la Guayana Esequiba y en una violación del derecho internacional. Como tal, exige la abstención de continuar con el referido proceso de licitación en virtud de las obligaciones y compromisos internacionales que recaen sobre la República Cooperativa de Guyana, en particular los contenidos en el Acuerdo de Ginebra de 1966, la reciente Declaración de Argyle, y otros compromisos internacionales relevantes.

EL MINISTERIO DEL PODER POPULAR PARA RELACIONES EXTERIORES DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA aprovecha esta oportunidad para reiterar al Ministerio de Relaciones Exteriores y Cooperación Internacional de la República Cooperativa de Guyana las seguridades de su más alta consideración.

REPUBLICA BOLIVARIANA DE VENEZUELA
DIRECCIÓN DE DESPACHO
MINISTERIO DEL PODER POPULAR
RELACIONES EXTERIORES

ACF

Caracas, 17 de enero de 2024

Al Honorable
Ministerio de Relaciones Exteriores y Cooperación Internacional
República Cooperativa de Guyana
Georgetown.-

Courtesy translation

THE PEOPLE'S MINISTRY OF FOREIGN AFFAIRS OF THE BOLIVARIAN REPUBLIC OF VENEZUELA presents its compliments to the Ministry of Foreign Affairs and International Cooperation of the Cooperative Republic of Guyana on the occasion of the recent developments concerning the promotion by Guyana of a hydroelectric project in the territory of Guayana Esequiba.

The Government of the Bolivarian Republic of Venezuela formally raises its protests for the Co-operative Republic of Guyana's unlawful decision to issue, on 28 November 2023, a call for bids and the establishment of a work schedule for the "Amaila Falls Hydropower Project", by which the Government of Guyana plans to build two dams on the Kuribrong and Amaila rivers, both located in the territory of Guayana Esequiba, that is the subject of a long-standing controversy between the two countries. Pursuant to this call, on 29 December 2023, the National Tender & Procurement Administration of Guyana announced the receipt of numerous bids, thus confirming its intention to carry out this project.

The Government of Guyana cannot issue calls for tenders and long-standing contractual offers with respect to the exploitation of natural resources of territories claimed by both countries and over which Guyana only has a limited power of administration. Venezuela recalls that this territory is subject to a special regime duly agreed by both States under the Geneva Agreement of 1966, in particular its Article V. It also recalls that, under the Argyle Declaration, "both States will refrain, whether by words or deeds, from escalating any conflict or disagreement arising from any controversy between them".

The Government of Venezuela also notes with great concern and strongly protests against the intentions of the Government of Guyana to carry out and promote this type of project, which will undoubtedly have an irreversible impact on watercourses, disrupt the ecological balance of the rivers and surrounding environment, and result in a significant and permanent modification of the physical character of the territory currently in dispute between our two nations. The Government's concern is also heightened by the dramatic consequences that would result from such impacts on the population of Guayana Esequiba.

The Government of the Bolivarian Republic of Venezuela thus opposes any activity that could result in the irreparable prejudice of its rights in the territory of Guyana Esequiba and a breach of international law. It thus demands the abstention from continuing with the aforementioned tendering process by virtue of the international obligations and commitments that fall upon the Cooperative Republic of Guyana, in particular those contained in the Geneva Agreement of 1966, the recent Argyle Declaration, and other relevant international commitments.

THE PEOPLE'S MINISTRY OF FOREIGN AFFAIRS OF THE BOLIVARIAN REPUBLIC OF VENEZUELA avails itself of this opportunity to renew to the Ministry of Foreign Affairs and International Cooperation of the Cooperative Republic of Guyana the assurances of its highest consideration.

Caracas, 17 January 2024

MINUTES OF MEETINGS AND VISITS

Annex 84

Government of the United Kingdom, Record of Discussions between the Foreign Secretary, the Venezuelan Minister for Foreign Affairs and the Premier of British Guiana at the Foreign Office, 9 December 1965

Case concerning Arbitral Award of 3 October 1899, Co-operative Republic of Guyana v. Bolivarian Republic of Venezuela, Memorial of Guyana, vol. III, November 19, 2008, annex 28.

Available at: https://www.icj-cij.org/sites/default/files/case-related/171/171-20181119-WRI-01-01-EN.pdf

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AV 1081/326

Foreign Office and Whitehall Distribution

VENEZUELA
9 December, 1965
Section 1

(1)

RECORD OF DISCUSSIONS BETWEEN THE FOREIGN SECRETARY, THE VENEZUELAN MINISTER FOR FOREIGN AFFAIRS AND THE PREMIER OF BRITISH GUIANA AT THE FOREIGN OFFICE ON 9 DECEMBER, 1965

Present:

The Right Hon. Michael Stewart, M.P.
Mr. Forbes Burnham
The Right Hon. The Lord Walston
Mr. S. S. Ramphal
Mr. L. A. Luckhoo
Sir Geoffrey Meade
Mr. W. I. J. Wallace
Mr. J. O. Rennie
Mr. R. W. Piper
Mr. R. M. K. Slater
Mr. R. H. G. Edmonds
Mr. A. D. Watts
Mr. S. W Martin
Interpreter

Dr. Ignacio Iribarren Borges
The Venezuelan Ambassador
Dr. German Nava-Carillo
Dr. Adolfo Taylhardat
Dr. Leonardo Diaz-Gonzalez
General Marcos A. Morin
Father Pablo Ojer
Father Herman Gonzalez
Dr. Demetrio Broesner
Interpreter

The Venezuela-British Guiana frontier

Mr. Stewart welcomed the Venezuelan Foreign Minister, recalled that the Venezuelan complaint was aimed at the validity of the 1899 Award, and summarised the circumstances in which we had offered in 1962 an examination of documents concerning this problem. He enquired, in relation to Item 1 of the Agenda, whether the examination of documents had served its purposes in satisfying the Venezuelan Government that there was no substance in their allegations concerning the Award's validity.

Dr. Iribarren read a prepared statement. The Venezuelan Government had examined carefully the British experts' report and reached the firm conviction that its conclusions were completely unacceptable. Britain had promised to place at Venezuela's disposal documents to show that there was no justification for reopening the frontier question, but the British experts had confined themselves to a few observations on the Venezuelans' preliminary exposition. The report's form and substance had surprised the Venezuelan Government: its defects fully justified the observation in Foreign Office Note No. AV 1081/75 of 3 August, 1965, that the report did not necessarily represent the considered opinion of Her Majesty's Government on any of the matters discussed. He did not wish to enter into a long examination of the British experts' report, but would confine himself to a few comments to illustrate why Venezuela could not accept the conclusions:

(*a*) The report did not deal satisfactorily with the question of alteration of maps submitted by Britain to the Tribunal: it contained the extraordinary assertion that this was not relevant. The British experts had confused two entirely different matters, the falsification of original maps and the simple question of publishers' errors.

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(*b*) Correspondence between Sir Richad Webster, Lord Salisbury and Mr. Joseph Chamberlain of July to October 1899 and other documents proving that the British Government gave instructions for the imposition of a line prepared three months previously in the Colonial Office had been ignored.

(*c*) No reply had been given to the Venezuelan point that the statement by the Government of Grand Colombia regarding its frontier at the River Essequibo had never been disputed.

(*d*) The British experts had quoted unfounded opinions in an attempt to refute Venezuelan arguments about the 1897 Treaty. The facts were:

(i) Correspondence from September to November 1896 (the decisive period in the negotiation of the Treaty) had been hidden from Venezuela until 1899.

(ii) Richard Olney had assured Venezuela that the 1850 Agreement was in force, while agreeing with Britain that this question would be left to the discretion of the Tribunal.

(iii) On the prescription clause, Britain had said that title should be decided according to international law while agreeing privately with the United States that title should be established by occupation after 1850 by settlers later disowned by the British Government.

(iv) Olney and Pauncefote had agreed that no Venezuelan should be a member of the Tribunal. Moreover, Venezuela had acted under duress, being twice threatened by the United States that she would be left alone to face British power if she did not sign the Treaty. The British experts had failed to realise that Venezuela, whose independence had been recognised by Britain for over 70 years, was given treatment worse than that accorded to-day to a colony.

(*e*) Venezuela did not accept the experts' frivolous reply to her important point that the Tribunal did not give a decision in law. They had been unable to deny the reference in Block's Diary to a deal which gave Britain victory. C. A. Harris, on 4 November, 1899, had referred to the Award as a "farce". Nor could doubt be cast on the validity of Mallet-Prevost's Memorandum because of the time which had elapsed before it was written or because of its posthumous publication. In a letter dated 26 October, 1899, to Lincoln Byrd, Mallet-Prevost had referred to a decision forced on the Venezuelan Arbitrators and to the possibility of Russian intervention.

(*f*) The improper pressure exerted by the President of the Tribunal on the Venezuelan Arbitrators could not be disguised by the euphemism "strove hard to obtain a unanimous verdict". The argument that such behaviour was typical of arbitrations of that time carried no conviction.

It was precisely to make good the serious damages suffered by Venezuela in the past that her Representatives had come to the conference table. The Venezuelan Government remained convinced of the rightness of their position, and the only satisfactory solution of the frontier problem with British Guiana lay in the return of the territory which by right belonged to her. A legal frontier should now be established between Venezuela and British Guiana.

Mr. Stewart recalled the experts' narrow terms of reference, *i.e.*, whether documentary evidence established that the procedure of the Tribunal was improper or its Award invalid, and refuted the allegation that Sir Geoffrey Meade's report was frivolous. The Foreign Minister had referred to maps: these were inevitably inaccurate, and in any case maps did not figure in the Tribunal's terms of reference nor in the Award. As for Venezuelan representation, it was clear from the evidence that the United States were at that time hostile to Britain, and so far from Venezuela being coerced, it was Britain who was obliged to go to arbitration, when Cleveland threatened to determine the frontier unilaterally. He also referred to the extreme gravity of the charge that the British Arbitrators had tried to suborn the President of the Tribunal. Such a serious charge would need very clear proof, if it was to be made good. The experts had failed to find this proof. The legal frontier had already been duly determined by a procedure agreed by both parties and it had been accepted. It was impossible to shake this position.

Dr. Iribarren replied that Venezuela's point on the maps was that they had been falsified; the Venezuelan experts had duly proved this. He also differed on the question of Venezuela's representation at the Tribunal. As for the deal, Venezuela had always maintained that such a political deal existed, and that this deal had given victory to Great Britain. It was not a question of a mere allegation or a supposition, but a fact mentioned by Mallet-Prevost and in other sources. He re-emphasised that Venezuela had come to the conference table, not to discuss positions already established and known to each other, but with good will and in full consciousness of the necessity to resolve the dispute. The prolongation of this controversy could only bring damage and serious inconvenience to all parties concerned.

Mr. Burnham said that after a thorough study of the various reports including that prepared by Sir Geoffrey Meade, his Government were convinced that the boundary was finally determined in 1905, in accordance with the Award of 1899 and the Treaty of 1897. The existence of a political deal was a mere assertion. No evidence to support it had been produced, nor was there any information as to its nature. He asked Dr. Iribarren to explain what the deal consisted of; until this was known, there could be no question of a problem nor of finding a solution to it.

Dr. Iribarren said he thought that Mr. Burnham had not fully understood what he had said about the political deal. After elaborating on this, he recalled that British Guiana had been represented at all stages in the examination of documents and in the subsequent conversations. Venezuela had insisted on British Guiana representation. When the dates for the present meeting were agreed, the need for Mr. Burnham's presence had been taken into account; he reaffirmed his Government's desire to maintain friendly relations with British Guiana.

Mr. Stewart turning to Item 2 on the Agenda, emphasised that the phrase " to seek satisfactory solutions for the practical settlement of the controversy " could only be interpreted in the narrow context of the controversy over the validity of the 1899 Award. He also referred to the dangers which could result if, by pressing their claim, the Venezuelans were to create political difficulties for Mr. Burnham.

Mr. Burnham then referred to statements by his predecessor in 1962, alleging pressure on Venezuela by the United States and Great Britain. He mentioned this as an illustration of the sort of argument which those now in opposition could use and said it was inconceivable that his Government could be a party to any proposals implying that he was acting under pressure from Venezuela. He had to carry the entire people of Guyana with him.

Dr. Iribarren referred to the demands of public opinion in his own country, and denied categorically that Venezuela had been subjected to pressure by Britain or the United States. He offered Venezuelan collaboration and assistance in any way possible, and reaffirmed the duty of his Government to continue to try, in the friendliest manner and by all the means of diplomacy, to reach a solution of the territorial problem. He challenged Mr. Stewart's interpretation of the terms of Item 2 of the Agenda and emphasised the need for a practical settlement. When asked what he had in mind, he repeated his earlier proposal for the return of the territory which belonged to Venezuela by right.

Mr. Burnham rejected this proposal and quoted the terms of the offer to examine documents made by Mr. Crowe in his statement in the Special Political Committee on 13 November, 1962. Any consideration of the substantive question of the frontier was out of the question.

Mr. Stewart agreed that the proposal was wholly unacceptable: it involved a rejection of the 1899 Award, for which there was no justification. Asked for a counter-proposal he said that at first sight there appeared to be no alternative but to refer back to the United Nations in accordance with the earlier undertaking, unless of course Venezuela were to renounce the claim or at least to hold it in abeyance. This would be an act of great statesmanship on her part, for which she would receive due credit. *Mr. Burnham* endorsed this proposal and expressed surprise that Dr. Iribarren should profess such friendship while at the same time demanding the cession of five-eighths of British Guiana's territory.

Dr. Iribarren said that his Government rejected the British proposal for renouncing the claim for the same reasons that Britain had rejected his proposal. He wished now to propose a solution which would respect the positions of both countries.

He suggested that the parties should agree to a joint administration of the territory in dispute for a period of, say 10 years, with both countries undertaking, perhaps in a greater proportion for Venezuela, to provide the necessary means for the joint development of this area. Also, Venezuela would agree to collaborate in the development of British Guiana itself. Venezuela would be prepared to negotiate such an agreement which would acknowledge Venezuelan sovereignty over the area in dispute. This was not the same proposal as before, as it involved obligations for Venezuela, who would be able to develop the area in conjunction with her own development programme.

Mr. Burnham said that he could not accept the proposal as it appeared to involve the surrender of sovereignty.

Mr. Stewart while praising the idea of economic collaboration, could not see why this should be linked to a political question. He suggested that Venezuela should set aside her territorial claim, so that joint development could go ahead. We had already made two proposals for the solution of the political question; first, to refer back to the United Nations; secondly, that Venezuela should renounce her claim or at least leave it in abeyance. He underlined the importance which Her Majesty's Government attached to the peace and prosperity of former colonial territories, *e.g.*, in Africa: this was more important than questions of territorial extension.

Dr. Iribarren said that no parallel could be drawn with an African country; the Essequibo territory formed part of the Venezuelan national heritage and was incorporated in another country; it was as if the county of Gloucester were occupied by a foreign Power.

Mr. Burnham recalled that the Essequibo district is under the sovereignty of Guyana and is so recognised under international law. If Venezuela challenged that position, they must provide evidence to justify their stand. This they had failed to do. It was a source of great concern that a friendly neighbour should appear to have expansionist aims. The Venezuelan Government could not deny that they were a party to the drawing up of the frontier in 1905. He thanked Dr. Iribarren for his offer of development assistance, but recalled that Guyana too had her honour and would not yield sovereignty as the price for buying economic development.

Dr. Iribarren expressed his Government's sincere and honest desire to find a solution to the problem which undeniably exists, and which if unresolved could bring to both countries and to the whole of Latin America serious problems. This was not a threat, but merely a grasping of reality.

Dr. Iribarren then put forward another proposal. A mixed commission should be set up to solve the territorial controversy, to formulate plans for collaboration in the development of Essequiban Guyana and British Guiana, and to carry out these plans. If the commission could not reach agreement, they were to refer within three months to one or more mediators and if they failed to reach a satisfactory solution, within a prescribed time limit, they were to have recourse to international arbitration. The Treaty setting up the basis for this arbitration would have to be concluded within 18 months from 1 January, 1966. *Mr. Stewart* promised to look at this proposal and closed the meeting.

(2)

RECORD OF DISCUSSIONS BETWEEN THE FOREIGN SECRETARY, THE VENEZUELAN MINISTER FOR FOREIGN AFFAIRS AND THE PREMIER OF BRITISH GUIANA AT THE FOREIGN OFFICE ON 10 DECEMBER, 1965

Present:

The Right Hon. Michael Stewart, M.P.
Mr. Forbes Burnham
The Right Hon. The Lord Walston
Mr. S. S. Ramphal
Mr. L. A. Luckhoo
Sir Geoffrey Meade
Mr. W. I. J. Wallace
Mr. J. O. Rennie
Mr. R. W. Piper
Mr. R. M. K. Slater
Mr. R. H. G. Edmonds
Mr. A. D. Watts
Mr. S. W. Martin
Interpreter

Dr. Ignacio Iribarren Borges
The Venezuelan Ambassador
Dr. German Nava-Carillo
Dr. Adolfo Taylhardat
Dr. Leonardo Diaz-Gonzalez
General Marcos A. Morin
Father Pablo Ojer
Father Herman Gonzalez
Dr. Demetrio Broesner
Interpreter

Mr. Ramphal opened the meeting by recalling the circumstances leading up to the present talks. The Agenda in particular ruled out the question of discussion on the substantive issue of the frontier, and the first question under discussion was the validity of the 1899 Award. Discussion under Item 2 of the Agenda was confined to this question. British Guiana could not accept the Venezuelan contention that the 1899 Award was invalid and the proposal put forward by Dr. Iribarren on the preceding evening was unacceptable, as it envisaged that a mixed commission should concern itself with the substantive issues which had been specifically excluded from the scope of the present discussions arising from the 1962 offer to examine documents.

Mr. Stewart recalled that the two sides had been unable to agree on the question of the 1899 Award's validity. Venezuela had insisted that her position was right, and Her Majesty's Government had stuck to theirs. He wished to look at more constructive ideas under Items 2 and 3 of the Agenda. A mixed commission to stimulate economic development was a good idea, but such development should not be confined to one side of the frontier. It would be better for Venezuela to leave the argument about the Award in abeyance, and allow the parties concerned to concentrate on the task of economic development. He recalled that in Antarctica, a number of nations with conflicting territorial claims had agreed that these should be frozen so that scientific work could go ahead freely and unhampered by political disputes. He read out the terms of Article IV of the Antarctic Treaty. This Treaty had received wide acceptance from a number of countries, among them, Argentina and Chile. They had felt it consistent with their national honour and dignity to leave their territorial claims aside for the time being and agree that these would not be prejudiced in any way by scientific activities. Our suggestion was, therefore, to take the constructive part of the Venezuelan proposal concerning economic development, and to join it with the idea of putting the political problem in suspense. Furthermore, this would preclude Guiana from preferring a claim to the territory which the 1899 Award had given to Venezuela. Clearly it would not be possible to reach final agreement at once, and he therefore suggested that both Venezuela's proposal and his own should be considered, and that discussions should be continued when Lord Walston visited Caracas in January.

After a short break for private discussion *Dr. Iribarren* recalled that Venezuela had come to the conference table to try to find a solution to the

territorial problem between Venezuela and the United Kingdom over British Guiana's frontier. It was absurd to claim that at the present discussions the parties should merely consider their respective positions, which were already fully known. Secondly, he considered that recourse to the United Nations would be inappropriate. The present conversations had arisen from the United Nations, and it would be no use going back to them again, since they had no powers of decision. It would be more positive to continue conversations and to seek genuine solutions. Thirdly, with reference to the proposal for an Antarctic-type agreement, he could see no connection between Antarctica and the British Guiana frontier problem. Antarctica was not a part of any nation's sovereign territory, while Venezuela's problem with the United Kingdom and British Guiana related to a part of her territory wrongfully occupied by another Power. This could lead to serious frictions between Venezuela, British Guiana and Britain if no satisfactory solution were found. He was surprised that Mr. Stewart should have suggested leaving the political problem aside and giving attention only to the question of development. Venezuela had shown goodwill in entering the discussions: this had been sufficiently demonstrated by the proposals which he had put forward. But goodwill was not to be confused with weakness or doubt. Venezuela would continue to press her claim. Any proposal which did not recognise that Venezuela extended to the River Essequibo would be unacceptable. Lord Walston would be received in Caracas as a welcome guest, but he saw no case for continuing discussions during his visit. His own proposal for a mixed commission provided for finding solutions by a series of conciliatory stages, and if necessary by recourse to arbitration by an impartial international body. Venezuela's willingness to submit to an arbitration tribunal represented a great concession on her part.

Mr. Stewart pointed out that the proposal for a mixed commission differed from his own in that the former envisaged the complete acceptance of the Venezuelan view on the Award's validity, whereas his proposal merely froze claims on both sides, and did not require Venezuela to abandon her position. If the Venezuelan case were accepted it would destroy faith generally in international awards and procedures. What faith could there be in these procedures, if awards could be set aside because of unproven allegations raised many years afterwards? The Antarctic Treaty was relevant, since there, as in British Guiana, a practical job of work had to be done. Collaboration in remedying economic backwardness in British Guiana was in everybody's interest. He regretted that his proposal had been turned down so promptly and without further consideration in Caracas. But if that was the position, we would have to inform the United Nations, in accordance with our obligations, that we had sought solutions in vain. Further discussion there might throw up ideas which would make it easier for us afterwards to resume our search for a satisfactory solution. The serious frictions to which Dr. Iribarren had alluded were an additional reason for keeping the United Nations informed.

Mr. Burnham said it had never been his understanding that the territorial claim would be discussed unless the invalidity of the 1899 Award had first been established. If Venezuela thought that the United Nations were not competent to consider the question, why did she take it there in the first place? He was grateful for the offer of economic help, but he found this inconsistent with the demand for the surrender of five-eighths of British Guiana. There could be no peaceful relations between Venezuela and British Guiana in these circumstances. If talks were to be continued, he would find both London and Caracas unacceptable places.

Dr. Iribarren argued that some arbitral awards could be defective, and the declaration of invalidity of one such award would not undermine the validity of others. Nor was it right to say that Venezuela had doubts about the usefulness of the United Nations. But the United Nations were not a court, and they had no power of decision. The dispute had already gone beyond that stage. He argued the value of his proposal for a mixed commission.

After a further interval, it was decided that the present discussions should be continued in Geneva in the week beginning 13 February, 1966, at Ministerial level. They would continue on the basis of the existing Agenda, but without Item 1 which had already been disposed of. The proposed time and place were accepted by Mr. Burnham. It was also agreed that other proposals, beside those put forward at these meetings, would also be presented and discussed.

The rest of the meeting was devoted to discussion of the joint communiqué (at Annex).

ANNEX

JOINT COMMUNIQUE

In accordance with what had been agreed in the joint communiqué of 7 November, 1963, talks took place in London on 9 and 10 December between the Minister of Foreign Affairs of Venezuela on the one side and the Foreign Secretary of the United Kingdom and the Premier of British Guiana on the other on the basis of the following agenda:

Agenda for the continuation at Ministerial level of governmental conversations concerning the controversy between Venezuela and the United Kingdom over the frontier with British Guiana, in accordance with the joint communiqué of 7 November, 1963

(i) Exchange of views on the experts' report on the examination of documents and discussions of the consequences resulting therefrom. Necessity of resolving the dispute.

(ii) To seek satisfactory solutions for the practical settlement of the controversy which has arisen as a result of the Venezuelan contention that the 1899 Award is null and void.

(iii) Concrete plans for collaboration in the development of British Guiana.

(iv) Determination of time limits for the fulfilment of whatever may be agreed with reference to points 1, 2 and 3 above.

(v) Joint communiqué on the present talks.

2. In addition to considering the experts' reports on the documentary material relating to the Arbitration Award of 1899, the Ministers considered ways and means of putting an end to the controversy which threatens to damage the traditionally cordial relations between Venezuela on the one hand and the United Kingdom and British Guiana on the other.

3. Ideas and proposals for a practical settlement of the controversy were exchanged. It was agreed that some of these should receive further consideration and that the Ministers should continue the present discussions in the week starting 13 February, 1966, at Geneva in order to consider those proposals as well as others that might be suggested under the above agenda. Neither side having been able to accept the conclusions of the experts appointed by the other side, Item I will therefore not be considered. It was further agreed that preparatory talks between officials should start at an early date.

4. The text of this communiqué will be made available to the Secretary-General of the United Nations.

Foreign Office, London, S.W. 1,
10 December, 1965.

Annex 85

Minutes of London Preliminaries to the Geneva Agreement, 9 December 1965 (Translation- Excerpt)

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Minuta sobre las conversaciones sostenidas en el Foreign Office de Londres sobre la disputa fronteriza entre Venezuela y Guyana, 65 hojas, 9-10-dic-65, Box: E-20.

Folder 02 d1 *9/10 December 1965*

Minutes

PRELIMINARIES TO THE GENEVA AGREEMENT

LONDON MINUTES

1965

Doc.

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

No. _____

CONVERSATIONS HELD AT THE LONDON FOREIGN OFFICE ON THE BORDER DISPUTE BETWEEN VENEZUELA AND BRITISH GUIANA DECEMBER 9 AND 10, 1965

(Linear stamp)
MINISTRY
OF FOREIGN AFFAIRS
BORDER MANAGEMENT
(ILLEGIBLE)
Control Number G 267
Shelf 10, Section 2

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

No. _____

DECEMBER 9, 1965
Time: 3 p.m.

EXCHANGE OF GREETINGS AND REFERENCE TO THE AGENDA BY THE TWO FOREIGN MINISTERS

Mr. Stewart: I accept that this is the agreed Agenda and that we can move forward on this basis.

If we take the first paragraph: Exchange of views on the reports of the Experts on the examination of documents and discussion of the consequences arising therefrom and the need to resolve the dispute. Now, is the Venezuelan Government satisfied that there is no basis for disputing the validity of the 1899 Award?

Mr. Iribarren: First of all, I would like to thank Mr. Stewart for his kind words of welcome, and again we regret that he was unable to come to Caracas in response to our invitation to hold these talks in the capital of Venezuela.

In connection with the Agenda, I would like to note that the Agenda in full with its title reads as follows: "Agenda for the continuation at ministerial level of the governmental talks concerning the controversy between Venezuela and the United Kingdom on the border with British Guiana in accordance with the Joint Communiqué of November 7, 1963". The first point reads: Exchange of views on the reports of the experts on the examination of documents and discussion of the consequences arising therefrom. Need to resolve the dispute.

The second point: To seek satisfactory solutions for the practical settlement of the controversy which has arisen as a result of the Venezuelan contention that the 1899 Award is null and void. The other points, I agree with Mr. Stewart's reading.

The Government of Venezuela has carefully examined

.../...

a political deal is a mere allegation and it is significant that His Excellency the Minister of Foreign Affairs has virtually said that "a deal could have been made". There is no evidence in the documents that there was a deal or of the nature of the deal. I would like to draw attention to the fact that he who alleges has to prove. The fact is that there was an Award and whoever alleges a fraud or a deal must, as a matter of courtesy, amplify and detail clearly and exactly what it consisted

of. Until that is done, we do not know what solutions we will be able to find to that problem or controversy.

Mr. Stewart: Let's interrupt now.

II

Mr. Stewart: I wasn't sure, Mr. Iribarren, if you wanted to comment on what Mr. Burnham said.

Mr. Iribarren: When I referred earlier to the presentation, I also mentioned the position of British Guiana, which is also known to us because it has been expressed on several occasions by high officials of the Government of Guiana, among them Mr. Burnham himself. Before concluding, I would like to say very kindly to Mr. Burnham that perhaps, due to the difficulty of the conversation in two languages, he did not understand well what I said about the famous "political deal". What I said is that for Venezuela there was a "political deal"; and for us that is duly proven, as I said before. Now, in relation to the courtesy that he claims in relation to British Guiana for being a party, also involved in this problem, we Venezuelans frankly have no sin to accuse ourselves of in this matter. British Guiana has been represented at all times in these talks, from the beginning; it participated in them at the expert level and through its representative had access to and knowledge of all the documents and evidence produced by the Venezuelan experts. Not only that, but we have always insisted - also from the beginning - that British Guiana be represented, not only in these talks but also at the United Nations in all the opportunities in which Venezuela has brought to this international Organization our problem with British Guiana. Likewise, in the conversations held in London by the Ambassador of Venezuela, here present at my side, to reach an agreement, as was happily reached to agree on an Agenda for these conversations, British Guiana was also represented - and the Ambassador also on that occasion insisted on that representation. Likewise, the setting of this date for the talks was made taking into account the arrival of Mr. Burnham. I apologize for this long exposition in relation to the presence and consideration that British Guiana deserves, because we, as well as the President of the Republic and Head of the Venezuelan State and its Foreign Minister here present and the one who speaks to you, have repeatedly and publicly said and proclaimed our deep desire to maintain the best relations with our neighbor British Guiana.

Mr. Stewart: Mr. Iribarren, I think we agree that we could now consider item 2 of the Agenda and I would like to elaborate on a point made earlier by Mr. Burnham. This phrase "To seek a satisfactory solution, etc.... " was a suggestion made by Venezuela for the wording of this item. For our part, we feel that it should be strictly construed, since the point between us which we refer to by the term "dispute" is simply the validity of the 1899 Award and I do not see what is meant by the words "satisfactory solutions", since in our view the case against the Award has not been proved.

There is another point to be remembered at length in another discussion, and it is this. I am sure you will agree, you know that you have in Mr. Burnham's Government a good neighbor and that, if because of the urgency of this matter you were to create difficulties for him, the course of

events would not be favorable to your country. You know a great deal about the situation in British Guiana, but who knows more is Mr. Burnham and I would ask him if he would comment anything about this matter.

Mr. Burnham: I would like to draw the Minister's attention to the fact that in 1962 our predecessor in my office agreed that a report would be made after examination of the documents and, more importantly, my predecessor, who is now in the opposition, said that everything concerning the border was raised under pressure from Venezuela, Britain and the United States. In these circumstances, it is inconceivable that my government could take part in any action that would give the impression that we are acting or have acted under pressure from Venezuela. In any case, if we were to be so indiscreet, and it would be unnatural, it would only give the opposition a great deal of capital. I cannot and will not say more.

Mr. Iribarren: Mr. Burnham in his speech raised a political aspect involved in this controversy and referred to the internal situation in his country. I must also mention the internal situation in my country. I think Mr. Burnham knows that there is a unanimous consensus in my country that this old matter should be satisfactorily settled. With regard to the statements made by your predecessor in the high office which he holds, we totally and absolutely deny, in the most categorical manner that can be expressed in words, that what he said, that we have dealt or are dealing with this problem under pressure from Great Britain and the United States, is absolutely untrue. I am not going to refer here - because it would take too long - to all the statements, declarations, claims that my country has made since the Award on its validity, and I must further say, also categorically, that Venezuela is a sovereign country and that, in defense of its high interests, it does not tolerate or accept pressure from any other country. As I have said, Mr. Burnham has a friend in the Venezuelan Government, and Venezuela is willing to cooperate with him and to give him the assistance - if I may say so - that he may request from us and that we are in a position to provide. But I must make it clear that in a matter so transcendental for my country, in which a Territory that belongs to it is not currently included in its Territory, it is the duty of the Government and of the country to continue, as they have been doing, to try to reach a solution in the most amicable way, using all diplomatic channels.

Now, referring to the presentation made by His Excellency, the Secretary of State of Great Britain, in accordance with item 2 of the Agenda, its title and all the other mentions it contains, Venezuela has come to this Conference table to seek amicably a solution to the problem, and it is not conceivable to me that the terms of this Agenda can be interpreted only in the sense that we have gathered before this Conference table, after long and difficult talks, for each of the parties to express again its own position, which is already sufficiently well known. I believe that we have come to this conference table to seek a solution to the problem and not for each party to let the other know its known position.

Mr. Stewart: In view of that, Mr. Iribarren, could you tell us what, from your point of view, could be "satisfactory solutions" in the terms of item 2 of the Agenda?

Mr. Iribarren: At the end of my previous presentation, I expressed the first solution that Venezuela saw, that is, the return of the territory that rightfully belongs to it. Now, naturally, we are willing

to discuss exhaustively, if necessary, any other solution that may be proposed to achieve the goal expressed in item 2 of the Agenda.

Mr. Burnham: First of all, I would like to say that my government does not believe that Venezuela's sovereignty is under pressure from abroad. I was merely repeating what has been said by the opposition in British Guiana, and that it can be believed. The Honorable Minister is sufficiently familiar with these matters to recognize that what is believed, even if it is not factual, can have an important influence on the events that are taking place.

I am interested to know that the position of the Government of Venezuela has been, first of all, that the territory in question should be returned to Venezuela, and I want to say without equivocation that such a question is inconceivable to the Government and people of British Guiana.

I would now like to refer to the statement made by Mr. Crowe to the United Nations Special Committee on November 30, 1962, and I quote: "Experts of my Government have carried out a thorough examination of records available to them and are satisfied that there is no justification for reopening this boundary question. We are also satisfied that a thorough examination of those cannot lead to any other conclusion. Therefore, my Government, with the concurrence of the Government of British Guiana, are prepared to discuss with Venezuela, through diplomatic channels, arrangements for a tripartite examination of the voluminous material relevant to this question. On our part, we will naturally look forward to examining the Venezuelan records or documents. In making this offer, I must clearly state that it is not an offer to engage in substantive talks about a border review. We cannot do that because we believe there is no justification for it. This offer simply reflects our consideration of our friendship with Venezuela, to dispel doubts that the Government of Venezuela may still have about the validity of the Arbitral Award."

This offer was accepted by the representative of Venezuela at the time and on the date indicated above. I would like to cite that the position of my Government is exactly the same as that of the Government of British Guiana at that time, and I see no reason to depart from that position. I understand that there was, in addition, a further agreement to inform the Special Committee of the findings arising from the examination of the documents referred to in Mr. Crowe's statement.

Mr. Stewart: I think you will agree that your proposal is not a real solution to the problem, because what you propose includes a total rejection of the 1899 Award and I do not see a valid reason to reject it, and furthermore it includes, what you might say, making a different Award, naturally in favor of Venezuela. I do not think it could be seen as a satisfactory solution. I wonder if you could tell us, Mr. Iribarren, what other ideas the Venezuelan Government has in mind that could be seen as satisfactory solutions.

Mr. Iribarren: Well, I have already put on the table a proposal from the Venezuelan Government and I would like to know what is the solution proposed by the British Government as a satisfactory solution to the problem.

Mr. Stewart: Well, it seems to me in the light of the discussions that, first of all, there seems to be no alternative but to return the matter to the United Nations in accordance with our commitment, but I think we should come to that conclusion with pain. There is an alternative in that we would call upon Venezuela to do an act of great statesmanship and courage, and that might also be to renounce the claim, or at least to withhold it until British Guiana is firmly established as an independent country, and see the next item on our Agenda to help British Guiana find its way as an independent country.

If you ask me what does the British Government feel by "satisfactory solution," I would recommend the second alternative. In the absence of this, I don't know what we could do; only resort to the U.N. Would Mr. Burnham like to add to this now?

Mr. Burnham: I have already said that, if we are to be consistent, the next stage would be to report to the Special Committee of the United Nations. I might add that I am grateful for the description by the distinguished Minister of myself and my Government as friends and I wonder whether it is reasonable, at the same time as we make protestations of friendship, to leave our territory with about 5/8 of what we have known it at the beginning; we are a young people and the beginning, for us, is the beginning of the twentieth century.

Mr. Iribarren: I am obliged to reject the proposal or suggestion of my colleague the Secretary of State of Great Britain for the same reasons that he has given for rejecting our first proposal for a satisfactory solution, that is to say, that he has said that the first solution proposed by Venezuela would be a satisfactory solution for Venezuela alone. I can present the same reasons for rejecting the proposal of the Secretary of State, in the sense that Venezuela should withdraw its claim to the territory it has claimed. Now, I do believe that there can be satisfactory solutions for both, solutions involving a practical settlement of the problem which none of us can deny exists. Why do we not try to seek at this conference table - as stated in item 2 of the Agenda - a satisfactory solution for the practical settlement of the controversy? A solution which contemplates the interests, the problem of both countries, of Venezuela and of British Guiana, and which instead of meaning for Mr. Burnham as Prime Minister a problem with his Opposition, may mean a new triumph for him, that is, the settlement of this problem with his neighbor, and which at the same time brings him some benefit for his country.

Mr. Burnham: My only comment is that I would be very interested to know what kind of proposals Mr. Iribarren has under item 2 of the Agenda, since it should be noted that under the 1899 Award the existing line was established assuming, but not admitting, that there is a problem in the boundary demarcation that was fixed by mutual consent.

As far as my Government is concerned, we know our borders and we say that the series of international exercises which occurred between 1895 and 1905 established those borders. If the distinguished Minister has propositions which are within the scope of item 2 of the Agenda, my colleagues and I will be anxious and pleased to know and study such propositions.

Mr. Iribarren: At the invitation of Mr. Burnham, I shall make a second proposal, which would be as follows: that we agree to a joint administration of the disputed territory for a period to be discussed - let us say ten years - with obligations established for both countries, although perhaps in a greater proportion for my country, to provide the necessary means for this joint development, and also, with the agreement of my country, to cooperate in the development of British Guiana itself. Such an agreement, with such details as may be agreed upon after discussion, Venezuela would naturally be willing to enter into, recognizing the sovereignty of my country over the disputed territory.

Mr. Stewart. When you speak of a ten-year period and that Guiana will be a sovereign country within a few months, it is clear that we want to hear Mr. Burnham's opinion.

Mr. Burnham: I would like to know where we can read the proposition again. (The proposition is read.) I have to assume that this proposition does not involve any surrender of sovereignty on the part of British Guiana at this time. I would like to hear Mr. Iribarren's comments on this.

Mr. Iribarren: The proposition has been explained: recognizing my country's sovereignty over the disputed area.

Mr. Burnham: The answer is no.

Mr. Stewart: This is your original proposition with only the administration added. It includes acceptance of the Venezuelan claim challenging the 1899 Award.

Mr. Iribarren: I must repeat to Mr. Stewart - if I may - that Venezuela has already declared on repeated occasions that it does not recognize or accept the *1899* Award. And I must also add that this is not the same original proposition, since it involves obligations for Venezuela, as I clearly expressed it when I submitted my proposal.

Mr. Burnham: As a matter of interest, why would Venezuela be interested in developing this area before completing the development of the area that belongs to Venezuela?

Mr. Iribarren: I repeat to Mr. Burnham: as he knows, Venezuela is developing a large industrial, agricultural and many other complexes within its territory. Therefore, it would be in a position to develop this task, immediately, with the precise purpose of helping or collaborating with British Guiana, and at the same time, trying to find a solution to the territorial problem.

Mr. Stewart: I can see that the development of this territory would be of great value to both countries. The development of an underdeveloped area is an advantage to mankind. If this was proposed, for the common interest of both countries, to examine the possibilities of development of that area, very well, but why has it had to be tied up with a political proposition, the relationship of which is not justified?

I do not know if, in view of the next item on the agenda, you are considering practical plans for development, leaving aside for the moment this demand for sovereignty, on which we cannot agree, while on the issue of development we could reach an agreement for assistance from both countries.

I would like to add something about development, but it would be a matter for the countries concerned, to give them the opportunity to do something useful in a field where they both agree.

Mr. Iribarren: I reply to the Secretary of State that the development proposition also includes the political problem to which he refers, because it is precisely the undeniable existence of this political problem which has brought us to this conference table. The purpose of this meeting is to try to solve this very political problem that the British Foreign Secretary has referred to. Now, I would like to invite both the British Government and the Government of British Guiana, whose Prime Minister is present here, to make a proposition to us.

Mr. Stewart: Well, I have two propositions - one, that we should refer the matter to the United Nations to examine the expert reports and consider the possibility of practical solutions, since, unfortunately, we do not agree. That is one proposition.

The other is that Venezuela should renounce the claim, or if it believes that this is impossible, it should agree to let the matter rest until Guiana has found its way as an independent country and they can see to what extent they can cooperate in the development of their territory.

I thought I understood that you did not like the second proposition. What alternative is left if not to report back to the United Nations?

I could add something more about development and sovereignty in general. There was a time in our history when we were interested in having our flag flying and waving in many places. But we find ourselves now in this century, and see advantageous for us that our former possessions have become prosperous and peaceful countries.

For a country on the verge of national independence like Guiana, the question of territory and sovereignty must be of great importance, but perhaps Venezuela will find, as we have found, that for a country with more years, that its interests lie not in the expansion of its own territory, but in the peace and prosperity of its neighbors.

Mr. Iribarren: On this point, I must reply to the Secretary of State that the case is not the same for us. It would be the case for Great Britain if one of its counties were incorporated into another country; this is how we Venezuelans firmly consider the case of Essequibo Guiana: it is a territory that is part of a National Territory incorporated into another country. It is not the case of possessions in other continents overseas, but a part of the territory itself, as if we were to say that the county of Gloucester was occupied by another country.

Mr. Burnham: I would say that whatever the difference in concept between the Essequibo, in relation to Venezuela, on the one hand, and African territories and Great Britain on the other, the fact is that, at the present time, this county of the Essequibo is under the sovereignty of British Guiana and is so recognized in international law. If another country says that such area belongs to it, it must prove it. We must have details. It is a source of concern to us that a friendly country seems, to the children of our country, to have expansionist ideas.

I would also like to add that it seems to me impossible to have friendly relations if a nation that at the moment only comprises square miles is going to ask you to cede 5/8 of its territory to another nation that comprises more than 300,000 square miles. There will never be peace. We want to be grateful for the offer of development from that part of South America but, although poor, we are not without honor and will not buy development at the cost of voluntarily ceding sovereignty.

Mr. Stewart: We are facing the need to inform the United Nations of the position we have reached.

Mr. Iribarren: I believe that the way is always open; and we would like to exhaust these conversations first, because we hope to find a solution, as has been indicated by means of a commitment in the Agenda.

Referring to what Mr. Burnham has said, I beg him not to interpret my words in that way, because there has not been the slightest intention in them, not even to think about it - to buy, as he has put it so crudely and directly, any settlement. We are sincerely and honestly trying to seek a solution, we are presenting solutions to try to reach an agreement to solve the undeniable problem that exists, and which, if not solved - and in this I am not even thinking of any threat but only observing reality - if not solved, I repeat, can bring for our two countries, and I dare say, for the American Continent, serious problems. I repeat that this is not a threat in any way but only a grasp of reality. The problem exists and we must try to solve it. Mr. Burnham has no proposition to make?

Mr. Burnham: I have no proposition other than the above. I would remind the Venezuelan delegation, however, that a poor country like Liberia had, in recent times, a claim on New Guinea, which it has not pursued in the interest of African unity. Why can't Venezuela make the same gesture that Liberia did for New Guinea? One would think that this would be in the tradition of that great patriot, Simon Bolivar, whose tomb I had the honor to visit.

Mr. Stewart: Do you think we will come up with anything more tonight or would it be convenient to continue discussions tomorrow morning?

Mr. Iribarren: Before the end of this session, despite all the difficulties, I would like to be allowed to make another proposition, which I consider useful, a conciliatory proposition to try always and with the same effort to find a solution to our problem. Before presenting it, I would like to thank Mr. Burnham, from the bottom of my heart, for the reference he made to Simon Bolivar, our Liberator. The proposition is as follows: "Creation of a Commission to settle the controversy

between Venezuela and the United Kingdom on the territorial question between Venezuela and British Guiana...(he continued reading the proposition)....

I believe that with this proposal Venezuela has demonstrated its desire to reach a solution to the problem.

Mr. Steward: If this is agreeable to Mr. Burnham, could you leave the copies of the proposition for us to study and recommence discussions tomorrow morning?

Mr. Iribarren: The copy I have in my hands is in Spanish, perhaps the interpreters and stenographers already have an English translation.

Mr. Burnham: In order to prevent something from being forgotten, would it not be possible, Mr. Iribarren, to give the translator a copy of the document in Spanish?

Mr. Iribarren: I will send you copies in Spanish this afternoon.

THE MEETING WAS ADJOURNED AT 7:00 P.M.

Annex 86

Record of Conversations held at the Foreign Office in London on the Border Dispute between Venezuela and British Guiana, 10 December 1965 (Translation- Excerpt)

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Minuta sobre las conversaciones sostenidas en el Foreign Office de Londres sobre la disputa fronteriza entre Venezuela y Guyana, 65 hojas, 9-10-dic-65, Box: E-20.

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

N° _____

Day 10th of December 1965

Time: 10 a.m.

There is a parallel to this in the Treaty made by a number of parties on different claims over the Antarctic. Without carrying this comparison too far, there is an important similarity between the Antarctic position and the problem we are studying here. A number of nations have conflicting claims over the Antarctic. They determined that the more these claims are challenged and remain unresolved, the valuable scientific work would have come to a halt, and they agreed on a cooperative action in the scientific field, along with the freezing of all claims during the implementation of the Treaty. This means that no one was asked to give up their claim, but simply not to put further pressure on them and not to file new claims during the effect of the Treaty for a period of 30 years.

Annex 87

Minutes of London Preliminaries to the Geneva Agreement, 10 December 1965 (Translation- Excerpt)

Ministerio de Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Minuta sobre las conversaciones sostenidas en el Foreign Office de Londres sobre la disputa fronteriza entre Venezuela y Guyana, 65 hojas, 9-10-dic-65, Box: E-20.

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

*No.*_____

DECEMBER 10, 1965

Time: 10 a.m.

Mr. Stewart: Thank you for sending copies of the proposition. It is a very detailed and complicated proposition, but we have had the opportunity to study it and I would like Mr. Ramphal to express his opinion.

Mr. Ramphal (Solicitor General of British Guiana): Our approach must be considered against the background of the proposition that Mr. Burnham put forward yesterday, in accordance with our obligations to the United Nations. The first and most logical step should be a report to the United Nations with the results of the examination of the documents.

Our first problem in relation to the contrary propositions is the ambiguity that exists in the first point of the terms of reference proposed to the Commission that is to resolve the territorial problem or controversy. We are not sure what that means. The only possible problem that can arise in item 2 of the Agenda is the problem of the invalidity of the 1899 Award, We have excluded, in the long discussions on the items of this Agenda, any question that refers to a territorial dispute.

Since this initial question of the invalidity of the Award presented by Venezuela is under item 2 of the Agenda, we are inclined to assume that it is reduced to a much more limited issue, but we are obliged to say that its terms suggest that the Commission would be expected to find a way to resolve this technical problem and deal with the question

.../...

Possibility raised by the Secretary of State of continuing these talks with him in Caracas, I must say that Lord Walston will be a welcome guest in my country, but we see no point in continuing talks with him. I sincerely believe that it is now that we must try to find solutions. I believe, as I said before, that the good will of Venezuela, as well as the certainty of its position, has been demonstrated in the proposition that I made at the end of yesterday afternoon's meeting, which is a conciliatory proposition that takes into account the continuation of the talks and the continuation of our efforts to find solutions. It foresees in it several conciliatory stages (namely) the Commission, which will continue in this task; the presence of the mediator or mediators to try to conciliate and seek solutions; and, finally, a final decision to be submitted to a totally neutral entity with the power to

decide. Furthermore, the proposition fully demonstrates the Venezuelan desire to cooperate and collaborate in the development of our neighbor, British Guiana. Moreover, it is a "fair proposition" that allows the intervention of the United Kingdom in all the steps of the proposed Commission, the selection of the mediator or mediators, as well as in the conclusion or discussion and decision on the bases, conditions and rules of the arbitration foreseen. The consideration of this arbitration as a final procedure is a demonstration by Venezuela of the certainty of its position, since it is willing to submit to the final decision of an arbitral tribunal. Finally, I would like to invite the Secretary of State to propose something in relation to our proposition. We are willing to discuss and consider the points he may submits to us.

.../...

- 15 -

unilaterally the Award on certain oil concessions in that country, and Great Britain and the United States have agreed to negotiate a settlement. Venezuela does not have the slightest doubt about the Nations, and considers it not only useful but a necessity for the whole world. This is what I said on behalf of my country in my speech to the United Nations General Assembly last October 6. Venezuela too - as Mr. Burnham has rightly pointed out - took this case to the United Nations in the first instance. And I repeat, we are in these talks in accordance with what was agreed in that initial procedure. Now, the United Nations is not a court, it has no power of decision; that stage has been passed in relation to this dispute, and I repeat, we are here as a result of that. At no time has Venezuela intended to offend British Guiana, nor has it thought of using the procedure of the Greeks to which Mr. Burnham alluded with the Latin verse; on the contrary, Venezuela ardently desires to solve this political problem, and at the same time to cooperate with its neighbor. What is happening is that none of us around this table can deny that there is a problem, and that this problem must be solved. Our proposition is not - as Mr. Stewart stated - a decision in favor of the Venezuelan claim; it seems to me quite the contrary. Venezuela, in accordance with this proposition, is willing that the problem be resolved in accordance with an international procedure. Venezuela has not ruled on this, it has not ruled in its favor by presenting this proposition; on the contrary, Venezuela is willing for the dispute or controversy to be resolved in a neutral manner, through the intervention of an arbitration tribunal. Furthermore - I must repeat what I said before - it is the last instance contained in the proposition. Before that, procedures will be established to continue the talks, to continue trying to find solutions, so I honestly believe, that is, I do not see how this proposition can be criticized in this or any other aspect. Precisely in this proposition and in its procedure, the continuation of talks and the power of each of the parties to discuss their points of view are clearly established; finally, and without this being the "gift of the Greeks", since it is not my intention to offend, but only to define a simple procedure to establish plans and begin their execution, that is to say, in this aspect, as in the case of Antarctica cited by Mr. Stewart, these plans for cooperation and development would begin immediately.

Mr. Stewart: I have explained before our difficulty about this proposition, as it involves the acceptance that the Award of 1899 was invalid. Mr. Iribarren says that Venezuela wants to settle the problem in accordance with international procedures, but he does not accept our view that this matter was settled by international procedures in 1899. I think we have to accept the fact that we have not reached an agreement. We believe, for our part, that we should report to the United Nations, because we are under an obligation to do so. I am sorry, but it seems to me that this is so.

Mr. Iribarren: Excuse me, but I would like to add something in relation to the continuation of the talks. I have to say, on behalf of Venezuela, that we are always willing to continue talking, and what I said in relation to Lord Walston's visit is that I do not think it is an appropriate opportunity to do so.

.../...

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

*No.*_____

DECEMBER 10, 1965

Time: 4 p.m.

Mr. Stewart: When we left the talks this morning, we were considering the possibility of restarting these discussions. You had said that it would not be right to use Lord Walston's visit for this purpose. Now I don't know, if we could get Mr. Burnham's agreement, but, concerning this, we thought it would be in the first 15 days of February, and since both London and Caracas do not seem to be acceptable to him, it might be in Geneva. We would be prepared to recommence discussions even without an Agenda, or on the basis of the already existing one, except point I, which we have already discussed and which we will not discuss any further, as it has no object.

Now, for our part, we would like to look more broadly at the idea of a Joint Commission, but subject to the very important point that we and our colleagues from British Guiana made this morning about the terms of reference.

Now, we would hope that you could look again at our suggestion for a solution comparable to the Antarctic solution. Some preliminary discussions would be very helpful, and we would suggest that they should be held and then resumed, as I have already suggested. Perhaps Mr. Burnham would like to comment.

Mr. Burnham: In general, the Government of British Guiana is prepared to accept these propositions, but I am concerned as to why the conference already proposed cannot be held in the tropics. Speaking for myself, I feel that the climate in the temperate zones is quite strong at the present time, and I am sure that a place like Antigua or Barbados, in

the Caribbean, would meet with no objection, provided we could obtain the consent of the government concerned.

Mr. Stewart: What do you think?

Mr. Iribarren: Allow me to summarize what is proposed: It is proposed to continue these talks in February in Geneva without item I of the Agenda. I consider Mr. Stewart's proposition to be useful, because I believe that due to the short time of this meeting, the analysis that has been made of the propositions has been insufficient. I propose to adjourn this Conference and that it be resumed at a date in January. With regard to the location, I must very kindly remind you that Venezuela has come to London twice and that it would be a pleasure for it to be held elsewhere, for example in Caracas, although I know that this morning Mr. Burnham spoke out against holding it in Caracas or in London.

Mr. Stewart: Well , now we have January, February, Geneva, Antigua and Caracas in the proposition.

We at least seem to agree to continue the talks on the basis of the existing Agenda, without item I.

Well, we could, of course, adjourn this meeting leaving the time and location to the continuation, to be arranged by later agreement, but I see no difficulty in agreeing now on the time and location.

Mr. Burnham: In January it is impossible, in February it is difficult.

Mr. Stewart: You would prefer later.

Mr. Burnham: Yes, I have been away from my country for a long time and I have numerous things there that I want to be involved in that relate to

.../...

JOINT STATEMENT

1.- In accordance with the Joint Communiqué of November 7, 1963, talks have been held in London on December 9 and 10, 1963, between the Minister of Foreign Affairs of Venezuela, on the one hand, and the Secretary of State for Foreign Affairs of the United Kingdom and the Prime Minister of British Guiana, on the other hand, on the basis of the following Agenda:

Agenda for the continuation at ministerial level of the governmental talks concerning the dispute between Venezuela and the United Kingdom on the border with British Guiana, in accordance with the Joint Communiqué of November 7, 1963.

1) Exchange of views on the reports of the Experts on the review of documents and discussion of the consequences arising therefrom. Need to resolve the dispute.

2) Seeking satisfactory solutions for the practical settlement of the dispute that has

arisen as a result of the Venezuelan contention that the 1899 Award is null and void.

3) Concrete plans for cooperation in the development of British Guiana.

4) Determination of deadlines for the fulfillment of what is agreed with respect to points 1, 2 and 3 above.

5) Joint Communiqué on the present talks.

2.- In addition to considering the reports of the experts on the documentary material relating to the Arbitral Award of 1899, the Ministers discussed ways and procedures to put an end to the controversy that threatens to break the traditionally cordial relations between Venezuela, on the one hand, and the United Kingdom and British Guiana, on the other.

3.- Ideas and propositions for a practical settlement of the dispute were exchanged. It was agreed that some of these should be submitted for further consideration and that the Ministers should continue the present discussions during the week beginning February 13, 1966, in Geneva, in order to consider these propositions, as well as others which might be suggested in accordance with the above Agenda. Since neither party was able to accept the conclusions of the experts appointed by the other party, item one will not be considered. It was further agreed that officials of the governments concerned will shortly begin preparatory talks.

The text of this communiqué shall be brought to the attention of the Secretary General of the United Nations.

London, December 10, 1965.

Annex 88

Meeting at Ministerial level between the Venezuelan and British Foreign Secretaries on the Controversy over the Frontier with British Guiana, United Nations, Geneva, 16 February 1966

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Reunión a nivel ministerial entre los Cancilleres Venezolano y Británico en torno a la controversia sobre la frotnera con la Guayana Británica, 1966, Box: E-11.

UNITED NATIONS, GENEVA, 16TH FEBRUARY 1966,
10 a.m.

MEETING AT MINISTERIAL LEVEL BETWEEN THE VENEZUELAN AND BRITISH FOREIGN SECRETARIES ON THE CONTROVERSY OVER THE FRONTIER WITH BRITISH GUIANA

Dr. Iribarren Apertura.

Mr. Stewart Mr. Burnham and I thank you for your welcome and I trust that we shall be able to make progress.

You have explained the strength of your conviction, representing so many aspects of your national life, the conviction you have about your claim, but you will remember that in London we found that none of us, of the three parties concerned, were able ~~tax~~ to accept the views of the experts of the other party on the validity of the 1899 Award, and we did not find ourselves able to accept the proposition that it was invalid.

It seems that to justify such an allegation a very conclusive evidence will be necessary, and I must state that as plainly as you have.

However, Venezuela and Guyana, as it will soon be, are neighbours, and they both want to live on good terms.

We, on our part, have a long record of friendly relations between the United Kingdom and Venezuela and want them to continue and, in that frame, search for a solution.

Now, in London you put forward from your side a proposal for a Mixed Commission of Guyana and Venezuela to pursue this matter. We found the difficulty about that Commission dealing with the territorial controversy, and considered there were many matters of mutual concern, such as economical development, trade, cultural relations, etc., with which the Mixed Commission could usefully deal.

Now, you will remember that we put furward a proposal which

linked the idea with the Antarctic solution, setting aside, for the time being, all territorial claims. I wonder if you had given further thought to this idea and whether you had any further suggestions in that field, or whether you had thought of others by which the controversy might be dealt with. I would ask you if you could tell us first if you had any further thought for the proposal of a Mixed Commission, or whether you could suggest other ways in which the controversy might be dealt with.

Dr. Iribarren

Mr. Stewart Well, then. I will put forward what I trust you will regard a proposal.

I will say a few words describing the general contents and we could then let your Delegation have copies of it.

It does take the idea of a joint body, which was in your proposal, but sets it out as follows:that it should be a Mixed Commission to be appointed at an early date to examine the relations between British Guiana and Venezuela; that the membership of the Commission should be two representatives from Veneyuela and two from British Guiana, and they should be appointed within two months of the agreement on these lines. It would be possible for the representatives to decide to add expert advicers to their number.

I think your proposal envisaged the United Kingdom being there as well. That, I think, is something which could be considered.

Now, the Commission, as proposed, would start working within two months of our agreeing to it, and it would examine a wide range of matters, as the collaboration between Guyana and Veneguela for the development of both countries. It would examine the possibilities of extending the contacts between the two countries, diplomatic, trade, educational contacts, etc.,

and then in order to facilitate the work of the Commission the Agreement setting it up should state that nothing in the Agreement implies the renunciation by either side of any territorial claims and that nothing done under the agreement should become basis for either denying or asserting territorial claims. This question should be set aside without prejudicing the claims by either side while the Commission gets on with its work. That is the essence of our proposal. I think its advantages are it is not prejudiced and it does not prevent co-operation while the territorial ~~xkaim~~ argument still remains unsolved. It is comparable to the Antarctic solution, in which Latin American countries took part and gained in international reputation. Perhaps if we could distribute copies of this proposal you might like to look at it.

(Copies are being distributed)

Dr. Iribarren propone suspender reunion.

Mr. Stewart Certainly.

11.45 horas

Dr. Iribarren

Mr. Stewart I take note of what you have said. I think we ought to try to consider further whether we could reach a measure of agreement, possibly if we adjourned the session formally and consider the matter less formally? But, could I suggest, I think Mr. Burnham, who has not yet spoken, should have the opportunity to say a few words about his country's position. Then I suggest we might consider the possibilities of further progress.

Mr. Burnham As far as British Guiana is concerned, we are most anxious that the outcome of the talks should be a happy one. That outcome has to be, from our point of view, with honour and must remove all doubt. After consulting with my colleagues, I think it necessary that the British Guiana's attitude and stand be firm in the circumstances of the Venezuelan Delegation being larger and more nationally represented than it was in December of last year.

In the first place, the British Guiana Government accepts the validity of the Award in the terms of the 1897 Treaty, as a full and final ~~xxxxx~~ settlement. We feel also assured in our position by the fact that the situation was arrived at by agreement between the Venezuelan and British Governments, and that the agreement was signed by the parties in Georgetown on 10th January 1905. The Venezuelan Foreign Minister, in 1941, admitted to the British representative in Caracas that the frontier had been finally defined. It must be remembered that the President of the United States at the time and his predecessor were very kindly disposed towards Venezuela and the decision appeared to be satisfactory to both sides.

It is difficult for us to agree to the yielding of any territory, but are aware of the fact that in international relations two positions may appear to be exclusive. However, with good will on both sides we may be able to arrive at a mutually acceptable solution, where honour is preserved.

We are anxious to have the very best relations with Venezuela, but we are also very anxious that none of our soil goes to anyone. We are a small nation, Venezuela is four times our size, and we doubt the possibility of friendship if we are forced to yield 5/8 of our country's territory to a nation much larger than us.

We accept Venezuela's asseverations of friendship and hope that they will be translated into a reality of co-operation.

~~Dr. Iribarren~~ Dr. Iribarren

Mr. Stewart Thank you. Shall we then adjourn the formal meeting? Ought we not to decide when to meet formally again?

Dr. Iribarren

Mr. Stewart Very well.

11.55 horas. Las conversaciones continúan con carácter informal.

17 de Febrero de 1966, Sala de Conferencias, 2.45 horas

(Conversaciones comenzadas cuando llegué por tener que haber ido a buscar a varios miembros de la Delegación Venezolana).

Discussion of the Agreement

Mr. Stewart I am sorry I haven't quite understood that. I drew your attention particularly to the end of point 2, which is the only change.

Dr. Iribarren

Mr. Stewart No claims shall be submitted except to the Commission. You will be able to show us this in writing, but it seems to me it shows what we want.

What happens to the rest of the clause, to b) and c)? Do you propose what you have read out? We would like to see it in writing. Subject to our seeing in in writing, it seems to me to be satisfactory.

Written version is handed to him.

Mr. Stewart Dr. Iribarren, now that we have got this closely, I would like to ask you the following questions.

The draft you propose covers the ground of 1a) in the original draft, but it leaves out 1b) and 1c). Have you any objection to what it is contained in b) and c)?

My other question: Article 2 of earlier draft does contain the provision that"any acts or activities while the Agreement is in force shall constitute basis for ....." That seems to us also important. We want to be sure that while the Commission is doing its work there are not only no propaganda arguments going on, but no acts or activities either which might prejudice there work.

Dr. Iribarren

Mr. Stewart I think not. I think there are matters of substance in 1b) and 1c) and the first part of article 2. 1b) is concerned with renunciation or diminution of claims to territorial sovereignity, and 1c) contains the important provision that neither of us must be regarded by having

signed the Agreement here as accepting the validity of the arguments of the ~~xx~~ other side, and still more important is the first sentence of article 2. Our common object is to ensure that propaganda activities shall not go on outside the Commission while it's sitting, to ensure that real action and activities which might prejudice the work of the Commission shall not go on. ~~Xx~~ Have you any real objection to keeping 1b) and 1c) and the first part of article 2 in the draft which add something of substance which is not present in your draft?

Dr. Iribarren

Mr. Stewart Dr. Iribarren, does that cover the point of the first sentence of paragraph 2 that "acts or ~~xxxxxxx~~ activities, etc., etc."?

Dr. Iribarren

Mr. Stewart ~~Xxxx~~ I am not quite clear if you want to include in your draft the substance of paragraph 2. It is in existing draft. What is your objection to the existing draft as modified in the new wording of 1a)?

Dr. Iribarren

Mr. Stewart I see. Well, could I put it like this? If it is understood that we are both agreed that whatever wording is used, the substance of 1b) and 1c) and the first sentence of paragraph 2 should be included not in the wording they now are, if we are agreed on that I wonder if it would be agreeable to yourself and Mr. Burnham that perhaps Mr. Watts and Mr. Ramphal and whoever you wish from your side should have a look at the wording of these and see if they can reach agreement. To do it across the table could be rather difficult.

Dr. Iribarren

(Appointed members of both Delegations leave the Conference Room to try and reach agreement on the above)

Mr. Stewart ~~Xxxxx~~ Should we continue with the other points we are still discussing?

Dr. Iribarren

Mr. Stewart There was the first question of the wording of the Preamble.

Dr. Iribarren

Mr. Stewart I can understand that but, have you any real objection to what we proposed? We felt that if mention was to be made of Government conversations, it should be made clear that they were in accordance with the Joint Communiqué of November 1963. It makes more complete and accurate the historical record of what it really occurred. Have you any objection ~~mx~~ to this?

Dr. Iribarren

Mr. Stewart Dr. Iribarren, you are proposing to put ~~in~~ in the Preamble a reference to the title of the Agenda of the London talks, and the actual title is "Governmental conversations concerning the controversy between Venezuela and the United Kingdom over the frontier with British Guiana in accordance with the Joint Communiqué of November 1963". In the title of the Agenda that is all in one sentence. Therefore, if we are going to put the title of the Agenda into the Preamble of the Agreement we should put it in as it stands.

Dr. Iribarren

Mr. Stewart I think, looking at your draft, that I would like to make these two points. First, if one looks closely the sentence is not really complete: "have reached the following Agreement in order to resolve", and then you have got to ask: resolve what? The word "controversy" is fitted in the phrase "ministerial meeting regarding the controversy". The word "resolve" is left without object.

Secondly, the ministerial meeting was in accordance with the Joint Communiqué of November 1963. We might meet both these points if we took what you have proposed and modified it as follows: "have reached the following agreement in order to resolve the present controversy in accordance with the Agenda of the ministerial meeting begun on 9th December 1965 in accordance with the Joint Communiqué of November 1963 and concluded in Geneva, etc., etc.

Dr. Iribarren

Mr. Stewart In that case, if one places the whole thing in inverted commas that strengthens the arguments for putting

the words "in accordance withe Joint Communiqué of 7th November 1963" after the words "9th December 1965". Your quotation will then be complete.

Dr. Iribarren

Mr. Stewart After the words "9th December 1965", can we add the words "in accordance withe Joint Communiqué of 7th November 1963"? The Ministerial meeting was begun in London in accordance with that Communiqué.

Dr. Iribarren

Mr. Stewart Yes, yes. We shall see the Spanish text but this is clear, I think. You gave us the Spanish text. If we could have the text of your draft again?

Dr. Iribarren

Mr. Stewart The text the drafting committee are engaged on?

Dr. Iribarren

Mr. Stewart I wonder if meanwhile we could have the Spanish text of what we were just discussing. That would help.

Dr. Iribarren

Mr. Stewart Dr. Iribarren, perhaps we could return to the Preamble when xxx our legal advisers are present. Meanwhile if we are able to meet agreement - there are one or two uncontentious clauses in it.

Dr. Iribarren

Mr. Stewart Well, for example, article 1: "a Mixed Commission shall be appointed at an early date to examine ..... in accordance with article 3 of this Agreement."

Dr. Iribarren

Mr. Stewart Article one, the very first after the Preamble. This was our first draft, article 1 of our first draft.

Dr. Iribarren

Mr. Stewart Oh yes. That was what you submitted to us recently. Yes, I'm sorry. I beg your pardon. We find no difficulties about that article 1, but if you would be kind enough to look at the original draft we gave you, it contained an article 2 which is simply the mechanics of the matter. I thought we could possibly agree on that subject to agreement on larger matters to be reached.

Dr. Iribarren

Mr. Stewart For the Government of British Guiana.

Dr. Iribarren

Mr. Stewart It would be able to appoint representatives nonetheless.

Dr. Iribarren

Mr. Stewart I find, Dr. Iribarren, no reason in the British constitution why we should not give the Government of British Guiana the power to appoint representatives. What we both want is representatives of British Guiana and of Venezuela, and I am informed there is no constitutional difficulty to it.

Dr. Iribarren

Mr. Stewart Yes, provided, of course, the British Government agrees which, by signing this Agreement, it would in fact do.

Dr. Iribarren

Mr. Stewart Yes, yes, thank you, and I think the rest of article 2 does not present any difficulty.

Dr. Iribarren

Mr. Stewart I see. You would like it really to say that this would require the concurrence of the Governments.

Dr. Iribarren

Mr. Stewart I see, yes.

Dr. Iribarren

Mr. Stewart Yes, I think that's right. What this paragraph does is to say that if an expert is actually to be co-opted to the Commission, that requires the agreement of both sides' but it would not prevent the representatives of the Mixed Commission to consult by themselves with whoever they thought fit.

Dr. Iribarren

Mr. Stewart Article 3, of course, well that involved major matters we have still to consider. Article 4 is non-contentious, "the Mixed Commission shall hold its first meeting, etc., etc."

Dr. Iribarren

Mr. Stewart Then the next article is the one our drafting committee is now considering. That leaves us with article 6: "this Agreement shall enter into force, etc., etc." This will, I think, have to be redrafted.

Dr. Iribarren

Mr. Stewart I have not considered that for the moment because that xxxxxxxx is a major point.

Dr. Iribarren

Mr. Stewart Yes indeed. Yes. Well, then, I think your next article was about the proposed limit of three years. We thought four years would be better. I wonder if we could leave the argument for the moment and also the point about the Secretary General of the United Nations. If we could leave these for the moment and look at the last article of the Agreement. That will require more redrafting.

Dr. Iribarren

Mr. Burnham Both the United Kingdom and British Guiana Governments feel that no difficulty arises.

Dr. Iribarren

Mr. Stewart Yes, indeed.

Ambassador Santaella We are awaiting for it. It is being typed. It will be here shortly.

(Typed copies are being studied by both Delegations).

Mr. Stewart Am I right in thinking we are now agreed on the Preamble?

Dr. Iribarren

Mr. Stewart I think Mr. Ramphal and Dr. Santaella have been discussing the Preamble and I think you do agree, do you not?

Mr. Ramphal We did propose a wording to meet both points of view and which would take the following frame: after the first four paragraphs of it it would read: "have reached the following agreement in pursuance of the Agenda

for the continuation ~~of the talks~~ at ministerial level ....."

Dr. Iribarren

Mr. Ramphal That, Dr. Iribarren, is what I believe you had proposed.

Dr. Iribarren

Mr. Stewart I had reserved my position on this point.

Dr. Iribarren

Mr. Stewart That was not so, Dr. Iribarren. I had reserved my position on that but I think we can now reach agreement. I think this wording would meet us both. After the Preamble it is "have reached the following agreement in pursuance of the Agenda for the continuation at ministerial level of Governmental conversations concerning the controversy between Venezuela and the United Kingdom ..... in accordance with the Joint Communiqué of 7th November 1963". That, I think, brings in the reference in which you are interested, the words "controversy between Venezuela and the United Kingdom over the frontier with British Guiana", and brings them in in the operative part rather than in the Preamble. Does that not cover all the essential points?

Mr. Burnham Propone incluir la Agenda completa.

Dr. Iribarren

Mr. Stewart It is not what I suggested. If we adopt Mr. Burnham's suggestion the title of the Agenda would also be there.

Dr. Iribarren

Mr. Burnham All doubt will then be removed.

Ambassador Santaella

Mr. Burnham The point really is: what is the objection to the most recent draft we are proposing?

Mr. Stewart It says"in pursuance of the Agenda" and then it spells out the title and goes word for word setting out the whole title of the Agenda.

Dr. Iribarren

Mr. Stewart Yes.

Dr. Iribarren

Mr. Stewart My recollection is I said I xx would like to see the text of that. But I did say I wanted to see the text of it and we are now suggesting something where we could both agree on. That we should have the opening paragraphs of the Preamble and then "we have reached the following agreement in xxxxxxxxxxxxxxxxxxxxxxxxxx conformity ....." and then spell out the whole title of the Agenda. Is there anything of substance there you find objection to?

Dr. Iribarren

Mr. Stewart My recollection is that I reserved my position on that, but is there any objection to what I am now suggesting?

Mr. Burnham My recollection is that the position was reserved and we were awaiting the return of the team.

Dr. Iribarren

Mr. Stewart That is agreeable to us. Well, I think, then, the first article of the Agreement will be the one on your draft on which we are agreed. I think that is agreed between us.

Dr. Iribarren

Mr. Stewart Yes, as in your draft.

Dr. Iribarren

Mr. Stewart Very well. Certainly.

(Whole text of the Agreement is now to be read).

Mr. Stewart There is one matter we are not agreed. The period after which the Commission is to report if it has not agreed. You have proposed a term of three years. We would ask you to consider a period of four years.

Dr. Iribarren

Mr. Stewart Yes.

Dr. Iribarren

Mr. Stewart
I did understand you said that you had agreed to 4 years? Thank you.

There is a very small point: the last article concerning the enter into force of the Agreement. In view of what is now in the Agreement, there is, I think, no need to say how long the Agreement remains in force for.

One would only need to say "the Agreement will enter into force on the date of its signature."

(Observación hecha por miembro Delegación Venezolana).

Mr. Stewart One correction on that. When mentioned Guiana the second time,it will of course be Guyana and not British Guiana. "Upon obtaining of independence of British Guiana, the Government of Guyana ....."

Dr. Iribarren

(Texto completo del Acuerdo es leído por el Senador Roncajolo)

Mr. Burnham You want a word for "thereupon" or "thereafter" and not "immediately". "Immediately" is inconsistent with the text, and, therefore, the word should not be the Spanish equivalent of "immediately", but of "thereupon".

Ambassador Santaella

Mr. Stewart I think there is an English phrase which would be ~~xxx~~ agreeable: "without delay".

(Accepted by all).

(Spanish text of Agreement is continued to be read by Senador Roncajolo).

Mr. Burnham Renunciation or diminution?

(Ambassador Santaella examines translation of Agreement. Spanish text is read by him).

Mr. Burnham Asserted.

Mr. Stewart Correct English is "rights previously asserted?

Ambassador Santaella That's right.

Mr. Burnham One moment. What is the Spanish for "prejudicing"?

Ambassador Santaella

Mr. Burnham How do you translate "any ~~xxx~~ claim whatsoever"? You cannot get in Spanish the flavour of the word "whatsoever".

Ambassador Santaella

Mr. Stewart Our English text: "nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission".

Mr. Robert Edmonds With due respect, Ambassador, we have in the English first paragraph of that article and in the second the word "asserted". If I understood it right, this word was differently translated in both occasions. It was translated as "hacer valer" and then "establecer".

Ambassador Santaella En ambas ocasiones debemos decir "hacer valer". ¿Podemos continuar la lectura?

Yes.

Dr. Iribarren Is there anything further you have?

Mr. Stewart Yes indeed. Just a point about the text. It will be necessary for our legal advisers to compare the texts to be sure the languages correspond. I think we should issue a Joint Communiqué.

Dr. Iribarren

Mr. Stewart Certainly.

Dr. Iribarren

Mr. Stewart It is now 6.20. By when it will be practical to sign the Agreement? I think if we said 10 o'clock, would that be suitable?

Dr. Iribarren

Mr. Stewart I must express my appreciation of your determination and good will to reach agreement, and express the same feelings of Mr. Burnham, my colleague.

Dr. Iribarren

Mr. Stewart You have expressed more eloquently than I can my what we both feel about the success of these negotiations. I note that you firmly maintain your arguments, and Mr. Burnham and I have an equal solidarity. Through these long and very laborious hours we have been sustained by the thought that we were not merely drawing a legal document but a basis for good will between two countries in the American Continent with one of whom we have a special Commonwealth tie. We trust both will always be able to preserve that.

Mr. Burnham May I, on behalf of the Government and people of British Guiana, express the gratitude we feel at the solution of this controversy which has set our

relations. May I say that with the advent of our Independence we are supported by your good wishes, and we feel quite confident we shall be able to co-operate with our Latin American neighbour.

I xxx want to say I appreciated your patience and I appreciated very highly the kindness and understanding which have been shown time after time.

We are a small country, we cannot invite all of you to our Independence celebrations, but I expect to see some of your faces then.

6.45 horas.

Versión taquigráfica de T. de la Mare.

Annex 89

Minutes of the 6th Session, 9th Meeting of the Mixed Commission, 4 July 1968 (Translation)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Minutas de la 6ta Sesión, 9a Reunión de la Comisión Mixta, 1968, Box: E-01.

…Dr GONZALO GARCÍA BUSTILLOS referred to the conviction of Venezuela's position that the area situated to the west of the Essequibo River had priority in the development plans that, together with Venezuela, were to be carried out in Guyana, and pointed out that this did not mean that no attention would be paid to the area situated to the east of that river, but that in any case, the Essequibo area was a priority because it was the area that was under reclamation and the subject of the dispute….

Annex 90

Report on the courtesy visit of Ambassador R. Collins of Guyana, to Brigadier General (AV) Ramón Enrique Mendoza Ibarra, Director General of Frontiers (Translation)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, expediente 53, Venezuela, Punto de información confidencial de la Guayana Esequiba. Propuestas de Miguel A. Capriles. Opiniones de distintos sectores nacionales e internacionales sobre la zona en reclamación. Informe sobre la visita del Embajador Collins de Guyana, 1894, expediente 27. Box: E-11.

Bolivarian Government of Venezuela

People's Power Ministry of **Foreign Affairs**

OFFICE OF BORDER AFFAIRS
DOCUMENTATION DIVISION

CODE:

SECTION SERIES

FILE NUMBER: 27

ITEM:

GEOGRAPHICAL DESCRIPTOR: VENEZUELA

DIRECTORATE OF FOREIGN AFFAIRS: INFORMATION ITEM.

TOPIC DESCRIPTOR: CONFIDENTIAL INFORMATION REGARDING THE CLAIM OVER THE ESSEQUIBO. PROPOSALS MADE BY MIGUEL A. CAPRILES. OPINIONS FROM DIFFERENT DOMESTIC AND FOREIGN SECTORS CONCERNING THE ZONE IN RECLAMATION. REPORT ON THE VISIT OF GUYANA AMBASSADOR COLLINS.

YEAR(S): 1984

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Section Nº _____ Box Nº _____

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Courtesy visit paid by Guyana Ambassador R. Collins to Aviation Brigadier General Ramón Enrique Mendoza Ibarra, Sectoral Director General of Border Affairs

AMBASSADOR COLLINS:

He said that the fact that he had been received for the first time by General Mendoza Ibarra showed the mood of relations up to the present.

He added that his presence at the Directorate showed that more than just a courtesy visit, it was in fact the beginning of a new situation that would possibly lead us to a definitive solution to the problem of the dispute.

GENERAL MENDOZA:

He welcomed Ambassador Collins.

We are going to try to have a closer relationship between the two States and to start this relationship with a firm step and vigour, always within the framework of the national interests of both countries.

AMBASSADOR COLLINS:

I do not know where to start and I do not think it would be good to systematically go over our old differences.

There are several ways of addressing the problem. Some are out of our hands and others are our responsibility.

1° There is the process that is currently under way, which involves waiting for the UN Secretary General's determination. Even so, when the Secretary-General makes a decision, the matter should then be taken up again by us and we should negotiate at the political level.

2° Secondly, we should look for mechanisms for contact. Previously, there was a climate of suspicion; now we must find common ground and create a climate of trust to remove barriers. A very important aspect is to prepare Venezuelan and Guyanese public opinion. A very illustrative example is the dispute with Colombia, in which the officials of both governments worked hard and in good faith, but they failed to prepare public opinion, which derailed the efforts made.

An example of the positive change in the climate of relations is that the Foreign Minister not only made private statements, but also public statements, in particular in relation to the public statement to the press by the official of the Supreme Electoral Council. Additionally, it is significant that after the Foreign Minister's clarification, there were no further negative reactions in the press, which shows that public opinion can be shaped.

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There is already a climate of willingness to seek a solution. However, it should be noted that there are issues that are perhaps complementary in some way, but in fact are mutually exclusive: the issue of cooperation between the two countries is perhaps complementary in some way to that of the territorial claim, but it should not really be linked to the search for a definitive solution to the territorial problem.

Based on his contacts with many Venezuelans, Ambassador Collins believes that there is a feeling in Venezuela that it will not be possible to foster economic cooperation with Guyana the territorial issue has been settled, as there is a connection between these two issues (cooperation and the territorial problem).

GENERAL MENDOZA:

The presence of the Ambassador here in the Directorate for Border Issues is very important, but the important thing is to start here the dialogue for the common solution of this problem without having to take into account only the opinion of the United Nations Secretary-General for the definitive solution of the dispute. This will be an arduous task, but it must be undertaken jointly by Venezuela and Guyana and at the same time we must try to shape the public opinion. We must realise that there are divergences on the part of some minority groups, but the Government itself has a clearly defined approach to manage the problem

The best way to handle the problem would be to develop mutually beneficial procedures for both countries. And dealing properly with public opinion is very important.

This should not be approached only from the angle of the territorial dispute. Economic cooperation is also very important. There is a third factor to be taken into consideration, namely the delimitation of marine and submarine areas. Everything must be seen as a big package so as to be able to manage public opinion in the country and even include the points of view that are of interest for the internal politics of our States.

The fact that I am in the military and that I am here at the forefront of the talks suggests that things can be looked at not only in terms of purely and merely settling a border dispute, but that this issue can be seen by the international community as an example of a cooperative agreement between brotherly countries and that the solution is viable as stipulated under the Geneva Agreement for both countries.

AMBASSADOR COLLINS:

I can but fully share your words, because five years ago I said exactly the same thing to President Herrera Campins, when he was President Elect, and I told him that it was necessary to set an example for other countries on how two States can solve a territorial problem and provide a good example of cooperation.

There is also a concrete problem to which we should look for a solution. I have had the opportunity in the past to mention that there is a great difference between the border situation of Venezuela and Colombia, that of Venezuela and Brazil and that of Venezuela and Guyana. If an incident occurs on the Venezuelan-Colombian border, it is regarded as an incident. If an incident takes place on the Venezuelan-Brazilian border it is also considered as an incident, but if an incident occurs on the Venezuelan-Guyanese border, this incident immediately becomes a national issue that requires a formal declaration at the presidential level.

For this reason, I suggest that a "localizing group" be formed, whose function would be to identify

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the circumstances of the incidents and which would serve as a border body to which incidents would be referred in order to prevent them from becoming national issues that would require a presidential statement.

GENERAL MENDOZA:

He agrees with the above approach and points out that, within the Venezuelan administrative framework, the body that plays this role is the Sectoral Directorate General for Border Issues, reporting to the head of this Office. This is the means to deal with incidents that may occur between Venezuela and Brazil, but in the case of Guyana, what happens is that the highest level of the National Executive wants to be able to control the situation. This is the case in both countries.

It must be shown that there are indeed mechanisms to control public opinion and to support the criteria of good neighbourliness and spontaneity for the flow of information and the exchange of information in an expeditious manner. For example, in the case of the fishermen, six months ago, the Sectoral Directorate General for Border Issues took charge of the case and did everything necessary, and as this was considered a domestic matter, it was not given international resonance, but was resolved amicably.

I hope that a similar body in Guyana will be able to manage these issues jointly with our Ambassador in Georgetown.

The issue provides an opportunity for anything that can help relations between the two countries, for example in the areas of education, health, culture and even defence.

AMBASSADOR COLLINS:

I would like to voice a personal sentiment. I do not doubt that there was good will on the part of both governments, but I do not see that there are concrete mechanisms in place to allow real progress and that at the end of each day a visible sign of progress can be seen.

GENERAL MENDOZA:

How can this be measured? A first way would be to organise a visit by the Foreign Minister to Guyana. A second way would be to convene a Joint Commission to examine how to move forward in cooperation, economically, legally and politically.

The Venezuelan government is looking forward to seeing an opening for all possible initiatives.

The public must see the official sector as taking concrete steps, to see that something positive is being done.

As a military man I want to see openings for progress.

DR PULVENIS:

The Ambassador spoke about concrete mechanisms. I would like to know if he has any suggestions on this.

AMBASSADOR COLLINS:

He stressed the need to proceed with great caution. He specified that he was speaking in a personal capacity, but that he could of course pass on certain proposals to his government.

However, I realise that despite the informal nature of this meeting you seem to be speaking on behalf of your government and in any case your point of view is fully in line with what I know of

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your government's position. For this reason, I can tell you that although I am speaking in a personal capacity, you can imagine that everything I say reflects the position of my government.

Speaking of concrete proposals, firstly, I think the Foreign Minister's visit to Guyana is quite timely.

Also, in the near future, he will visit you and I will give him concrete suggestions as to how to make progress on the other aspects. For the time being, no commitments have been made by either country, but we can see the background against which progress can be made in the future.

GENERAL MENDOZA:

All of us in the Ministry are very pleased. Naturally, we will support, in every possible way, efforts to find a solution to the problem that divides us. There are indeed mechanisms to avoid division. The Minister of Foreign Affairs will be very pleased when I explain to him what we have talked about and he will see that there is interest in establishing this openness that we have been promoting. And although minority groups may have antagonistic positions, the vast majority of the people want to have brotherly relations and show their respect for sovereign States and for all the systems that each State has as a sovereign State. We must be able to act as one, united. The problems facing the continent are very difficult and, if we are disunited, we cannot present a united front. We must defend our continent and seek the unity and integrity of our populations; although there is a language difference between the two countries, we must think alike ideologically and be united.

Ambassador Collins, I have sought this meeting, because if there is no communication and exchange on this matter, we will not be able to solve the many problems that each State has on its border. Let us not miss the opportunity, when we can, to talk to each other. I am very happy to know that there is a willingness to make progress towards a solution to the problem and that there is a spirit of trust in this solution.

(This was followed by an informal exchange on the presence of a Guyanese crewed vessel in the Las Aves archipelago, as well as other minor issues).

Annex 91

Memorandum, Notes taken during the First Session of Negotiations with the Government of Guyana, Georgetown, 20 December 1977
(Translation- Excerpt)

Ministerio del Poder Popular para Relaciones Exteriores, Archivos, Bibliotecas y Divulgación
Casa Amarilla, Guyana 8-A-97.

Guyana 8-A-98

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS
Office of International Relations
PI-AI

MEMORANDUM

To:	Doctor Isidro Morales Paúl
From:	Mrs. Myriam Feil
Subject:	Notes taken at the first session of negotiations with the Government of Guyana, Georgetown 12-20-77.

[...]

The Venezuelan side replied that the initiative to discuss border issues came from Prime Minister Burnham, and that the Venezuelans' trip to Georgetown was agreed upon on that basis, and based on the map with the territorial settlement that Minister Wills himself had submitted to President Pérez when they met in his office during the Official Visit to Caracas a few days earlier.

Caracas, January 1978

MF: tns
Please find attached.

Annex 92

Minutes of the Work-Meeting chaired by the Heads of States of Venezuela and Guyana in the Palace of Miraflores, 18-26 February 1993 (Translation- Excerpt)

Ministerio del Poder Popular para Relaciones Exteriores, Archivo de Fronteras, Minutas de la reunión de trabajo presidida por los Jefes de Estado de Venezuela Carlos Andrés Pérez y Guyana Jagan en Miraflores, 1993, Box: E-10.

BOLIVARIAN GOVERNMENT
OF VENEZUELA | PEOPLE'S MINISTRY FOR FOREIGN AFFAIRS
BORDER OFFICE
DOCUMENTATION AREA

FILE NUMBER: 65

ITEM:

GEOGRAPHICAL DESCRIPTOR: VENEZUELA

THEMATIC DESCRIPTOR: MINUTES OF THE WORKING MEETING PRESIDED OVER BY THE HEADS OF STATE OF VENEZUELA CARLOS ANDRES PÉREZ AND GUIANA JAGAN, IN MIRAFLORES.

YEAR(S): 1993

Foreign Debt

He informed that the economic situation of his country is in critical conditions. The gap between the rich and the poor has increased, despite the fact that Guiana has enormous resources and a small population, but due to internal and external processes it has the lowest per capita income in the continent. In this sense, he presented some tables on the deficit situation of the budget of this country due to the payments that had to be made to cancel the foreign debt.

He also informed that international loans are being requested to cover the aforementioned deficit, which manifests itself in the lack of money to pay the salaries of the public administration, the deterioration of the social and physical infrastructure, the lack of a regular electricity service, as well as housing for the low-income population. In this regard, they will soon renegotiate their debt with the Paris Club.

Agricultural cooperation

He added that the population of Guiana is predominantly agricultural. In this sense, he offered his lands as a source of supply for the Venezuelan market, in which the complementation would be given by the offer that Venezuela can make of fertilizers, raw materials and equipment for the agricultural development of his country, stimulating the integration with the Venezuelan Guayana. If the latter project is implemented, the problem of marijuana cultivation will be counteracted.

Cooperation in the health sector

He also presented the Minister of Health, Mrs. Gail Texeira, as a very active person who recently faced a serious crisis with the closure of hospital wards, a situation that was resolved with the contribution of the private sector and the help of friendly governments such as Korea, from which millions of dollars in supplies were purchased due to the critical situation of the health sector in his country, one of the areas that require cooperation from Venezuela.

Land transportation

Guyana has asked Venezuela for $1 million to half a million dollars to complete the road that connects that country to ours from the north.

Electrical interconnection

Among the alternatives that the Government of Guiana is considering to solve the serious electricity crisis, is the electric interconnection project through the Guri.

President Perez suggested that since the viability of this project depends on a loan from the IDB, it will be analysed in Puerto Ordaz within the framework of the visit to be made to that region by President Jagan.

WILLIAM LARRALDE:

I would like to point out some aspects related to financial cooperation (...) there is an open line of credit for US$ 15 million, the balance of which was US$ 600 thousand for last year (he next reads his notes).

Then we have the energy issue. First there is the oil agreement (...) we will continue it (...), then [there is the] energy crisis [in Guiana]. How can we face it? What can we do about it? [We have to talk] with CADAFE, [there is the] electrical interconnection project from Guri (...) We would have to resort to the IDB (if we decide to continue the project).

Annex 93

Ministers of Foreign Affairs of Guyana and Venezuela held their First Meeting of the Joint Commission in Brasilia, Brazil, 26 January 2024

Ministry of Foreign Affairs and International Cooperation Cooperative Republic of Guyana, January 26, 2024

Available at: https://www.minfor.gov.gy/newsroom/ministers-foreign-affairs-guyana-and-venezuela-held-their-first-meeting-joint-commission

Ministers of Foreign Affairs of Guyana and Venezuela held their first meeting of the Joint Commission in Brasilia, Brazil

Publish Date: 26 Jan 2024

Press Release

On January 25, 2024, the Ministers of Foreign Affairs of Guyana and Venezuela held their first meeting of the Joint Commission in Brasilia, Brazil. This meeting was in line with the Joint Declaration of Argyle for Dialogue and Peace that was agreed upon after the meeting of the Presidents of Guyana and Venezuela on December 14, 2023.

According to Paragraph 7 of the Declaration, the two states agreed to immediately establish a joint commission comprising of the Foreign Ministers and technical persons from both countries. The commission was to address matters that were mutually agreed upon, and an update was to be submitted to the Presidents of Guyana and Venezuela within three months.

At the meeting, Guyana proposed an agenda, and Minister Hugh Todd, who was the head of Guyana's delegation, explained that Guyana's position regarding the land boundary between Guyana and Venezuela had not changed. Guyana maintained that the settlement of this controversy was properly before the International Court of Justice in accordance with the Geneva Agreement. Therefore, it must remain there until the Court gives its final ruling on the merits of the case, which will be fully respected by Guyana. Guyana will not undermine the judicial process or the Geneva Agreement by participating in any other means of settlement of the controversy as long as it is pending before the Court.

Minister Todd suggested that regional and hemispheric statements on peace and security could be a means of moving forward in the discussions. He also offered a number of areas that the two countries could discuss, including agreements already entered into between them on drugs, Jet A1 Fuel, and matters relating to food security.

Guyana reaffirmed its commitment to the principles of the Argyle Declaration, particularly the maintenance of peace in Latin America and the Caribbean. The country looked forward to the next meeting to advance the relationship between Guyana and Venezuela.

Finally, Minister Todd expressed his sincere appreciation to the Foreign Minister of Brazil, HE Mauro Vieira, for facilitating the discussions. He also thanked the representatives of CELAC and the United Nations for attending as observers.

January 25, 2024

Category: General News